

# WILLIAM HARVEY JONES

B A R R I S T E R & S O L I C I T O R

Suite 2702 – 401 Bay Street | Toronto, Ontario | M5H 2Y4 V

TEL: (416) 596-8876 | FAX: (416) 596-0907 | EMAIL: WHJONES@WILLIAMJONES.CA

February 9, 2018

Chaitons LLP  
Barristers & Solicitors  
5000 Yonge Street, 10<sup>th</sup>. floor  
Toronto Ontario  
MM2N 7E9  
Attention: Maya Poliak

And to the attached service list

Dear Sirs and Mesdames:

**RE: In the matter of the Notice of intention to Make a Proposal of Forte EPS Solutions Inc.**

Please find attached hereto the motion record returnable on Friday February 16, 2018

Yours very truly

  
\_\_\_\_\_  
William Harvey Jones

Court File No. 31-2253654

Estate File No. 31-2253654

***ONTARIO***  
**SUPERIOR COURT OF JUSTICE**  
**IN BANKRUPTCY AND INSOLVENCY**

**IN THE MATTER OF THE NOTICE OF INTENTION TO MAKE A PROPOSAL OF  
FORTE EPS SOLUTIONS INC., A CORPORATION WITH A HEAD OFFICE IN THE  
TOWN OF MIDLAND IN THE PROVINCE OF ONTARIO**

**MOTION RECORD**  
**(Motion returnable February 16, 2018)**

Date February 5, 2018

William Harvey Jones  
Barrister & Solicitor  
Suite 2702 – 401 Bay Street  
Toronto, Ontario M5H 2Y4  
Law Society # 38733J  
Tel: (416) 596-8876  
Fax: (416) 596-0907

## **Service List**

Business Development Bank of Canada  
Care of Chaitons LLP.  
5000 Yonge Street  
Toronto, Ontario  
M2N 7E7  
Email: [maya@chaitons.com](mailto:maya@chaitons.com)

Department of Justice (Canada)  
The Exchange Tower  
130 King Street West, Suite 3400  
P.O. Box: 36  
Toronto, Ontario  
M5X 1K6  
Email: [diane.winters@justice.gc.ca](mailto:diane.winters@justice.gc.ca)

Ministry of Finance Legal Services Branch  
Michael Starr Building  
33 King Street West, 6<sup>th</sup>/ Floor  
P.O. Box 627, Station A  
Oshawa, Ontario  
L1H 8H5  
Email: [kevin.ohara@ontario.ca](mailto:kevin.ohara@ontario.ca)

Pacific High Tech Ltd  
Care of Folger Rubinoff LLP  
77 King Street West, Suite 3000  
Toronto, Ontario  
M5K 1G8  
Attention: W. Ross MacDougall  
Email: [rmacdougall@foglers.com](mailto:rmacdougall@foglers.com)

Travelers Leasing Ltd.  
500-4180 Lougheed Highway  
Burnaby, BC V 5C 6A7  
Email: [AFisher@travelersfinancial.com](mailto:AFisher@travelersfinancial.com)

First Source Mortgage Corporation  
Care of Paliare Roland LLP  
Barrister & Solicitors  
155 Wellington Street W.  
Toronto, Ontario M5H 3H1  
Attention: Jeff Larry, Esq

Email: [jeff.larry@paliereoland.com](mailto:jeff.larry@paliereoland.com)

Western Ontario Mortgage Community Futures Development Corporation  
330 West Street, Unit 10,  
Brantford, Ontario  
N3R 7V5  
Attention: David Penton  
Email: [david@wocfdca.com](mailto:david@wocfdca.com)

North Simcoe Community Futures Development Corporation  
P.O. Box 8, 355 Cranston Crescent  
Midland Ontario  
L4R 4K6  
Email: [admin@nscfed.on.ca](mailto:admin@nscfed.on.ca)

2306732 Ontario Inc.  
Care of Angelo Mancini  
Barrister & Solicitor  
505 -7050m Weston Road  
Woodbridge, Ontario L4L 8G7  
Email: [acm@manciniassociates.com](mailto:acm@manciniassociates.com)

Court File No. 31-2253654

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**ONTARIO**  
**SUPERIOR COURT OF JUSTICE**  
**IN BANKRUPTCY AND INSOLVENCY**

**IN THE MATTER OF THE NOTICE OF INTENTION TO MAKE A PROPOSAL OF  
FORTE EPS SOLUTIONS INC., A CORPORATION WITH A HEAD OFFICE IN THE  
TOWN OF MIDLAND IN THE PROVINCE OF ONTARIO**

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Date February 5, 2018

William Harvey Jones  
Barrister & Solicitor  
Suite 2702 – 401 Bay Street  
Toronto, Ontario M5H 2Y4  
Law Society # 38733J  
Tel: (416) 596-8876  
Fax: (416) 596-0907

**TAB 1**

Court File No. 31-2253654

Estate File No. 31-2253654

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
IN BANKRUPTCY AND INSOLVENCY**

**IN THE MATTER OF THE NOTICE OF INTENTION TO MAKE A PROPOSAL OF  
FORTE EPS SOLUTIONS INC., A CORPORATION WITH A HEAD OFFICE IN THE  
TOWN OF MIDLAND IN THE PROVINCE OF ONTARIO**

**NOTICE OF MOTION**

**(RETURNABLE ON FEBRUARY 16, 2018)**

16567 Highway 12 Holdings Limited. (the "Applicant") will make a motion to a Judge on the Commercial List at 10:00 am on Friday, February 16, 2018, or as soon thereafter as the motion can be heard, at The Court House, 7<sup>th</sup> Floor, 330 University Avenue, Toronto, Ontario M5G 1R7.

PROPOSED METHOD OF HEARING: The motion is to be heard

- in writing under subrule 37.12.1 (1) because it is on consent;
- in writing as an opposed motion under subrule 37.12.1 (4);
- orally.

THE MOTION IS FOR an order in the form contained at Tab 1 to the Applicant's Motion Record (the "Draft Order") as follows:

- (a) Authorizing and approving the payment by Albert Gelman Inc. (the "Trustee") in its capacity as Trustee of Forte EPS Solutions Inc. (the "Company") of the sum of \$90,585.39 to the Canada Revenue Agency (the "C.R.A.") on account of the Property Claims as evidenced in the Proof of Claim dated January 19, 2018 filed by the C.R.A. (the "Property Claim");
- (b) Terminating the reimbursement agreement entered into between the Trustee, the Company and the Business Development Bank of Canada, subject to the payment of the Property Claim, evidenced by the Proof of Claim described above;

- (c) Granting a priority charge (the “Administrative Charge”) in favour of the Proposal Trustee and its counsel, Lerners LLP., to a maximum amount of \$20,000.00 and authorizing the payment thereof to the Trustee;
- (d) Authorizing the Trustee, Albert Gelman Inc. to distribute the sum of \$200,000.00 plus accrued interest (the “DIP Funds”) on account of the DIP Finance Charge as provided for and defined in the order of the Honourable Justice Penny dated July 31, 2017 as follows:
  - (i) If the Western Ontario Community Futures Corporation Association withdraws its garnishment in respect of its execution certificate No. 17-0001661 filed with the Sheriff of the County of Simcoe (the “Garnishment Notice”) delivered to Albert Gelman Inc., with respect to its judgment against the DIP Lender on or before February 22, 2018, to distribute the DIP Funds to the DIP Lender; or
  - (ii) If the Garnishment Notice is not withdrawn on or before March 22, 2018, to pay the DIP Funds to the Sheriff of the County of Simcoe in respect of Garnishment Notice.
- (e) Approving the fifth report of the Trustee and its activities as described therein;
- (f) such further and other relief as counsel may advise and this Honourable Court may permit.

THE GROUNDS FOR THE MOTION ARE:

- (a) the Company was established in 2011 and operates as an expanded polystyrene products manufacturer;
- (b) on May 19, 2017, the Company filed and notice of intention to file a proposal (the “NOI”) pursuant to Section 50.4 (1) of the *Bankruptcy and Insolvency Act* RSC. 1985 c. B-3 as amended (the “BIA”). At that time, Albert Gelman Inc. as the Proposal Trustee consented and was appointed to act;
- (c) as of the date of the NOI the Company had four (4) secured creditors (the “Secured Creditors”) as follows:

- (i) Business Development Bank of Canada (“BDC”) which is issued a Notice of Intention to enforce its security pursuant to Section 244 of the BIA on November 3, 2016, and which was owed approximately \$554,000.00. BDC is not affected by the stay under the NOI but has entered into a forbearance agreement whereby BDC will temporarily forbear from continuing to enforce its security through the appointment of a receiver subject to being apprised of the activities of the Company and the Proposal Trustee and the BDC’s approval of the same. As a result of the sale of the assets of the Company approved and authorized by the order of the Honourable Justice Myers granted October 30, 2017, the obligations to the BDC have been paid;
  - (ii) Western Ontario Community Futures Development Corporation Association (Southern Ontario Fund for Investment in Innovation hereinafter “SOFFI”) which is owed approximately \$474,000.00;
  - (iii) North Simcoe Community Futures Development Corporation which is owed approximately \$250,000.00; and
  - (iv) Travelers Leasing Ltd. which is a lessor of certain capital equipment used by the Applicant and which is owed approximately \$400,000.00;
- (d) As a result of a sales and investment solicitation process (“SISP”) as authorized in the order of The Honourable Justice Myers dated August 24, 2017 and an asset sales authorized by the order of the of The Honourable Justice Myers dated October 30, 2017, (the “Vesting Order”) the Company sold its assets to Amvic Inc. (the “Purchaser” ) and the Purchaser was directed to pay a portion of the purchase price in the amount of the BDC Indebtedness directly to the BDC in satisfaction of the rights of the BDC under the PPSA against the Company (the “BDC Distribution”);
- (e) Pursuant to the Vesting Order, the BDC payment was made subject to an Reimbursement Agreement pursuant to which the BDC agreed to repay from the BDC Distribution the amount of any Deemed Trust Claims that may thereafter arise as a result of an audit of the Company’s obligations in respect of amounts

deemed to be held in trust under subsection 227(4) or 227 (4.1) of the *Income Tax Act* or subsection 86 (2) or 86(2.1) of the *Employment Insurance Act* (collectively the “Deemed Trust Claims”).

- (f) On January 19, 2018, the Canada Revenue Agency filed a proof of claim claim the sum of \$90,585.39 in respect of the Deemed Trust Claims;
- (g) The Trustee and the Company acknowledge that the Deemed Trust Claims as evidenced in the January 19, 2018 proof of claim are justly owing and payable by the Company to the CRA. The Trustee holds sufficient funds to pay such Deemed Trust Claims in the amount of \$90,585.39.
- (h) The Trustee, the Applicant, the Company and the BDC support an order authorizing the payment by the Trustee of the Deemed Trust Claims and an order terminating the reimbursement agreement upon payment of the Deemed Trust Claims by the Trustee.
- (i) The DIP Charge authorized by the Court in the amount of \$200,000.00 together with interest thereon as authorized by the DIP Charge is justly payable to the DIP Lender. As of February 4, 2018, the accrued interest under the DIP Charge is \$12,739.72 and the per diem rate of interest thereafter is \$82.19. Upon the sale of the Midland Lands by the by the DIP Lender, its obligations to SOFFI will be discharged. The judgment against the DIP Lender will be satisfied and the Proposal Trustee will be at liberty to release the DIP Loan payment directly to the DIP Lender.
- (j) sections 50.4, 50.6, 64.2 and 65.13 of the BIA; and
- (k) such further and other grounds as counsel may advise and this Honourable Court may permit.

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

- (a) the affidavit of John Cipressi sworn February 4, 2018;
- (b) the Fifth Report and the appendices thereto; and

(c) such further and other material as counsel may advise and this Honourable Court may permit.

Date February 5, 2018

William Harvey Jones  
Barrister & Solicitor  
Suite 2702 – 401 Bay Street  
Toronto, Ontario M5H 2Y4  
Law Society # 38733J  
Tel: (416) 596-8876  
Fax: (416) 596-0907

**TAB 2**



Trustee, BDC, no one appearing for any other person on the service list, although properly served as appears from the affidavit of Helga Fairhurst sworn February ., 2018 filed:

**GENERAL**

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

2. **THIS COURT ORDERS** that the First Report and the activities of AGI contained therein be and are hereby approved.

**DISTRIBUTION OF ESCROW FUNDS**

3. **THIS COURT ORDERS** that AGI is authorized and directed to distribute the Escrow Funds as follows:

- (a) payment to CRA the sum of \$90,585.39 in full and final satisfaction of all trust claims made by CRA and further particularized in CRA's property proof of claim dated January 19, 2018 filed by the CRA with the Trustee (the "**Property Claim**");
- (b) payment of \$50,000 to AGI in its capacity as proposal trustee of the Debtor in accordance with the Administration Charge as granted by the Order of the Honourable Justice \_\_\_\_\_ dated \_\_\_\_\_; and
- (c) payment of \$200,000 plus accrued interest thereon (the "**DIP Funds**") representing repayment of the DIP Charge as created by the Order of the Honourable Justice \_\_\_\_\_ dated \_\_\_\_\_. The DIP Funds to be distributed as follows:
  - (i) if Western Ontario Community Futures Development Corporation Association (hereinafter "**OCFDCA**") withdraws its notice of garnishment attached as Appendix "\_\_\_\_" of the First Report (the

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“Garnishment Notice”) on or before February 28, 2018, then the DIP funds to be distributed to the DIP Lender; or

- (ii) if the Garnishment Notice is not withdrawn by February 28, 2018, then the DIP Funds to be distributed to the sheriff for the \_\_\_\_\_ of \_\_\_\_\_ in accordance with the terms of the Garnishment Notice.

4. **THIS COURT ORDERS** that AGI’s accounts (including the accounts of its counsel) relating to its administration of the Escrow Funds shall be paid from the Escrow Funds up to a maximum of \$20,000 plus HST and disbursements. For greater certainty, this amount is over and above the amounts payable to AGI on account of the Administration Charge referenced in paragraph 2(b) of this Order.

5. **THIS COURT ORDERS** that AGI shall pay the balance of the Escrow Funds into Court.

6. **THIS COURT ORDERS** that upon payment of the amounts set out in paragraphs 3 through 5 of this Order, AGI, in its personal capacity and in its capacity as proposal trustee and trustee in bankruptcy of the Debtor, is hereby released and discharged from any and all liability that it now has or may hereafter have by reason of, or in any way arising out of, the acts or omissions with respect to its activities in holding and distributing the Escrow Funds as mandated by the Order of the Honourable Justice \_\_\_\_\_ dated \_\_\_\_\_ and this Order save and except for any gross negligence or wilful misconduct on AGI’s part. Without limiting the generality of the foregoing, AGI in its personal capacity and in its capacity as proposal trustee and trustee in bankruptcy of the Debtor is hereby forever released and discharged from any and all liability relating to matters that were raised, or which could have been raised, with respect to the Escrow Funds, save and except for any gross negligence or wilful misconduct on its part.

**ADMINISTRATIVE MATTERS**

7. **THIS COURT ORDERS** that upon payment of the Property Claim the Reimbursement Agreement be and is here by terminated.

8. **THIS COURT ORDERS** that upon payment of the Property Claim, BDC shall discharge its collateral mortgage registered against title to certain real property municipally known as \_\_\_\_\_ and registered as instrument number \_\_\_\_\_.

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**TAB 3**

Court File No. 31-2253654

Estate File No. 31-2253654

**ONTARIO**  
**SUPERIOR COURT OF JUSTICE**  
**IN BANKRUPTCY AND INSOLVENCY**  
**IN THE MATTER OF THE NOTICE OF INTENTION TO MAKE A PROPOSAL OF**  
**FORTE EPS SOLUTIONS INC., A CORPORATION WITH A HEAD OFFICE IN THE**  
**TOWN OF MIDLAND IN THE PROVINCE OF ONTARIO**

Applicant

**AFFIDAVIT OF JOHN CIPRESSI SWORN FEBRUARY 4, 2018**

I, John Cipressi, businessman, of the City of Mississauga, Province of Ontario, make oath and say as follows:

1. I am a shareholder, director and the vice president and chief executive officer of Forte EPS Solutions Inc. (hereinafter the “Debtor”) and the applicant 16567 Highwat 12 Holdings Limited and as such I have personal knowledge of the facts and matters hereinafter deposed to except where such facts and matters are stated to be based upon information and belief and where so stated I verily believe the same to be true.

2. The Debtor is a corporation incorporated under the *Canada Business Corporations Act* with its registered office located at 16567 Highway 12, Midland Ontario. My co-director Dominic Zita and I are the shareholders of the Debtor.

3. The Debtor carried on business as an expanded polystyrene manufacturer servicing the construction, insulation, construction and packaging industries throughout Ontario, Quebec and the north-eastern USA.

4. On May 19, 2017, the Debtor filed a Notice of Intention to make a Proposal to its Creditors (the “NOI”) pursuant to Section 50.4 (1) of the *Bankruptcy and Insolvency Act* (the “BIA”). Albert Gelman Inc. consented to act and was appointed as proposal trustee (the “Proposal Trustee”). As a result of a sales and investment solicitation process, the sale of the

assets of the Debtor to Amvic Inc. was approved and authorized by an Order of the Honourable Justice Myers dated October 30, 2017 as described below.

5. I am also a shareholder and a director of the applicant, 16567 Highway 12 Holdings Limited, (hereinafter “Highway 12 Holdings” or the “DIP Lender”), a corporation incorporated under the *Canada Business Corporations Act*. The Highway 12 Holdings owns the business premises from which the Debtor operated and has provided additional security to two of the Debtor’s secured creditors, the Business Development Bank of Canada (the “BDC”) and Western Ontario Community Futures Development Corporation Association (hereinafter “SOFFI”) as described below. Further, pursuant to the order of The Honourable Justice Penny granted of July 31, 2017 authorizing and granting a DIP Finance Charge, Highway 12 Holdings became a DIP Lender to the Debtor and in that capacity Highway 12 Holdings has advanced \$200,000.00 to the Debtor pursuant to a DIP Financing Agreement and promissory note true copies of which are annexed hereto as Exhibit “A” to this affidavit.

**The Indebtedness.**

6. A search of the Personal Property Security Act registrations against the Debtor discloses the following outstanding registrations against the Debtor (which are listed below in the order of registration):

- (a) North Simcoe Futures Development Corporation (herein “North Simcoe”) in respect of certain equipment, pursuant to which North Simcoe claims an indebtedness of \$226,399.44 as at October 31, 2017;
- (b) Business Development Bank of Canada (hereinafter “BDC”) in respect of inventory, equipment, accounts and motor vehicles, pursuant to which BDC claims and indebtedness of \$554,785.00 together with accruing interest and costs;
- (c) Western Ontario Community Futures Development Corporation Association (herein after “SOFFI”) in respect of inventory, equipment, accounts, and motor pursuant to which SOFFI claims an indebtedness of \$474,000.00 including accrued interest and costs;

- (d) First Source Mortgage Corporation (hereinafter "First Source") in respect of inventory, equipment, accounts and motor vehicles pursuant to which First Source claims and indebtedness of \$18,300.00;
- (e) Travelers Leasing Ltd (hereinafter "Travelers") in respect of certain equipment in pursuant to which Travelers claims an indebtedness of \$399,800.00 as at May 15, 2017 together with accruing interest and costs; and
- (f) Highway 12 Holdings in respect of the DIP Financing Charge described above.

All of the said secured creditors described in this paragraph 6 are hereinafter collectively referred to as the "Secured Creditors".

7. As described below the indebtedness to the BDC has been discharged as a result of the sale of the assets of the Debtor authorized by the order of the Honourable Justice Myers dated October 30, 2017.

8. Upon the deemed bankruptcy of the Debtor the Prosal Trustees became the trustee of the estate of the Debtor

9. The lands located at 16567 Highway 12, Midland, Ontario (the "Midland Lands") were formerly occupied by the Debtor and remain owned by the Highway 12 Holdings. The Midland Lands are subject to the following encumbrances:

- (a) A first mortgage/ charge in favour of First Source Mortgage Corporation securing an approximate indebtedness of \$2,400,000.00;
- (b) A second mortgage/ charge of lands securing the guarantee granted by 16567 Corporation of the SOFFI obligations in the approximate amount of \$474,000.00 due from the Debtor; and
- (c) A third mortgage /charge of lands securing the guarantee granted by 16567 Corporation of the BDC obligations due from the Debtor as required under a Forbearance Agreement dated May 27, 2017. However, subject to the obligations under a 'reimbursement agreement' described below, these BDC obligations have been satisfied.

10. All of the creditors of Highway 12 Holdings claim that Highway 12 Holdings is in

default under their respective security arrangements and Highway 12 Holdings has agreed to sell the Midland Lands and discharge those obligations.

### **Orders Sought**

11. The Applicant is seeking an order:

- (a) Authorizing and approving the payment by the Trustee of the sum of \$90,585.39 to the Canada Revenue Agency (the "C.R.A.") as evidenced in the Proof of Claim dated January 31, 2018 filed by the C.R.A. (the Property Claim");
- (b) Terminating the reimbursement agreement entered into between the Trustee, the BDC and the Debtor, subject to the payment of the Property Claim, described above;
- (c) Authorizing the payment by the Trustee of the sum of \$200,000.00 together with accrued interest thereon as authorized under the DIP Finance Charge, to the Highway 12 Holdings, in its capacity as DIP Lender, in respect of the DIP Finance Charge authorized by the order of the Honourable Justice Penny granted, July 31, 2017;
- (d) Authorizing the Trustee to make a payment of \$20,000.00 on account of the accrued fees of the Trustee and its counsel;
- (e) Approving the fifth report of the Trustee and its activities as described herein; and
- (f) such further and other relief as counsel may advise and this Honourable Court may permit.

### **Sale of the Debtor's Assets and the Vesting Order**

12. By the order of the Honourable Justice Myers dated August 24, 2017, the Debtor and the Proposal Trustee were authorized to undertake a SISP. The SISP process proceeded as described in the Fourth Report and the Confidential Brief to the stage of the acceptance of an offer to purchase the assets of the Debtor received from Amvic Inc. (the "Purchaser")

13. On October 30, 2017 pursuant to the Vesting Order of the Honourable Mr Justice Myers, a true copy of which is annexed hereto and marked as Exhibit "B" to this affidavit (the "Vesting Order"), this court authorized the sale of the assets of the Debtor to Amvic Inc. (the

“Purchaser”) As part of the Vesting Order, the Purchaser was directed under paragraph 11 of the Vesting Order to pay a portion of the purchase price in the amount of the BDC Indebtedness of \$547,167.26 directly to the BDC in full satisfaction of the rights of the BDC under its security against the Debtor (the “BDC Distribution”).

14. At the time of the sale of the assets of the Debtor to the Purchaser the obligations of the Debtor in respect of certain obligations under the *Income Tax Act* and the *Employment Insurance Act* were subject to an ongoing audit by the Canada Revenue Agency (the “CRA”).

15. Pursuant to the Vesting Order, the payment of the BDC Distribution was made subject to a reimbursement agreement among the BDC, the Debtor and the Proposal Trustee, pursuant to which the BDC agreed to repay from the BDC Distribution the amount of any deemed trust property claims that might thereafter arise, as a result of the then on-going CRA audit of the Debtor’s obligations, under subsections 227(4) or 227(4.1) of the *Income Tax Act* or under Subsection 86 (2) or (2.1) of the *Employment Insurance Act* (collectively the “Deemed Trust Claims”). Annexed hereto and marked as Exhibit “C” is a true copy of the Reimbursement Agreement among the Debtor, the Proposal Trustee and the BDC.

16. On January 19, 2018, the CRA filed with the Proposal Trustee a proof of claim in the amount of \$90,585.39 in respect of the deemed trust claims (the “Property Claim”). Annexed hereto and marked as Exhibit “D” is a true copy of the CRA proof of claim in respect of the Property Claim.

17. The Debtor acknowledges that the Property Claim set forth in the CRA proof of Claim are justly owing and payable by the Debtor to the CRA and The Debtor supports an order authorizing the payment by the Trustee of the Property Claim in the amount of \$90,585.39 to the CRA and an order terminating the obligations of the BDC under the Reimbursement Agreement upon payment of the Property Claim to the CRA by the Proposal Trustee.

#### **The Payment of the DIP Loan and other advances to the Debtor**

18. On July 31, 2017, the Court approved a debtor-in-possession loan agreement for an

aggregate amount of \$200,000.00 (the "DIP Loan"). The DIP Loan agreement and collateral loan documents between the DIP Lender, Highway 12 Holdings and the Debtor were executed and on August 21, 2017 an initial advance of \$40,000.00 the DIP Lender and then re-advanced to pay creditors of the Debtor. The balance of the DIP Loan in the amount of \$160,000.00 was advanced by the DIP Lender to the Debtor's counsel on September 5, 2017 and shortly thereafter re-advanced to settle trade obligations of the Debtor. Accordingly, the DIP Loan has now been fully advanced by Highway 12 Holdings. The accrued interest under the DIP Loan amounts to \$12,739.73 as at February 4, 2018 with a per diem rate thereafter of \$82.19.

19. In addition to the advance of funds to Highway 12 Holdings for the purposes of the DIP Loan as described, I personally advanced the additional sum of \$30,000.00 to the Debtor since September 18 2017 to pay creditors of the Debtor and to ensure that the cash flow needs of the Debtor have been met. I personally undertook to make these advances in my affidavit of August 22, 2017.

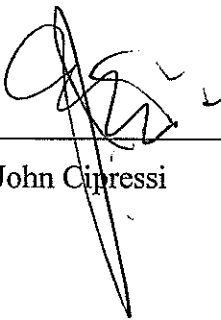
20. The DIP Lender, 16567 Highway 12 Holdings Limited has provided collateral guarantees and Mortgage and PPSA Security therefor to two secured creditors of the Debtor, the BDC and SOFFI.

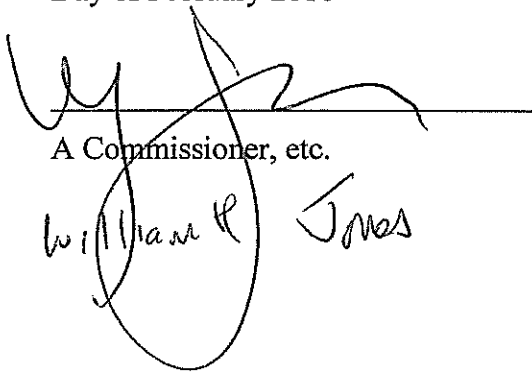
21. The BDC Indebtedness has been satisfied. However, unknown to Highway 12 Holdings, SOFFI served Highway 12 Holdings with an action and subsequently obtained a judgment against Highway Holdings Limited and issued a garnishing order against the Trustee in respect of the DIP Financing funds payable to Highway 12 Holdings.

22. Highway 12 Holdings has entered into an agreement to sell the Midland Lands. While the exact closing date is not certain it is expected to complete before February 15, 2018. Upon the completion of the of the Midland Lands by Highway 12 Holdings, the obligations owed by Highway 12 Holdings to secured creditors, including SOFFI, will be paid.

23. I swear this affidavit in support of an order in the form of the draft order appended to the Debtor's Notice of Motion herein and for such further and other relief as counsel may advise and the Court may approve.

SWORN BEFORE ME at the )  
City of Toronto, in the )  
Province of Ontario this 5<sup>th</sup>. )  
Day of February 2018 )

  
\_\_\_\_\_  
John Cipressi

  
\_\_\_\_\_  
A Commissioner, etc.  
William R Jones

TAB A

Exhibit A to the affidavit  
of JOHN CROSS  
sworn the 4 day of FEB, 2018

  
\_\_\_\_\_  
Commissioner, etc.

**DEBTOR IN POSSESSION LOAN AGREEMENT**

**THIS AGREEMENT** made as of the 31<sup>st</sup>. day of July 2017.

**BETWEEN:**

Forte EPS Solutions Inc., a corporation incorporated under the laws of Canada and having its head office at Midland, Ontario

(hereinafter referred to as the "Borrower")

OF THE FIRST PART,

-- and --

16567 Highway 12 Holdings Limited, a corporation incorporated under the laws of Canada and having its head office at Midland Ontario,

(hereinafter referred to as the "Lender")

OF THE SECOND PART

**WHEREAS** THE Borrower has filed a Notice of Intention to file a Proposal pursuant to Section 50.4 of the *Bankruptcy and Insolvency Act* (the "BIA") and in such proceedings the Borrower has sought and obtained an order approving a sales and investment solicitation process and this Credit Facility;

**WHEREAS** the Borrower has requested that the Lender loan to the Borrower the aggregate sum of up to a maximum \$200,000.00 on the terms and conditions hereinafter set forth (hereinafter the "DIP Loan Facility");

**NOW THEREFORE THIS AGREEMENT WITNESSES THAT** in consideration of the respective covenants and agreements of the parties contained herein, the sum of one dollar paid by each party hereto to each of the other parties hereto and other good and valuable consideration, (the receipt and sufficiency of which is hereby acknowledged by each of the parties hereto), it is agreed as follows:

**ARTICLE ONE -- DEFINITIONS AND INTERPRETATION**

**1.1 Definitions.** In this Agreement unless something in the subject matter or context is inconsistent therewith:

- (a) **BIA Court proceedings** means the proceedings in the Ontario Superior Court of Justice in Bankruptcy bearing Court File No. 31-2253554
- (b) **"Business Day"** means any day other than a Saturday or Sunday, or holiday, on

which Canadian chartered banks are open for business in Toronto, Ontario;

(c) **“DIP Charge”** means the DIP Charge granted by the Superior Court of Justice as a fully perfected charge on all the property of the Borrower including all existing or after acquired real and personal property of the Borrower which shall rank in priority to all other charges affecting the property of the Borrower except an Administrative Change in favour of the Proposal Trustee of the Borrower and cetin security granted By the Borrower in favour of the Business Development Bank of Canada;

(d) **“Definitive Loan Documentation”** shall include evidence of indebtedness, a general security agreement and filing statements in respect thereof and all related agreements reasonably necessary to secure the advances of the Lender to the Borrower and shall be in a form and substance reasonably satisfactory to the Lender and shall include provisions customarily included in debtor in possession credit facilities in Canada.

## ARTICLE TWO – THE DIP CREDIT FACILITY LOAN

2.1 **The Loan.** The Lender hereby agrees that on the terms and subject to the conditions set forth herein, it will make a loan (the “DIP Loan Facility”) in the aggregate maximum amount of up to two hundred thousand (\$200,000) to the Borrower. Subject to the provisions of the Definitive Loan Documentation, including a grid note evidencing the indebtedness from and a general security agreement, such DIP Loan Facility shall be repayable by the Borrower upon the sale of its assets pursuant to the provisions of the BIA upon the approval of the Proposal of the Borrower or otherwise and such advances shall bear interest at the rate of fifteen (15%) per cent per annum compounded semi-annual not in advance.

## ARTICLE THREE – CONDITIONS PRECEDENT TO DRAW DOWN

3.1 **Condition Precedent.** No advances under this proposed DIP Loan Facility shall be required until the Definitive Loan Documentation has been completed and the Definitive Loan Documentation shall include terms and conditions customarily included in debtor in possession credit facilities in Canada and, without limiting the generality of the foregoing, it shall include:

- (a) All customary court orders, credit agreements, promissory notes, security agreements, drawdown certificates and financing statements, to be prepared and executed in a form satisfactory to the Lender; and
- (b) An order approving the credit facility contemplated hereunder shall have been entered in the Ontario Superior Court of Justice creating a DIP Charge in form and substance reasonably satisfactory to the Lender and the said DIP Charge shall not have been reversed, modified amended or stayed in a manner adverse to the interests of the Lender

## ARTICLE FOUR -- COVENANTS

4.1 **Covenants.** The Definitive Loans Documentation shall contain customary covenants,

representations, and warranties reasonably used in similar debtor in possession financings in Canada and as deemed appropriate in the judgment of the Lender.

## ARTICLE FIVE -- EVENTS OF DEFAULT

**5.1 Default.** The Definitive Loan Documentation shall contain customary events of default used in similar debtor in possession financing in Canada and as deemed appropriate in the judgment of the Lender.

## ARTICLE SIX -- GENERAL CONTRACT PROVISIONS

**6.1 Notices.** All notices, requests, demands or other communications (collectively, "Notices") by the terms hereof required or permitted to be given by one party to any other party, or to any other person shall be given in writing by personal delivery or by registered mail, postage prepaid, or by facsimile transmission to such other party as follows:

- (a) To the Borrower at:                      care of Albert Gelman Inc  
    Suite 125- 100 Simcoe Street,  
    Toronto, Ontario
- Attention: Tom McElroy
- (b) To the Lender at:                              care of William Harvey Jones  
    Barrister & Solicitor  
    Suite 2702- 401 Bay Street  
    Toronto, Ontario  
    M5H 2Y4

or at such other address as may be given by such person to the other parties hereto in writing from time to time.

All such Notices shall be deemed to have been received when delivered or transmitted, or, if mailed, 48 hours after 12:01 a.m. on the day following the day of the mailing thereof. If any Notice shall have been mailed and if regular mail service shall be interrupted by strikes or other irregularities, such Notice shall be deemed to have been received 48 hours after 12:01 a.m. on the day following the resumption of normal mail service, provided that during the period that regular mail service shall be interrupted all Notices shall be given by personal delivery or by facsimile transmission.

**6.3 Counterparts.** This Agreement may be executed in several counterparts, each of which when executed shall be deemed to be an original and such counterpart together shall be but one and the same instrument.

**6.4 Enurement.** This agreement shall enure to the benefit of and be binding upon the parties and their respective successors and assigns.

**6.5 Currency.** Unless otherwise provided for herein, all monetary amounts referred to herein shall refer to the lawful money of Canada.

**6.6 Headings for Convenience Only.** The division of this Agreement into articles and sections is for convenience of reference only and shall not affect the interpretation or construction of this Agreement.

**6.7 Governing Law.** This Agreement shall be governed by and construed in accordance with the laws of the Province of Ontario and the federal laws of Canada applicable therein and each of the parties hereto agrees irrevocably to conform to the exclusive jurisdiction of the Courts of such Province.

**6.8 Gender.** In this Agreement, words importing the singular number shall include the plural and vice versa, and words importing the use of any gender shall include the masculine, feminine and neuter genders and the word "person" shall include an individual, a trust, a partnership, a body corporate, an association or other incorporated or unincorporated organization or entity.

**6.9 Legislation References.** Any references in this Agreement to any law, by-law, rule, regulation, order or act of any government, governmental body or other regulatory body shall be construed as a reference thereto as amended or re-enacted from time to time or as a reference to any successor thereto.

**6.10 Severability.** If any Article, Section or any portion of any Section of this Agreement is determined to be unenforceable or invalid for any reason whatsoever, that unenforceability or invalidity shall not affect the enforceability or validity of the remaining portions of this Agreement and such unenforceable or invalid Article, Section or portion thereof shall be severed from the remainder of this Agreement.

**IN WITNESS WHEREOF** the parties have duly executed this Debtor in Possession Credit Facility Loan Agreement this 31<sup>st</sup>. day of July 2017.

Forte EPS Solutions Inc.

Per: \_\_\_\_\_ C/S  
[Authorized Signing Officer]

16567 Highway 12 Holdings Limited

Per: \_\_\_\_\_ C/S  
[Authorized Signing Officer]

**PROMISSORY NOTE**

\$200,000

Due upon sale of the sale of the assets of the Maker  
pursuant to the *Bankruptcy and Insolvency Act*

FOR VALUE RECEIVED the undersigned, Forte EPS Solutions Inc. promises to pay to or to the order of 16567 Highway 12 Holdings Limited (the "Lender") in lawful money of Canada, the lesser of:

- (a) The principal sum of two hundred thousand (\$200,000) dollars; and
- (b) The aggregate of the unpaid balance of all advances made by the Lender as recorded on the reverse of this note or on any attachment, with interest on the principal amount calculated as described below.

This note is issued to evidence advances made by the Lender to the undersigned under a Debtor in Possession Loan Agreement dated as of July 31, 2017, between the undersigned as Borrower and the Lender (the "DIP Loan Agreement").

The principal and interest on this note are payable in accordance with the provisions of the DIP Loan Agreement, which provides, among other things that the principal and all unpaid interest hereunder shall be payable upon the sale of the assets of the Undersigned pursuant to the provisions of the *Bankruptcy and Insolvency Act* pursuant to a Proposal or otherwise.

Interest shall be payable as said at the rate of fifteen (15%) per annum, calculated semi-annually, not in advance, on the principal amount from time to time remaining unpaid. Payments received shall be applied firstly in payment of unpaid accrued interest and the balance if any in reduction of principal.

The Undersigned authorizes the Lender to record on the reverse of this note or on any attachment to this note, all advances, repayments, prepayments and the unpaid principal balance from time to time. The Undersigned agrees that in the absence of any manifest error, the record kept by the Lender on this note or any attachment shall be conclusive evidence of the matters recorded, provided that the failure of the Lender to record or correctly record any amount or date shall not affect the obligation of the Undersigned to pay the outstanding principal amount and interest in accordance with the DIP Loan Agreement.

Upon maturity as provided for in the DIP Loan Agreement, the entire unpaid balance of the principal amount and accrued interest shall become immediately due and payable without notice or demand and the undersigned covenants to pay interest thereon and on subsequent overdue interest at the rate aforesaid, both before and after judgment, until paid in full. The covenants to pay interest shall not merge on the taking of a judgment or judgments with respect to any of the obligations herein stipulated for.

The Undersigned hereby waives demand and presentment for payment, notice of non-payment,

protest, notice of protest, notice of dishonour, bringing of suit and diligence in taking any action.

Terms are used in this note with the meanings ascribed to them in the DIP Loan Agreement unless otherwise specified.

DATED at Toronto, Ontario this 31 day of July 2017.

Forte EPS Solutions Inc.

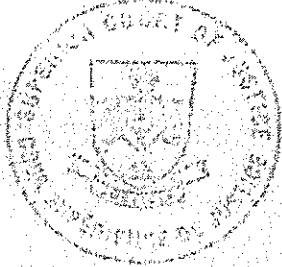
Per: \_\_\_\_\_ C/S  
[Authorized Signing Officer]

TAB B

Exhibit B to the affidavit  
of John C. Rossi  
sworn the 4 day of FEB, 2018.

  
\_\_\_\_\_  
Commissioner, etc.

Court File No.: 31-2253654  
Estate File No.: 31-2253654



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

THE HONOURABLE

MONDAY, THE 30th

JUSTICE Myers

DAY OF OCTOBER, 2017

**IN THE MATTER OF THE NOTICE OF INTENTION TO MAKE A PROPOSAL OF  
FORTE EPS SOLUTIONS INC., A CORPORATION WITH A HEAD OFFICE IN THE  
TOWN OF MIDLAND IN THE PROVINCE OF ONTARIO**

**APPROVAL AND VESTING ORDER**

**THIS MOTION**, made by Forte EPS Solutions Inc. (the "**Company**") for an order, *inter alia*, approving the sale transaction (the "**Transaction**") contemplated by an agreement of purchase and sale (the "**Sale Agreement**") between the Company and Amvic Inc. (the "**Purchaser**") dated October 17, 2017 and appended to the Confidential Brief (the "**Confidential Brief**") of Albert Gelman Inc. in its capacity as proposal trustee (the "**Proposal Trustee**"), the Supplement to the Confidential Brief of the Proposal Trustee (the "**Supplement**") and vesting in the Purchaser the Company's right, title and interest in and to the assets described in the Sale Agreement (the "**Purchased Assets**"), was heard this day at 330 University Avenue, Toronto, Ontario.

**ON READING** (i) the affidavit of John Cipressi sworn October 23, 2017 (the "**Cipressi Affidavit**"), (ii) the fourth report of the Proposal Trustee (the "**Fourth Report**"), and the Confidential Brief and on hearing the submissions of counsel for the Company, the Proposal Trustee, the Purchaser and Business Development Bank of Canada ("**BDC**"), no one appearing for any other person on the service list, although properly served as appears from the affidavit of Helga Fairhurst sworn October 25, 2017 filed:

### APPROVAL OF SALE AND VESTING OF ASSETS

1. **THIS COURT ORDERS AND DECLARES** that the Transaction is hereby approved and the execution of the Sale Agreement by the Company is hereby authorized and approved, with such minor amendments as the Company, in consultation with the Proposal Trustee may deem necessary. The Company is hereby authorized and directed to take such additional steps and execute such additional documents as may be necessary or desirable for the completion of the Transaction and for the conveyance of the Purchased Assets to the Purchaser,

2. **THIS COURT ORDERS AND DECLARES** that upon the delivery of a certificate to the Purchaser substantially in the form attached as Schedule A hereto (the "**Closing Certificate**"), all of the Company's right, title and interest in and to the Purchased Assets described in the Sale Agreement shall vest absolutely in the Purchaser, free and clear of and from any and all security interests (whether contractual, statutory, or otherwise), hypothecs, mortgages, trusts or deemed trusts (whether contractual, statutory, or otherwise), liens, executions, levies, charges, or other financial or monetary claims, whether or not they have attached or been perfected, registered or filed and whether secured, unsecured or otherwise (collectively, the "**Claims**") including, without limiting the generality of the foregoing: (i) any encumbrances or charges created by the Order of the Honourable Justice Hailey dated June 14, 2017 and the Order of the Honourable Justice Penny dated July 31, 2017; and (ii) all charges, security interests or claims evidenced by registrations pursuant to the *Personal Property Security Act* (Ontario) or any other personal property registry system (all of which are collectively referred to as the "**Encumbrances**") and, for greater certainty, this Court orders that all of the Encumbrances affecting or relating to the Purchased Assets are hereby expunged and discharged as against the Purchased Assets.

3. **THIS COURT ORDERS** that for the purposes of determining the nature and priority of Claims, the net proceeds from the sale of the Purchased Assets (the "**Net Proceeds**") shall stand in the place and stead of the Purchased Assets, and that from and after the delivery of the Closing Certificate all Claims and Encumbrances shall attach to the net proceeds from the sale of the Purchased Assets with the same priority

as they had with respect to the Purchased Assets immediately prior to the sale, as if the Purchased Assets had not been sold and remained in the possession or control of the person having that possession or control immediately prior to the sale, and for greater certainty, no person, including, but not limited to the Canada Revenue Agency ("CRA"), shall have any recourse, notwithstanding the BDC Payment (as defined herein), against the Purchaser and the Purchased Assets in respect of the Claims and the Encumbrances.

4. **THIS COURT ORDERS AND DIRECTS** the Proposal Trustee file with the Court a copy of the Closing Certificate, forthwith after delivery thereof.

5. **THIS COURT ORDERS** that, pursuant to clause 7(3)(c) of the *Canada Personal Information Protection and Electronic Documents Act*, the Company is authorized and permitted to disclose and transfer to the Purchaser all human resources and payroll information in the Company's records pertaining to its past and current employees. The Purchaser shall maintain and protect the privacy of such information and shall be entitled to use the personal information provided to it in a manner which is in all material respects identical to the prior use of such information by the Company.

6. **THIS COURT ORDERS** that, notwithstanding:

- (a) the pendency of these proceedings;
- (b) any applications for a bankruptcy order now or hereafter issued pursuant to the *Bankruptcy and Insolvency Act* (Canada) in respect of the Company and any bankruptcy order issued pursuant to any such applications; and
- (c) any assignment in bankruptcy (including any deemed assignment in bankruptcy resulting from these proceedings) made in respect of the Company;

the vesting of the Purchased Assets in the Purchaser pursuant to this Order shall be binding on any trustee in bankruptcy that may be appointed in respect of the Company and shall not be void or voidable by creditors of the Company, nor shall it constitute nor be deemed to be a fraudulent preference, assignment, fraudulent conveyance, transfer

at undervalue, or other reviewable transaction under the *Bankruptcy and Insolvency Act* (Canada) or any other applicable federal or provincial legislation, nor shall it constitute oppressive or unfairly prejudicial conduct pursuant to any applicable federal or provincial legislation.

### **ADMINISTRATIVE MATTERS**

7. **THIS COURT ORDERS** that the Fourth Report and the activities of the Proposal Trustee contained therein (including the Confidential Brief, the Supplement, and the activities of the Proposal Trustee contained therein) be and are hereby approved.

8. **THIS COURT ORDERS** that the Confidential Brief and the Supplement be and are hereby sealed until the earlier of; (i) the closing date of the Sale Agreement; or (ii) further Order of the Court;

9. **THIS COURT ORDERS** that the Proposal Trustee Charge (as defined in the Order of the Honourable Justice Hainey dated June 14, 2017), as amended by the Order of the Honourable Justice Penney dated July 31, 2017 (the "**July 31 Order**"), be and is hereby further amended by increasing the maximum amount of the charge to \$200,000 (the "**Professional Charge Amount**").

10. **THIS COURT ORDERS** that notwithstanding paragraph 9 above and the July 31 Order, \$50,000 of the Charge Amount shall be subordinate to any proven deemed trust claims advanced by CRA.

### **DISTRIBUTION**

11. **THIS COURT ORDERS** that the Purchaser is directed to pay to BDC an amount equal to the BDC Indebtedness (as defined in the Fourth Report) as of the date of payment (the "**BDC Payment**"). The BDC Payment shall be deducted from the purchase price payable to the Debtor on closing and shall constitute a payment pursuant to BDC's rights under the *Personal Property Security Act* (Ontario) and shall be paid from proceeds of the Sale Transaction that are related to the Owned Assets (as that term is defined in the Fourth Report).

M 12. ~~THIS COURT ORDERS~~ that levy prescribed under section 147 and 60(4) of the *Bankruptcy and Insolvency Act* does not apply to the BDC Payment and the Proposal Trustee shall not be required to remit same. ✓ M

13. **THIS COURT ORDERS** that the BDC Payment shall be subject to a reimbursement agreement to be in a form acceptable to the Company, BDC and the Proposal Trustee and said reimbursement agreement shall be enforceable by any trustee in bankruptcy that may be appointed over the Company.

14. **THIS COURT ORDERS** that the Proposal Trustee is hereby authorized to distribute the portion of the Net Proceeds secured by the Proposal Trustee Charge to satisfy the unpaid accounts of the Proposal Trustee, its counsel and counsel to the Company up to the maximum amount of \$150,000 (the "**Professional Fee Payment**"), said funds not to be considered Net Proceeds as that term is defined in paragraph 3 of this Order.

15. **THIS COURT ORDERS** that no payment shall be made in to the Proposal Trustee, its counsel and counsel to the Company in excess of the Professional Fee Payment until such time as the CRA has completed its audit and finally determined the amount owing in respect of any deemed trust claims.

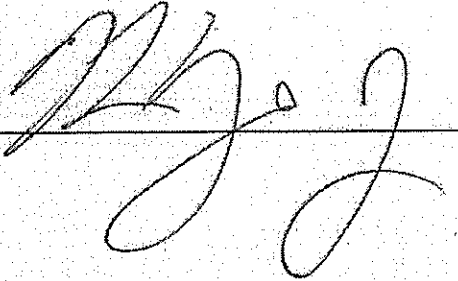
16. **THIS COURT ORDERS** that to the extent that the accounts in questions have not been reviewed and/or taxed, the Professional Fee Payment remains subject to review and/or taxation as required under the *Bankruptcy and Insolvency Act*

17. **THIS COURT ORDERS** that after the BDC Payment and the Professional Fee Payment, the balance of the funds received on account of the Purchased Assets shall be held by the Proposal Trustee in trust pending further Order of the Court.

#### FOREIGN RECOGNITION

18. **THIS COURT HEREBY REQUESTS** the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada or in the United States to give effect to this Order and to assist the Receiver and its agents in carrying out the terms of this Order. All courts, tribunals, regulatory and administrative bodies

are hereby respectfully requested to make such orders and to provide such assistance to the Receiver, as an officer of this Court, as may be necessary or desirable to give effect to this Order or to assist the Receiver and its agents in carrying out the terms of this Order.



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A handwritten signature in cursive script is written over a horizontal line. The signature appears to be "M. J. J." with a large, stylized flourish at the end.

**Schedule A – Form of Closing Certificate**

Court File No.: 31-2253654  
Estate File No.: 31-2253654

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

**IN THE MATTER OF THE NOTICE OF INTENTION TO MAKE A PROPOSAL OF  
FORTE EPS SOLUTIONS INC., A CORPORATION WITH A HEAD OFFICE IN THE  
TOWN OF MIDLAND IN THE PROVINCE OF ONTARIO**

**CLOSING CERTIFICATE**

**RECITALS**

- A. On \_\_\_\_\_ Albert Gelman Inc. was appointed as the proposal trustee (the "Proposal Trustee") of Forte EPS Solutions Inc. (the "Debtor").
- B. Pursuant to an Order of the Court dated \_\_\_\_\_, the Court approved the agreement of purchase and sale made as of \_\_\_\_\_ (the "Sale Agreement") between the Debtor and Amvic Inc. (the "Purchaser") and provided for the vesting in the Purchaser of the Debtor's right, title and interest in and to the Purchased Assets (as defined in the Order of the Honourable Justice \_\_\_\_\_ dated \_\_\_\_\_ (the "Approval Order"), which vesting is to be effective with respect to the Purchased Assets upon the delivery by the Proposal Trustee to the Purchaser of a certificate confirming (i) the payment by the Purchaser of the Purchase Price for the Purchased Assets; (ii) that the conditions to Closing as set out in section \_\_\_\_ of the Sale Agreement have been satisfied or waived by the Debtor and the Purchaser; and (iii) the transaction as contemplated in the Sale Agreement has been completed to the satisfaction of the Debtor.
- C. Unless otherwise indicated herein, terms with initial capitals have the meanings set out in the Sale Agreement.

THE PROPOSAL TRUSTEE has been advised by the Debtor of the following:

1. The Purchaser has paid and the Debtor has received the Purchase Price for the Purchased Assets as provided for in the Sale Agreement and the Approval Order;

2. The conditions to Closing as set out in section \_\_\_\_ of the Sale Agreement have been satisfied or waived by the Debtor and the Purchaser; and
3. The Transaction has been completed to the satisfaction of the Debtor in consultation with the Proposal Trustee.
4. This Certificate was delivered by the Proposal Trustee at \_\_\_\_\_ on \_\_\_\_\_.

ALBERT GELMAN INC. in its capacity as  
Proposal Trustee of FORTE EPS SOLUTIONS  
INC. and not in its personal capacity

Per: \_\_\_\_\_

Name:

Title:

**IN THE MATTER OF THE NOTICE OF INTENTION TO MAKE A PROPOSAL  
OF FORTE EPS SOLUTIONS INC., A CORPORATION WITH A HEAD OFFICE  
IN THE TOWN OF MIDLAND IN THE PROVINCE OF ONTARIO**

Court File No. 31-2253654  
Estate File No. 31-2253654

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST**

Proceeding commenced at TORONTO

**ORDER**

William Harvey Jones LS 387331  
401 Bay Street, Suite 2702  
Toronto, ON M5H 2Y4

Tel: 416.596.8876  
Fax: 416.596.0907

Lawyers for EPS Solutions Inc.

TAB C

Exhibit C to the affidavit  
of JOHN C. PLESSI  
sworn the 4 day of FEB, 2018

  
\_\_\_\_\_  
Commissioner, etc.



**REIMBURSEMENT AGREEMENT**

THIS AGREEMENT dated as of November 2, 2017

BETWEEN:

**FORTE EPS SOLUTIONS INC.**

(the "Debtor")

- and -

**ALBERT GELMAN INC.**

(the "Proposal Trustee")

-and-

**BUSINESS DEVELOPMENT BANK OF CANADA**

("BDC")

**RECITALS:**

- A. Pursuant to an offer letter dated January 23, 2013, as amended by the letter agreement dated February 13, 2013, BDC made credit facilities available to the Debtor in an amount of \$700,000 (the "Loan") for the purpose of financing purchase of some equipment and leasehold improvements;
- B. As security for the Loan, BDC obtained (among other things) a general security agreement dated January 31, 2013 granted by the Debtor providing a first security interest in all of the Debtor's present and after-acquired personal property;
- C. On May 19, 2017, the Debtor filed a Notice of Intention to Make a Proposal pursuant to section 50.4(1) of the *Bankruptcy and Insolvency Act* naming Albert Gelman Inc. as Proposal Trustee;
- D. The Debtor was advised by Canada Revenue Agency "that it has commenced but not completed" an audit (the "Audit") of the Debtor's obligations in respect of amounts deemed to be held in trust under subsection 227(4) or 227(4.1) of the *Income Tax Act* or subsection 86(2) or (2.1) of the *Employment Insurance Act* (collectively, the "Deemed Trust Claim");
- E. Pursuant to the Approval and Vesting Order of Mr. Justice Myers dated October 30, 2017 (the "Vesting Order"), the sale of substantially all of the business and assets of the

Debtors was approved by the Ontario Superior Court of Justice (Commercial List) (the "Court") and the purchaser was ordered to make a distribution to BDC from the sale proceeds in the full amount owed to BDC by the Debtor being \$547,167.26 as at November 2, 2017 (the "BDC Distribution"), subject to the Debtor and BDC entering into a reimbursement agreement;

- F. There will be no deduction from the BDC Distribution with respect to any actual or potential levy (the "BIA Levy") payable pursuant to section 147 and/or 60(2) of the *Bankruptcy and Insolvency Act* (the "BIA").
- G. Pursuant to the Vesting Order, the Court also authorized the Proposal Trustee to retain and distribute proceeds from the sale of the Leased Equipment (as defined in the Fourth Report of the Proposal Trustee) in the amount not to exceed \$150,000 to pay the fees and disbursements of the Proposal Trustee, its counsel and counsel for the Debtor (the "Charge Distribution"); and
- H. Pursuant to the Vesting Order, the Court also ordered that the balance of the proceeds from the sale of the Debtor's assets, remaining after the BDC Distribution and the Charge Distribution (the "Balance of the Proceeds") be held in trust by the Proposal Trustee until further order of the Court.

**NOW THEREFORE**, for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged:

1. Subject to the terms hereof:
  - (a) BDC hereby irrevocably and unconditionally undertakes to repay all or a portion of the BDC Distribution if it is determined that the Balance of the Proceeds is not sufficient to satisfy the amounts owing, if any, by the Debtor to CRA for the Deemed Trust Claim; and
  - (b) following the final determination of the amounts owing by the Debtor in respect of the Deemed Trust Claim, if any, BDC also hereby irrevocably and unconditionally undertakes to pay to the Proposal Trustee or the Superintendent of Bankruptcy (the "Superintendent") the BIA Levy if, on written consent of BDC and the Proposal Trustee, or by a Final Order (as defined below) it is determined that the BDC Distribution constitutes a distribution by the Proposal Trustee pursuant to sections 147 and 60(2) of the BIA.

For the purpose of this Agreement, a "Final Order" shall mean a Court order from which all rights of appeal shall have been determined or expired.

2. The Debtor and the Proposal Trustee, for so long as the Proposal Trustee remains appointed (including, if it is subsequently appointed as Trustee in Bankruptcy of the Debtor), shall provide BDC with notice of any correspondence from the CRA with

respect to the Deemed Trust Claim, including any determination made with respect to the quantum of the Deemed Trust Claim, and/or from the Superintendent with respect to whether the BIA Levy is payable on the BDC Distribution. If BDC does not receive notice in time effectively required to contest the determination of any liability susceptible of being contested in respect of the Deemed Trust Claim, then the liability of BDC to the Debtor under this Agreement shall be reduced by the amount of any losses incurred by BDC resulting from the failure to give such notice on a timely basis. For greater clarity, the Proposal Trustee shall not be liable for the failure of the Debtor, its principals or its advisors to provide BDC with prompt notice pursuant to this section of the Agreement.

3. The parties hereto agree that the Proposal Trustee (and if applicable, the Proposal trustee in its capacity as Trustee in Bankruptcy of the Debtor) bears no obligation to dispute, challenge or otherwise question the Deemed Trust Claim or any determination on whether the BIA Levy is payable to the Superintendent.
4. BDC may participate in the negotiation, settlement or challenge of the Deemed Trust Claim and/or the Levy (collectively, the "**Disputed Claims**"). BDC may elect to assume control of the negotiation, settlement or the defence of the Disputed Claims. BDC shall pay all of its own expenses of participating in or assuming control of such negotiation, settlement or defence. The Debtor and the Proposal Trustee shall co-operate in good faith with BDC in the negotiation, settlement or defence of each of the Disputed Claims so as to permit BDC to conduct such negotiation, settlement and defence and for this purpose shall preserve all relevant documents in relation to the Disputed Claims, allow BDC access on reasonable notice to inspect and take copies of all such documents and require its personnel to provide such statements as BDC may reasonably require and to attend and give evidence at any trial or hearing in respect of the Disputed Claims. With respect to the Proposal Trustee, BDC agrees to reimburse to the Proposal Trustee its reasonable fees and disbursements for providing said cooperation, provided however, that the Proposal Trustee shall not take any steps in furtherance thereof without written consent of BDC.
5. The liability of BDC to reimburse the Debtor under this agreement pursuant to Section 1(a) of this Agreement shall be limited to the aggregate amount of the BDC Distribution.
6. BDC shall have the full benefit and use of the BDC Distribution and shall have no obligation to hold it in trust or keep it separate and apart from its general assets.
7. From the date of the payment of the BDC Distribution until the date of any possible reimbursement of the BDC Distribution by BDC, BDC will treat the amount of the BDC Distribution as a payment on account of the indebtedness of the Debtor to BDC, which payment shall be reversed and the liability of the Debtors increased by the amount of such reimbursement by BDC pursuant to Section 1(a).
8. This Agreement is for a term that expires on the date on which a final determination of the Disputed Claims is made as evidenced by written consent of BDC or the Final Order.

9. All notices provided and other communications pursuant to this agreement shall be in writing and either delivered by hand or electronic mail as follows, and any notice or other communication shall be deemed conclusively to have been given and received, if delivered or transmitted by e-mail, on the day in which it was delivered or transmitted:

(a) in the case of the Debtor:

c/o

William Harvey Jones  
Barrister & Solicitor  
Suite 2702-401 Bay Street  
Toronto, Ontario M5H 2Y4

Email: whjones@williamjones.ca

(b) in the case of BDC:

Business Development Bank of Canada  
70 York Street  
Suite 1202  
Toronto, Ontario, M5J 1S9

Attention: Ruth Thomson  
Email: ruth.thomson@bdc.ca

and with a copy to:

Chaitons LLP  
5000 Yonge Street, 10<sup>th</sup> Floor  
Toronto, Ontario M2N 7E9

Attention: Maya Poliak  
Email: maya@chaitons.com

(c) in the case of the Proposal Trustee

Albert Gelman Inc.  
100 Simcoe Street, Suite 125  
Toronto, Ontario M5H 3G2

Attention: Tom McElroy  
Email: tmcelroy@albertgelman.com

and with a copy to:

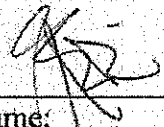
Lerners LLP  
130 Adelaide St. West, 24th Floor  
Toronto, Ontario M5H 3P5

Attention: Domenico Magisano  
Email: [dmagisano@lernalers.ca](mailto:dmagisano@lernalers.ca)

- 10. This agreement is a contract made under and shall be governed by and construed in accordance with the laws of the Province of Ontario and the federal laws of Canada applicable therein.
- 11. This agreement may be executed by the parties in counterparts and may be executed and delivered by fax and all such counterparts and faxes shall together constitute one and the same instrument.
- 12. This agreement is binding on and enures to the benefit of the parties to this agreement and their respective successors and assigns, including any interim receiver, receiver, receiver and manager or trustee in bankruptcy of the Debtors.

**FORTE EPS SOLUTIONS INC.**

By:

  
 \_\_\_\_\_  
 Name:  
 Title:

I have authority to bind the corporation.

**ALBERT GELMAN INC.** solely in its capacity as proposal trustee of Forte EPS Solutions Inc. and not in its personal capacity

By:

\_\_\_\_\_  
 Name:  
 Title:

I have authority to bind the corporation.

**BUSINESS DEVELOPMENT BANK OF  
CANADA**

By:

\_\_\_\_\_  
Name:

Title:

\_\_\_\_\_  
Name:

Title:

We have authority to bind the corporation.

TAB D

Exhibit D to the affidavit  
of JOHN GROSS  
sworn the 4 day of Feb, 2005.

  
\_\_\_\_\_  
Commissioner, etc.





NVCC Team 715-20  
Surrey BC V3T 0E5

January 19, 2018

ALBERT GELMAN INC.  
100 SIMCOE ST  
SUITE 125  
TORONTO ON M5H 3G2

Dear Sir or Madam:

Re: FORTE EPS SOLUTIONS INC. of the City of Midland  
in the Province of Ontario  
Date of the bankruptcy: November 2, 2017

Please find enclosed our claim and supporting schedule in the  
above-noted insolvency event for the amount of \$114,757.49.

Issue dividend payment directly to the Receiver General quoting  
the account number shown on the schedule.

Please send individual, corporate and payroll dividend payments  
to:

Canada Revenue Agency  
PO BOX 3800 STN A  
Sudbury ON P3A 0C3

Please send goods and services tax/harmonized sales tax (GST/HST)  
remittances, including dividend payments to the applicable  
tax centre (shown on your client's GST/HST return).

If you need more information about this claim, such as a more  
detailed breakdown of the debt, please contact the undersigned at  
one of the telephone numbers provided in this letter.

Yours truly,

A handwritten signature in black ink, appearing to read "M. Johal".

M. Johal  
Collections Contact Officer

Enclosure(s)

The word "Canada" in a stylized font with a small maple leaf icon to its right.

National Insolvency Office  
9755 King George Boulevard  
Surrey BC V3T 0E5

Local: 604-585-5780  
Toll Free: 1-866-891-7403  
Fax: 604-587-2606  
Web site: [canada.ca/taxes](http://canada.ca/taxes)

ATTACHMENT PAGE 1

Proof of Claim (Form 31)  
(Sections 50.1, 81.5, 81.6, subsections 65.2(4), 81.2(1), 81.3(8),  
81.4(8), 102(2), 124(2), 128(1), and paragraphs 51(1)(e)  
and 66.14(b) of the Act)

Send all notices or correspondence regarding this claim to the following address:

Canada Revenue Agency  
Surrey National Verification and Collection Centre  
Insolvency Intake Centre  
Collections Directorate  
9755 King George Blvd  
Surrey BC V3T 5E1

Attention: M. Johal

In the matter of the bankruptcy of FORTE EPS SOLUTIONS INC. of the City of Midland in the Province of Ontario, and the claim of Her Majesty the Queen in Right of Canada as represented by the Minister of National Revenue, creditor.

I, M. Johal, of the City of Surrey in the Province of British Columbia, do hereby certify:

1. That I am a collections contact officer of the Canada Revenue Agency.
2. That I have knowledge of all the circumstances connected with the claim referred to below.
3. That the debtor was, at the date of the bankruptcy namely the 2nd day of November, 2017, and still is, indebted to the creditor in the sum of \$114,757.49, as specified in the statement of account attached and marked Schedule "A", after deducting any counterclaims to which the debtor is entitled.
4. (X) UNSECURED CLAIM of \$24,172.10. That in respect of this debt, I do not hold any assets of the debtor as security.

(X) PROPERTY CLAIM of \$90,585.39.

That property holding a value equal to the debt enumerated in the Schedule "A" was in possession of the debtor and still remains in the possession of the debtor and (or) the trustee. The claimant hereby claims an interest in all assets of the debtor up to the value of the property claim shown. The claimant is entitled to demand from the trustee the return of the property.

ATTACHMENT PAGE 2

5. That, to the best of my knowledge, the above-named creditor is not related to the debtor within the meaning of section 4 of the Act, and has not dealt with the debtor in a non-arm's length manner.

6. That the following are the payments that I have received from, and the credits that I have allowed to the debtor within the three months immediately before the date of the initial bankruptcy event within the meaning of section 2 of the Act.

Nil

7. Whenever the trustee reviews the financial situation of a bankrupt to redetermine whether or not the bankrupt is required to make payments under section 68 of the Act, I request to be informed, pursuant to paragraph 68(4) of the Act, of the new fixed amount or of the fact that there is no longer surplus income.

I request that a copy of the report filed by the trustee regarding the bankrupt's application for discharge pursuant to subsection 170(1) of the Act be sent to the above address.

Sworn before me at the City of Surrey in the Province of British Columbia, on January 19, 2018.

.....*J. Bain*.....  
Commissioner for Oaths

.....*[Signature]*.....  
Signature of Claimant

*Tasmine Bain*

*A Commissioner for Taking Affidavits for BC*

*Expiry Date: Oct 31, 2020*

ATTACHMENT PAGE 3

Schedule "A"

Name: FORTE EPS SOLUTIONS INC.

Unsecured claim

Income Tax Act  
 (as it relates to payroll deductions - non deemed trust)  
 Account number: 849883707 RP 0001  
 Assessed period(s): 2016-2017  
 Principal: \$13,899.42  
 Penalty and interest: \$10,272.68

Total: \$24,172.10

Property claim

Income Tax Act  
 (as it relates to payroll deductions - deemed trust)  
 Account number: 849883707 RP 0001  
 Assessed period(s): 2016-2017  
 Principal: \$90,585.39

Total: \$90,585.39

Total Property claim \$90,585.39

Sworn before me at the City of Surrey in the Province of British Columbia, on January 19, 2018.

*J. Bains*  
 .....  
 Commissioner for Oaths

*[Signature]*  
 .....  
 Signature of Claimant

*Jaimie Bains*  
*A Commissioner for Taking Affidavits B.C.*  
*Expiry date: Oct 31, 2020*

**IN THE MATTER OF THE NOTICE OF INTENTION TO MAKE A PROPOSAL OF  
FORTE EPS SOLUTIONS INC.**

(Short title of proceeding)

Court file no. 31-2253654  
Estate File no. 31-2253654

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
IN BANKRUPTCY AND INSOLVENCY**

**AFFIDAVIT OF JOHN CIPRESSI**  
sworn February 4, 2018

William Harvey Jones  
Barrister and Solicitor  
2702- 401 Bay Street,  
Toronto, Ontario  
M4V 3A1  
LSUC # 38733J

(416) 596-8876  
Fax: (416) 596-0907

Lawyer for the DEBTOR/APPLICANT

**IN THE MATTER OF THE NOTICE OF INTENTION TO MAKE A PROPOSAL OF  
FORTE EPS SOLUTIONS INC.**

(Short title of proceeding)

Court file no. 31-2253654  
Estate File no. 31-2253654

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
IN BANKRUPTCY AND INSOLVENCY**

**MotionRecord**

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