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**

DECLARATION OF PETER CHISHOLM IN SUPPORT OF SALE

I, Peter Chisholm, do hereby declare as follows:

1. I am over the age of 18, and I am authorized to submit this declaration (the "Declaration") on behalf of the Receiver (as defined below).

2. I am a Partner and Senior Vice President at Ernst & Young Inc. ("EY"). I hold a B.B.A. in accounting from St. Francis Xavier University. I am a Licensed Trustee in Bankruptcy, a Chartered Insolvency and Restructuring Professional and a Chartered Professional Accountant. I am a member of the Canadian Association of Insolvency and Restructuring Professionals and Turnaround Management Association. I have more than fifteen (15) years of experience providing transaction and restructuring advisory services to companies and their stakeholders, including representing creditors, lenders, shareholders, management and boards of directors in both formal and out-of-court restructurings and cross-border cases. I have industry experience in oil and gas, including companies operating in exploration and production, midstream and oilfield services sectors. My office is at 215 2nd Street SW, Calgary, AB, T2P 1M4 Canada.

3. All facts set forth in this Declaration are based upon my personal knowledge, my review of relevant documents, information provided to me by employees working under my

[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.

direction or supervision, my discussions with other members of EY or the Debtors (as defined herein) and/or my opinions based upon my experience concerning the Debtors' operations and financial condition. If called to testify, I could and would testify competently as stated herein.

4. EY is the court-appointed receiver (the "Receiver") of (1) BOS Solutions Ltd. ("BOS Ltd."), (2) BOS Solutions Inc. ("BOS Inc."), (3) BOS Leaseco LLC, (4) BOS Solutions Real Estate Inc., and (5) BOS USHoldco Inc. (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").

5. I make this Declaration in support of the Receiver's *Emergency Motion for Entry of an Order: (I) Granting Comity; (II) Approving the Sale Process; (III) Approving the Sale of Substantially All of the Debtors' Assets Free and Clear of Claims and Interests; (IV) Approving the Form and Manner of the Cure and Sale Notices; and (V) Granting Related Relief* [Doc. No. 51] (the "U.S. Sale Motion").[2]

A. Procedural Background

6. On May 4, 2020, National Bank of Canada ("NBC") 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. As of the date of the Receivership Order, the Debtors owed approximately USD $38.0 million and CAD $6.1

[2] Capitalized terms used, but not otherwise defined herein, shall have the meanings ascribed to such terms in the U.S. Sale Motion, U.S. Sale Process Order, and Canadian Sale Process Order, as applicable.

million to a syndicate of Canadian financial institutions (the "Syndicate"), led by National Bank of Canada, as administrative agent and a member of the Syndicate.

7. 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.

8. 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"). 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] (the "TRO Order"), 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] (the "Recognition Order"). Among other things, the Recognition Order recognized the Canadian Proceedings as foreign main proceedings pursuant to Section 1517 of the Bankruptcy Code and gave the Receivership Order full force and effect in the United States.

9. Additional information about the Debtors' business, capital structure, and the circumstances leading to the commencement of the Chapter 15 Cases can be found 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] (the "Petition for Recognition") and the Receiver's declaration in support thereof [Doc. No. 6].

B. The Property Subject to the Sale

10. The Debtors are a group of Canadian-owned companies that are engaged in the business of providing customizable and scalable liquids-solids separation in western Canada and the United States. Such services are provided to the oilfield services industry and to other industrial undertakings including construction.

11. The Debtors' operations are located in: (A) two (2) offices in Alberta, Canada and (B) five (5) offices in the United States (two (2) field offices in Texas, one (1) field office in each of North Dakota and Pennsylvania, and a corporate office in Houston, Texas). BOS Ltd. operates in Canada and owns the majority of the BOS Debtors' equipment. BOS Inc. operates in the United States and leases its specialized liquids-solids separation equipment from BOS Ltd. Accordingly, all or substantially all of the Debtors' assets are located in Canada (the "Canadian Property") and the U.S. (the "U.S. Property") (collectively, the "Sale Property").

C. The Bidding Procedures, Timeline, and Sale Process

12. Prior to the appointment of the Receiver, in November 2019, the Debtors underwent a broad sales process (the "Initial Sales Process") with Raymond James & Associates Inc. acting as the sale advisor. In March 2020, the Debtors were negotiating a purchase and sale agreement (the "Initial Draft PSA") to sell the business of the Debtors to a prospective purchaser arising from the Initial Sales Process. The proceeds to be paid pursuant to the Initial Draft PSA were expected to be sufficient to fully satisfy the indebtedness owing to the Syndicate. During Initial Draft PSA negotiations, the Debtors' business was negatively affected by COVID-19 and the global oil price decline and as a result, the prospective purchaser revised its purchase price downwards. The

revised purchase price was not acceptable to the Debtors, and the Initial Sales Process was effectively concluded in early April 2020.

13. Following the commencement of the Canadian Proceedings, the Receiver took control of the Debtors' assets and business operations and evaluated alternatives for stabilizing operations and maximizing recovery for the Debtors' creditors. The Receiver believes a sale of the Sale Property will enhance the stability of the Debtors' operations as it would provide assurance to customers and employees that the business will continue as a going-concern subsequent to these receivership proceedings. The Receiver also believes that a sale of the Debtors' business as a going concern will obtain the highest value for the Debtors' assets. Therefore, the Receiver retained Ernst & Young Orenda Corporate Finance Inc. (the "Sale Advisor") to market the Debtors' assets in the U.S. and Canada (the "Assets").

14. Because of the marketing efforts previously undertaken during the Initial Sales Process, the Receiver, with the assistance of the Sale Advisor, developed the terms of the *BOS Solutions Ltd., BOS Solutions Inc., BOS LeaseCo LLC, BOS Solutions Real Estate Inc., and BOS USHoldCo Inc. - Sale Solicitation Process* (the "Sale Process"), including the key milestones ("Sale Milestones") and anticipated deadlines for the Sale Process ("Timeline"). The Receiver and the Sale Advisor developed and implemented the Sale Process to maximize the value of the Sale Property for the benefit the Debtors' stakeholders. The Receiver and the Sale Advisor launched the Sale Process on June 17, 2020.

15. With the Receiver's assistance, the Sale Advisor gathered and reviewed all required due diligence material and populated and operated a virtual electronic data room ("VDR") with the information deemed appropriate about the Sale Property for prospective purchasers to conduct due diligence. In addition, with the Receiver's assistance, the Sale Advisor prepared a non-

confidential teaser letter (the "Teaser Letter") describing the opportunity to acquire the Sale Property and made it available to prospective purchasers and posted on the Receiver's website. With the Receiver's assistance, the Sale Advisor also prepared a Confidential Information Summary ("CIS") and compiled information concerning the Sale Property for distribution to prospective purchasers that signed a non-disclosure agreement with the Receiver. The Receiver also developed an asset purchase agreement for use during the Sale Process (the "Template APA").

16. On June 22, 2020, the Receiver filed the *Application for Approval of Sale Process* (the "Canadian Application") in the Canadian Court for approval of the *BOS Solutions Ltd., BOS Solutions Inc., BOS LeaseCo LLC, BOS Solutions Real Estate Inc., and BOS USHoldCo Inc. - Sale Solicitation Process* (the "Sale Process"). On June 29, 2020, the Receiver filed the U.S. Sale Motion, seeking entry of an order from this Court granting comity to the anticipated Canadian sale process order, approving a U.S. contract assumption and assignment process related thereto, and upon the conclusion of the Sale Process and the selection of one or more successful bidder(s), granting comity to and recognizing the anticipated Canadian sale approval order and approving the assumption and assignment of contracts to the successful bidder(s).

17. In addition, on June 29, 2020, the Sale Advisor provided a notice of the Sale Process, and such other relevant information which the Sale Advisor, in consultation with the Receiver and the Syndicate, considered appropriate, to be published in the *Daily Oil Bulletin, Calgary Herald,* and the *Houston Chronicle*.

18. On July 2, 2020, the Canadian Court entered the *Order Approving Sale Solicitation Process with the Sale Process Procedures* [Doc. No. 54-1] (the "Canadian Sale Process Order"). On July 6, 2020, the Court entered 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"). The U.S. Sale Process Order, among other things, (i) extended comity to the Canadian Sale Process Order; (ii) recognized the Canadian Sale Process Order, giving it full force and effect in the United States; and (iii) established various deadlines, including a date for the Sale Approval and Vesting Order Recognition Hearing and the Objection Deadlines.

19. In accordance with the U.S. Sale Process Order, on July 8, 2020, the Receiver's noticing agent in the Chapter 15 Cases, Bankruptcy Management Solutions, Inc. d/b/a Stretto (the "Noticing Agent"), served the Sale Notice on (a) all entities contacted by the Sale Advisor or reasonably believed by the Receiver to have expressed an interest in a sale of the Sale Property; (b) all state and local taxing authorities or recording offices which have a reasonably known interest in the relief requested; (c) all non-debtor parties to relevant contracts or leases (executory or otherwise); (d) all parties who are known or reasonably believed, after reasonable inquiry, to have asserted any lien, encumbrance, claim, or other interests in the Assets; (e) the parties that have filed proofs of claim in the Chapter 15 Cases; (f) the parties that have filed a written request for notice in the Chapter 15 Cases pursuant to Bankruptcy Rule 2002; (g) the office of the United States Trustee; and (h) all parties set forth in the Master Service List maintained in the Chapter 15 Cases (collectively, the "Sale Notice Parties"). The Noticing Agent also posted the Sale Notice on its website maintained for these Chapter 15 Cases at https://cases.stretto.com/bossolutions.

20. Also on July 8, 2020, July 22, 2020, July 24, 2020, and August 14, 2020, in accordance with the "Assumption and Assignment Procedures" established in the U.S. Sale Process Order, the Receiver served "Cure Notices" that identified (i) potential Assigned Agreements; (ii) the name and address of the contract counterparty thereto; (iii) notice of the proposed effective date of the assignment; (iv) the amount of the Cure Costs; and (v) the deadlines

by which any such contract counterparty must file an objection to the proposed assumption and assignment of any Assigned Agreement.

21. Due to ongoing negotiations with potential bidders, the Receiver determined it was in the best interest of the Debtors to delay filing the Notice of Selection of Successful Bidder and to extend the Supplemental Objection Deadline until two (2) business days after the Receiver filed such notice. On August 6, 2020, the Court entered the *Order Granting the Receiver's Emergency Motion for Entry of an Order: (I) Extending the Supplemental Objection Deadline Relating to the Sale Process and (II) Granting Related Relief* [Doc. No. 100]. This extension was beneficial in helping the Sale Advisor and the Receiver continue to negotiate in good faith with potential bidders for the sale of the Sale Property to determine which bidder(s) would be the successful bidder(s).

22. Given the extensive marketing efforts undertaken by the Receiver and Sale Advisor, I believe that the Receiver and Sale Advisor had sufficient time to conduct a robust marketing and solicitation process under the Sale Milestones to ensure that a market-tested purchase price was obtained for the Sale Property.

D. The Bids and Qualified Bids

23. Pursuant to the Sale Process, a bidder that desired to make a bid for the Sale Property was required to deliver written copies of a final, binding proposal (the "Final Bid") which included a fully executed purchase and sale agreement together with a blackline to the Template APA as well as a supplemental letter outlining additional detail with respect to the proposed transaction not fully captured within the Template APA (collectively, the "Bid Materials"). The Bid Materials were required to be delivered to the Sale Advisor with a copy to the Receiver so as to be received no later than 12:00 p.m. prevailing Mountain Time on July 17, 2020, or such other

date or time as may be agreed by the Receiver in consultation with the Syndicate (the "Binding Bid Deadline").

24. Overall, the Sale Advisor contacted approximately 105 potential purchasers, including both strategic buyers and private equity funds. Of those, 27 parties executed non-disclosure agreements and became "Qualified Bidders" pursuant to the Sale Process.

25. The Qualified Bidders received the CIS. The CIS provided further detail of the Sale Property and business of the Debtors. Qualified Bidders also received access to the VDR containing further due diligence information on the Sale Property and business of the Debtors.

26. Qualified Bidders had the opportunity to receive a management presentation and received responses to due diligence and process inquiries from the Receiver with respect to the Sale Property and business of the Debtors, and the Qualified Bidders also had the opportunity to perform site visits to inspect and verify the existence of equipment and inventory owned by the Debtors.

27. Throughout the process, the Sale Advisor spent substantial time meeting with the Qualified Bidders and other interested parties in an effort to promote the selection of a successful bidder. As diligence requests continued to be made, the Sale Advisor uploaded significant additional material to meet these information requests, and otherwise worked tirelessly to enable parties to address areas of interest and concern in connection with preparing their bids. In addition, the Sale Advisor facilitated and participated in conversations and meetings between certain bidders and the Receiver in order to improve the terms of such bids. In the days following the receipt of bids, the Sale Advisor worked extensively with the bidders in order for their bids to become Qualified Bids.

28. Prior to the Binding Bid Deadline, as a result of the efforts of the Receiver and Sale Advisor, the Receiver received multiple final binding proposals to acquire all or certain Assets of the Debtors.[3]

29. The Receiver then had additional time to review the bids and discuss any needed harmonizing and potential improvements to the bids with the bidders before the deadline to file the notice of selection of the Successful Bidder. The Receiver assessed the Final Bids and evaluated whether the bids met the Qualified Bid standards. The Receiver evaluated the Final Bids based on several factors, including, without limitation, the net value and form of consideration to be paid, the ability of the Qualified Bidder to successfully complete the transaction, including any conditions attached to the bid and the feasibility of such conditions, the proposed transaction documents, factors affecting the certainty and value of the transaction, the assets included or excluded from the bid, any related restructuring costs, compliance, eligibility or other matters with respect to regulatory authority requirements and/or approvals, the likelihood and timing of closing such transactions, and the ability of the bidder to finance and close the proposed transaction within the timelines established by the Receiver.

30. The Receiver reviewed and evaluated each Qualified Bid and identified the best bid (the "Successful Bid") and the Qualified Bidder making such Successful Bid (the "Successful Bidder"). After months of marketing the Sale Property, the Receiver, in consultation with the Sale Advisor and the Syndicate, selected Stage 3 Separation, LLC ("Stage 3") as the Successful Bidder.

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[3] A summary of the offers received for the Property of the Debtors is found in the Confidential Supplement to the Receiver's Second Report dated August 10, 2020 (the "Confidential Supplement"). The Receiver is seeking an Order sealing the Confidential Supplement and the Second Confidential Supplement. It is the view of the Receiver that the details of the offers received and the purchase price set out in the Stage 3 APA (as defined below) are commercially sensitive information which could negatively impact the sale of the Sale Property if made public, and should therefore remain confidential until closing of the Stage 3 Transaction (as defined below) in order to preserve the integrity of the Sale Process in the event that the Stage 3 Transaction does not close.

Stage 3 is a privately-owned firm headquartered in Houston, Texas which provides solids controls services similar to those provided by the Debtors.

E. Stage 3 and the Stage 3 APA

31. In accordance with the U.S. Sale Process Order, on August 14, 2020, the Receiver filed the Notice of Successful Bidder (Doc. No. 105) (the "Successful Bidder Notice"), identifying Stage 3 as the Successful Bidder and identifying the contracts and leases (the "Assigned Contracts") proposed to be assumed and assigned to Stage 3. Also, on August 14, 2020, the Receiver served the Successful Bidder Notice on the Sale Notice Parties, all contract counterparties to the Assigned Contracts identified by the Receiver, and the parties listed on the Master Service List maintained in the Chapter 15 Cases.

32. On August 14, 2020, the Receiver also filed the proposed form of Order approving the sale of certain Assets to Stage 3 (Doc. No. 108) (the "Sale Order"). The Sale Order attaches the Asset Purchase Agreement between the Receiver and Stage 3 (as amended, the "Stage 3 APA"). Pursuant to the Stage 3 APA, Stage 3 will acquire the "Purchased Assets" (as defined in the Stage 3 APA), which include all tangible and intangible assets, undertakings, and properties of the Debtors other than the "Excluded Assets" (as defined in the Stage 3 APA).

33. Certain key aspects of the Stage 3 APA include:

- The transaction under the Stage 3 APA (the "Stage 3 Transaction") is subject to the approval of the Canadian Court and this Court.

- The Receiver is required to seek the assignment of the Assigned Contracts associated with the continuing business of the Debtors. The Assigned Contracts to be assigned primarily relate to active customer, repeat customer, and sales pipeline projects and master services agreements with customers. The Receiver is also required to the seek the assignment of a contract with an executive of the BOS Debtors.

- The Receiver is required to buy out the Debtors' leased vehicles (the "US Leased Vehicles") in the United States to transfer title into the name of the Debtors prior to transferring ownership to Stage 3. Pursuant to the Stage 3

Transaction, the purchase price is subject to an adjustment whereby Stage 3 compensates the Receiver in full for the buy-out of these leases; however, the Receiver will be responsible for paying state transfer taxes on the fair market value of these vehicles.

- The Receiver and Stage 3 will jointly conduct an on-site physical count of the equipment and inventory not more than 15 business days before closing and shall use commercially reasonable efforts to agree upon a written statement describing the adjustments to the purchase price. The adjustment for missing equipment is based upon the missing equipment's net book value as a percentage of total net book value of the property per the Stage 3 APA multiplied by the purchase price. No adjustments shall be made until such adjustments, in the aggregate, exceed five percent of the purchase price (the "De Minimis Threshold") and then only by the amount that the adjustment amount exceeds the De Minimis Threshold.

- The Receiver shall hold back \$1.0 million from the purchase price for 90 days post-closing for potential losses incurred by Stage 3 associated with the assets and liabilities of the Debtors excluded from the Stage 3 Transaction and any breach of the Receiver's covenants or its agreement to sell the Purchased Assets free and clear of all encumbrances and claims.

- Stage 3 is not acquiring the accounts receivable owed to the Debtors as at closing. The Receiver will collect these receivables for the benefit of the Debtors' stakeholders.

- The Stage 3 Transaction is scheduled to close on or before September 15, 2020.

34. Following the Receiver's and Stage 3's entry into the Stage 3 APA, the Receiver and Stage 3 entered into an amending agreement (the "Amending Agreement") to the Stage 3 APA. Pursuant to the Amending Agreement, the Stage 3 APA was amended as follows:

- The leases associated with the BOS Debtors' leased vehicles in Canada (the "Canadian Leased Vehicles") were to be assigned to Stage 3 pursuant to the Stage 3 APA. Through discussions with the company leasing the Canadian Leased Vehicles to the BOS Debtors, the Receiver determined it would be preferable to buy out the Canadian Leased Vehicles and transfer ownership to Stage 3 instead of assigning the leases. Therefore, pursuant to the Amending Agreement, the Receiver is required to buy out the Canadian Leased Vehicles to transfer title into the name of the BOS Debtors prior to transferring ownership to Stage 3. The proceeds to be received by the Receiver under the Stage 3 Transaction are not affected by this amendment as Stage 3 is reimbursing the Receiver for the charges associated with the buy-out of the Canadian Leased Vehicles.

- Certain Canadian vehicle leases cannot be assigned to Stage 3 or bought out. Therefore, the Amending Agreement has removed these leases from the Stage 3 APA.

- Stage 3 shall be required to deliver an allocation of the purchase price among the Property being acquired pursuant to the Stage 3 APA no later than 10 days before closing instead of 30 days before closing. This amendment is required to permit closing of the Stage 3 APA prior to the outside date under the Stage 3 APA of September 15, 2020.

- The Receiver and Stage 3 shall complete the joint physical count of the equipment, inventory and capital spares of the BOS Debtors "on or before three days before closing" instead of "not more than fifteen days before closing."

- The adjustment for missing equipment has been amended such that the adjustment shall be based upon the lesser of:

  - The net book value of the equipment or capital spare missing multiplied by the Adjustment Ratio (as defined in the Stage 3 APA); or

  - The replacement cost (based on a third-party estimate) of the major individual component of such equipment or capital spare needed to make the item complete.

  This amendment will reduce the purchase price adjustment in favor of Stage 3 where equipment is missing major individual components which the Receiver is unable to replace prior to closing.

35. The Stage 3 APA and the Amending Agreement were negotiated, proposed, and entered into by the Receiver and Stage 3 in good faith, and from arm's length bargaining positions. On August 19, 2020, the Canadian Court entered the Approval and Vesting Order (the "Canadian

Approval and Vesting Order") approving the proposed sale to Stage 3 pursuant to the Stage 3 APA, as amended by the Amending Agreement.

F. The Receiver's Analysis of the Sale

36. I believe the Sale Process set forth in the Canadian Sale Process Order and U.S. Sale Process Order afforded a full, fair, and reasonable opportunity for any person or entity to make a higher or otherwise better offer to purchase the Sale Property. The Receiver provided adequate notice of the Sale Process, and the Sale Process was conducted in a non-collusive, fair, and good faith manner. The Sale Process provided broad marketing of the Assets to a large number of prospective purchasers over a reasonable time frame. The Sale Process provided a mechanism for interested parties to bid competitively to purchase the Sale Property, and subjecting the Sale Property to the market in this manner allowed the Receiver to determine that the price to be paid by Stage 3 is the highest and best offer for the Sale Property. The Sale Process afforded a reasonable opportunity for any interested party to make a higher or otherwise better offer for the Sale Property, and no offer that was higher or otherwise better than the Successful Bid was made.

37. The Stage 3 Transaction is supported by the Syndicate, the Debtors' primary secured creditor holding general security over substantially all of the Sale Property of the Debtors. The Stage 3 Transaction and collection of accounts receivable by the Receiver will not provide sufficient recovery to fully repay the indebtedness owed from the Debtors to the Syndicate.

38. The Stage 3 Transaction is not conditional, and the representations and warranties are typical for sales in these circumstances. Further, the sale is on an "as is where is" basis, and the Receiver will retain the accounts receivable owed to the Debtors as at the Closing Date, which will be collected by the Receiver and will provide additional recovery to the Syndicate.

39. The Stage 3 APA constitutes the highest and best offer for the Sale Property and will provide a greater recovery for the Debtors' estates than would be provided by any other available alternative. Moreover, based on the information and representations made to me by Stage 3, I believe that Stage 3 has the ability to perform under the Stage 3 APA and to perform under the Assigned Agreements following the closing of the sale. Accordingly, the Receiver's determination that the Stage 3 APA constitutes the highest and best offer for the Sale Property constitutes a valid and sound exercise of the Receiver's business judgment.

40. The Stage 3 APA was not entered into for the purpose of hindering, delaying, or defrauding creditors under the Bankruptcy Code or under the laws of the United States, any state, territory, possession, or the District of Columbia. The Receiver and Stage 3 are not fraudulently entering into the transaction contemplated by the Stage 3 APA.

41. In my view, the Stage 3 APA represents a fair and reasonable offer to purchase the Assets under the circumstances of these Chapter 15 Cases. No other entity or group of entities has offered to purchase the Sale Property for greater overall value than Stage 3. Therefore, approval of the U.S. Sale Motion, the Stage 3 APA and the consummation of the transactions contemplated thereby is in the best interests of the Debtors (taken as a whole), their creditors, and other parties in interest.

D. Conclusion

42. The Stage 3 APA represents a fair and reasonable offer to purchase the Sale Property under the circumstances of these Chapter 15 Cases. No other entity or group of entities has offered to purchase the Sale Property for greater overall value than Stage 3. I believe the Sale Process was conducted in a non-collusive, fair, and good faith manner, and a reasonable opportunity has been given to any interested party to make a higher or otherwise better offer for

the Assets. Further, I believe that the Sale Process maximizes the value of the Debtors' Assets for the benefit of all stakeholders.

43. In my view, the Sale Process and Successful Bid represent the best possible outcome for the Assets in view of the process that was run, and the basis upon which bids were made.

44. For all of the foregoing reasons, I believe that approval of the U.S. Sale Motion, recognition of the Canadian Approval and Vesting Order, and closing of the Stage 3 Transaction is in the best interests of the Debtors (taken as a whole), their creditors, and other parties in interest.

Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Executed on August 22, 2020

By: ____________________
Peter Chisholm for EY, Receiver and Foreign Representative