

UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF MISSOURI
SOUTHEASTERN DIVISION

In re: BRIGGS & STRATTON CORPORATION, et al., Debtors.1
Chapter 11
Case No. 20-43597-399
(Joint Administration Requested)
Hearing Date: July 21, 2020
Hearing Time: 10:00 a.m. (Central Time)
Hearing Location: Courtroom 5 North, 111 S. 10th St., St. Louis, MO 63102

MOTION OF DEBTORS FOR INTERIM AND FINAL ORDERS
(I) AUTHORIZING ASSURANCE OF PAYMENT TO UTILITY PROVIDERS,
(II) ESTABLISHING PROCEDURES PROVIDING ADEQUATE ASSURANCE AND RESOLVING OBJECTIONS BY UTILITY PROVIDERS, AND (III) PROHIBITING UTILITY PROVIDERS FROM ALTERING, REFUSING, OR DISCONTINUING UTILITY SERVICE; (IV) AUTHORIZING DEBTORS TO HONOR OBLIGATIONS TO PAYMENT PROCESSOR IN ORDINARY COURSE OF BUSINESS, AND (V) GRANTING RELATED RELIEF

Briggs & Stratton Corporation and its debtor affiliates in the above-captioned chapter 11 cases, as debtors and debtors in possession (collectively, the "Debtors"), respectfully represent as follows in support of this motion (the "Motion"):

Background

1. On the date hereof (the "Petition Date"), the Debtors each commenced with this Court a voluntary case under title 11 of the United States Code (the "Bankruptcy Code"). The Debtors are authorized to continue to operate their business and manage their properties as debtors in possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code. No trustee, examiner, or statutory committee of creditors has been appointed in these chapter 11 cases. The

1 The Debtors in these chapter 11 cases, along with the last four digits of each Debtor's federal tax identification number are: Briggs & Stratton Corporation (2330), Billy Goat Industries, Inc. (4442), Allmand Bros., Inc. (4710), Briggs & Stratton International, Inc. (9957), and Briggs & Stratton Tech, LLC (2102). The address of the Debtors' corporate headquarters is 12301 West Wirth Street, Wauwatosa, Wisconsin 53222.



Debtors have also filed a motion requesting joint administration of their chapter 11 cases pursuant to Rule 1015(b) of the Federal Rules of Bankruptcy Procedure (the “**Bankruptcy Rules**”) and Rule 1015(b) of the Local Rules of Bankruptcy Procedure for the Eastern District of Missouri (the “**Local Rules**”).

2. The Debtors, combined with their non-Debtor affiliates (collectively, the “**Company**”), are the world’s largest producer of gasoline engines for outdoor power equipment and a leading designer, manufacturer and marketer of power generation, pressure washer, lawn and garden, turf care and job site products. The Company’s products are marketed and serviced in more than 100 countries on six continents through 40,000 authorized dealers and service organizations. Additional information regarding the Debtors’ business and capital structure and the circumstances leading to the commencement of these chapter 11 cases is set forth in the *Declaration of Jeffrey Ficks, Financial Advisor of Briggs & Stratton Corporation, in Support of the Debtors’ Chapter 11 Petitions and First Day Relief*, sworn to on the date hereof (the “**Ficks Declaration**”),² which has been filed with the Court contemporaneously herewith and is incorporated by reference herein.

Jurisdiction

3. The Court has jurisdiction to consider this matter pursuant to 28 U.S.C. §§ 157 and 1334. This is a core proceeding pursuant to 28 U.S.C. § 157(b). Venue is proper before the Court pursuant to 28 U.S.C. §§ 1408 and 1409.

Relief Requested

4. To ensure the uninterrupted supply of electricity, natural gas, water, sewer, waste management, telecommunications, and other utility services as that term is used in

² Capitalized terms used but not otherwise defined herein shall have the meanings ascribed to such terms in the Ficks Declaration. All dollar (\$) references in this Motion are to the U.S. dollar, unless stated otherwise.

section 366 of the Bankruptcy Code (collectively, the “**Utility Services**”), which are critical to the operations of the Debtors’ business, by this Motion, the Debtors request, pursuant to sections 366 and 105(a) of the Bankruptcy Code, entry of interim and final orders (respectively, the “**Proposed Interim Order**” and the “**Proposed Final Order**,” and together, the “**Proposed Orders**”)³ (i) approving the Debtors’ proposed form of adequate assurance of payment for postpetition Utility Services, (ii) establishing procedures for providing adequate assurance and resolving objections by Utility Providers (as defined below) relating to the adequacy of the proposed adequate assurance, (iii) prohibiting the Utility Providers from altering, refusing, or discontinuing service to, or discriminating against, the Debtors because of the commencement of these chapter 11 cases or outstanding prepetition invoices for Utility Services rendered prior to the Petition Date, and (iv) authorizing the Debtors to honor obligations to the Payment Processor (as defined and described below) in the ordinary course of business, and (v) granting related relief.

Debtors’ Utilities

A. Utility Providers

5. In the ordinary course of their business, the Debtors incur expenses for various Utility Services. The Debtors make utility payments in one of two ways: (i) by direct payment to a utility provider or (ii) through a Payment Processor (as defined below). Approximately 71 utility providers (collectively, the “**Utility Providers**”) provide Utility Services to the Debtors as of the Petition Date. A non-exclusive list of the Debtors’ Utility Providers (the “**Utility Service List**”) is attached hereto as **Exhibit A**.⁴

³ Copies of the Proposed Orders will be made available on the Debtors’ case information website at <http://www.kccllc.net/Briggs>.

⁴ The Debtors reserve the right to amend or supplement the Utility Service List to include any Utility Provider omitted. The inclusion (or exclusion) of any entity on the Utility Service List is not an admission that such entity is (or is not) a utility within the meaning of section 366 of the Bankruptcy Code, and the Debtors reserve the right to contest any such characterization in the future.

6. On average, the Debtors spend approximately \$1,815,010 each month on Utility Services. The Debtors have a good payment history with the Utility Providers. As of the Petition Date, the Debtors estimate that approximately \$750,000 remain outstanding and payable.

7. In addition, the Debtors employ a third-party company Trane U.S. Inc. (“**Trane**”) to process utility payments on behalf of the Debtors for 67 Utility Providers across 88 accounts for ten (10) of the Debtors’ facilities. To manage the Debtors’ payment owed to certain of their Utility Providers, the Debtors entered into that certain consulting and management contract with Trane dated July 1, 2009 (as amended and supplemented from time to time, the “**Service Agreement**”). Pursuant to the Service Agreement, the Debtors pay Trane the amounts invoiced for the Utility Services managed by Trane, plus an average monthly bill payment administration fee of approximately \$608 and a monthly consulting service fee of \$1,383.14, in the ordinary course of business (the “**Service Fees**”).⁵ Upon review of the Debtors’ billing history with Trane, it appears that Trane utilizes a platform provided by Capturis™ (“**Capturis**”) to manage the Debtors’ utilities invoices and payments. Capturis is an affiliate of National Information Solutions Cooperative, Inc. (“**NISC**,” and together with Trane and Capturis, the “**Payment Processor**”) and provides organizations with utility information management service as well as utility payment processing and payment services. As such, while the Debtors’ Service Agreement was entered into with Trane, the Debtors make payments through the NISC/Capturis platform. As of the Petition Date, the Debtors estimate that approximately \$2,500 in Service Fees remain outstanding and payable to the Payment Processor. The Debtors seek authority to pay the outstanding Service

⁵ The Debtors are also obligated to pay, as necessary, an additional account fee of \$30 per each new utility account.

Fees and to continue to honor their obligations to the Payment Processor under the Service Agreement as they come due in the ordinary course of business.

8. Uninterrupted Utility Services are essential to the Debtors' ongoing operations and, therefore, the success of the Debtors' reorganization. The Debtors' business operations require them to maintain constant communications with and operations of their offices, manufacturing facilities, warehouses, and distribution centers, which requires, among other things, uninterrupted electricity and telecommunications services. Should any Utility Provider alter, refuse, or discontinue service, even briefly, the Debtors' business operations could be severely disrupted, which would jeopardize the Debtors' chapter 11 objectives to the detriment of all parties in interest.

9. Pursuant to section 366(c)(2) of the Bankruptcy Code, a utility may alter, refuse, or discontinue a debtor's utility service if the utility does not receive from the debtor within thirty (30) days of the commencement of the debtor's chapter 11 case "adequate assurance of payment" for postpetition utility services. Section 366(c)(1) of the Bankruptcy Code defines "assurance of payment" of postpetition charges as "(i) a cash deposit; (ii) a letter of credit; (iii) a certificate of deposit; (iv) a surety bond; (v) a prepayment of utility consumption; or (vi) another form of security that is mutually agreed on between the utility and the debtor or the trustee." As set forth in detail below, the Debtors propose to provide the Utility Providers adequate assurance of payment for postpetition utility services.

B. Proposed Adequate Assurance

10. The Debtors intend to pay postpetition obligations owed to the Utility Providers in a timely manner and expect sufficient cash flows from operations and the Debtors' proposed debtor-in-possession financing (the "**DIP Financing**") to pay such obligations in the ordinary course of business. Nevertheless, to provide the Utility Providers with adequate

assurance pursuant to section 366 of the Bankruptcy Code, the Debtors also propose to deposit into a newly created, segregated, interest-bearing bank account (the “**Adequate Assurance Account**”) a sum equal to the cost of two (2) weeks’ worth of the average utility cost for each Utility Provider (less any amounts already on deposit with any such Utility Provider that exceed outstanding prepetition amounts owed to such Utility Provider)⁶ (collectively, the “**Adequate Assurance Deposit**”). As of the Petition Date, the Debtors estimate that the Adequate Assurance Deposit would total approximately \$907,505.

11. The Adequate Assurance Deposit will be held by the Debtors in the Adequate Assurance Account for the benefit of the Utility Providers identified on the Utility Service List during the pendency of these chapter 11 cases.

12. The Adequate Assurance Deposit may be increased or decreased by the Debtors if, among other things, the Debtors terminate any of the utility services provided by a Utility Provider, make alternative arrangements with a Utility Provider for adequate assurance of payment, determine that an entity listed on the Utility Service List is not a “utility provider” as defined by section 366 of the Bankruptcy Code, or supplement the Utility Service List to include additional Utility Providers.

13. The portion of the Adequate Assurance Deposit attributable to each Utility Provider shall be returned to the Debtors on the earlier of (i) reconciliation and payment by Debtors of the Utility Providers final invoice in accordance with applicable nonbankruptcy law following the Debtors’ termination of Utility Services from such Utility Provider and (ii) the effective date of any chapter 11 plan confirmed in these chapter 11 cases.

⁶ To the extent that any Utility Provider holds or will hold any cash deposit from the Debtors that is in excess of two (2) weeks’ worth of the average utility cost, the Debtors reserve their right to demand such excess amounts.

14. The Debtors submit that the Adequate Assurance Deposit, in conjunction with cash flow from operations, cash on hand, the use of the Debtors' DIP Financing, and any existing cash deposits held by the Utility Providers, demonstrates the Debtors' ability to pay for future Utility Services in the ordinary course of business (collectively, the "**Proposed Adequate Assurance**"), and constitutes sufficient adequate assurance to the Utility Providers.

C. Proposed Adequate Assurance Procedures and the Resolution of Objections

15. The Debtors propose that the procedures described below (the "**Adequate Assurance Procedures**") be utilized in connection with the Proposed Adequate Assurance:

- a. The Debtors will fax, e-mail, serve by overnight mail, or otherwise expeditiously cause a copy of this Motion, the Proposed Interim Order, and the Proposed Final Order (upon entry of the Proposed Final Order, the "**Utilities Order**"), which include the proposed Adequate Assurance Procedures, to be served on each Utility Provider within two (2) business days after entry of the Utilities Order.
- b. The Debtors will deposit the Adequate Assurance Deposit in the Adequate Assurance Account within twenty (20) calendar days after entry of the Utilities Order; provided that to the extent any Utility Provider receives any other value from the Debtors as adequate assurance of payment (such as deposits held by a Utility Provider), the Debtors may, upon agreement with the Utility Provider, reduce the Adequate Assurance Deposit maintained in the Adequate Assurance Account on account of such Utility Provider by the amount of such other value.
- c. Any Utility Provider seeking additional assurances of payment in the form of deposits, prepayments or otherwise must serve a request for additional assurance (an "**Additional Assurance Request**") so that it is actually received by the Adequate Assurance Notice Parties (as defined below) at the following addresses: (i) Briggs & Stratton Corporation, 12301 West Wirth Street, Wauwatosa, Wisconsin 53222, (Attn: Kathryn Buono, Esq.); (ii) proposed counsel to the Debtors, Weil, Gotshal & Manges LLP, 767 Fifth Avenue, New York, NY 10153, (Attn: Debora Hoehne, Esq. and Janiel Myers, Esq.); (iii) proposed co-counsel counsel to the Debtors, Carmody MacDonald P.C., 120 South Central Avenue, Suite 1800, St. Louis, Missouri 63105, (Attn: Robert E. Eggmann, Esq., Christopher J. Lawhorn, Esq., and Thomas H. Riske, Esq.); (iv) Office of the United States Trustee, 1111 South 10th Street, Room 6353, St. Louis, Missouri, 63102; (v) counsel to any statutory committee appointed in these cases; and (vi) to the extent

not listed herein those parties requesting notice pursuant to Bankruptcy Rule 2002 (collectively, the “**Adequate Assurance Notice Parties**”).

- d. The portion of the Adequate Assurance Deposit attributable to each Utility Provider shall be returned to the Debtors on the earlier of (i) reconciliation and payment by Debtors of the Utility Providers final invoice in accordance with applicable nonbankruptcy law following the Debtors’ termination of Utility Services from such Utility Provider and (ii) the effective date of any chapter 11 plan confirmed in these chapter 11 cases.
- e. Any Additional Assurance Request must (i) be made in writing and actually received by the Debtors and the other Adequate Assurance Notices Parties, (ii) set forth the location for which Utility Services are provided, (iii) include a summary of the Debtors’ payment history relevant to the affected account(s), including the amounts of any security deposits, and (iv) set forth why the Utility Provider believes the Proposed Adequate Assurance is not sufficient adequate assurance of future payment.
- f. If a Utility Provider believes it is entitled to additional adequate assurance but fails to serve on the Adequate Assurance Notice Parties an Additional Assurance Request, such Utility Provider shall be (i) deemed to have received adequate assurance of payment “satisfactory” to such Utility Provider in compliance with section 366 of the Bankruptcy Code; and (ii) prohibited from discontinuing, altering, or refusing service to, or discriminating against, the Debtors on account of the commencement of the Debtors’ chapter 11 cases and/or any unpaid prepetition charges, or requiring additional assurance of payment other than the Proposed Adequate Assurance.
- g. Upon receipt of any Additional Assurance Request as provided herein, the Debtors shall have until the later of (i) twenty (20) days after receipt of such Additional Assurance Request, (ii) thirty (30) days after entry of the Utilities Order, or (iii) such date as may be agreed to by the Debtors and the relevant Utility Provider (collectively, the “**Resolution Period**”) to negotiate with such Utility Provider to resolve its Additional Assurance Request.
- h. The Debtors may, in their sole discretion and without further order of the Court, resolve any Additional Assurance Request by mutual agreement with a Utility Provider, and may, in connection with any such agreement, in their sole discretion, provide a Utility Provider with additional adequate assurance of future payment, which may include, but shall not be limited to, cash deposits, prepayments or other forms of security, in each case, without further order of the Court.
- i. If the Debtors are not able to reach a resolution with a Utility Provider that has submitted an Adequate Assurance Request during the Resolution

Period, the Debtors, during or immediately after the Resolution Period, will request a hearing before the Court to determine the adequacy of assurance of payment with respect to the Utility Provider (the “**Determination Hearing**”) pursuant to section 366(c)(3) of the Bankruptcy Code, and such Determination Hearing shall be scheduled for the next omnibus hearing date.

- j. Pending resolution of such dispute at the Determination Hearing, the relevant Utility Provider shall be prohibited from discontinuing, altering, or refusing service to the Debtors on account of the commencement of these chapter 11 cases, any unpaid charges for prepetition services provided to any of the Debtors by the Utility Provider, or any objections to the Proposed Adequate Assurance.
- k. Absent compliance with the Adequate Assurance Procedures and the terms of the Utilities Order, the Debtors’ Utility Providers are prohibited from altering, refusing, or discontinuing service on account of the commencement of these chapter 11 cases and/or any unpaid charges for prepetition services provided to any of the Debtors and are deemed to have received adequate assurance of payment in accordance with section 366 of the Bankruptcy Code.

D. Subsequent Modifications of Utility Service List

16. The Debtors have made an extensive and good-faith effort to identify all of their Utility Providers and include them on the Utility Service List. Nonetheless, to the extent that the Debtors subsequently identify additional Utility Providers or determine that any such party listed on the Utility Service List is not in fact a Utility Provider, the Debtors seek authority, in their sole discretion, to amend the Utility Service List as appropriate. The Debtors further request that the Court’s order approving this Motion be deemed to apply to any such subsequently identified Utility Provider, regardless of when such Utility Provider is added to the Utility Service List. The Debtors will serve a copy of this Motion and the Court’s order on any such Utility Provider subsequently added to the Utility Service List and, as soon as reasonably practicable (and only to the extent necessary), deposit two weeks’ worth of estimated utility costs in the Adequate Assurance Account for the benefit of such Utility Provider (less any amounts on deposit with any such subsequently added Utility Provider that exceed outstanding prepetition amounts).

Subsequently added Utility Providers shall make an Additional Assurance Request in accordance with the Adequate Assurance Procedures.

17. Any Utility Provider subsequently added to the Utility Service List that objects to the entry of the order approving this Motion with respect to such Utility Provider must file an objection in accordance with the Bankruptcy Rules, the Local Rules, and the Adequate Assurance Procedures.

18. The Debtors request that all Utility Providers, including Utility Providers subsequently added to the Utility Service List, be prohibited from altering, refusing, or discontinuing utility services to the Debtors absent further order of the Court.

Relief Requested Should Be Granted

19. The relief requested will ensure that the Debtors' operations will not be disrupted, which would severely impact their business and prospects for a successful reorganization. The relief requested also provides the Utility Providers with a fair and orderly procedure for evaluating requests for Additional Adequate Assurance, without which the Debtors could be forced to address myriad requests by Utility Providers in a disorganized manner at a critical period in these chapter 11 cases when the Debtors' efforts should be more productively focused on operations for the benefit of all parties in interest.

20. Congress enacted section 366 of the Bankruptcy Code to protect debtors from being cut off from utility services upon a bankruptcy filing while providing utility companies with adequate assurance that debtors will be able to pay for postpetition services. *See* H.R. Rep. No. 95-595 at 350 (1978), *reprinted in* 1978 U.S.C.C.A.N. 5963, 6306. To that end, pursuant to section 366(c) of the Bankruptcy Code, during the first thirty (30) days of a chapter 11 case, a utility company may not alter, refuse, or discontinue service to a debtor solely because of any unpaid prepetition amounts, but after the first thirty (30) days, the utility company may alter,

refuse, or discontinue service if a debtor does not provide “adequate assurance” of payment for postpetition services in satisfactory form.

21. Section 366(c)(3)(B) of the Bankruptcy Code provides a list of factors that courts are *not* to consider when evaluating whether a proposed adequate assurance payment is in fact adequate. These factors include: (i) the absence of security before the petition date; (ii) a debtor’s history of timely payments; and (iii) the availability of administrative expense priority. Although section 366(c) clarifies what does and does not constitute “assurance of payment” and what can be considered in determining whether such assurance is adequate, Congress, in enacting that section, did not divest this Court of its power to determine what amount, if any, is necessary to provide adequate assurance of payment to a Utility Provider. *See* 11 U.S.C. § 366(c)(3)(A). Specifically, section 366(c)(3)(A) states that, “[o]n request of a party in interest and after notice and a hearing, the court may order modification of the amount of an assurance of payment” Thus, there is nothing to prevent a court from deciding that, on the facts of the case before it, the amount required of the debtor to provide adequate assurance of payment to a utility company should be nominal or even zero. *See, e.g., In re Pac-West Telecomm., Inc.*, Case No. 07-10562 (BLS) (Bankr. D. Del. May 2, 2007) (D.I. 39) (approving adequate assurance in the form of a one-time supplemental prepayment to each utility company equal to the prorated amount of one week’s charges).

22. Although section 366(c)(2) of the Bankruptcy Code allows a utility provider to take action if a debtor fails to provide adequate assurance of payment that is “satisfactory” to the utility, it is this Court and not the utility provider that ultimately determines what constitutes “satisfactory” assurance. *See, e.g., In re Penn. Cent. Transp. Co.*, 467 F.2d 100, 103–04 (3d Cir. 1972) (affirming the bankruptcy court’s decision that no utility deposit was necessary if such

deposit would “jeopardize the continuing operation of the [debtor] merely to give further security to suppliers who already [were] reasonably protected”). Indeed, section 366 only requires that assurance of payment be “adequate” and courts have not construed section 366 to require an absolute guarantee of a debtor’s ability to pay. *See, e.g., In re Caldor, Inc. – N.Y.*, 199 B.R. 1, 3 (S.D.N.Y. 1996) (“Section 366(b) requires the Bankruptcy Court to determine whether the circumstances are sufficient to provide a utility with ‘adequate assurance’ of payment. The statute does not require an ‘absolute guarantee of payment.’”) (citation omitted), *aff’d sub nom. Va. Elec. & Power Co. v. Caldor, Inc. – N.Y.*, 117 F.3d 646 (2d Cir. 1997); *In re New Rochelle Tel. Corp.*, 397 B.R. 633, 639 (Bankr. E.D.N.Y. 2008) (“Adequate assurance, however, is not a guarantee of payment; rather, it is intended to guard against the utility assuming an unreasonable risk of non-payment.”) (citation omitted); *In re Adelpia Bus. Solutions, Inc.*, 280 B.R. 63, 80 (Bankr. S.D.N.Y. 2002) (“In determining adequate assurance, a bankruptcy court is not required to give a utility company the equivalent of a guaranty of payment . . .”).

23. Furthermore, courts consider what is “need[ed] of the utility for assurance, and . . . require that the debtor supply *no more than that*, since the debtor almost perforce has a conflicting need to conserve scarce financial resources.” *Va. Elec. & Power*, 117 F.3d at 650 (emphasis in original); *see also In re Penn Central*, 467 F.2d at 103–04. Indeed, “[c]ourts will approve an amount that is adequate enough to insure against unreasonable risk of nonpayment, but are not required to give the equivalent of a guaranty of payment in full.” *In re The Great Atl. & Pac. Tea Co.*, Case No. 11-CV-1338 (CS), 2011 WL 5546954, at *5 (S.D.N.Y. Nov. 14, 2011) (citations omitted).

24. Based upon the foregoing, the Debtors believe that most, if not all, of their Utility Providers have adequate assurance of payment even without the Adequate Assurance

Deposit. The Debtors anticipate having sufficient resources to pay, and intend to pay, all valid postpetition obligations for Utility Services in a timely manner. In addition, the Debtors' reliance on utility services for the operation of their business and preservation of value of their assets provides them with a powerful incentive to stay current on their utility obligations. These factors, which the Court may consider when determining the amount of any adequate assurance payments, justify finding that the Debtors are not required to make any additional adequate assurance payments in these chapter 11 cases beyond what is provided for herein. In light of the foregoing, the Debtors respectfully submit that the Proposed Adequate Assurance is more than sufficient to assure the Utility Providers of future payment.

25. Absent the approval of the Adequate Assurance Procedures, Utility Providers could discontinue service, without warning, thirty (30) days from the Petition Date, if they claim they have not yet received a "satisfactory" adequate assurance payment. Under the Adequate Assurance Procedures, however, any Utility Provider that fails to file a timely Additional Assurance Request shall be deemed to consent to the Adequate Assurance Procedures and shall be bound by the Proposed Order. *See In re Syroco, Inc.*, 374 B.R. 60, 62 (Bankr. D.P.R. Aug. 22, 2007) (a utility provider's lack of objection, response or counter-demand after receiving notice of hearing on a utilities motion, notice of interim order and notice of final hearing constitutes tacit acceptance of the debtor's proposed two-week cash deposit as adequate assurance of payment as such term is used in section 366 of the Bankruptcy Code).

26. The Adequate Assurance Procedures are necessary for the Debtors to effectuate a successful reorganization. If the Adequate Assurance Procedures are not approved, the Debtors likely will be confronted with and forced to address myriad requests by their Utility Providers at a critical point in their chapter 11 cases. Moreover, the Debtors could be blindsided

by a Utility Provider unilaterally deciding—on or after the thirtieth (30th) day following the Petition Date—that it is not adequately protected and, therefore, either makes an exorbitant demand for payment to continue service or discontinues providing service to the Debtors altogether. Such an outcome could seriously jeopardize the health of the Debtors’ business and their ability to maximize recoveries for their stakeholders.

27. Under the circumstances of these cases, the Debtors believe that the establishment of a cash reserve in a bank account, in an amount that is substantial, relative to the Debtors’ average usage, constitutes adequate assurance of payment under section 366(c) of the Bankruptcy Code.

28. Similar relief and procedures have been approved by courts in this district. *See, e.g., In re Foresight Energy LP*, No. 20-41308 (KAS) (Bankr. E.D. Mo. Mar. 13, 2020) [ECF No. 121]; *In re Payless Holdings LLC*, No. 19-40883 (KAS) (Bankr. E.D. Mar. 15, 2019) [ECF No. 582]; *In re Armstrong Energy, Inc.*, No. 17-47541 (KAS) (Bankr. E.D. Mo. Dec. 11, 2017) [ECF No. 286]; *In re Payless Holdings LLC*, Case No. 17-42267 (KAS) (Bankr. E.D. Mo. Apr. 7, 2017) [ECF No. 128]; *In re Peabody Energy Corp.*, No. 16-42529 (BSS) (Bankr. E.D. Mo. Apr. 15, 2016) [ECF No. 122]; *In re Noranda Aluminum, Inc.*, No. 16-10083 (BSS) (Bankr. E.D. Mo. Mar. 10, 2016) [ECF No. 391]; *In re Arch Coal, Inc.*, No. 16-40120 (CER) (Bankr. E.D. Mo. Jan. 14, 2016) [ECF No. 91].

29. The Court has the authority to approve these Adequate Assurance Procedures pursuant to its equitable powers under section 105(a) of the Bankruptcy Code, which provides that a bankruptcy court may “issue any order, process, or judgment that is necessary or appropriate to carry out the provisions” of the Bankruptcy Code. The Adequate Assurance Procedures are necessary for the Debtors to carry out their fiduciary duties under section 1107(a)

of the Bankruptcy Code without prejudicing the Utility Providers. Section 1107(a) of the Bankruptcy Code “contains an implied duty of the debtor-in-possession” to “protect and preserve the estate, including an operating business’ going-concern value,” on behalf of a debtor’s creditors and other parties in interest. *In re CEI Roofing, Inc.*, 315 B.R. 50, 59 (Bankr. N.D. Tex. 2004) (quoting *In re CoServ, L.L.C.*, 273 B.R. 487, 497 (Bankr. N.D. Tex. 2002)); *see also Unofficial Comm. of Equity Holders v. McManigle (In re Penick Pharm., Inc.)*, 227 B.R. 229, 232–33 (Bankr. S.D.N.Y. 1998) (“[U]pon filing its petition, the Debtor became debtor in possession and, through its management . . . was burdened with the duties and responsibilities of a bankruptcy trustee.”).

30. Based on the foregoing, the Debtors respectfully submit that the relief requested herein is necessary and appropriate, is in the best interest of the Debtors’ estates, and should be granted in all respects.

**Applicable Financial Institutions
Should Be Authorized to Receive, Process, Honor, and
Pay Checks Issued and Transfers Requested to Pay Utility Providers**

31. The Debtors further request that the Court authorize applicable financial institutions (the “**Banks**”) to receive, process, honor, and pay any and all checks issued, or to be issued, and electronic funds transfers requested, or to be requested, by the Debtors relating to the Utility Providers, to the extent that sufficient funds are on deposit in available funds in the applicable bank accounts to cover such payment. The Debtors also seek authority to issue new postpetition checks or effect new postpetition electronic funds transfers in replacement of any checks or fund transfer requests on account of prepetition Utility Providers dishonored or rejected as a result of the commencement of the Debtors’ chapter 11 cases.

Bankruptcy Rule 6003(b) Has Been Satisfied

32. The Debtors respectfully request emergency consideration of this Motion under Bankruptcy Rule 6003, which provides that the Court may grant relief within the first 21

days after the Petition Date to the extent such relief is necessary to avoid immediate and irreparable harm. As described herein and in the Ficks Declaration, the relief requested is essential to avoid the immediate and irreparable harm that would be caused by the Debtors' inability to transition smoothly into chapter 11. Accordingly, the Debtors submit that the requirements of Bankruptcy Rule 6003 are satisfied.

**Compliance with Bankruptcy Rule 6004(a)
and Waiver of Bankruptcy Rule 6004(h)**

33. To implement the foregoing successfully, the Debtors request that the Court find that notice of the Motion satisfies Bankruptcy Rule 6004(a) and that the Court waive the 14-day period under Bankruptcy Rule 6004(h).

Reservation of Rights

34. Nothing contained herein is intended to be or shall be construed as (i) an admission as to the validity of any claim against the Debtors, (ii) a waiver or limitation of the Debtors' or any party in interest's rights to dispute the amount of, basis for, or validity of any claim, (iii) a waiver of the Debtors' rights under the Bankruptcy Code or any other applicable nonbankruptcy law, (iv) an agreement or obligation to pay any claims, (v) a waiver of any claims or causes of action which may exist against any creditor or interest holder, or (vi) an approval, assumption, adoption, or rejection of any agreement, contract, lease, program, or policy under section 365 of the Bankruptcy Code. Likewise, if the Court grants the relief sought herein, any payment made pursuant to the Court's order is not intended to be and should not be construed as an admission to the validity of any claim or a waiver of the Debtors' rights to dispute such claim subsequently.

Notice

35. Notice of this Motion will be provided to (i) the Office of the United States Trustee for the Eastern District of Missouri; (ii) the holders of the 30 largest unsecured claims against the Debtors on a consolidated basis; (iii) Latham & Watkins LLP (Attn: Peter P. Knight, Esq. and Jonathan C. Gordon, Esq.), as counsel to JPMorgan Chase Bank, N.A., as the administrative agent and collateral agent under the ABL Credit Facility and DIP Facility; (iv) Pryor Cashman LLP (Attn: Seth H. Lieberman, Esq. and David W. Smith, Esq.), as counsel to Wilmington Trust, N.A., as successor indenture trustee under the Unsecured Notes; (v) the Internal Revenue Service; (vi) the United States Attorney's Office for the Eastern District of Missouri; (vii) the Securities and Exchange Commission; (viii) the Banks; (ix) the Utility Providers; (x) Payment Processor; and (xi) any other party that has requested notice pursuant to Bankruptcy Rule 2002 (collectively, the "**Notice Parties**"). Notice of this Motion and any order entered hereon will be served in accordance with Local Rule 9013-3(A)(1).

No Previous Request

36. No previous request for the relief sought herein has been made by the Debtors to this or any other court.

WHEREFORE the Debtors respectfully request entry of the Proposed Orders granting the relief requested herein and such other and further relief as the Court may deem just and appropriate.

Dated: July 20, 2020
St. Louis, Missouri

Respectfully submitted,

CARMODY MACDONALD P.C.

/s/ Robert E. Eggmann

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*Proposed Local Counsel to the Debtors
and Debtors in Possession*

-and-

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*Proposed Counsel to the Debtors
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Exhibit A

Utility Service List

Utility Service List

Utility Provider	Deposit Currently with Provider	Legal entity	Address	Account Number	Service Provided	NISC/Trane Payment?	Average Monthly Cost	Adequate assurance payment
Alabama Power	No	Briggs & Stratton Corporation	PO Box 242 Birmingham, AL 35292	3736007, 07311-45038, 81563-89005,	Electric / Natural Gas	Yes	\$ 95,814.00	\$ 47,907
Centerpoint Energy Services Inc	No	Billy Goat Industries	PO Box 48981 Houston, TX 77210-4981	58963 CUSTOMER ID	Electric / Natural Gas	No	\$ 2,500.00	\$ 1,250
Ferrelgas LP	No	Briggs & Stratton Corporation	1 LIBERTY PLZ	52946870, 110771867	Natural Gas	No	\$ 20,000.00	\$ 10,000
Duke Energy Corporation	No	Briggs & Stratton Corporation	PO Box 1090 Charlotte, NC 28201-1090	1720331750	Natural Gas	No	\$ 300.00	\$ 150
Amerigas Corporation	No	Briggs & Stratton Corporation	8951 HWY 301 SOUTH	200797671	Natural Gas	No	\$ 1,000.00	\$ 500
WE Energies	No	Briggs & Stratton Corporation	231 W MICHIGAN ST	1447027486	Electric	Yes	\$ 15,162.00	\$ 7,581
WE Energies	No	Briggs & Stratton Corporation	231 W MICHIGAN ST	8456527387	Electric	Yes	\$ 193,155.00	\$ 96,578
WE Energies	No	Briggs & Stratton Corporation	231 W MICHIGAN ST	4028438088	Electric	Yes	\$ 12,461.00	\$ 6,231
NISC/Trane	No	Briggs & Stratton Corporation	3131 TECHNOLOGY DR NW, 58554-4870	Multiple Accts	Electric	Yes	\$ 10,500.00	\$ 5,250
Direct Energy Business PA	No	Briggs & Stratton Corporation	PO BOX 70220 PHILADELPHIA, PA 19176-0220	1313041	Electric	No	\$ 5.00	\$ 3
Direct Energy Business PA	No	Briggs & Stratton Corporation	PO BOX 70220 PHILADELPHIA, PA 19176-0220	1313039	Electric	No	\$ 15.00	\$ 8
Direct Energy Business PA	No	Briggs & Stratton Corporation	PO BOX 70220 PHILADELPHIA, PA 19176-0220	1313040	Electric	No	\$ 2,000.00	\$ 1,000
Direct Energy Business PA	No	Briggs & Stratton Corporation	PO BOX 70220 PHILADELPHIA, PA 19176-0220	1313042	Electric	No	\$ 5.00	\$ 3
Direct Energy Business PA	No	Briggs & Stratton Corporation	PO BOX 70220 PHILADELPHIA, PA 19176-0220	1313043	Electric	No	\$ 650.00	\$ 325
New York Power Authority	No	Briggs & Stratton Corporation	PO BOX 5211 BINGHAMTON, NY 13902-5211	200006605	Electric	No	\$ 2,200.00	\$ 1,100
National Grid	No	Briggs & Stratton Corporation	PO BOX 11742 NEWARK, NJ 07101-4742	202995210	Electric	No	\$ 50.00	\$ 25
National Grid	No	Briggs & Stratton Corporation	PO BOX 11742 NEWARK, NJ 07101-4742	3669952106	Electric	No	\$ 25.00	\$ 13
National Grid	No	Briggs & Stratton Corporation	PO BOX 11742 NEWARK, NJ 07101-4742	2069952103	Electric	No	\$ 4,000.00	\$ 2,000
National Grid	No	Briggs & Stratton Corporation	PO BOX 11742 NEWARK, NJ 07101-4742	3733011001	Electric	No	\$ 2,100.00	\$ 1,050
Murray Electric System	No	Briggs & Stratton Corporation	401 OLIVE ST	163400001,213350002,213350003,371460001	Electric	Yes	\$ 156,452.00	\$ 78,226
Municipal Util & City Cable	No	Briggs & Stratton Corporation	PO BOX 1268 POPLAR BLUFF, MO 63902-1268	199300000, 200301500	Electric	Yes	\$ 167,863.00	\$ 83,932
Municipal Util & City Cable	No	Briggs & Stratton Corporation	PO BOX 1268 POPLAR BLUFF, MO 63902-1268	200031200, 200302000	Electric	Yes	\$ 7,319.00	\$ 3,660
Georgia Power Co	No	Briggs & Stratton Corporation	96 ANNEX	3137200	Electric	Yes	\$ 161,180.00	\$ 80,590
Georgia Power Co	No	Briggs & Stratton Corporation	96 ANNEX	671772044	Electric	Yes	\$ 2,000.00	\$ 1,000
City of Sherrill	No	Briggs & Stratton Corporation	377 SHERRILL RD	99100001	Electric	Yes	\$ 9,363.00	\$ 4,692
City of Sherrill	No	Briggs & Stratton Corporation	377 SHERRILL RD	99100002, 13053001	Electric	Yes	\$ 37,555.00	\$ 18,778
Oraneneberg Dept of Public Utilities	No	Briggs & Stratton Corporation	REGIONAL PKW, CAROLINA REGIONAL PK BLDG D	209772	Electric	Yes	\$ 986.61	\$ 493
City of Holdrege	No	Allmand Bros	502 EAST AVE	25011011	Electric	Yes	\$ 15,029.00	\$ 7,515
Dixie Electric Cooperative (AL)	No	Briggs & Stratton Corporation	9100 Atlanta Hwy, Montgomery, AL	159384001	Electric	Yes	\$ 6,404.00	\$ 3,202
FORT PIERCE UTILITIES	No	Briggs & Stratton Corporation	206 S 6TH ST	71223300167798	Electric	Yes	\$ 714.25	\$ 357
Evergy	No	Billy Goat Industries	1300 SE Hamblen Rd, Lee's Summit, MO 64081	6278082694	Electric	No	\$ 6,517.40	\$ 3,259
Wisconsin Gas Company	No	Briggs & Stratton Corporation	626 E WISCONSIN AVE	2613-003-028	Natural Gas	No	\$ 100.00	\$ 50
KCP&L	No	Billy Goat Industries	1200 Main Street Kansas City, MO 64105 USA	6278082694	Electric	Yes	\$ 9,571.00	\$ 4,786
Auburn Water Works Board	No	Briggs & Stratton Corporation	1501 W SAMFORD AVE	030661001-41012102, 030661001-41012101	Water	No	\$ 5,519.00	\$ 2,760
City of Wauwatosa	No	Briggs & Stratton Corporation	7725 W NORTH AVE	15549001, 15966001, 15545001, 15546001	Water	Yes	\$ 19,594.00	\$ 9,797
Murray Municipal Utilities	No	Briggs & Stratton Corporation	5TH & POPLAR STS	1800210004, 1800212504, 1800228501	Water	Yes	\$ 5,279.00	\$ 2,640
Murray Water System	No	Briggs & Stratton Corporation	200 ANDRUS DR	No acct number, but acct exists	Water	No	\$ 500.00	\$ 250
Municipal Util & City Cable	No	Briggs & Stratton Corporation	PO BOX 1268 POPLAR BLUFF, MO 63902-1268	200315000, 200301500	Water	Yes	\$ 8,359.00	\$ 4,180
Municipal Util & City Cable	No	Briggs & Stratton Corporation	PO BOX 1268 POPLAR BLUFF, MO 63902-1268	200302000	Water	Yes	\$ 22.00	\$ 11
City of Statesboro	No	Briggs & Stratton Corporation	PO BOX 348 STATESBORO, GA 30459	90380001	Water	Yes	\$ 9,419.00	\$ 4,710
City of Sherrill	No	Briggs & Stratton Corporation	377 SHERRILL RD	4081106	Water	Yes	\$ 325.85	\$ 163
City of Sherrill	No	Briggs & Stratton Corporation	377 SHERRILL RD	F00350	Water	Yes	\$ 3,907.00	\$ 1,954
Oraneneberg Dept of Public Utilities	No	Briggs & Stratton Corporation	PO BOX 1057 ORANEBURG, SC 29116-1057	209772	Water	Yes	\$ 314.00	\$ 157
City of Holdrege	No	Allmand Bros	502 EAST AVE	25011110	Irrigation	Yes	\$ 76.00	\$ 38
City of Holdrege	No	Allmand Bros	502 EAST AVE	25011110	Water	Yes	\$ 733.00	\$ 367
Village of Germantown	No	Briggs & Stratton Corporation	PO BOX 337 GERMANTOWN, WI 53022	749820000	Water	No	\$ 186.00	\$ 93
Leachawoka Water Authority	No	Briggs & Stratton Corporation	4742 Co Rd 188	20246	Water	Yes	\$ 179.00	\$ 90
FORT PIERCE UTILITIES	No	Briggs & Stratton Corporation	206 S 6TH ST	71223300167798	Water	Yes	\$ 32.14	\$ 16
Lee's Summit Water Utilities	No	Billy Goat Industries	1200 SE Hamblen Rd, Lee's Summit, MO 64081, United States	29198	Water	No	\$ 1,075.81	\$ 538
Voelia ES Technical Solutions LLC	No	Briggs & Stratton Corporation	PO Box 73709 Chicago, IL 60673-7709	443818	Trash	No	\$ 21,291.89	\$ 10,646
Waste Management	No	Briggs & Stratton Corporation	W124N8925 BOUNDARY RD	27812913006	Trash	Yes	\$ 2,835.00	\$ 1,418
WCA Waste Corporation	No	Billy Goat Industries	PO Box 46009 Houston, TX 77056	106001032	Trash	No	\$ 3,000.00	\$ 1,500
Auburn Water Works Board	No	Briggs & Stratton Corporation	1501 W SAMFORD AVE	030661001-48493101, 030661001-48496109	Fire/Hydrant	Only Hydrant acct -48469109	\$ 87.31	\$ 44
NISC/Trane	No	Briggs & Stratton Corporation	3131 TECHNOLOGY DR NW, 58554-4870	Multiple Accts	Irrigation	No	\$ 36.00	\$ 18
City of Wauwatosa Water	No	Briggs & Stratton Corporation	7725 W NORTH AVE	15545001	Fire	Yes	\$ 1,078.00	\$ 539
Murray Municipal Utilities	No	Briggs & Stratton Corporation	5TH & POPLAR STS	1800228501	Fire	Yes	\$ 21.00	\$ 11
City of Statesboro	No	Briggs & Stratton Corporation	PO BOX 348 STATESBORO, GA 30459	902380001	Fire	Yes	\$ 216.00	\$ 108
Oraneneberg Dept of Public Utilities	No	Briggs & Stratton Corporation	REGIONAL PKW, CAROLINA REGIONAL PK BLDG D	209772	Fire	Yes	\$ 60.00	\$ 30
Village of Germantown	No	Briggs & Stratton Corporation	PO BOX 337 GERMANTOWN, WI 53022	749820000	Fire	Yes	\$ 353.00	\$ 177
Soire/Alaogaco	No	Briggs & Stratton Corporation	FORMERLY ALABAMA GAS CORP BIRMINGHAM, AL 35246	200000710578	Gas	Yes	\$ 13,129.00	\$ 6,565
Soire/Alaogaco	No	Briggs & Stratton Corporation	FORMERLY ALABAMA GAS CORP BIRMINGHAM, AL 35246	200001498475	Gas	Yes	\$ 5,618.00	\$ 2,809
Constellation Gas Box 5473	No	Briggs & Stratton Corporation	N21W23340 RIDGEVIEW PKWY W STE B	BG93808-RG141814	Gas	Yes	\$ 3,263.00	\$ 1,632
Constellation Gas Box 5473	No	Briggs & Stratton Corporation	N21W23340 RIDGEVIEW PKWY W STE B	BG93808-RG61565, BG93808-RG110199, BG93808-RG141815	Gas	Yes	\$ 64,027.00	\$ 32,014
Constellation Gas Box 5473	No	Briggs & Stratton Corporation	N21W23340 RIDGEVIEW PKWY W STE B	BG93808-RG42115054	Gas	No	\$ 12,500.00	\$ 6,250
Saragoe Operatino Resources	No	Briggs & Stratton Corporation	PO BOX 536469 PITTSBURG, PA 15253	84346000	Gas	No	\$ 10,381.97	\$ 5,191
NISC/Trane	No	Briggs & Stratton Corporation	3131 TECHNOLOGY DR NW, 58554-4870	Multiple Accts	Gas	Yes	\$ 3,386.00	\$ 1,693
National Grid	No	Briggs & Stratton Corporation	PO BOX 11742 NEWARK, NJ 07101-4742	3649952100	Outdoor Light	No	\$ 17.00	\$ 9
National Grid	No	Briggs & Stratton Corporation	PO BOX 11742 NEWARK, NJ 07101-4742	50374002	Gas	Yes	\$ 1,500.00	\$ 750
National Grid	No	Briggs & Stratton Corporation	PO BOX 11742 NEWARK, NJ 07101-4742	105035032	Gas	Yes	\$ 1,134.00	\$ 567
NISC/Trane	No	Briggs & Stratton Corporation	3131 TECHNOLOGY DR NW, 58554-4870	Multiple Accts	Gas	Yes	\$ 40,000.00	\$ 20,000
Municipal Util & City Cable	No	Briggs & Stratton Corporation	PO BOX 1268 POPLAR BLUFF, MO 63902-1268	190300000	Outdoor Light	Yes	\$ 160.00	\$ 80
MURRAY MUNICIPAL UTILITIES	No	Briggs & Stratton Corporation	5TH & POPLAR STS	1800212504	Gas	No	\$ 43,366.00	\$ 21,683
Murray Natural Gas	No	Briggs & Stratton Corporation	INDUSTRIAL ACCOUNT MURRAY, KY 42071	875001000	Gas	No	\$ 50,000.00	\$ 25,000
Soire Marketing Inc	No	Briggs & Stratton Corporation	PO BOX 956103 ST LOUIS, MO 63195-6013	875001000	Gas	Yes	\$ 32,580.00	\$ 16,290
Spire	No	Briggs & Stratton Corporation	FORMERLY LACLEDE&MISSOURI GAS ST LOUIS, MO 63171	6484611000	Gas	Yes	\$ 1,139.00	\$ 570
City of Statesboro	No	Briggs & Stratton Corporation	PO BOX 348 STATESBORO, GA 30459	90380001	Gas	Yes	\$ 45,427.00	\$ 22,714
Black Hills Energy	No	Allmand Bros	PO BOX 6001 RAPID CITY, SD 57709-6001	9017094804	Gas	Yes	\$ 12,566.00	\$ 6,283

