2001-05949

CERTIFICATE

CANADA	)	*IN THE MATTER OF THE AFFIDAVIT OF AUDREY NG*
PROVINCE OF	)	*SWORN ON MAY 3, 2020*
ALBERTA	)	

I, SEAN COLLINS, of the City of Calgary, in the Province of Alberta, Barrister and Solicitor, **DO CERTIFY** that:

1. I remotely commissioned the affidavit of Audrey Ng dated May 3, 2020, attached hereto, using videoconferencing software in accordance with the procedure set out in the Court of Queen's Bench of Alberta Notice to the Profession and Public NPP#2020-02 regarding Remote Commissioning of Affidavits for Use in Civil and Family Proceedings During The COVID-19 Pandemic.

2. The remote commissioning process was necessary because it was impossible or unsafe, for medical reasons, for the deponent and I to be physically present together.

IN TESTIMONY WHEREOF I have hereunto subscribed my name and affixed my seal of office at the City of Calgary, in the Province of Alberta, this 3rd day of May, 2020.

Sean Collins

A Commissioner for
Oaths/Notary Public in and for
the Province of Alberta

560080/494637
MT DOCS 20279960v3

Clerk's Stamp

CLERK OF THE COURT
FILED
MAY 04 2020
JUDICIAL CENTRE OF CALGARY

COURT FILE NUMBER	2001-05949
COURT	COURT OF QUEEN'S BENCH OF ALBERTA
JUDICIAL CENTRE	CALGARY
PLAINTIFF	NATIONAL BANK OF CANADA, AS AGENT
DEFENDANTS	BOS SOLUTIONS LTD., BOS SOLUTIONS INC., BOS LEASCO LLC, BOS SOLUTIONS REAL ESTATE INC., AND BOS USHOLDCO INC.
DOCUMENT	**AFFIDAVIT OF AUDREY NG**
ADDRESS FOR SERVICE AND CONTACT INFORMATION OF PARTY FILING THIS DOCUMENT	McCarthy Tétrault LLP 4000, 421 - 7th Avenue SW Calgary AB T2P 4K9 Attention: Sean Collins / Walker W. MacLeod / Pantelis Kyriakakis Tel: 403-260-3531 / 3710 / 3536 Fax: 403-260-3501 Email: scollins@mccarthy.ca / wmacleod@mccarthy.ca / pkyriakakis@mccarthy.ca

AFFIDAVIT OF AUDREY NG
Sworn on May 3, 2020

I, AUDREY NG, of the City of CALGARY, in the Province of ALBERTA, SWEAR AND SAY THAT:

1. I am a Senior Manager with the Special Loans Group of National Bank of Canada ("**NBC**"). I have been directly involved with the accounts of BOS Solutions Ltd. ("**BSL**") and BOS Solutions Inc. ("**BSI**", BSI and BSL are collectively referred to as, the "**Borrowers**") and BOS LeaseCo LLC, BOS Solutions Real Estate Inc., and BOS USHoldCo Inc. (collectively, the "**Guarantors**", the Guarantors and the BSI are collectively referred to as, the "**US Loan Parties**", the US Loan Parties and the BSL are collectively referred to as, the "**Loan Parties**") and are responsible for managing the syndicated secured credit facilities on behalf of NBC. Additionally, I have reviewed the books and records maintained by and in the possession of NBC in the ordinary course of business. Based on the aforementioned and upon such review, I have personal knowledge of the matters and facts hereinafter sworn to, except where stated to be based on information and belief, in which case, I believe the same to be true.

2. I am authorized to swear this Affidavit on behalf of NBC, as the agent (the "**Agent**", when acting in such capacity) on behalf of NBC and those other banks and financial institutions from time to time party thereto (collectively, the "**Lenders**"), as lenders, National Bank Financial Inc., as lead arranger and sole bookrunner, and the Guarantors, as guarantors, under the Amended and Restated Credit Agreement, dated as of September 14, 2018 (the "**Credit Agreement**").

3. Capitalized terms used herein but not otherwise defined shall have the meaning ascribed to them in the Credit Agreement and the Forbearance and Amending Agreement (as defined herein), as applicable.

Summary of Relief Sought

4. The Loan Parties, as at April 24, 2020, were indebted to the Lenders in the amount of CAD$6,136,261.11 and USD$37,964,646.22, plus all interest, standby fees, costs, expenses, legal and professional fees and all other amounts due, accruing due and continuing to accrue in accordance with the terms and conditions of any Credit Document (collectively, the "**Indebtedness**"). This Affidavit is sworn in support of an urgent application by the Agent, which is supported by all of the Lenders, for the following relief to:

   (a) abridge the time for service of the Agent's application and supporting materials;

   (b) appoint EY Inc. ("**EY**") as receiver and manager (the "**Receiver**") over all of the assets, properties, and undertakings of the Loan Parties;

   (c) authorize and empower EY to act as a foreign representative within the meaning provided for in Title 11 of Chapter 15 of the *United States Bankruptcy Code* (the "**US Code**") for the purposes of obtaining foreign recognition of the within proceedings in the United States on terms and conditions that EY considers appropriate; and,

   (d) such other and related relief as counsel for Lenders may advise.

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<u>The Loan Parties</u>

5. The Loan Parties consist of the following entities:

   (a) BSL, is a corporation incorporated pursuant to the provisions of the *Business Corporations Act* (British Columbia) with a registered office located in the City of Vancouver. BSL carries on business in Alberta and is extra-provincially in the Province of Alberta.

   (b) BSI, is a corporation incorporated pursuant to the provisions of the *Colorado Business Corporations Act* with a registered office located in the State of Colorado.

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7. BSL is the ultimate parent of the US Loan Parties. Each of the Loan Parties maintains a bank account with the Agent in Canada.

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9. In the energy industry, BSL provides a proprietary process that is designed to significantly reduce the costs associated with drilling oil and gas wells by recycling the drilling fluid that is continuously used in the drilling process and reducing the volume of drilling waste for disposal. Additionally, the liquids-solids separation process yields a higher quality drilling

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fluid with less solids suspended in the liquid, which allows for faster drilling and reduces the abrasive wear on downhole equipment.

10. The environmental solutions division of the business provides a similar solution for industries such as construction, horizontal directional drilling, remediation, industrial, agricultural and municipal. Many of the same cost-saving benefits and efficiencies realized by oilfield customers are also captured by customers in industrial applications where fluid recycling, reduced waste disposal and environmental factors are important.

11. BSL has 21 employees in Canada. BSL conducts and coordinates its Canadian business operations from an operations center in Leduc, Alberta.

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13. BSL has engaged the services of Kevin McElcheran as its chief restructuring officer. Mr. McElcheran is ordinarily resident in the City of Toronto, Canada.

14. Until January, 2019 BSL's Chief Financial Officer was located in Calgary, Alberta. In October, 2019, the balance of BSL's treasury and finance operations were relocated to Houston, Texas. The US operations are conducted through BSI which is also headquartered in Houston, Texas.

<u>The Credit Agreement</u>

15. Pursuant to the Credit Agreement, the Borrowers had access to a revolving reducing credit facility in the aggregate amount of CAD$56,000,000, which includes (y) a $7,500,000 Swingline Commitment, and (z) an $8,500,000 Letter of Credit Commitment, each available as a sublimit of such facility (collectively, the "**Facilities**").

16. If any Default or Event of Default occurs which is continuing and has not been waived in writing in accordance with the terms hereof, no Lender shall be under any further obligation to make Advances or to accept drafts or bills of exchange as Bankers' Acceptances, and upon the occurrence of any Event of Default, the Agent may give notice to the Borrowers declaring all or any of the Obligations to be forthwith due and payable.

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Guarantees

17. The Guarantors guaranteed the Indebtedness pursuant to:

    (a) Amended and Restated Guarantee, dated August 13, 2014, granted by BOS LeaseCo LLC, as guarantor, to and in favour of National Bank of Canada, as Agent for the Lenders;

    (b) Amended and Restated Guarantee, dated August 13, 2014, granted by BOS Solutions Real Estate Inc., as guarantor, to and in favour of National Bank of Canada, as Agent for the Lenders; and,

    (c) Amended and Restated Guarantee, dated August 13, 2014, granted by BOS USHoldCo Inc., as guarantor, to and in favour of National Bank of Canada, as Agent for the Lenders,

    (each as otherwise amended, restated, supplemented or otherwise modified and as previously confirmed from time to time is herein referred to as, a "**Guarantee**" and collectively as, the "**Guarantees**").

18. All Guarantees are governed by Alberta law and the Federal laws of Canada applicable therein.

19. Each Loan Party's obligations, under their respective Guarantee, are enforceable by the Agent, upon demand by the Agent for payment, after the occurrence and during the continuance of an Event of Default, as contemplated and defined in the Credit Agreement.

The Security

20. As security for all amounts owed by the Loan Parties to the Agent and the Lenders, the Loan Parties entered into the following security agreements wherein the Loan Parties granted to the Agent a security interest in all of their respective assets, property and undertaking:

    (a) Amended and Restated General Security Agreement, dated August 13, 2014, as granted by BOS Solutions Ltd., to and in favour of National Bank of Canada, as Agent for the Lenders;

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(b) Amended and Restated Security Agreement, dated August 13, 2014, as granted by BOS Leaseco LLC, to and in favour of National Bank of Canada, as Agent for the Lenders;

(c) Amended and Restated Security Agreement, dated August 13, 2014, as granted by BOS Solutions Real Estate Inc., to and in favour of National Bank of Canada, as Agent for the Lenders;

(d) Amended and Restated Security Agreement, dated August 13, 2014, as granted by BOS USHoldco Inc., to and in favour of National Bank of Canada, as Agent for the Lenders; and,

(e) General Security Agreement, dated December 8, 2008, as granted by BOS Solutions Inc., to and in favour of National Bank of Canada; and,

(f) Amended and Restated Security Agreement, dated August 13, 2014, as granted by BOS Solutions Inc., to and in favour of National Bank of Canada, as Agent for the Lenders,

(collectively, the "**General Security Agreements**").

The General Security Agreements are enforceable upon the occurrence of an Event of Default, as defined in and contemplated by the Credit Agreement. Additionally, pursuant to Section 12 therein, upon the occurrence and during the continuance of any Event of Default, the Agent will be entitled to declare all Obligations as being immediately due and payable and all security interests thereunder will at such time become immediately enforceable.

21. In addition to the General Security Agreements, the Loan Parties also entered into and provided the following additional security agreements:

(a) Amended and Restated Intellectual Property Security Agreement, dated August 13, 2014, as granted by BOS Solutions Ltd., to and in favour of National Bank of Canada, as Agent for the Lenders;

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(b) Amended and Restated Patent Security Agreement, dated August 13, 2014, as granted by BOS Solutions Ltd., to and in favour of National Bank of Canada, as Agent for the Lenders;

(c) Deposit Account Control Agreement, dated as of September 16, 2019, executed by BOS Solutions Ltd., National Bank of Canada, as Agent for the Lenders, and HSBC Bank USA, National Association;

(d) Deposit Account Control Agreement, dated as of September 16, 2019, executed by BOS Solutions Inc., National Bank of Canada, as Agent for the Lenders, and HSBC Bank USA, National Association;

(e) Deposit Account Control Agreement, dated as of September 16, 2019, executed by BOS LeaseCo LLC, National Bank of Canada, as Agent for the Lenders, and HSBC Bank USA, National Association;

(f) Deposit Account Control Agreement, dated as of September 18, 2019, executed by BOS Solutions Inc., National Bank of Canada, as Agent for the Lenders, and Wells Fargo Bank, National Association; and,

(g) Set-Off and Security Agreement With Respect to Deposits, dated November 25, 2019, granted by BOS Solutions Ltd. and BOS Solutions Inc.,

PPR Registrations

22. The Agent, for and on behalf of itself and the Lenders perfected its security interests under the Security Agreements and as and against BSL's present and after acquired personal and real property, assets, and undertakings and in all proceeds and renewals thereof, accessions thereto, and substitutions therefor (the "**Canadian Collateral**") by the registration of:

(a) financing statements, in the personal property registries of Alberta in respect of BSL; and,

(b) land charges in the personal property registry of Alberta in respect of BSL.

As is the case in respect of the General Security Agreements, the personal property registry searches have not been attached to this my Affidavit. I am advised by counsel

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that the subordinate registrations in the Alberta, British Columbia and Saskatchewan personal property registries are in the name of Emkay Canada Leasing Corp. ("**Emkay**") (Alberta in what appears to be 7 GMC trucks), and Element Fleet Management Inc. ("**Element**") (British Columbia the collateral description being all motor vehicles).

UCC Financing Statements

23. The Agent, for and on behalf of itself and the Lenders perfected its security interests under the Security Agreements and as and against the US Loan Parties' present and after acquired personal and real property, assets, and undertakings and in all proceeds and renewals thereof, accessions thereto, and substitutions therefor (the "**US Collateral**", the US Collateral and the Canadian Collateral are collectively referred to as, the "**Collateral**") by the registration of:

(a) UCC Financing Statement Amendment to Initial Financing Statement File Number 20111667917, for BOS LeaseCo LLC, filed with the Secretary of State of Delaware;

(b) UCC Financing Statement Amendment to Initial Financing Statement File Number 20111667800, for BOS USHoldCo Inc., filed with the Secretary of State of Delaware;

(c) UCC Financing Statement Amendment to Initial Financing Statement File Number 2011F020120, for BOS Solutions Inc., filed with the Secretary of State of Colorado;

(d) UCC Financing Statement Amendment to Initial Financing Statement File Number 20182087478, for BOS Solutions Inc., filed with the Secretary of State of Colorado;

(e) UCC Financing Statement Amendment to Initial Financing Statement File Number 20192005828, for BOS Solutions Inc., filed with the Secretary of State of Colorado;

(f) UCC Financing Statement Amendment to Initial Financing Statement File Number 20192005834, for BOS Solutions Inc., filed with the Secretary of State of Colorado; and,

(g) UCC Financing Statement Amendment to Initial Financing Statement File Number 2011F020122, for BOS Solutions Real Estate Inc., filed with the Secretary of State of Colorado.

Initial Defaults

24. In late January, 2018, and as further deposed to herein, the Borrowers advised the Agent that it anticipated defaulting on the Credit Agreement because it would breach the Funded Debt to EBITDA Ratio. The Credit Agreement was amended to extend the deadline for compliance with Section 8.2(a)(ii) of the Credit Agreement to August 15, 2018 and again to September 10, 2018. Pursuant to Sections 8.2(a)(ii) and (iii) of the Credit Agreement, the Borrowers were required to ensure that the Funded Debt to EBITDA Ration of the Borrowers did not exceed 3.75:1.00 as at the end of the first Fiscal Quarter of Fiscal Year 2019 (the "**Q1 Funded Debt to EBITDA Covenant**"), and 3.50:1.00 as at the end of the second Fiscal Quarter of Fiscal Year 2019 (the "**Q2 Funded Debt to EBITDA Covenant**"), respectively. The Borrowers' Funded Debt to EBITDA Ratio was 3.90:1.00 as at the end of the first Fiscal Quarter of Fiscal Year 2019 and 4.06:1.00 as at the end of the second Fiscal Quarter of Fiscal Year 2019. The breaches of the Q1 Funded Debt to EBITDA Covenant and the Q2 Funded Debt to EBITDA Covenant each constitute an Event of Default pursuant to Section 9.1(b) of the Credit Agreement (collectively, the "**Financial Covenant Events of Default**").

25. Pursuant to Section 3.8(c) of the Credit Agreement, the Borrowers were required to repay the principal amount of all Advances under Facility A which are in excess of the Facility A Lending Limit (the "**Payment Covenant**"). Pursuant to Section 2.2(d) of the Credit Agreement, on September 30, 2019, the Facility A Lending Limit was reduced to $56,000,000 and the Borrowers failed to repay Advances under Facility A which were in excess of $56,000,000. Such breach of the Payment Covenant constitutes an Event of Default pursuant to Section 9.1(a) of the Credit Agreement (the "**Payment Default"** and together with the Financial Covenant Events of Default, collectively, the "**Specified Events of Default**").

26. Pursuant to letters from the Agent to the Borrowers dated as of May 13, 2019, May 31, 2019, June 7, 2019, June 27, 2019, July 31, 2019, August 30, 2019, September 23, 2019, October 11, 2019, October 18, 2019, and October 31, 2019 (collectively, the "**Prior Letters**"), the Agent notified the Borrowers of the Specified Events of Default and also notified the Borrowers of the Lenders' agreement to allow additional Advances under the Swingline Facility on the terms set out therein, notwithstanding the Specified Events of Default.

Forbearance Agreement

27. The Agent and the Lenders remained desirous of exploring whether the Loan Parties would be able to present a viable plan or proposal that could be supported by the Lenders and that would address the continuing solvency challenges of the Loan Parties. On November 25, 2019, the Borrowers, the Guarantors, and NBC, HSBC Bank Canada, ATB Financial, and The Toronto-Dominion Bank, as lenders, and the Agent, as agent, entered into a Forbearance and Amending Agreement (the "**Forbearance and Amending Agreement**").

Additional Defaults

28. Pursuant to Section 2(a)(xiv) of the Forbearance and Amending Agreement, the Borrowers covenanted and agreed to conduct the Strategic Process in accordance with the steps, timelines, and details set out in Schedule "A" to the Forbearance and Amending Agreement. In accordance with the Strategic Process milestones set forth in Schedule "A" to the Forbearance and Amending Agreement, the Borrowers were required to provide the Agent with an executed debt refinancing term sheet on or before December 13, 2019. The Borrowers did not provide the Agent with an executed debt refinancing term sheet on or before December 13, 2019 and, as a result, the Agent notified the Borrowers on December 19, 2019 of the Additional Event of Default, pursuant to the Forbearance and Amending Agreement (the "**Strategic Process Milestone Default**").

29. Pursuant to Section 3(k)(iii)(vi) of the Forbearance and Amending Agreement, the Borrowers covenanted and agreed that, during the Relief Period, the Borrowers would not, without the prior written consent of the Lenders, make any expenditures other than in accordance with the Cashflow Forecast, subject to a negative variance that does not exceed 15% in the aggregate on a cumulative basis (as tested on a semi-monthly basis) (the "**15% Various Threshold**"). As at January 15, 2020 and January 30, 2020, the Borrowers exceeded the 15% Variance Threshold and, as a result, the Agent notified the Borrowers on February 20, 2020 of the further Additional Event of Default, pursuant to the Forbearance and Amending Agreement (the "Spending Default", the Spending Default and the Strategic Process Milestone Default are collectively referred to as the "**Additional Events of Default**")

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Liquidity Issues

30. Pursuant to the: (i) Specified Events of Default; (ii) the Additional Events of Default; (iii) the expiration of the Relief Period, on March 31, 2020; and, (iv) the maturity of all Indebtedness under the Credit Facilities, which occurred on March 31, 2020, the Agent, for and on behalf of the Lenders, issued a demand for repayment and notice of intention to enforce security to the Loan Parties on April 24, 2020 (the "**Demand**").

31. The Loan Parties have not repaid the Indebtedness owing to the Lenders. I am advised by counsel to the Loan Parties that (i) the Loan Parties have instructed counsel to consent to the receivership order sought by the Lenders; and (ii) the directors of each of the Loan Parties intend on resigning on the return date of the within application.

Foreign Recognition

32. The Loan Parties operate in Canada and the United States. If it is determined by the Receiver to be in the best interests of the estates of the Loan Parties it is expected that the Receiver will make an application for foreign recognition under Chapter 15 of the US Code in respect of the US Loan Parties in a relatively expedited fashion. The proposed form of order authorizes EY to act as a foreign representative in such a proceeding.

33. The Loan Parties are jointly and severally liable for the Indebtedness and are insolvent. The Loan Parties (including the Loan Parties that operate outside of Canada) operate as a single economic unit and have common management, accounting functions and financial reporting. It is appropriate for EY to be appointed as receiver and manager over the US Loan Parties so that their insolvency, property and affairs, and the rights of all creditors against them, can be administered and supervised in an efficient and cost-effective fashion and with the assistance of courts in the United States as EY determines is necessary or advisable.

Necessity of the Appointment of a Receiver

34. The Borrowers currently have no access or availability under the Facilities or the Credit Agreement. All Loan Parties derive liquidity via the Borrowers. The Lenders are not prepared to extend any further credit to the Borrowers. It has become evident that no other parties are willing to commit or advance any additional funds in order to sustain or provide additional liquidity to the Loan Parties during the course of this liquidity crisis.

35. Absent further funding, the Borrowers are unable to meet their obligations as they become due. The Agent therefore has serious and valid concerns regarding the protection and preservation of its Collateral which includes any value attributed to the Loan Parties' ongoing operations. The Lenders are only prepared to fund go forward critical payment obligations by way of priority advances made under the terms of a receivership order and receiver's certificate within the proposed receivership proceedings.

36. The granting of the relief sought by the Agent will preserve and protect the Agent's first security position and allow go-forward decisions in respect of the Loan Parties' business to be made by a court-appointed officer for the benefit of all stakeholders.

37. EY is a licensed trustee in bankruptcy and has consented to being appointed as Receiver of the Loan Parties.

38. The appointment of the Receiver will allow the Property to be preserved. Additionally, all revenues derived from the Loan Parties' business will be used to maximize value for the general benefit of the estate and all stakeholders. The appointment of the Receiver will also allow the status quo to be maintained while the Receiver determines what additional steps are required with respect to the US Loan Parties.

Service

39. EY has been monitoring the Loan Parties' business and operations since April, 2018. I am advised by EY that the only Canadian employer is BSL and that BSL is current with respect to source deductions, employment insurance, and Canada Pension Plan remittances. I am also advised by EY that BSL is current with respect to its GST and HST remittances. Finally, the Loan Parties do not own any real estate.

40. Given the urgency of this matter and having regard to the facts in the immediate preceding paragraph, the Lenders have not served the Canada Revenue Agency or any Canadian municipality with notice of this application. Additionally, notice has not been provided to Emkay or Element. The Lenders have instructed counsel to serve this order upon the Canada Revenue Agency, Emkay and Element.

Conclusion

41. I believe it is just, convenient, and appropriate for a receiver to be appointed over the Loan Parties, for the following reasons:

(a) the majority of the assets of the Loan Parties that have material value and are subject to the Security are accounts receivable and operating assets. The Receiver will be the most efficient and effective way to realize on these assets and maximize the recovery of the Agent, the Lenders, and the estate and stakeholders of the Loan Parties;

(b) the Loan Parties have serious risk of not being able to meet critical payment obligations. Absent the immediate intervention of this Honourable Court, this will prevent any ordinary course wind-down under the control of the Receiver and cause severe, irreparable, and unnecessary prejudice to the first security position of the Agent and the Lenders;

(c) the Agent has valid and serious concerns regarding the preservation and protection of the Collateral, particularly due to the ongoing liquidity issues and its inability to meets its obligations as they become due;

(d) the Loan Parties have operations and assets situated in the Untied States and the proposed form of order allows the Receiver to initiate proceedings under the US Code.

42. I swear this affidavit in support of an application to appoint EY as receiver and manager of the Loan Parties, together with such powers, as set out in the draft Receivership Order, attached to the Notice of Application to be filed concurrently with this, my Affidavit. I confirm that I am swearing this Affidavit via video in accordance with Court of Queen's Bench of Alberta practice protocol NPP 2020-02.

SWORN BEFORE ME at the City of Calgary, in the Province of Alberta, this 3rd day of May, 2020.	))))))	
_______________________________ A COMMISSIONER FOR OATHS in and for the Province of Alberta	)))	_______________________________ **AUDREY NG**

Sean F. Collins, Barrister & Solicitor
My appointment does not expire.

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DOCS 20336499

COURT FILE NUMBER		Clerk's Stamp
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ADDRESS FOR SERVICE AND CONTACT INFORMATION OF PARTY FILING THIS DOCUMENT	McCarthy Tétrault LLP 4000, 421 - 7th Avenue SW Calgary AB T2P 4K9 Attention: Sean Collins / Walker W. MacLeod / Pantelis Kyriakakis Tel: 403-260-3531 / 3710 / 3536 Fax: 403-260-3501 Email: scollins@mccarthy.ca / wmacleod@mccarthy.ca / pkyriakakis@mccarthy.ca	

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Sworn on May 3, 2020

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13. BSL has engaged the services of Kevin McElcheran as its chief restructuring officer. Mr. McElcheran is ordinarily resident in the City of Toronto, Canada.

14. Until January, 2019 BSL's Chief Financial Officer was located in Calgary, Alberta. In October, 2019, the balance of BSL's treasury and finance operations were relocated to Houston, Texas. The US operations are conducted through BSI which is also headquartered in Houston, Texas.

The Credit Agreement

15. Pursuant to the Credit Agreement, the Borrowers had access to a revolving reducing credit facility in the aggregate amount of CAD$56,000,000, which includes (y) a $7,500,000 Swingline Commitment, and (z) an $8,500,000 Letter of Credit Commitment, each available as a sublimit of such facility (collectively, the "**Facilities**").

16. If any Default or Event of Default occurs which is continuing and has not been waived in writing in accordance with the terms hereof, no Lender shall be under any further obligation to make Advances or to accept drafts or bills of exchange as Bankers' Acceptances, and upon the occurrence of any Event of Default, the Agent may give notice to the Borrowers declaring all or any of the Obligations to be forthwith due and payable.

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Guarantees

17. The Guarantors guaranteed the Indebtedness pursuant to:

    (a) Amended and Restated Guarantee, dated August 13, 2014, granted by BOS LeaseCo LLC, as guarantor, to and in favour of National Bank of Canada, as Agent for the Lenders;

    (b) Amended and Restated Guarantee, dated August 13, 2014, granted by BOS Solutions Real Estate Inc., as guarantor, to and in favour of National Bank of Canada, as Agent for the Lenders; and,

    (c) Amended and Restated Guarantee, dated August 13, 2014, granted by BOS USHoldCo Inc., as guarantor, to and in favour of National Bank of Canada, as Agent for the Lenders,

    (each as otherwise amended, restated, supplemented or otherwise modified and as previously confirmed from time to time is herein referred to as, a "**Guarantee**" and collectively as, the "**Guarantees**").

18. All Guarantees are governed by Alberta law and the Federal laws of Canada applicable therein.

19. Each Loan Party's obligations, under their respective Guarantee, are enforceable by the Agent, upon demand by the Agent for payment, after the occurrence and during the continuance of an Event of Default, as contemplated and defined in the Credit Agreement.

The Security

20. As security for all amounts owed by the Loan Parties to the Agent and the Lenders, the Loan Parties entered into the following security agreements wherein the Loan Parties granted to the Agent a security interest in all of their respective assets, property and undertaking:

    (a) Amended and Restated General Security Agreement, dated August 13, 2014, as granted by BOS Solutions Ltd., to and in favour of National Bank of Canada, as Agent for the Lenders;

(b) Amended and Restated Security Agreement, dated August 13, 2014, as granted by BOS Leaseco LLC, to and in favour of National Bank of Canada, as Agent for the Lenders;

(c) Amended and Restated Security Agreement, dated August 13, 2014, as granted by BOS Solutions Real Estate Inc., to and in favour of National Bank of Canada, as Agent for the Lenders;

(d) Amended and Restated Security Agreement, dated August 13, 2014, as granted by BOS USHoldco Inc., to and in favour of National Bank of Canada, as Agent for the Lenders; and,

(e) General Security Agreement, dated December 8, 2008, as granted by BOS Solutions Inc., to and in favour of National Bank of Canada; and,

(f) Amended and Restated Security Agreement, dated August 13, 2014, as granted by BOS Solutions Inc., to and in favour of National Bank of Canada, as Agent for the Lenders,

(collectively, the "**General Security Agreements**").

The General Security Agreements are enforceable upon the occurrence of an Event of Default, as defined in and contemplated by the Credit Agreement. Additionally, pursuant to Section 12 therein, upon the occurrence and during the continuance of any Event of Default, the Agent will be entitled to declare all Obligations as being immediately due and payable and all security interests thereunder will at such time become immediately enforceable.

21. In addition to the General Security Agreements, the Loan Parties also entered into and provided the following additional security agreements:

(a) Amended and Restated Intellectual Property Security Agreement, dated August 13, 2014, as granted by BOS Solutions Ltd., to and in favour of National Bank of Canada, as Agent for the Lenders;

(b) Amended and Restated Patent Security Agreement, dated August 13, 2014, as granted by BOS Solutions Ltd., to and in favour of National Bank of Canada, as Agent for the Lenders;

(c) Deposit Account Control Agreement, dated as of September 16, 2019, executed by BOS Solutions Ltd., National Bank of Canada, as Agent for the Lenders, and HSBC Bank USA, National Association;

(d) Deposit Account Control Agreement, dated as of September 16, 2019, executed by BOS Solutions Inc., National Bank of Canada, as Agent for the Lenders, and HSBC Bank USA, National Association;

(e) Deposit Account Control Agreement, dated as of September 16, 2019, executed by BOS LeaseCo LLC, National Bank of Canada, as Agent for the Lenders, and HSBC Bank USA, National Association;

(f) Deposit Account Control Agreement, dated as of September 18, 2019, executed by BOS Solutions Inc., National Bank of Canada, as Agent for the Lenders, and Wells Fargo Bank, National Association; and,

(g) Set-Off and Security Agreement With Respect to Deposits, dated November 25, 2019, granted by BOS Solutions Ltd. and BOS Solutions Inc.,

PPR Registrations

22. The Agent, for and on behalf of itself and the Lenders perfected its security interests under the Security Agreements and as and against BSL's present and after acquired personal and real property, assets, and undertakings and in all proceeds and renewals thereof, accessions thereto, and substitutions therefor (the "**Canadian Collateral**") by the registration of:

(a) financing statements, in the personal property registries of Alberta in respect of BSL; and,

(b) land charges in the personal property registry of Alberta in respect of BSL.

As is the case in respect of the General Security Agreements, the personal property registry searches have not been attached to this my Affidavit. I am advised by counsel that the subordinate registrations in the Alberta, British Columbia and Saskatchewan personal property registries are in the name of Emkay Canada Leasing Corp. ("**Emkay**") (Alberta in what appears to be 7 GMC trucks), and Element Fleet Management Inc. ("**Element**") (British Columbia the collateral description being all motor vehicles).

UCC Financing Statements

23. The Agent, for and on behalf of itself and the Lenders perfected its security interests under the Security Agreements and as and against the US Loan Parties' present and after acquired personal and real property, assets, and undertakings and in all proceeds and renewals thereof, accessions thereto, and substitutions therefor (the "**US Collateral**", the US Collateral and the Canadian Collateral are collectively referred to as, the "**Collateral**") by the registration of:

(a) UCC Financing Statement Amendment to Initial Financing Statement File Number 20111667917, for BOS LeaseCo LLC, filed with the Secretary of State of Delaware;

(b) UCC Financing Statement Amendment to Initial Financing Statement File Number 20111667800, for BOS USHoldCo Inc., filed with the Secretary of State of Delaware;

(c) UCC Financing Statement Amendment to Initial Financing Statement File Number 2011F020120, for BOS Solutions Inc., filed with the Secretary of State of Colorado;

(d) UCC Financing Statement Amendment to Initial Financing Statement File Number 20182087478, for BOS Solutions Inc., filed with the Secretary of State of Colorado;

(e) UCC Financing Statement Amendment to Initial Financing Statement File Number 20192005828, for BOS Solutions Inc., filed with the Secretary of State of Colorado;

(f) UCC Financing Statement Amendment to Initial Financing Statement File Number 20192005834, for BOS Solutions Inc., filed with the Secretary of State of Colorado; and,

(g) UCC Financing Statement Amendment to Initial Financing Statement File Number 2011F020122, for BOS Solutions Real Estate Inc., filed with the Secretary of State of Colorado.

Initial Defaults

24. In late January, 2018, and as further deposed to herein, the Borrowers advised the Agent that it anticipated defaulting on the Credit Agreement because it would breach the Funded Debt to EBITDA Ratio. The Credit Agreement was amended to extend the deadline for compliance with Section 8.2(a)(ii) of the Credit Agreement to August 15, 2018 and again to September 10, 2018. Pursuant to Sections 8.2(a)(ii) and (iii) of the Credit Agreement, the Borrowers were required to ensure that the Funded Debt to EBITDA Ration of the Borrowers did not exceed 3.75:1.00 as at the end of the first Fiscal Quarter of Fiscal Year 2019 (the "**Q1 Funded Debt to EBITDA Covenant**"), and 3.50:1.00 as at the end of the second Fiscal Quarter of Fiscal Year 2019 (the "**Q2 Funded Debt to EBITDA Covenant**"), respectively. The Borrowers' Funded Debt to EBITDA Ratio was 3.90:1.00 as at the end of the first Fiscal Quarter of Fiscal Year 2019 and 4.06:1.00 as at the end of the second Fiscal Quarter of Fiscal Year 2019. The breaches of the Q1 Funded Debt to EBITDA Covenant and the Q2 Funded Debt to EBITDA Covenant each constitute an Event of Default pursuant to Section 9.1(b) of the Credit Agreement (collectively, the "**Financial Covenant Events of Default**").

25. Pursuant to Section 3.8(c) of the Credit Agreement, the Borrowers were required to repay the principal amount of all Advances under Facility A which are in excess of the Facility A Lending Limit (the "**Payment Covenant**"). Pursuant to Section 2.2(d) of the Credit Agreement, on September 30, 2019, the Facility A Lending Limit was reduced to $56,000,000 and the Borrowers failed to repay Advances under Facility A which were in excess of $56,000,000. Such breach of the Payment Covenant constitutes an Event of Default pursuant to Section 9.1(a) of the Credit Agreement (the "**Payment Default"** and together with the Financial Covenant Events of Default, collectively, the "**Specified Events of Default**").

26. Pursuant to letters from the Agent to the Borrowers dated as of May 13, 2019, May 31, 2019, June 7, 2019, June 27, 2019, July 31, 2019, August 30, 2019, September 23, 2019, October 11, 2019, October 18, 2019, and October 31, 2019 (collectively, the "**Prior Letters**"), the Agent notified the Borrowers of the Specified Events of Default and also notified the Borrowers of the Lenders' agreement to allow additional Advances under the Swingline Facility on the terms set out therein, notwithstanding the Specified Events of Default.

Forbearance Agreement

27. The Agent and the Lenders remained desirous of exploring whether the Loan Parties would be able to present a viable plan or proposal that could be supported by the Lenders and that would address the continuing solvency challenges of the Loan Parties. On November 25, 2019, the Borrowers, the Guarantors, and NBC, HSBC Bank Canada, ATB Financial, and The Toronto-Dominion Bank, as lenders, and the Agent, as agent, entered into a Forbearance and Amending Agreement (the "**Forbearance and Amending Agreement**").

Additional Defaults

28. Pursuant to Section 2(a)(xiv) of the Forbearance and Amending Agreement, the Borrowers covenanted and agreed to conduct the Strategic Process in accordance with the steps, timelines, and details set out in Schedule "A" to the Forbearance and Amending Agreement. In accordance with the Strategic Process milestones set forth in Schedule "A" to the Forbearance and Amending Agreement, the Borrowers were required to provide the Agent with an executed debt refinancing term sheet on or before December 13, 2019. The Borrowers did not provide the Agent with an executed debt refinancing term sheet on or before December 13, 2019 and, as a result, the Agent notified the Borrowers on December 19, 2019 of the Additional Event of Default, pursuant to the Forbearance and Amending Agreement (the "**Strategic Process Milestone Default**").

29. Pursuant to Section 3(k)(iii)(vi) of the Forbearance and Amending Agreement, the Borrowers covenanted and agreed that, during the Relief Period, the Borrowers would not, without the prior written consent of the Lenders, make any expenditures other than in accordance with the Cashflow Forecast, subject to a negative variance that does not exceed 15% in the aggregate on a cumulative basis (as tested on a semi-monthly basis) (the "**15% Various Threshold**"). As at January 15, 2020 and January 30, 2020, the Borrowers exceeded the 15% Variance Threshold and, as a result, the Agent notified the Borrowers on February 20, 2020 of the further Additional Event of Default, pursuant to the Forbearance and Amending Agreement (the "Spending Default", the Spending Default and the Strategic Process Milestone Default are collectively referred to as the "**Additional Events of Default**")

Liquidity Issues

30. Pursuant to the: (i) Specified Events of Default; (ii) the Additional Events of Default; (iii) the expiration of the Relief Period, on March 31, 2020; and, (iv) the maturity of all Indebtedness under the Credit Facilities, which occurred on March 31, 2020, the Agent, for and on behalf of the Lenders, issued a demand for repayment and notice of intention to enforce security to the Loan Parties on April 24, 2020 (the "**Demand**").

31. The Loan Parties have not repaid the Indebtedness owing to the Lenders. I am advised by counsel to the Loan Parties that (i) the Loan Parties have instructed counsel to consent to the receivership order sought by the Lenders; and (ii) the directors of each of the Loan Parties intend on resigning on the return date of the within application.

Foreign Recognition

32. The Loan Parties operate in Canada and the United States. If it is determined by the Receiver to be in the best interests of the estates of the Loan Parties it is expected that the Receiver will make an application for foreign recognition under Chapter 15 of the US Code in respect of the US Loan Parties in a relatively expedited fashion. The proposed form of order authorizes EY to act as a foreign representative in such a proceeding.

33. The Loan Parties are jointly and severally liable for the Indebtedness and are insolvent. The Loan Parties (including the Loan Parties that operate outside of Canada) operate as a single economic unit and have common management, accounting functions and financial reporting. It is appropriate for EY to be appointed as receiver and manager over the US Loan Parties so that their insolvency, property and affairs, and the rights of all creditors against them, can be administered and supervised in an efficient and cost-effective fashion and with the assistance of courts in the United States as EY determines is necessary or advisable.

Necessity of the Appointment of a Receiver

34. The Borrowers currently have no access or availability under the Facilities or the Credit Agreement. All Loan Parties derive liquidity via the Borrowers. The Lenders are not prepared to extend any further credit to the Borrowers. It has become evident that no other parties are willing to commit or advance any additional funds in order to sustain or provide additional liquidity to the Loan Parties during the course of this liquidity crisis.

35. Absent further funding, the Borrowers are unable to meet their obligations as they become due. The Agent therefore has serious and valid concerns regarding the protection and preservation of its Collateral which includes any value attributed to the Loan Parties' ongoing operations. The Lenders are only prepared to fund go forward critical payment obligations by way of priority advances made under the terms of a receivership order and receiver's certificate within the proposed receivership proceedings.

36. The granting of the relief sought by the Agent will preserve and protect the Agent's first security position and allow go-forward decisions in respect of the Loan Parties' business to be made by a court-appointed officer for the benefit of all stakeholders.

37. EY is a licensed trustee in bankruptcy and has consented to being appointed as Receiver of the Loan Parties.

38. The appointment of the Receiver will allow the Property to be preserved. Additionally, all revenues derived from the Loan Parties' business will be used to maximize value for the general benefit of the estate and all stakeholders. The appointment of the Receiver will also allow the status quo to be maintained while the Receiver determines what additional steps are required with respect to the US Loan Parties.

Service

39. EY has been monitoring the Loan Parties' business and operations since April, 2018. I am advised by EY that the only Canadian employer is BSL and that BSL is current with respect to source deductions, employment insurance, and Canada Pension Plan remittances. I am also advised by EY that BSL is current with respect to its GST and HST remittances. Finally, the Loan Parties do not own any real estate.

40. Given the urgency of this matter and having regard to the facts in the immediate preceding paragraph, the Lenders have not served the Canada Revenue Agency or any Canadian municipality with notice of this application. Additionally, notice has not been provided to Emkay or Element. The Lenders have instructed counsel to serve this order upon the Canada Revenue Agency, Emkay and Element.

Conclusion

41. I believe it is just, convenient, and appropriate for a receiver to be appointed over the Loan Parties, for the following reasons:

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(a) the majority of the assets of the Loan Parties that have material value and are subject to the Security are accounts receivable and operating assets. The Receiver will be the most efficient and effective way to realize on these assets and maximize the recovery of the Agent, the Lenders, and the estate and stakeholders of the Loan Parties;

(b) the Loan Parties have serious risk of not being able to meet critical payment obligations. Absent the immediate intervention of this Honourable Court, this will prevent any ordinary course wind-down under the control of the Receiver and cause severe, irreparable, and unnecessary prejudice to the first security position of the Agent and the Lenders;

(c) the Agent has valid and serious concerns regarding the preservation and protection of the Collateral, particularly due to the ongoing liquidity issues and its inability to meets its obligations as they become due;

(d) the Loan Parties have operations and assets situated in the Untied States and the proposed form of order allows the Receiver to initiate proceedings under the US Code.

42. I swear this affidavit in support of an application to appoint EY as receiver and manager of the Loan Parties, together with such powers, as set out in the draft Receivership Order, attached to the Notice of Application to be filed concurrently with this, my Affidavit. I confirm that I am swearing this Affidavit via video in accordance with Court of Queen's Bench of Alberta practice protocol NPP 2020-02.

SWORN BEFORE ME at the City of Calgary, in the Province of Alberta, this 3rd day of May, 2020.	)	
A COMMISSIONER FOR OATHS in and for the Province of Alberta	)	AUDREY NG

Sean F. Collins, Barrister & Solicitor
My appointment does not expire.

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