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.*,[1]	§	
	§	**Chapter 15**
Debtors in a foreign proceeding.	§	
	§	**Jointly Administered**

RECEIVER'S EMERGENCY MOTION FOR ENTRY OF AN ORDER AUTHORIZING THE FILING UNDER SEAL OF THE SECOND SUPPLEMENT TO THE SECOND RECEIVER'S REPORT

EMERGENCY RELIEF HAS BEEN REQUESTED. A HEARING WILL BE CONDUCTED ON THIS MATTER ON AUGUST 26, 2020 AT 3:30 PM IN COURTROOM 404, 515 RUSK STREET, HOUSTON, TX 77002. YOU MAY PARTICIPATE IN THE HEARING EITHER IN PERSON OR BY AUDIO/VIDEO CONNECTION.

AUDIO COMMUNICATION WILL BE BY USE OF THE COURT'S DIAL-IN FACILITY. YOU MAY ACCESS THE FACILITY AT (832) 917-1510. YOU WILL BE RESPONSIBLE FOR YOUR OWN LONG DISTANCE CHARGES. ONCE CONNECTED, YOU WILL BE ASKED TO ENTER THE CONFERENCE ROOM NUMBER. JUDGE JONES' CONFERENCE ROOM NUMBER IS 205691.

YOU MAY VIEW VIDEO VIA GOTOMEETING. TO USE GOTOMEETING, THE COURT RECOMMENDS THAT YOU DOWNLOAD THE FREE GOTOMEETING APPLICATION. TO CONNECT, YOU SHOULD ENTER THE MEETING CODE "JUDGEJONES" IN THE GOTOMEETING APP OR CLICK THE LINK ON JUDGE JONES' HOME PAGE ON THE SOUTHERN DISTRICT OF TEXAS WEBSITE. ONCE CONNECTED, CLICK THE SETTINGS ICON IN THE UPPER RIGHT CORNER AND ENTER YOUR NAME UNDER THE PERSONAL INFORMATION SETTING.

HEARING APPEARANCES MUST BE MADE ELECTRONICALLY IN ADVANCE OF THE HEARING. TO MAKE YOUR ELECTRONIC APPEARANCE, GO TO THE SOUTHERN DISTRICT OF TEXAS WEBSITE AND SELECT "BANKRUPTCY COURT" FROM THE TOP MENU. SELECT "JUDGES' PROCEDURES," THEN "VIEW HOME PAGE" FOR JUDGE JONES. UNDER "ELECTRONIC

[1] 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.

APPEARANCE" SELECT "CLICK HERE TO SUBMIT ELECTRONIC APPEARANCE". SELECT THE CASE NAME, COMPLETE THE REQUIRED FIELDS AND CLICK "SUBMIT" TO COMPLETE YOUR APPEARANCE.

IF YOU OBJECT TO THE RELIEF REQUESTED OR YOU BELIEVE THAT EMERGENCY CONSIDERATION IS NOT WARRANTED, YOU MUST EITHER APPEAR AT THE HEARING OR FILE A WRITTEN RESPONSE PRIOR TO THE HEARING. OTHERWISE, THE COURT MAY TREAT THE PLEADING AS UNOPPOSED AND GRANT THE RELIEF REQUESTED.

RELIEF IS REQUESTED NOT LATER THAN AUGUST 26, 2020.

Ernst & Young Inc., solely in its capacity as court-appointed receiver (the "Receiver") of (1) BOS Solutions Ltd., (2) BOS Solutions Inc., (3) BOS Leaseco LLC, (4) BOS Solutions Real Estate Inc., and (5) BOS USHoldco Inc. (collectively, the "Debtors") based upon the Receivership Order dated May 4, 2020 (the "Receivership Order"), 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 to seal (the "Motion"). In support of the Motion, the Receiver respectfully states as follows:

Jurisdiction and Venue

1. The United States Bankruptcy Court for the Southern District of Texas, Houston Division (the "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 matter is a core proceeding pursuant to 28 U.S.C. § 157(b)(2)(P).

2. The statutory bases for the relief requested herein are sections 105(a) and 107(b) of title 11 of the United States Code (the "Bankruptcy Code"), Rule 9018 of the Federal Rules of Bankruptcy Procedure (the "Bankruptcy Rules"), and Rules 9037-1 and 9013-1 of the Bankruptcy Local Rules for the Southern District of Texas (the "Local Rules").

Background

A. Procedural Background

3. 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.[2]

4. 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.

5. 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) to commence these chapter 15 cases (the "Chapter 15 Cases").

6. On May 5, 2020, the U.S. Court entered the *Order Granting Receiver's Emergency Ex Parte Application for Temporary Restraining Order and Relief Pursuant to Sections 105(a) and 1519 of the Bankruptcy Code* [Doc. No. 17], which was extended on a final basis pursuant to the *Order Granting Emergency Petition for Recognition as Foreign Main Proceeding Pursuant to Sections 1515 and 1517 of the United States Bankruptcy Code and Related Relief* [Doc. No. 41]

[2] The BIA is one of two pieces of federal legislation in Canada applicable to bankruptcies and insolvencies. 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.

(the "Recognition Order"). The Recognition Order gives the Receivership Order full force and effect in the U.S., so the Receivership Order applies equally in the U.S. and in Canada.

7. The factual background of these Chapter 15 Cases is described more fully in the *Receiver's Emergency Petition for Recognition as 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* [Doc. No. 5] and the Receiver's declaration in support thereof [Doc. No. 6].

B. The Sale Process

8. The Receiver has been conducting a sale process of substantially all of the Debtors' assets pursuant to: (i) the *Order Approving Sale Solicitation Process with the Sale Process Procedures* [Doc. No. 54-1] and (ii) the *Order Granting the Receiver's Emergency Motion for Entry of an Order: (I) Granting Comity; (II) Approving the Sale Process; (III) Approving the Form and Manner of the Cure and Sale Notices; and (IV) Granting Related Relief* [Doc. No. 57] (the "U.S. Sale Process Order").

9. Pursuant to the Sale Process (as defined in the U.S. Sale Process Order), the Receiver has identified a successful bidder, Stage 3 Separation, LLC ("Stage 3"), as set forth in the *Notice of Successful Bidder* [Docket No. 105]. In addition, the Receiver has filed a *Notice of Filing of Form Sale Order and APA*, which attaches a redacted copy of the Asset Purchase and Sale Agreement (the "Stage 3 APA") by and between the Receiver and Stage 3 [Doc. No. 108].

10. Contemporaneously herewith, the Receiver filed a *Notice of Filing of Amending Agreement*, which attached a redacted copy of the Amending Agreement, that amends the Stage 3 APA (the "Stage 3 APA Amendment").

C. The Receiver's Report, the Supplement to the Second Report, and the Second Supplement to the Second Report

11. Pursuant to the Receivership Order, the Receiver is required to submit periodic status reports to the Canadian Court, which are then filed in this Court. *See* Receivership Order ¶ 28 ("[T]he Receiver will report to this [Canadian] Court from time to time. . . ."); *see e.g.*, *Receiver's Witness and Exhibit List for Hearing on July 6, 2020 at 11:15 a.m.* [Doc. No. 53] (filing the Receiver's first report at exhibit number three).

12. On August 10, 2020, the Receiver filed with the Canadian Court the Second Report of Ernst & Young Inc., in its Capacity as Court-Appointed Receiver and Manager (the "Second Report") and the Confidential Supplement to the Second Report of Ernst & Young Inc., in its Capacity as Court-Appointed Receiver and Manager (the "Supplement to the Second Report"). On August 14, 2020, the Receiver filed the *Notice of Filing of Receiver's Second Report* [Doc. No. 107].

13. The Second Report describes the Sale Process and the proposed transaction with Stage 3. The Supplement to the Second Report supplements the Second Report and describes: (i) the confidential offers received by the Receiver for the sale of the Debtors' assets that were submitted pursuant to non-disclosure agreements; and (ii) an unredacted version of the Stage 3 APA. Given the confidential information contained therein, on August 14, 2020, the Receiver filed the *Receiver's Emergency Motion for Entry of an Order Authorizing the Filing Under Seal of the Confidential Supplement to the Second Receiver's Report* [Doc. No. 109]. On August 19, 2020, the Canadian Court entered an order sealing the Supplement to the Second Report.

14. On August 18, 2020, the Receiver filed with the Canadian Court the Supplement to the Second Report of Ernst & Young Inc., in its Capacity as Court-Appointed Receiver and Manager (the "Second Supplement to the Second Report"). The Second Supplement to the Second

Report supplements the Second Report to provide a copy of the redacted Stage 3 APA Amendment. The Stage 3 APA Amendment redacts the purchase price. The Receiver has filed a redacted copy of the Second Supplement to the Second Report contemporaneously with the filing of this Motion.

Relief Requested

15. By this Motion, the Receiver seeks entry of an order, substantially in the form attached hereto (the "Proposed Order"), authorizing the Receiver to file an unredacted copy of the Second Supplement to the Second Report under seal (the "Protected Material"). The Receiver seeks to file the Protected Material under seal to protect confidential commercial, sensitive, and privileged information because its public disclosure would be detrimental to the consummation of the sale with Stage 3. The Receiver will provide an unredacted copy of the Protected Material to and as required by this Court.

Basis for Relief

16. Section 107(b) of the Bankruptcy Code mandates that the Court protect confidential information upon request of a party in interest. 11 U.S.C. § 107(b) ("On request of a party in interest, the bankruptcy court ***shall***, and on the bankruptcy court's own motion, the bankruptcy court may (1) protect an entity with respect to a trade secret or confidential research, development, or commercial information. . . contained in a paper. . . .") (emphasis added); *see also Video Software Dealers Ass'n v. Orion Pictures Corp. (In re Orion Pictures Corp.)*, 21 F.3d 24, 27 (2d Cir. 1994) ("[I]f the information fits any of the specified categories, the court is ***required*** to protect a requesting interested party and has no discretion to deny the application.") (citation omitted) (emphasis in original); *see also In re Gen. Homes Corp.*, 181 B.R. 898, 903 (Bankr. S.D. Tex. 1995) ("The court has authority to seal court records, in order to protect trade secrets or confidential research, development, or confidential information, or to protect a person with regard

to a scandalous or defamatory matter."); *In re 50-Off Stores, Inc.*, 213 B.R. 646, 655–56 (Bankr. W.D. Tex. 1997) ("The statute, on its face, states that the bankruptcy court is ***required*** to protect such an entity on request of a party in interest.").

17. Moreover, pursuant to section 105(a) of the Bankruptcy Code, bankruptcy courts "may issue any order, process, or judgment that is necessary or appropriate to carry out the provisions of this title." 11 U.S.C. § 105(a). Further, under Bankruptcy Rule 9018, "[o]n motion, or on its own initiative, with or without notice, the court may make any order which justice requires (1) to protect the estate or any entity in respect of a trade secret or other confidential research, development, or commercial information. . . ." FED. R. BANKR. P. 9018.

18. The Protected Material is of a sensitive, confidential, and proprietary nature to the Receiver, the Debtors, and Stage 3, and thus, is confidential commercial information as contemplated by section 107 of the Bankruptcy Code. "Commercial information" has been defined as "information which would result in an 'unfair advantage to competitors by providing them with information as to the commercial operations of the debtor.'" *In re Altera Healthcare Corp.*, 353 B.R. 66, 75 (Bankr. D. Del. 2006) (quoting *In re Orion Pictures Corp.*, 21 F.3d at 27–28). "Commercial information" in this context need not rise to the level of a trade secret in order to warrant protection. *See In re Orion Pictures Corp.*, 21 F.3d at 27–28 (finding that section 107(b)(l) of the Bankruptcy Code creates an exception to the general rule that court records are open to examination by the public and, under this exception, an interested party has to show only that the information it wishes to seal is "confidential" and "commercial" in nature).

19. The Protected Material includes information about the purchase price for the assets subject to the Stage 3 APA and the Stage 3 APA Amendment. Requiring the purchase price terms to remain confidential is necessary to protect the integrity of the process until the transaction has

closed. Significant commercial injury, in the form of competitive disadvantage, undermining of value, potential interference in consummation of the sale, and revelation of confidential business information and plans could result from public disclosure of this information.

20. In sum, keeping the Protected Material under seal is necessary and essential to achieve a successful outcome in these Chapter 15 Cases and to consummate a sale of the Debtors' assets. If the Receiver is required to disclose the information contained in the Protected Material, it could undermine the Receiver's efforts to market the Debtors' assets in the event the sale to Stage 3 does not close. Such an outcome would be to the detriment of the Debtors' stakeholders, who have an interest in ensuring the highest value possible is received for the Debtors' assets. The Receiver therefore respectfully requests that it have authority to file the Protected Information under seal.

Basis for Emergency Relief

21. The Receiver seeks emergency relief because the sale hearing is scheduled for August 26, 2020, which is less than twenty-one (21) days after the date of filing this Motion. The Receiver seeks emergency consideration of this Motion to file the Second Supplement to the Second Report under seal contemporaneously with the Court's consideration of approval of the sale at the sale hearing. The Receiver seeks relief not later than August 26, 2020.

WHEREFORE, the Receiver respectfully requests that the Court enter the Proposed Order (i) authorizing the Receiver to file the Protected Material under seal and (ii) granting any related relief to which the Receiver is justly entitled.

Dated: August 24, 2020
Houston, Texas

Respectfully submitted,

HAYNES AND BOONE, LLP

By: */s/ Kelli S. Norfleet*

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ATTORNEYS FOR CANADIAN RECEIVER

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing document was served by electronic mail via the Court's ECF system to all parties authorized to receive electronic notice in this case on August 24, 2020.

/s/ Kelli S. Norfleet
Kelli S. Norfleet

Exhibit A

Proposed Order

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

In re:	§	
	§	**Case No. 20-32465**
BOS SOLUTIONS LTD., *et al.*,[1]	§	
	§	**Chapter 15**
Debtors in a foreign proceeding.	§	
	§	**Jointly Administered**

ORDER GRANTING THE RECEIVER'S EMERGENCY MOTION FOR ENTRY OF AN ORDER AUTHORIZING THE FILING UNDER SEAL OF THE SECOND SUPPLEMENT TO THE SECOND RECEIVER'S REPORT
[Ref Doc. No. ____]

This matter coming before this Court upon the motion (the "Motion")[2] filed by the Receiver for entry of an order (this "Order"), pursuant to sections 105(a) and 107(b) of title 11 of the United States Code (the "Bankruptcy Code"), rules 9018 of the Federal Rules of Bankruptcy Procedure (the "Bankruptcy Rules"), and rule 9037-1 of the Bankruptcy Local Rules for the Southern District of Texas (the "Local Rules") authorizing the Receiver to file an unredacted copy of the Second Supplement to the Second Report under seal, all as further described in the Motion; and after due deliberation and sufficient cause appearing therefor,

IT IS HEREBY ORDERED THAT:

1. The Motion is GRANTED.

2. The Receiver is authorized to file an unredacted copy of the Second Supplement to the Second Report (the "Protected Material") under seal pursuant to sections 105 and 107(b) of the Bankruptcy Code, Bankruptcy Rule 9018, and Local Rules 9037-1 and 9013-1.

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[1] 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.

[2] Capitalized terms used but not otherwise defined herein have the meanings ascribed to them in the Motion.

3. The Protected Material is confidential and shall remain under seal, and shall not be made available to anyone, except that a copy of the Protected Material shall be provided to the Court and as further directed by order of this Court. Any party to whom the Court orders that the Protected Material be made available shall keep the Protected Material and the terms thereof strictly confidential.

4. Any party who receives the Protected Material in accordance with this Order shall not disclose or otherwise disseminate such Protected Material, or the information contained therein, to any other person or entity.

5. Notwithstanding the provisions of Bankruptcy Rule 6004(h), this Order shall be immediately effective and enforceable upon its entry.

6. The Receiver is authorized to take all actions necessary or appropriate to carry out the relief granted in this Order.

7. This Court shall retain jurisdiction to hear and determine all matters arising from or related to the implementation, interpretation, or enforcement of this Order.

Dated: __________, 2020

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DAVID R. JONES
UNITED STATES BANKRUPTCY JUDGE