IN THE UNITED STATES BANKRUPTCY COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

In re: **BOS SOLUTIONS LTD.** **Debtor in a foreign proceeding.**	§ § § § § § §	**Case No. 20-32465** **Chapter 15** **Joint Administration Requested**
In re: **BOS SOLUTIONS INC.** **Debtor in a foreign proceeding.**	§ § § § § § §	**Case No. 20-32467** **Chapter 15** **Joint Administration Requested**
In re: **BOS LEASECO LLC** **Debtor in a foreign proceeding.**	§ § § § § § §	**Case No. 20- 32468** **Chapter 15** **Joint Administration Requested**
In re: **BOS SOLUTIONS REAL ESTATE INC.** **Debtor in a foreign proceeding.**	§ § § § § § §	**Case No. 20-32469** **Chapter 15** **Joint Administration Requested**
In re: **BOS USHOLDCO INC.** **Debtor in a foreign proceeding.**	§ § § § § § §	**Case No. 20-32470** **Chapter 15** **Joint Administration Requested**

RECEIVER'S EMERGENCY MOTION FOR JOINT ADMINISTRATION OF CHAPTER 15 CASES

THIS MOTION SEEKS AN ORDER THAT MAY ADVERSELY AFFECT YOU. IF YOU OPPOSE THE MOTION, YOU SHOULD IMMEDIATELY CONTACT THE MOVING PARTY TO RESOLVE THE DISPUTE. IF YOU AND THE MOVING PARTY CANNOT AGREE, YOU MUST FILE A RESPONSE AND SEND A COPY TO THE MOVING PARTY. YOU MUST FILE AND SERVE YOUR RESPONSE WITHIN 21 DAYS OF THE DATE THIS WAS SERVED ON YOU. YOUR RESPONSE MUST STATE WHY THE MOTION SHOULD NOT BE GRANTED. IF YOU DO NOT FILE A TIMELY RESPONSE, THE RELIEF MAY BE GRANTED WITHOUT FURTHER NOTICE TO YOU. IF YOU OPPOSE THE MOTION AND HAVE NOT REACHED AN AGREEMENT, YOU MUST ATTEND THE HEARING. UNLESS THE PARTIES AGREE OTHERWISE, THE COURT MAY CONSIDER EVIDENCE AT THE HEARING AND MAY DECIDE THE MOTION AT THE HEARING.

REPRESENTED PARTIES SHOULD ACT THROUGH THEIR ATTORNEY.

EMERGENCY RELIEF HAS BEEN REQUESTED. IF THE COURT CONSIDERS THE MOTION ON AN EMERGENCY BASIS, THEN YOU WILL HAVE LESS THAN 21 DAYS TO ANSWER. IF YOU OBJECT TO THE REQUESTED RELIEF OR YOU BELIEVE THE EMERGENCY CONSIDERATION IS NOT WARRANTED, YOU SHOULD FILE AN IMMEDIATE RESPONSE.

Ernst & Young Inc. ("EY") solely in its capacity as court-appointed receiver (the "Receiver") of (1) BOS Solutions Ltd. ("BOS Ltd."), (2) BOS Solutions Inc. ("BOS Inc."), (3) BOS Leaseco LLC ("BOS Leaseco"), (4) BOS Solutions Real Estate Inc. ("BOS Real Estate"), and (5) BOS USHoldco Inc. ("BOS Holdco") (collectively, "BOS" or the "Debtors") based upon the Receivership Order dated May 4, 2020, entered by the Court of Queen's Bench of Alberta in the Judicial Centre of Calgary, Canada, Court File No. 2001-05949 (the "Canadian Court" and the "Canadian Proceedings"), and as authorized foreign representative of the above-captioned Debtors, by and through its undersigned counsel, files this Emergency Motion (the "Motion") for Joint Administration of the above-referenced chapter 15 cases (the "Chapter 15 Cases"), and respectfully states as follows:

INTRODUCTION

1. The Debtors are a group of Canadian-owned companies that have been placed into a receivership proceeding under the Bankruptcy and Insolvency Act and the Judicature Act in

Canada, which is a foreign proceeding within the meaning of 11 U.S.C. § 101(23). EY, the movant, is the Canadian court-appointed Receiver, who is a foreign representative within the meaning of 11 U.S.C. § 101(24). As petitioner in these cases, the Receiver seeks recognition of the foreign proceedings as foreign main proceedings, or in the alternative, as foreign non-main proceedings, under 11 U.S.C. §§ 1515 and 1517. The Receiver seeks joint administration of the cases of these five affiliated Debtors.

JURISDICTION, VENUE, AND CORE ALLEGATIONS

2. This Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 1334(a) and (b) and 11 U.S.C. § 1501 of the Bankruptcy Code. Venue is proper in this district pursuant to 28 U.S.C. § 1410. This is a core proceeding pursuant to 28 U.S.C. § 157(b)(2)(P).

SUPPORT FOR THIS MOTION

3. By this Motion, the Receiver respectfully requests entry of an order directing the consolidation and joint administration of these Chapter 15 Cases for procedural purposes only. For the reasons set forth below, the Receiver submits that the relief requested in this Motion is in the best interest of the Debtors and all parties in interest because joint administration will (1) ease the administrative burden to this Court of entering duplicative orders and maintaining duplicative files and dockets and (2) result in savings to the Receiver (and the Debtors' estates).

4. The Receiver also requests that the Court take judicial notice of its files in this case, and relies upon the *Witness and Exhibit List in Support of First Day Motions* (the "Exhibits List"),[1] and the *Declaration of Receiver in Support of (A) Receiver's Emergency Ex Parte Application for Temporary Restraining Order and Relief Pursuant to Sections 105(a) and 1519 of the Bankruptcy Code, and (B) Emergency Petition for Recognition as Foreign Main Proceedings, or Alternatively*

[1] The Exhibits List and all exhibits thereto are incorporated into this Petition by reference for all purposes as if fully set forth at length.

as Foreign Nonmain Proceedings, Pursuant to Sections 1515 and 1517 of the United States Bankruptcy Code and Related Relief (the "Receiver's Declaration"), both filed contemporaneously herewith.

BACKGROUND

5. On May 4, 2020, National Bank of Canada filed an Originating Application (Appointment of Receiver) in the Canadian Proceedings seeking the appointment of EY as receiver for each of the Debtors under section 243 of the Canadian Bankruptcy and Insolvency Act ("BIA") and section 13(2) of the Judicature Act, RSA 2000 c J-2. The BIA is one of two pieces of federal legislation in Canada applicable to bankruptcies and insolvencies.[2] Bankruptcy and Insolvency Act, R.S.C. 1985, c. B-3 (Can.). The BIA governs both voluntary and involuntary bankruptcy liquidations and provides for debtor reorganizations.

6. On May 4, 2020, the Canadian Court, Honorable Justice P. R. Jeffrey, entered the Receivership Order pursuant to section 243 of the BIA and section 13(2) of the Judicature Act, RSA 2000 c J-2. Among other things, the Receivership Order appointed the Receiver as the authorized foreign representative of the Debtors, with the power to commence ancillary insolvency proceedings in other countries, and requested aid and cooperation of U.S. courts to give effect to the Receivership Order and assistance with the Canadian Proceedings.

7. On May 4, 2020, the Receiver filed Official Form No. 401 Chapter 15 petitions for each of the Debtors pursuant to 11 U.S.C. § 1504, 1509(a) and 1515(a). The factual background of these cases is described more fully in the Receiver's *Emergency Petition for Recognition as*

[2] The second federal legislation in Canada concerning bankruptcies and insolvencies is the Companies' Creditors Arrangement Act ("CCAA"), which affords financially troubled corporations the opportunity to restructure their financial affairs through a "Plan of Arrangement." Companies' Creditors Arrangement Act, R.S.C. 1985, c. C-36 (Can.). The CCAA process is akin to chapter 11 of the Bankruptcy Code, affording companies an opportunity to restructure operations rather than liquidate. *See In re Fracmaster*, Ltd., 237 B.R. 627, 629 n.3 (Bankr. E.D. Tex. 1999).

Foreign Main Proceedings, or in the Alternative Foreign Nonmain Proceedings, Pursuant to Sections 1515 and 1517 of the United States Bankruptcy Code and Related Relief (the "Petition for Recognition"), filed contemporaneously herewith.

RELIEF REQUESTED

8. Pursuant to Federal Rule of Bankruptcy 1015(b) and Local Rule 1015, the Receiver seeks joint administration of these Chapter 15 cases and implementation of the following procedures:

a. One docket shall be maintained for the Debtors' cases, under the case number assigned to BOS Solutions, Ltd.

b. The caption of all pleadings, orders, and other papers filed shall be modified as follows to reflect the joint administration of these cases:

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

In re:	§	
	§	**Case No. 20-32465**
BOS SOLUTIONS LTD., *et al.*,[3]	§	
	§	**Chapter 15**
Debtors in a foreign proceeding.	§	
	§	**Jointly Administered**

[3] The Debtors are: (1) BOS Solutions Ltd., (2) BOS Solutions Inc., (3) BOS Leaseco LLC, (4) BOS Solutions Real Estate Inc., and (5) BOS USHoldco Inc.

c. A notation substantially similar to the following notation shall be entered on the docket for each of BOS Inc., BOS Leaseco, BOS Real Estate, and BOS Holdco to reflect that each of the Debtors' chapter 15 cases shall be jointly administered under the BOS Ltd. Chapter 15 case:

> An order has been entered in this case directing joint administration of this case solely for procedural purposes with the chapter 15 bankruptcy case of BOS Solutions Ltd., Case No. 20-32465. **The docket for BOS Solutions Ltd. should be consulted for all matters affecting this case.**

ARGUMENT AND AUTHORITIES

9. Bankruptcy Rule 1015(b) provides that "if a joint petition or two or more petitions are pending in the same court by or against . . . a debtor and an affiliate, the court may order a joint administration of the estates." Fed. R. Bankr. P. 1015(b). Section 101(2) of the Bankruptcy Code, in turn, defines the term "affiliate," in pertinent parts, as:

> (A) [an] entity that directly or indirectly owns, controls, or holds with power to vote, 20 percent or more of the outstanding securities of the debtor;
> (B) [a] corporation 20 percent or more of whose outstanding voting securities are directly or indirectly owned, controlled, or held with power to vote, by the debtor, or by an entity that directly or indirectly owns, controls, or holds power to vote, 20 percent or more of the outstanding voting securities of the debtor;

11 U.S.C. §101(2).

10. As disclosed in the Receiver's Declaration, BOS Ltd., as the ultimate parent of the Debtors, directly or indirectly owns or controls 100% of the voting securities and/or membership interests (as applicable) of each of the other Debtors. As such, the Debtors are "affiliates" as that term is defined in section 101(2) of the Bankruptcy Code. Accordingly, this Court is authorized to jointly administer these cases for procedural purposes under Bankruptcy Rule 1015(b) and Local Rule 1015-1.

11. The Receiver anticipates that numerous notices, applications, motions or other pleadings and orders in these Chapter 15 Cases will affect several or all of the Debtors. The failure to jointly administer these five cases—each with its own case docket—would result in numerous duplicative filings for each issue. Further, joint administration will relieve the Court from entering duplicative orders and maintaining duplicative files and dockets. The Office of the United States Trustee for the Southern District of Texas (the "US Trustee") and other parties in interest will similarly benefit from joint administration, sparing them the time and effort of reviewing duplicative pleadings and papers.

12. Joint administration will save time and money and avoid such duplicative and potentially confusing filings by permitting counsel for all parties in interest to: (a) use a single caption on the numerous documents that may be served and filed in these Chapter 15 Cases; (b) file the pleadings in one case rather than in multiple cases; and (c) refer to one case docket in order to review all pleadings filed in these Chapter 15 Cases. Further, joint administration will protect parties in interest by ensuring that parties in each of the Debtors' respective cases will be apprised of the various matters before the Court in these Chapter 15 Cases.

13. The rights of the Debtors' creditors and other parties in interest will not be adversely affected by joint administration of these Chapter 15 Cases because this Motion requests only administrative consolidation of the estates for procedural purposes and does not seek substantive consolidation. Creditors and other parties in interest will maintain their rights against each of the respective estates, as applicable.

BASIS FOR EMERGENCY RELIEF

14. Pursuant to Bankruptcy Rule 6003, which empowers a court to grant relief within the first twenty-one (21) days after the commencement of a chapter 11 case "to the extent that relief is necessary to avoid immediate and irreparable harm," and Local Rule 9013-1(i), the Receiver respectfully request emergency consideration of this motion. The Motion requests relief from procedural rules and requirements that pertain to matters of immediate significance or which involve deadlines sooner than twenty-one (21) days after the Petition Date. The relief will save costs and avoid undue administrative burden and confusion if granted before the applicable deadlines. Accordingly, the Receiver submits that it has satisfied the "immediate and irreparable harm" standard of Bankruptcy Rule 6003 and, therefore, respectfully request that the Court approve the relief requested in this motion on an emergency basis.

Wherefore, the Receiver respectfully requests an Order providing for joint administration of the above-captioned Debtors, and granting all other relief, at law or in equity, to which the Receiver is justly entitled.

Dated: May 4, 2020
Houston, Texas

Respectfully submitted,

HAYNES AND BOONE, LLP

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ATTORNEYS FOR CANADIAN RECEIVER

<u>CERTIFICATE OF SERVICE</u>

I hereby certify that contemporaneously with the filing of the foregoing, I directed noticing agent Stretto to serve a copy of the foregoing on parties in interest in this case. The Receiver will supplement this certificate of service with proof of service and a copy of such service list.

/s/ Charles A. Beckham, Jr.
Charles A. Beckham, Jr.