

ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST

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

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

Applicant

SUPPLEMENTAL AFFIDAVIT OF KEVIN MCELCHERAN
(Sworn June 24, 2016)
(Re Appointment of CRO and Stay Extension)

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, 2123125 Ontario Inc., formerly known as "FirstOnSite G.P. Inc." ("**212**"), the general partner of Former Restoration L.P., formerly known as "FirstOnSite Restoration L.P." ("**Former LP**" and together with 212, "**FirstOnSite**"), a limited partnership formed under the laws of Ontario. Hereinafter, where reference is made to the FirstOnSite enterprise as a whole, the term FirstOnSite will be used.
2. As a director of 212, I have knowledge of the matters to which I hereinafter depose, except where otherwise stated. I have also reviewed the records of FirstOnSite and have spoken with certain of the other directors, officers and/or employees of FirstOnSite, as necessary, and where I have relied upon such information do verily believe such information to be true.
3. This affidavit is to be read in conjunction with my affidavit sworn June 22, 2016 (the "**June 22 Affidavit**") and is sworn in support of the motion brought by FirstOnSite seeking orders, among other things, (a) appointing Oriole Advisors Ltd. ("**Oriole**") as

chief restructuring officer (“**CRO**”) of FirstOnSite, (b) extending the Stay Period (as defined below) to October 31, 2016, (c) approving reports of the Monitor (as defined below) and the activities set out therein, and (d) approving the Monitor and its counsel’s fees and disbursements.

4. Capitalized terms not defined herein have the meaning set out in the June 22 Affidavit.

5. On June 24, 2016 FirstOnSite and Oriole executed an engagement letter (the “**CRO Agreement**”) setting forth the terms of the Oriole’s appointment as CRO of FirstOnSite, including the CRO’s duties, responsibilities and compensation, all of which is subject to Court approval. A copy of the CRO Agreement is appended hereto as **Exhibit “A”**.

6. As set out in the CRO Agreement, subject to Court approval, the CRO will have power to exercise all of the powers of FirstOnSite, subject to any orders of this Court that have or will be made. The CRO will be responsible for overseeing the remaining day-to-day operations and affairs of FirstOnSite and these CCAA Proceedings, including:

- (a) conducting and controlling the financial affairs and operations of FirstOnSite and carry on the business of FirstOnSite as the CRO deems necessary;
- (b) taking such steps as in the opinion of the CRO are necessary or appropriate to reduce the expenses of FirstOnSite;
- (c) executing such documents as may be necessary in connection with any proceedings before or order of the Court for and on behalf of FirstOnSite;
- (d) taking steps for the preservation and protection of the remaining assets of FirstOnSite (the “**Property**”);

- (e) disposing of, disclaiming, or otherwise dealing with the Property;
- (f) negotiating and entering into agreements on behalf of FirstOnSite with respect to the Property;
- (g) selling, and directing FirstOnSite to apply to Court for any vesting order or orders which may be necessary or appropriate in order to convey the Property to a purchaser or purchasers thereof;
- (h) taking any steps required to be taken by FirstOnSite under any Order of the Court, including without limitation, the Distribution Order dated May 18, 2016 and the Amended and Restated Approval and Vesting Order dated May 9, 2016;
- (i) engaging in such other related activities as may be necessary or desirable;
- (j) providing information to FTI Consulting Canada Inc. in its capacity as court-appointed Monitor regarding the business and affairs of FirstOnSite;
- (k) taking any steps, entering into any agreements or incurring any reasonable obligations necessary or incidental to the exercise of the its powers, with such agreements and obligations to be those of FirstOnSite and not of the CRO or Oriole personally;
- (l) applying to the Court for an order authorizing and directing FirstOnSite to make a voluntary assignment in bankruptcy;
- (m) exercising such shareholder or member rights as may be available to FirstOnSite;
- (n) in consultation with Stikeman Elliott LLP, directing FirstOnSite to commence any proceeding and seek any order, or respond to any motion

or application brought by any other person, in these CCAA proceedings or otherwise; and

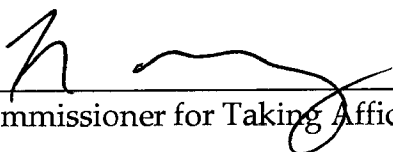
- (o) applying to Court to seek advice and direction with respect to any of the CRO's powers or duties as set out in the CRO Agreement.

7. Pursuant to the CRO Agreement, Oriole will receive a monthly working fee. The term of the CRO Agreement shall extend until termination in accordance with the CRO Agreement. The Monitor, the CRO, or any other interested party may apply to the Court to terminate the CRO's engagement at any time.

8. Oriole consents to its appointment as CRO of FirstOnSite.

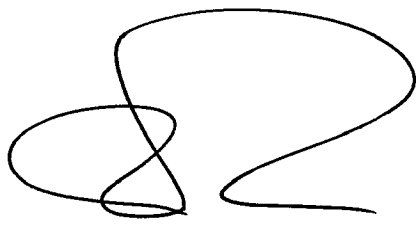
9. I am advised by Haddon Murray that the board of directors of FirstOnSite approved the appointment of the CRO and the CRO Agreement on June 23, 2016. I am advised by Harvey Chaiton, counsel to BDC Capital Inc. ("**Capital**") that Capital does not oppose the approval of the CRO Agreement.

SWORN BEFORE ME at the
Toronto, Province of Ontario, June
24, 2016.



Commissioner for Taking Affidavits

C. Haddon Murray
LSUC #: 61640P

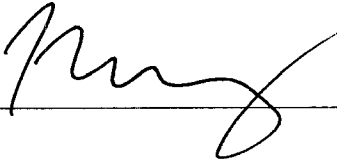


Kevin McElcheran

EXHIBIT “A”

Exhibit "A" to the Affidavit
of Kevin McElcheran sworn

June 24, 2016



ENGAGEMENT AGREEMENT

BY AND BETWEEN: Former Restoration L.P., previously FirstOnSite Restoration L.P. (“**FOS LP**”), by its general partner 2123125 Ontario Inc. (“**FOS GP**”)

(hereinafter individually and collectively referred to as “**Company**”)

AND: Oriole Advisors Ltd., a corporation incorporated under the laws of Ontario having its registered office at Suite 420, 120 Adelaide St. W., Toronto, Ontario, M5H 1T1

(hereinafter referred to as “**Oriole**”)

RECITALS:

A. FOS GP, under its previous name “FirstOnSite G.P. Inc.” is the applicant in proceedings under the Companies Creditors’ Arrangement Act (“**CCAA**”). On April 21, 2016, an initial order was made under the CCAA (the “**Initial Order**”) in respect of the application of FOS GP and, the Ontario Superior Court of Justice (Commercial List) (the “**Court**”) ordered that FOS LP would enjoy the benefits of the protection and authorizations provided to FOS GP under the Initial Order.

B. With the approval of the Court, the Company sold substantially all of its assets to 3297167 Nova Scotia Limited (the “**Purchaser**”) pursuant to an asset purchase agreement dated April 20, 2016 (the “**Sale Agreement**”).

C. The transactions contemplated under the Sale Agreement closed on June 1, 2016, and the Purchaser and its affiliates are now carrying on the business of the Company, subject to Transition Agreement between the Company and the Purchaser dated June 1, 2016.

D. The officers and directors of FOS GP intend to resign effective as of 12:01 am June 28, 2016.

E. Subject to Court approval, Oriole has agreed to act as Chief Restructuring Officer (the “**CRO**”) of FOS GP, to execute documents and act on behalf of the Company until all proceedings under the CCAA have been completed.

F. Kevin McElcheran is the owner and sole officer, director and employee of Oriole.

NOW THEREFORE in consideration of the premises and the mutual covenants herein contained, the parties hereto hereby agree as follows:

1. **TERM.** The term of this Agreement shall commence on June 28, 2016 (the “**Effective Date**”) and continue until the termination in accordance with this Agreement.

2. DUTIES.

- (a) **Appointment.** The services of Oriole will be provided by Kevin McElcheran.
- (b) **Appointment is not exclusive.** The Company acknowledges that Oriole now has and will have other commitments and business activities in which it will continue to be involved during the term of this engagement.
- (c) **Not directors or officers.** Neither Oriole nor Kevin McElcheran shall be or be deemed to be a director or officer of any corporation affiliated with the Company by virtue of the performance of their duties under this Agreement.
- (d) **Scope of Duties.** Subject to such orders of the Court as have been and as may be made from time to time, the CRO shall be responsible for:
- (i) conducting and controlling the financial affairs and operations of the Company and carry on the business of the Company as the CRO deems necessary;
 - (ii) taking such steps as in the opinion of the CRO are necessary or appropriate to reduce the expenses of the Company;
 - (iii) executing such documents as may be necessary in connection with any proceedings before or order of the Court for and on behalf of the Company;
 - (iv) taking steps for the preservation and protection of the remaining assets of the Company (the “**Property**”);
 - (v) disposing of, disclaiming, or otherwise dealing with the Property;
 - (vi) negotiating and entering into agreements on behalf of the Company with respect to the Property;
 - (vii) selling, and directing the Company to apply to Court for any vesting order or orders which may be necessary or appropriate in order to convey the Property to a purchaser or purchasers thereof;
 - (viii) taking any steps required to be taken by the Company under any Order of the Court, including without limitation, the Distribution Order dated May 18, 2016 and the Amended and Restated Approval and Vesting Order dated May 9, 2016;
 - (ix) engaging in such other related activities as may be necessary or desirable;
 - (x) providing information to FTI Consulting Canada Inc. in its capacity as court-appointed Monitor regarding the business and affairs of the Company;
 - (xi) taking any steps, entering into any agreements or incurring any reasonable obligations necessary or incidental to the exercise of the its powers, with such

agreements and obligations to be those of the Company and not of the CRO or Oriole personally;

- (xii) applying to the Court for an order authorizing and directing the Company to make a voluntary assignment in bankruptcy;
- (xiii) exercising such shareholder or member rights as may be available to the Company;
- (xiv) in consultation with Stikeman Elliott LLP, directing the Company to commence any proceeding and seek any order, or respond to any motion or application brought by any other person, in these CCAA proceedings or otherwise; and
- (xv) applying to Court to seek advice and direction with respect to any of the CRO's powers or duties as set out in the CRO Agreement,

collectively the "Services".

(e) **Powers of the CRO.** The CRO shall have the power to exercise all of the powers of the Company, subject to such orders of the Court as have been and as may be made from time to time.

(f) **Standard of Performance.** Oriole shall provide its Services, including all ancillary services, in good faith.

3. **CONSIDERATION FOR CONSULTING SERVICES.**

(a) **Monthly Fees.** CDN\$10,000 per month work fee (unless notice of a motion for termination has been given under 4(a), in which case payment shall be prorated for the fee for the portion of the month for which the CRO is engaged), together with applicable taxes including HST, payable monthly by the Monitor on behalf of the Company in advance from the funds held by the Monitor on behalf of the Company pursuant to the Approval and Vesting Order and the Distribution Order, provided that the Monitor shall have no liability in respect of any such payments in the event there are insufficient funds held by the Monitor on behalf of the Company. The first monthly payment shall be made on July 4, 2016 for the period beginning on the Effective Date and ending on July 28, 2016 and monthly payments for subsequent periods will become payable on the 1st of each month during the term of this Agreement for the period ending on the 28th of each such month.

(b) **Expenses.** Oriole shall be reimbursed for all reasonable and documented out-of-pocket expenses incurred by it in connection with the performance of its duties under this Agreement. Invoices for reimbursement of expenses shall be payable by the Monitor on behalf of the Company promptly following receipt of such invoices by the Monitor from the funds held by the Monitor on behalf of the Company pursuant to the Approval and Vesting Order and the Distribution Order, provided that the Monitor shall have no liability in respect of any such payments in the event there are insufficient funds held by the Monitor on behalf of the Company.

4. **TERMINATION.**

(a) **Termination.** The appointment of the CRO under this Agreement may be terminated by order of the Court on a motion from the Monitor, the CRO or any other interested party at any time.

(b) **Automatic Termination.** This Agreement shall automatically terminate if it is not approved by the Court in a form satisfactory to the CRO, including a provision securing the Company's obligations under this Agreement and the Indemnity, within 30 days of the Effective Date.

5. INDEMNITY.

Indemnity. The Company hereby agrees to indemnify and save harmless Oriole and Kevin McElcheran, in accordance with Schedule A hereto, which Schedule A forms part of this Agreement, the consideration for which is the entering into of this Agreement.

6. GENERAL PROVISIONS

(a) **Independent Contractor.** Nothing contained in this Agreement shall be construed as creating a relationship between any party and Oriole other than that of an independent contractor. Oriole and any of Oriole's employees, agents or representatives, including Kevin McElcheran, shall not be deemed a partner, employee, joint venturer or agent of such party by virtue of this Agreement.

(b) **Notices.** Any notice hereunder by either party to the other shall be given in writing by personal Delivery, or certified mail, return receipt requested, or by email transmission, in any case Delivered to the applicable address set forth below:

(i) To the Company:

c/o Stikeman Elliott LLP
5300 Commerce Court West
Toronto, Ontario
M5L 1B9

Attention: Brian Pukier
Email: bpukier@stikeman.com

(ii) To Oriole:

Suite 420, 120 Adelaide St. W.
Toronto, Ontario
M5H 1T1

Attention: Kevin McElcheran
Email: kevin@mcelcheranAdr.com

(iii) To the Monitor:

FTI Consulting
TD Waterhouse Tower
79 Wellington Street West
Suite 2010, P.O. Box 104
Toronto, Ontario
M5L 1B9

Attention: Paul Bishop and Michael Basso
Email: paul.bishop@fticonsulting.com / michael.basso@fticonsulting.com

(iv) To the Lawyers for the Monitor

Goodmans LLP
Barristers & Solicitors
333 Bay Street, Suite 3400
Toronto, Ontario
M5H 2S7

Attention: Robert J. Chadwick and Caroline Descours
Email: rchadwick@goodmans.ca / cdescours@goodmans.ca

or to such other persons or other addresses as either party may specify to the other in writing.

(c) **Amendment; Waiver; Assignment.** No provision of this Agreement may be amended, modified, waived or discharged unless such amendment, modification, waiver or discharge is agreed to in writing and signed by the parties. No waiver by either party hereto, at any time, of any breach by the other party hereto of, or compliance with, any condition or provision of this Agreement to be performed by such other party shall be deemed a waiver of similar or dissimilar provisions or conditions at the same or at any prior or subsequent time. Neither party may assign this Agreement or any of its rights and obligations hereunder without the prior written consent of the other. This Agreement may not be assigned by the CRO without approval of the Court. Any purported assignment made in contravention of this section shall be null and void and have no legal effect.

(d) **Severability.** The parties have carefully reviewed the provisions of this Agreement and agree that they are fair and equitable. However, in light of the possibility of differing interpretations of law and changes in circumstances, the parties agree that if any one or more of the provisions of this Agreement shall be determined by a court of competent jurisdiction to be invalid, void or unenforceable, the remainder of the provisions of this Agreement shall, to the extent permitted by law, remain in full force and effect and shall in no way be affected, impaired or invalidated. Moreover, if any of the provisions contained in this Agreement is determined by a court of competent jurisdiction to be excessively broad as to duration, activity, geographic application or

subject, such provision shall be construed, by limiting or reducing it to the extent legally permitted, so as to be enforceable to the extent compatible with then applicable law.

(e) **Governing Law.** This Agreement shall be governed by and construed in accordance with the laws of the Province of Ontario (determined without regard to the choice of law provisions thereof). The Court shall have exclusive jurisdiction in relation to any disputes arising from or in any way related to this Agreement and/or the Indemnity.

(f) **Entire Agreement.** This Agreement contains the entire agreement of Oriole and the Company and any predecessors or affiliates thereof with respect to the subject matter hereof, and supersedes all prior agreements, understandings and arrangements, oral and written between the parties either jointly or individually, with respect to the subject matter hereof.

(g) **Survival.** The following provisions will survive the termination of the appointments of Oriole and Kevin McElcheran hereunder and this Agreement: Sections 3, 5 and 6.

(h) **Counterparts.** This Agreement may be executed by the parties hereto in counterparts, each of which shall be deemed an original, but both such counterparts shall together constitute one and the same document.

(i) **Headings.** The headings of this Agreement are for convenience and reference only and shall not be considered in construing the provisions hereof.

(j) **Language.** It is the express wish of the parties hereto that this Agreement and any related documents be drawn up and executed in the English language only. Les parties conviennent que la présente convention et tous les documents s'y rattachant soient rédigés et signés en langue anglaise seulement.

(k) **Currency.** All financial references in this Agreement are to Canadian dollars unless otherwise indicated.

[Remainder of page intentionally left blank]

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed as of this
24th day of June, 2016.

~~3~~Former Restoration L.P.~~3~~ (by its general partner 2123101 Ontario Inc.)

By: _____

Name:

Title:

Oriole Advisors Ltd.

By: _____

Name: Kevin McElcheran

Title: President

SCHEDULE A

INDEMNITY

In connection with the engagement (the “**Engagement**”) of Oriole Advisors Inc. (“**Oriole**”) pursuant to an agreement (the “**Agreement**”) between Oriole and Former Restoration L.P., by its general partner 2123125 Ontario Inc. (hereinafter collectively referred to as the “**Company**”) dated as of June 24, 2016, the Company agrees to indemnify and hold harmless Oriole and its respective directors, officers, employees, partners and agents, and any other person providing services to it pursuant to the Agreement (collectively, the “**Indemnified Parties**” and individually, an “**Indemnified Party**”), from and against any and all losses, expenses, claims, actions, damages and liabilities, joint or several, including the aggregate amount paid in reasonable settlement of any actions, suits, proceedings, investigations or claims and the reasonable fees and expenses of its counsel on a solicitor and his own client basis that may be incurred in advising with respect to and/or Defending any action, suit, proceeding, investigation or claim that may be made or threatened against any Indemnified Party or in enforcing this Indemnity (collectively the “**Claims**”) to which any Indemnified Party may become subject or otherwise involved in any capacity insofar as the Claims relate to, are caused by, result from, arise out of or are based upon, directly or indirectly, the Engagement, and is not caused by the gross negligence and or wilful misconduct of any Indemnified Party. The Company also agrees that no Indemnified Party shall have any liability (whether directly or indirectly in contract or tort or otherwise) to it or any person asserting claims on behalf of or in right of the Company for or in connection with the Engagement except to the extent any losses, expenses, claims, actions, damages or liabilities incurred by it are determined by a court of competent jurisdiction in a final judgment that has become non-appealable to have resulted primarily from the gross negligence or wilful misconduct of any Indemnified Party.

The Company will not, without Oriole’s written consent, settle, compromise, consent to the entry of any judgment in or otherwise seek to terminate any action, suit, proceeding, investigation or claim in respect of which indemnification may be sought hereunder unless such settlement, compromise, consent or termination includes a release of each Indemnified Party from any liabilities arising out of such action, suit, proceeding, investigation or claim.

Promptly after receiving notice of an action, suit, proceeding or claim against Oriole or any other Indemnified Party or receipt of notice of the commencement of any investigation which is based, directly or indirectly, upon any matter in respect of which indemnification may be sought from the Company, Oriole or any such other Indemnified Party will notify the Company in writing of the particulars thereof. Oriole and all Indemnified Parties shall fully cooperate with the Company and its counsel in the preparation of the case(s) and provide all information and documents in their possession as required by the Company’s counsel.

Oriole and any other Indemnified Party may retain counsel to separately represent it, him or her in the Defence of a Claim, provided that only one counsel can be retained by all of Oriole and any Indemnified Party, which shall be at the expense of the Company on a full indemnity basis if (i) the Company does not promptly assume the Defence of the Claim, or (ii) the Company agrees to separate representation, or (iii) the Indemnified Party is advised by its counsel that there is an actual

or potential conflict between the Company's and the Indemnified Party's respective interests or additional Defences are available to the Indemnified Party, which makes representation by the same counsel inappropriate.

Where the Indemnified Party pays or is required to pay any amount for which the Indemnified Party may ultimately be entitled to claim indemnity hereunder, the Company shall forthwith pay such amount (or reimburse the Indemnified Party in respect of such amount if the Indemnified Party has already paid the same). The Indemnified Party agrees that, if the Indemnified Party is not otherwise ultimately entitled to indemnity hereunder, the Indemnified Party shall forthwith refund to the Company any amount paid out by the Company which it would not have otherwise paid out but for the provisions of this paragraph and which the Company is not otherwise legally obliged to pay out, together with simple interest thereon at an annual rate equal to the prime rate of interest from time to time charged by Canadian Imperial Bank of Commerce.

Although this Indemnity shall not be interpreted in any way to limit the ability of the Indemnified Party to seek indemnity under any other indemnity agreement, under any insurance policy (including, without limitation, any directors' and officers' insurance policy, if applicable), or applicable legislation to the fullest extent permitted by law, the Indemnified Party shall be under no obligation to do so nor shall the Company be entitled to rights of subrogation under any of the foregoing except if the Company has fully satisfied its obligations hereunder and except if the person against whom subrogation is claimed has no right over against the Indemnified Party as a result thereof.

This Indemnity shall enure to the benefit of each Indemnified Party, and shall survive termination of the Engagement, and shall be binding upon the Company heirs and executors, and his successors and assigns. The Company hereby acknowledges and agrees with the CRO, the President and Chief Executive Officer of Oriole, that this Indemnity may be enforced against the Company by him as an Indemnified Party, if he is named to a Claim.

This Indemnity is made pursuant to, and shall be construed, performed and enforced in accordance with, the laws of the Province of Ontario including the laws of Canada applicable therein.

The obligations of the Company hereunder are in addition to any liabilities which the Company may otherwise have to Oriole or any other Indemnified Party.

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

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

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

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

Proceeding commenced at Toronto

**SUPPLEMENTAL AFFIDAVIT
OF KEVIN MCELCHERAN
(SWORN JUNE 24, 2016)**

STIKEMAN ELLIOTT LLP

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

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