

UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF MISSOURI
SOUTHEASTERN DIVISION

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| In re: | § | Chapter 11 |
| | § | |
| | § | Case No. 20-43597-399 |
| BRIGGS & STRATTON CORPORATION, <i>et al.</i> , | § | |
| | § | (Joint Administration Requested) |
| | § | |
| Debtors. ¹ | § | 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 DEBTORS TO PAY
PREPETITION OBLIGATIONS IN THE ORDINARY COURSE OF
BUSINESS TO (A) CRITICAL VENDORS, (B) FOREIGN CREDITORS,
AND (C) 503(b)(9) CLAIMANTS; AND (II) 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 Debtors have also filed a motion requesting joint administration of their chapter 11 cases pursuant

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.



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. By this Motion, the Debtors seek entry of an interim order (the “**Proposed Interim Order**”) and, pending a final hearing on the relief requested herein, a final order (the “**Proposed Final Order**”) and, and together with the Proposed Interim Order, the “**Proposed**

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.

Orders)³ pursuant to sections 105(a), 363(b), and 503(b)(9) of the Bankruptcy Code and Bankruptcy Rules 6003 and 6004, (i) authorizing, but not directing, the Debtors to pay prepetition obligations in the ordinary course of business to (a) certain vendors, suppliers, service providers, and other similar entities that are essential to maintaining the going concern value of the Debtors’ enterprise (and as further defined below, the “**Critical Vendors**” and their prepetition claims, the “**Critical Vendor Claims**”); (b) certain vendors, suppliers, service providers, and other similar entities outside of the United States that are not or, in the Debtors’ reasonable judgment, may not be subject to jurisdiction in the United States and may take action against the Debtors in a foreign country (collectively, the “**Foreign Creditors**” and their prepetition claims, the “**Foreign Claims**”); and (c) certain vendors holding claims that are entitled to statutory priority under section 503(b)(9) of the Bankruptcy Code (the “**503(b)(9) Claimants**”, and collectively with the Critical Vendors and the Foreign Creditors, the “**Vendor Claimants**” and their prepetition claims the “**Vendor Claims**”); and (ii) granting related relief.

5. The following table summarizes the types of Vendor Claims held by the Vendor Claimants and provides the Debtors’ estimate of the total amount of each type of Vendor Claim outstanding as of the Petition Date, including estimates for the portion of such total coming due within the Interim period:

| Category | Description of Claims | Estimated Amount Due Within Interim Period | Estimated Total Amount Outstanding as of Petition Date |
|------------------------|---|--|--|
| Critical Vendor Claims | Claims of certain trade creditors that are essential to maintaining the going concern value of the Debtors’ enterprise. | \$2.43 million | \$4.04 million |

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

| Category | Description of Claims | Estimated Amount Due Within Interim Period | Estimated Total Amount Outstanding as of Petition Date |
|-----------------------------|--|--|--|
| Foreign Vendor Claims | Claims of certain trade creditors that are based outside of the United States and are essential to maintaining the going concern value of the Debtors' enterprise. | \$6.13 million | \$10.17 million |
| 503(b)(9) Claims | Claims entitled statutory priority under section 503(b)(9) of the Bankruptcy Code. | \$12.54 million | \$20.79 million |
| Total Vendor Claims: | | \$ 21.1 million | \$35.0 million |

6. The Debtors are not seeking to pay these amounts immediately or in one lump sum; rather, the Debtors intend to pay these amounts as they become due and payable in the ordinary course of the Debtors' business. Concurrently with the filing of this Motion, the Debtors have filed the *Motion of Debtors for Interim and Final Orders (I) Authorizing Debtors to Obtain Postpetition Financing, (II) Authorizing Debtors to Use Cash Collateral, (III) Granting Liens and Superpriority Claims, (IV) Granting Adequate Protection to Prepetition Secured Parties, (V) Modifying Automatic Stay, (VI) Scheduling Final Hearing, and (VII) Granting Related Relief* (the "**DIP Motion**"), which will provide the necessary additional liquidity for the Debtors to continue operations in the ordinary course of business. As set forth in the budget (the "**DIP Budget**") annexed to the DIP Motion, the Debtors' proposed expenditures set forth in the DIP Budget include payment of the Vendor Claims the Debtors are seeking authority to pay pursuant to this Motion. Accordingly, the Debtors believe they will have ample liquidity to pay the Vendor Claims in the ordinary course during the administration of these chapter 11 cases.

7. Authority to pay the Vendor Claimants in the ordinary course of business is necessary to avoid the risk of key vendors and service providers withholding essential services or refusing to sell essential goods to the Debtors, and is therefore in the best interests of the Debtors' estates.

The Debtors' Vendors

A. Overview

8. As discussed in the Ficks Declaration, some of the Debtors' primary lines of business are the production of gasoline engines for residential and commercial outdoor power equipment and the design and manufacture of power generation, pressure washer, lawn and garden, turf care and job site products. Most of the Vendor Claimants supply the Debtors with the various component parts the Debtors require to manufacture their products lines, such as fuel tanks, fuel pumps, battery packs, mower blades, tires, carburetors, pulleys, engine starters, flywheel fans, intake and exhaust valves, pistons, wireforms, mufflers, paint, motors, control cables, clutches, tractor seats, belts, fuel hoses, gaskets, and ignition coils. The Debtors also rely on the Vendor Claimants for materials, including aluminum and lithium ion cells, and certain finished goods, like packaging.

9. Certain parts provided by Vendor Claimants, like crankshafts and battery cells, are integral parts of the products the Debtors manufacture, and the Debtors require a high volume of these parts to meet production demands. Replacing these vendors with the capacity to supply the Debtors would require the Debtors to source from multiple vendors. The Debtors do not keep surplus stores of the components and products supplied by the Vendor Claimants and instead rely on the suppliers to provide these components and products as the Debtors need them in an efficient and seamless process. Thus, any delay in sourcing would put the Debtors' production on hold.

10. Moreover, many of the Vendor Claimants provide unique materials and parts that would be difficult, if not impossible, to replace without incurring significant costs or significant disruption to the Debtors' business. For example, one supplier provides the Debtors with a custom vent solution for a battery pack the Debtors use in their products. If the Debtors

were to replace this vendor, the Debtors would have to spend extensive time re-engineering their product to work without this custom vent solution. After the Debtors entirely redesign the product, the Debtors would need to retest and recertify the products incorporating a replacement vent solution, a process that may take up to several years, to ensure the Debtors do not sell a product that that is unsafe or does not meet various environmental regulations. During this redesign and retesting process, the Debtors would be unable to manufacture the products using this vent solution. The Debtor would, therefore, incur both significant costs redesigning the products to work with a new a vent solution and production losses due to the long lead time required for the redesign, testing, and certification necessary for manufacturing the Debtors' products.

11. The sale of lawn and garden and turf care products is a highly seasonal business. Customers do not use lawnmowers or other turf site products year round and, consequently, do not buy these products year round. The majority of law and garden equipment is sold in the spring and summer months. As a result, to maintain sales projections, the Debtors must be able to complete the manufacture and delivery of their products to market by the fall and winter months to prepare a sizable inventory for sales in the spring and summer months. The Debtors run a seamless operation, optimizing efficiency, and any delay in receiving parts, sourcing replacement parts, and testing new parts and designs would inhibit the Debtors' ability to send their products to market on this seasonal timeline. Even a delay of just a few months could substantially decrease the Debtors' sales for the year.

B. Critical Vendors

12. In narrowing the Debtors' list of vendors to only those that are critical, the Debtors and their advisors have engaged in a comprehensive process reviewing and analyzing the Debtors' books and records, consulting with the Debtors' management and personnel responsible for operations, reviewing contracts and supply agreements, and analyzing applicable laws,

regulations, and past practices to (a) identify those vendors, suppliers, and/or service providers that may be “critical” to the Debtors’ businesses (which, if lost, would materially impair the going-concern viability of the Debtors’ business) and (b) quantify the relief necessary to avoid immediate and irreparable harm to the Debtors at the outset of these chapter 11 cases. The Debtors assessed a variety of factors,⁴ including:

- Whether the goods or services provided by a vendor or supplier are essential to the manufacturing of products, commercial operations, and/or the continued smooth operation of the Debtors’ businesses;
- Whether the goods or services are provided pursuant to a contract or on a purchase-order basis;
- Whether failure to pay all or part of a particular vendor’s claim could cause the vendor to refuse to ship inventory or provide services on a postpetition basis;
- Whether the vendor is bound by an agreement pursuant to which the Debtors could compel such vendor to continue performing on prepetition terms;
- Whether the vendor is a sole- or limited-source or high-volume supplier for goods and services;
- Whether alternative vendors are available that could provide the requisite volume of similar goods or services on equal or better terms, and, if so, whether the Debtors would be able to continue operating without significant disruption to their postpetition operations while transitioning business thereto;
- Whether certain specifications or contract requirements and conditions prevent, directly or indirectly, the Debtors from obtaining the goods and services from alternative sources;
- Whether the failure to pay a particular vendor could jeopardize the Debtors’ valuable interest in goods or materials;

⁴ The Debtors did not include in the list of Critical Vendors any vendors based on their potential ability to (1) assert liens against the Debtors or (2) administrative expense claims under section 503(b)(9) of the Bankruptcy Code. The Debtors ask for relief for the former in a separate motion and for the latter as 503(b)(9) Claims in this Motion.

- Whether the failure to pay a particular vendor could result in the negotiated trade terms being altered as a matter of applicable non-bankruptcy commercial law or regulations.

13. As a result of this analysis, the Debtors identified the universe of Critical Vendors whose support remains essential to the Debtors' ability to preserve and enhance their value as they proceed with a seamless transition into chapter 11.⁵

14. The Debtors have identified five types of Critical Vendors that the Debtors cannot easily replace. These vendors include: (i) integrated suppliers, (ii) suppliers of components or finished products that require substantial certification or testing, (iii) suppliers of proprietary or custom products, (iv) suppliers of key parts or products, and (v) suppliers in possession of tooling owned by the Debtors.

15. Integrated Suppliers. In some instances, suppliers are highly integrated with the Debtors' manufacturing process and work together with the Debtors onsite at the Debtors' facilities. Employees of these suppliers work at these facilities, on a part-time basis, helping to oversee the integration of the parts they supply into the Debtors' manufacturing process. Some of these supplier employees participate in testing and controls of the Debtors' products including these suppliers' component parts. If the Debtors were forced to change suppliers, the Debtors would be unable to replicate the joint logistical and testing processes they have with these suppliers. Additionally, many of the employees of these suppliers provide unique services and expertise that none of the Debtors' onsite employees would be able to provide, such as quality checks for the parts the suppliers provide. Without the ability to pay prepetition amounts to these suppliers, the Debtors could have to forego these vital services.

⁵ In this Motion, the Debtors do not seek authority to pay prepetition claims that may be paid pursuant to the *Motion of Debtors for Order (I) Authorizing Payment of Prepetition Claims of Shippers, Warehousemen, Import/Export Providers, and Other Lien Claimants, (II) Authorizing Payment of Such Obligation in the Ordinary Course of Business, and (III) Granting Related Relief*, filed contemporaneously herewith.

16. Suppliers of Products Requiring Substantial Certification. In many cases, the Debtors have designed their products according to the specifications of component parts provided by the suppliers and these designs have been rigorously tested and certified to ensure compliance with various safety and environmental regulations. In other instances, suppliers provide the Debtors with finished products that the Debtors have certified and tested. The certification and testing process can take from several months to several years, and the Debtors are unable to manufacture a product before it has been fully tested and certified. If these suppliers were to stop supplying these component parts and products, the Debtors would no longer be able to manufacture their relevant product while they recertify and retest a new product or new design. Additionally, some customer contracts require approval from the customer for the sourcing of the product or its component. In one case, it took the Debtors three years to find a vendor that fit the requirements of the customer. If the Debtors could not pay these suppliers, the Debtors could face substantial delays while finding suitable replacement vendors and gaining customer approval under these contracts. The Debtors may also run the risk of losing the customer entirely, from changes in vendors or any significant delays in replacing them.

17. Suppliers of Proprietary or Custom Parts. Some suppliers own the intellectual property to the component part or product they sell to the Debtors. In these instances, the Debtors would be unable to find a vendor to replace the supplier, as no other vendors would own the right to produce and supply the part. Other suppliers provide the Debtors with custom parts, which are designed solely for the Debtors' use in manufacturing their products. The Debtors may not be able to find replacement suppliers for these custom parts, and, even if they were able to find replacement suppliers, the Debtors would face a significant lag time before a new supplier could provide a custom part. If Debtors had to replace the suppliers of these parts, the Debtors

would have to re-engineer entirely, and subsequently retest and recertify, the products incorporating these parts to accommodate a replacement part. During this time, the Debtors would be unable to manufacture their products with these custom or proprietary parts.

18. Suppliers of Key Parts. Some Critical Vendors provide the Debtors with high-volume, crucial components to the products the Debtors manufacture. Replacement of such high volume orders could be a logistical challenge, as the Debtors would need to source replacement parts from multiple vendors to fill their requirements. The Debtors may also face challenges sourcing replacement vendors within a commercially reasonable distance or on comparable terms.

19. Suppliers with the Debtors' Tooling. The Debtors require some products and components to be made to certain specifications. To ensure that suppliers can meet these specifications, the Debtors provide the suppliers with equipment and tooling owned by the Debtors for the manufacture of the parts and products the suppliers sell to the Debtors. If the Debtors were unable to pay prepetition amounts to these suppliers, the suppliers may refuse to return this tooling to the Debtors, leaving the Debtors unable to use their own tooling or provide their tooling to alternate suppliers.

20. By this Motion, the Debtors seek authority to pay the prepetition claims of Critical Vendors in the ordinary course of business up to a maximum aggregate amount of \$4.04 million, including up to \$2.43 million on an interim basis.⁶

21. The Debtors submit that (a) each of the Critical Vendors is of great necessity to the Debtors' business on a going-forward basis and cannot, if at all, be easily and efficiently

⁶ For the avoidance of doubt, the Critical Vendor Claims amounts do not include amounts subject to administrative expense priority status under section 503(b)(9) of the Bankruptcy Code.

replaced, and (b) any failure to pay the Critical Vendors for the Critical Vendor Claims would (i) likely result in a severe disruption or cessation of the Debtors' business and sales to their customers and thereby negatively impact the revenues derived therefrom and (ii) in some cases give rise to, among other things, administrative expense claims, which such amounts would likely be entitled to payment priority pursuant to a chapter 11 plan.

C. Foreign Creditors

22. Given the Debtors' global footprint, it is not surprising that many of the Debtors' vendors and creditors are located in jurisdictions outside of the United States. Because of the nature of the Debtors' business, many of the Foreign Creditors will make, or have already made, credible actionable threats that, unless paid on account of their prepetition debt, they will cease to supply the Debtors with the goods and services necessary to maintain the operation of the Debtors' businesses.

23. Most of the Foreign Creditors have little or no connection to the United States. Although the scope of the automatic stay set forth in section 362 of the Bankruptcy Code is universal, the Debtors may not be able to enforce the stay in foreign jurisdictions if the creditor against which enforcement is sought has minimal or no presence in the United States. As a result, despite the commencement of these cases and the imposition of the automatic stay, the Foreign Creditors may be able to pursue remedies immediately and seek to collect prepetition amounts owed to them. Indeed, there is real risk that Foreign Creditors may attach or seize the Company's assets in their jurisdictions—which would significantly disrupt operations.

24. The Debtors are making every effort to avoid any interruptions to their global operations and the adverse effects that even a temporary break in the supply chain could have. Any short term disruption could generate instability and thus jeopardize the Debtors' ability to preserve their value. In light of the potential for serious and irreparable consequences if the

Foreign Creditors do not continue to make uninterrupted and timely deliveries and/or take actions outside the United States to collect on prepetition obligations, the Debtors have determined, in the exercise of their business judgment, that payment of certain Foreign Creditors' claims is essential to avoid costly disruptions to the Debtors' operations and, accordingly, the relief requested herein should be granted. By this Motion, the Debtors seek authority to pay the prepetition claims of Foreign Creditors in the ordinary course of business up to a maximum aggregate amount of \$10.17 million, including up to \$6.13 million on an interim basis.⁷

D. The 503(b)(9) Claimants

25. The Debtors have received certain goods from various suppliers within the 20 days leading up to the Petition Date (collectively, the “**503(b)(9) Claimants**”). Many of the Debtors' relationships with the 503(b)(9) Claimants are not contractual and the Debtors place orders as they need goods from the 503(b)(9) Claimants. As a result, the 503(b)(9) Claimants may refuse to supply new goods to the Debtors without first receiving payment on account of those undisputed claims (collectively, the “**503(b)(9) Claims**”) arising from the value of the goods that were received by the Debtors within 20 days leading up to the Petition Date. The Debtors believe that certain of the 503(b)(9) Claimants could reduce the Debtors' existing trade credit—or demand payment for the goods on a “cash on delivery” or “cash in advance” basis—thereby negatively impacting the Debtors' liquidity position.

26. Further, and as described below, the 503(b)(9) Claims are entitled to statutory priority for the goods received by the Debtors in the ordinary course of business within 20 days prior to the Petition Date. Section 503(b)(9) of the Bankruptcy Code provides that “the

⁷ For the avoidance of doubt, the Foreign Creditor Claims amounts do not include amounts subject to administrative expense priority status under section 503(b)(9) of the Bankruptcy Code.

value of any goods received by the debtor within 20 days before the date of commencement of a case under this title in which the goods have been sold to the debtor in the ordinary course of such debtor's business" are administrative claims against a debtor's estate. *See* 11 U.S.C. § 503(b)(9). The Debtors, therefore, are required to pay such 503(b)(9) Claims in full to confirm a chapter 11 plan. As of the Petition Date, the Debtors owe approximately \$20.79 million to the 503(b)(9) Claimants on account of the 503(b)(9) Claims.

27. By this Motion, the Debtors seek authority to pay the 503(b)(9) Claimants in the ordinary course of business up to a maximum aggregate amount of \$20.79 million, including up to \$12.54 million on an interim basis.

E. Customary Trade Terms

28. In return for paying the Vendor Claims, the Debtors will use commercially reasonable efforts to require the Vendor Claimants to provide favorable terms in line with historical practice (the "**Customary Trade Terms**") for the postpetition delivery of goods and services or otherwise to continue supplying the Debtors with goods and services for the duration of these chapter 11 cases. The Debtors, therefore, request authority to condition payment of the Vendor Claims upon such Vendor Claimants' written agreement to continue supplying goods and services to the Debtors for the duration of these chapter 11 cases, substantially in the form attached hereto as **Exhibit A** (each, a "**Trade Agreement**"), in accordance with the Customary Trade Terms that are at least as favorable as those practices and programs that were in place prior to the Petition Date, as may be modified by any such Trade Agreement. Such Trade Agreement, once agreed to and accepted by a Vendor Claimant, shall be a legally binding, contractual arrangement between the Debtors and such Vendor Claimant, governing the commercial trade relationship as provided therein.

29. Subject to the entry of the Proposed Final Order, the Debtors also seek unlimited authority to pay the Vendor Claims even if no Trade Agreement has been executed should the Debtors determine, in their business judgment, that a formal Trade Agreement is unnecessary to ensure such Vendor Claimant's continued performance on the Customary Trade Terms. In connection with any payment to a Vendor Claimant without a Trade Agreement, the Debtors will notify such Vendor Claimant of the disgorgement procedures (the "**Disgorgement Procedures**") set forth in the Proposed Orders, as applicable.

30. If, either after executing a Trade Agreement or receiving notification of the Disgorgement Procedures, a Vendor Claimant accepts payment pursuant to the relief requested by this Motion and thereafter does not continue to provide the applicable goods and services to the Debtors on the Customary Trade Terms, then, subject to such Vendor Claimant's right to file an objection with the Bankruptcy Court within 14 days of a notice of non-performance: (a) such payment by the Debtors to such Vendor Claimant may be deemed to be an improper postpetition transfer on account of a prepetition claim and, therefore, immediately recoverable by the Debtor in cash upon written request; (b) upon recovery by the Debtors of such payment, any prepetition Vendor Claim of such Vendor Claimant shall be reinstated as if the payment by the Debtors had not been made in the first instance; and (c) if there exists an outstanding postpetition balance due from the Debtors to such Vendor Claimant, then the Debtors may elect to recharacterize and apply any payment made by the Debtors to such Vendor Claimant pursuant to the relief requested by the Motion to such outstanding postpetition balance, and such Vendor Claimant will be required to repay the Debtors such paid amounts exceeding the postpetition obligations then outstanding from the Debtors to such Vendor Claimant without the right of any setoffs, claims, provisions for payment of any claims, or otherwise.

31. The Debtors shall maintain a matrix (the “**Vendor Claimant Payment Matrix**”) summarizing (i) the name of each Vendor Claimant the Debtors seek to pay on account of the terms set forth in any order approving this Motion, (ii) the amount of each made payment, and (iii) a brief description of the goods and services provided by the Vendor Claimant for which such payment will be made. Upon entry of the Proposed Interim Order, the Debtors shall provide the full Vendor Claimant Payment Matrix to (a) the United States Trustee for the Eastern District of Missouri; (b) counsel to any official committee of unsecured creditors that may be appointed in these chapter 11 cases (if any committee has been appointed); and (c) counsel to the lenders under the Debtors’ postpetition debtor in possession secured credit facility. Upon entry of the Proposed Interim Order, the Debtors shall provide a list of any changes to the Vendor Claimant Payment Matrix to the above parties every two weeks until a final order is entered granting the relief requested herein and monthly thereafter. Provision of the Vendor Claimant Payment Matrix and any subsequent changes by email shall be sufficient. Recipients of the Vendor Claimant Payment Matrix shall keep the Vendor Claimant Payment Matrix strictly confidential with access to the actual details limited to attorneys and financial advisors and shall not disclose the Vendor Claimant Payment Matrix or any portion thereof to any individual or entity without the Debtors’ prior written consent.

Relief Requested Should Be Granted

A. Payment of Vendor Claims is Warranted Under Sections 105(a) and 363(b) of the Bankruptcy Code

32. The Court may grant the relief requested herein pursuant to section 363(b) of the Bankruptcy Code, which provides, in relevant part, that “[t]he [debtor], after notice and a hearing, may use, sell, or lease, other than in the ordinary course of business, property of the estate” 11 U.S.C. § 363(b)(1). A debtor’s request to use property of the estate outside of the

ordinary course of business pursuant to section 363(b) of the Bankruptcy Code must be supported by sound business reasons. *See, e.g., In re Montgomery Ward Holding Corp.*, 242 B.R. 147, 153 (D. Del. 1999); *In re Nine West Holdings, Inc.*, 588 B.R. 678, 686 (Bankr. S.D.N.Y. 2018). The business judgment rule is highly deferential to debtors and may be satisfied “as long as the proposed action *appears* to enhance the debtor’s estate.” *Crystalin, LLC v. Selma Props. Inc. (In re Crystalin, LLC)*, 293 B.R. 455, 463–64 (B.A.P. 8th Cir. 2003) (quoting *Four B. Corp. v. Food Barn Stores, Inc. (In re Food Barn Stores, Inc.)*, 107 F.3d 558, 566 n.16 (8th Cir. 1997)); *see also In re Farmland Indus. Inc.*, 294 B.R. 903, 913 (Bankr. W.D. Mo. 2003) (“Under the business judgment standard, the question is whether the [proposed action] is in the Debtors’ best economic interests, based on the best business judgment in those circumstances.”).

33. Further, under section 105(a) of the Bankruptcy Code, “[t]he court 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); *see also In re Wehrenberg, Inc.*, 260 B.R. 468, 469 (Bankr. E.D. Mo. 2001) (“Pursuant to 11 U.S.C. § 105(a) the Court may authorize the payment of prepetition claims when such payments are necessary to the continued operation of the Debtor”); *In re Payless Cashways, Inc.*, 268 B.R. 543, 546–47 (Bankr. W.D. Mo. 2001) (authorizing payment of critical prepetition suppliers’ claims when such suppliers agree to provide postpetition trade credit). Courts consistently have permitted payment of prepetition obligations where necessary to preserve or enhance the value of a debtor’s estate for the benefit of all creditors. *See, e.g., In re Ionosphere Clubs*, 98 B.R. 174, 175 (Bankr. S.D.N.Y. 1989) (applying section 105(a) to justify an order authorizing the payment of certain prepetition wages, salaries, medical benefits, and business expense claims to debtor’s employees).

34. The Court may also authorize the payment of prepetition claims in appropriate circumstances under section 105(a) of the Bankruptcy Code and the doctrine of necessity when such payment is essential to the continued operation of a debtor's business. *See, e.g., In re Just for Feet, Inc.*, 242 B.R. 821, 824–25 (D. Del. 1999) (holding that section 105(a) of Bankruptcy Code provides a statutory basis for payment of prepetition claims under the doctrine of necessity and noting that “[t]he Supreme Court, the Third Circuit and the District of Delaware all recognize the court’s power to authorize payment of pre-petition claims when such payment is necessary for the debtor’s survival during chapter 11”); *In re Columbia Gas Sys., Inc.*, 171 B.R. 189, 191–92 (Bankr. D. Del. 1994) (confirming that the doctrine of necessity is standard for enabling a court to authorize payment of prepetition claims prior to confirmation of a reorganization plan).

35. The Court has the authority, pursuant to its equitable powers under section 105(a) of the Bankruptcy Code, to authorize the relief requested herein, because such relief is necessary for the Debtors to carry out their fiduciary duties under section 1107(a) of the Bankruptcy Code, which “contains an implied duty of the debtor-in-possession” to act as a fiduciary 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.”).

36. Moreover, Bankruptcy Rule 6003 itself implies that the payment of prepetition obligations may be permissible within the first 21 days of a case where doing so is “necessary to avoid immediate and irreparable harm.” Fed. R. Bankr. 6003. Accordingly, the Bankruptcy Code authorizes the postpetition payment of prepetition claims where, as here, such payments are critical to preserving the going-concern value of a debtor’s estate.

37. In a long line of well-established cases, courts consistently have permitted payment of prepetition obligations where necessary to preserve or enhance the value of a debtor’s estate for the benefit of all creditors. *See, e.g., Miltenberger v. Logansport, C&S W.R. Co.*, 106 U.S. 286, 312 (1882) (payment of pre-receivership claim prior to reorganization permitted to prevent “stoppage of the continuance of [crucial] business relations”); *In re Lehigh & New Eng. Ry. Co.*, 657 F.2d 570, 581 (3d Cir. 1981) (holding that “if payment of a claim which arose prior to reorganization is essential to the continued operation of the . . . [business] during reorganization, payment may be authorized even if it is made out of [the] corpus”); *Dudley v. Mealey*, 147 F.2d 268, 271 (2d Cir. 1945) (extending doctrine for payment of prepetition claims beyond railroad reorganization cases), *cert. denied* 325 U.S. 873 (1945); *Mich. Bureau of Workers’ Disability Comp. v. Chateaugay Corp. (In re Chateaugay Corp.)*, 80 B.R. 279, 285–86 (S.D.N.Y. 1987) (approving lower court order authorizing payment of prepetition wages, salaries, expenses, and benefits).

38. This “doctrine of necessity” functions in a chapter 11 reorganization as a mechanism by which the Court can exercise its equitable power to allow payment of critical prepetition claims not explicitly authorized by the Bankruptcy Code when such payment is essential to the continued operation of a debtor’s business. *See, e.g., In re Just for Feet*, 242 B.R. 821, 824-25 (D. Del. 1999) (holding that section 105(a) of Bankruptcy Code provides statutory

basis for payment of prepetition claims under the doctrine of necessity particularly when such payment is necessary for the debtor's survival during chapter 11); *In re Columbia Gas Sys., Inc.*, 171 B.R. 189, 191–92 (Bankr. D. Del. 1994) (confirming that the doctrine of necessity is standard for enabling a court to authorize payment of prepetition claims prior to confirmation of a reorganization plan).

39. As described below in more detail for each type of Vendor Claim, it is a sound exercise of the Debtors' business judgment to pay the Vendor Claims as they become due in the ordinary course of business because doing so will avoid value-destructive business interruption and will, therefore, benefit the Debtors' other stakeholders. The goods and services provided by Vendor Claimants are necessary for the continued, uninterrupted operation of the Debtors' business. The Debtors anticipate that failure to pay the Vendor Claims as they become due is likely to result in many Vendor Claimants refusing to provide essential goods and services or conditioning the delivery of such goods and services on compliance with onerous and commercially unreasonable terms.

B. Payment of Critical Vendor Claims Is Necessary to Ensure Continuation of the Debtors' Operations

40. Payment of Critical Vendors is necessary for the Debtors to maintain operations in the ordinary course and preserve the value of the Debtors' business, and moreover, to enable the Debtors to function in the ordinary course. As described above, many of the Critical Vendors are providers of unique and critical components for the products the Debtors manufacture and the Debtors cannot easily replace the Critical Vendors, due to, among other reasons, (i) the suppliers are highly integrated with the Debtors, (ii) replacement of the suppliers would require substantial recertification or retesting of replacement components or products, (iii) the suppliers provide custom or proprietary parts, (iv) the suppliers provide key parts or products, and (v) the

suppliers are in possession of the Debtors' tooling. Nonperformance by numerous Critical Vendors could materially disrupt the Debtors' business operations jeopardize the continued viability of the Debtors' business, and impair the value available to creditors in these cases to the detriment of all of the Debtors' stakeholders.

41. Failure to pay the Critical Vendor Claims would result in a loss of value to the Debtors' business, which would suffer from material disruptions without the continued support provided by the Critical Vendors. Indeed, without ensuring payment to the Critical Vendors, the Debtors believe that at best, the Debtors' manufacturing ability could be materially inhibited, and at worst, the Debtors would be completely unable to generate a material portion of their revenue due to the disruption in their ability to manufacture their product lines for a substantial period of time, which would be particularly harmful to the Debtors given the seasonality of their business. If Debtors could not continue to pay Critical Vendor Claims, the Debtors would no longer have access to the products and parts these suppliers provide and would either not be able to replace these suppliers or would face significant delays in finding replacements. For example, because the Debtors conduct rigorous testing and certification procedures to ensure their products meet safety and environmental standards, a switch in suppliers for certain component parts and products would delay the Debtors' production for, at best, several months and, at worst, several years. The Debtors cannot manufacture their products during testing, as to do so would be to put potentially dangerous products on the market.

42. If certain of the Critical Vendors refuse to perform on their obligations, the Debtors may find it very difficult to locate replacement vendors of geographic or logistical scope necessary to support their operations, and indeed, may make it difficult to maintain business

operations. Therefore, even if it were possible to obtain replacement goods and services, doing so would likely cause substantial delay and significant costs.

43. Additionally, the failure to pay some Critical Vendor Claims would prevent the Debtors from taking advantage of a streamlined supply process and would cause serious disruptions to the Debtors' manufacturing process as the Debtors have to reclaim tooling from vendors. This would not only restrain the Debtors' cash flow, but would harm the Debtors' relationships with their customers on a go-forward basis, and could cause the Debtors' customers to turn to the Debtors' competitors, threatening to derail the Debtors' sale process and reorganization efforts. Accordingly, the Debtors have concluded that if they do not make payments to Critical Vendors, their value will be reduced by amounts well in excess of amounts that the Debtors seek authorization to pay. In addition, the Debtors believe that maintaining favorable trade terms with the Critical Vendors is in the best interests of all parties in interest in these cases.

44. Courts in this district regularly grant relief to pay critical vendors consistent with that which the Debtors are seeking in this Motion. *See, e.g., In re Foresight Energy LP*, No. 20-41308 (Bankr. E.D. Mo. Apr. 7, 2020) [Docket No. 242] (authorizing payment of critical vendors); *In re Payless Holdings LLC*, No. 19-40883-659 (Bankr. E.D. Mo. Mar. 19, 2019) [Docket No. 600] (same); *In re Payless Holdings LLC*, No. 17-42267-659 (Bankr. E.D. Mo. May 9, 2017) [Docket No. 600] (same); *In re Noranda Aluminum, Inc.*, No. 16-10083-399 (Bankr. E.D. Mo. Feb. 10, 2016) [Docket No. 96] (same); *In re Arch Coal, Inc.*, No. 16-40120-705 (Bankr. E.D. Mo. Jan. 13, 2016) [Docket. No. 71] (same).

C. Payment of Foreign Claims Is Necessary to Ensure Continuation of Debtors' Operations

45. Payment of the prepetition claims of the Debtors' Foreign Creditors is essential to the Debtors' reorganization. As stated, the limitations of the enforceability of the automatic stay, the risk of Foreign Creditors' exercising remedial rights, the critical nature of goods and services provide by the Foreign Creditors, and the lack of qualified alternative suppliers justify the requested relief in this Motion. Absent a continued, uninterrupted supply of goods and services from Foreign Creditors, the Debtors' overall ability to operate their business will be jeopardized. Simply stated, payment of the Foreign Claims as proposed will assure the orderly operation of the Debtors' business and avoid costly disruptions and the significant loss of value and irreparable harm arising therefrom. Further, the Foreign Creditors may take actions to collect debts outside the United States. The Debtors have concluded that if they do not pay Foreign Claims, their value will be reduced by amounts well in excess of amounts that the Debtors seek authorization to pay.

46. Courts in this district and others regularly grant relief to pay foreign vendors consistent with that which the Debtors are seeking in this Motion. *See, e.g., In re Noranda Aluminum, Inc.*, No. 16-10083-399 (BSS) (Bankr. E.D. Mo. Feb. 11, 2016) [Docket. No. 99] (authorizing payments of prepetition obligations to foreign creditors); *In re Arch Coal, Inc.*, No. 16-40120 (Bankr. E.D. Mo. Jan. 14, 2016) [Docket No. 86] (same); *see also In re Patriot Coal Corp.*, No. 12-12900 (Bankr. S.D.N.Y. Aug. 2, 2012) [Docket No. 256] (authorizing payment of prepetition obligations to foreign creditors).

D. Relief Requested is Supported by Section 503(b)(9) of the Bankruptcy Code

47. Vendor Claims in an aggregate amount of approximately \$20.79 million, roughly 59.41% of all Vendor Claims, are entitled to the statutory priority for goods delivered to

the Debtors in the ordinary course of business within 20 days before the Petition Date. Section 503(b)(9) of the Bankruptcy Code provides that claims for goods delivered to the Debtors in the ordinary course of business within 20 days after the Petition Date are administrative expense claims against the applicable Debtor's estate. *See* 11 U.S.C. § 503(b)(9). The Debtors, therefore, are required to pay such claims in full to confirm a plan of reorganization. *See id.*; 11 U.S.C. § 1129(a)(9)(A) (requiring payment in full of claims entitled to administrative expense priority). Instead of paying such Vendor Claims on the effective date of a chapter 11 plan, the Debtors seek authority to pay the 503(b)(9) Claims during the pendency of these chapter 11 cases as they become due. The Bankruptcy Code requires payment in full of administrative expense claims. Thus, payment of 503(b)(9) Claims under the Proposed Orders will effect only a change in the timing of such payments, not the amounts or priority thereof.

48. Because the 503(b)(9) Claimants are already familiar with the Debtors' assets and business needs based on years of the Debtors' building relationships with such vendors, they are in the best position to provide the necessary goods and services to the Debtors, and are the most likely to do so on commercially reasonable terms. Finally, authorizing the Debtors to pay 503(b)(9) Claims pursuant to the terms set forth herein should eliminate the burden on this Court and the Debtors arising from numerous individual motions requesting payment on account of 503(b)(9) Claims.

49. Courts in this district have frequently authorized the payment of vendor claims entitled to administrative priority pursuant to section 503(b)(9) of the Bankruptcy Code. *See, e.g., In re Foresight Energy LP*, No. 20-41308 (Bankr. E.D. Mo. Apr. 7, 2020) [Docket No. 242] (authorizing payment of claims arising under section 503(b)(9)); *In re Armstrong Energy, Inc.*, No. 17-47541-659 (Bankr. E.D. Mo. Nov. 2, 2017) [Docket No. 92] (same); *In re Noranda*

Aluminum, Inc., No. 16-10083-399 (BSS) (Bankr. E.D. Mo. Feb. 10, 2016) [Docket No. 96] (same); *In re Arch Coal, Inc.*, No. 16-40120-705 (Bankr. E.D. Mo. Jan. 14, 2016) [Docket. No. 71] (same).

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

50. 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 Vendor Claims, 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 Vendor Claims dishonored or rejected as a result of the commencement of the Debtors’ chapter 11 cases.

Bankruptcy Rule 6003(b) Has Been Satisfied

51. 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)**

52. 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

53. Nothing contained herein is intended to be or shall be deemed 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

54. 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) 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

55. 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
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-and-

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*Proposed Counsel to the Debtors
and Debtors in Possession*

Exhibit A

Form Trade Agreement

TRADE AGREEMENT

[●] (the “**Company**”), on the one hand, and the supplier identified in the signature block below (“**Supplier**”), on the other hand, hereby enter into the following trade agreement (this “**Trade Agreement**”) dated as of the date in the Supplier’s signature block below.

Recitals

WHEREAS on July 20, 2020 (the “**Petition Date**”), Briggs & Stratton Corporation, and certain of its affiliates (collectively, the “**Debtors**”) filed voluntary petitions for relief under chapter 11 of the United States Bankruptcy Code, 11 U.S.C. §§ 101, *et seq.* (the “**Bankruptcy Code**”), in the United States Bankruptcy Court for the District of Delaware (the “**Court**”).

WHEREAS on [●], 2020, the Court entered its *Interim Order (I) Authorizing Debtors to Pay Prepetition Obligations in the Ordinary Course of Business to (A) Critical Vendors, (B) Foreign Creditors, and (C) 503(b)(9) Claimants; and (II) Granting Related Relief* (collectively, with the final order granting similar relief, the “**Critical Vendor Orders**”)¹ [Docket No. [●]] authorizing the Debtors on an interim basis, under certain conditions, to pay the prepetition claims of certain suppliers, including Supplier, subject to the terms and conditions set forth therein.

WHEREAS prior to the Petition Date, Supplier delivered goods to and/or performed services for the Company, and the Company paid Supplier for such goods and/or services, according to Customary Trade Terms (as defined herein).

WHEREAS the Company and Supplier (each a “**Party**,” and collectively, the “**Parties**”) agree to the following terms as a condition of payment on account of certain pre-petition claims Supplier may hold against the Company.

Agreement

1. Recitals. The foregoing recitals are incorporated herein by reference as if set forth at length herein.

2. Supplier Payment. Supplier represents and agrees that, after due investigation, the sum of all amounts currently due and owing by the Company to Supplier is \$[●] (the “**Agreed Supplier Claim**”). Following execution of this Trade Agreement, the Company shall, in full and final satisfaction of the Agreed Supplier Claim, pay Supplier \$[●] on account of its prepetition claim (the “**Supplier Payment**”) (without interest, penalties, or other charges), as such amounts become due and payable in the ordinary course.

3. Agreement to Supply.

a. Supplier shall supply goods and/or perform services to or for the Company, and the Company shall accept and pay for goods and/or service from Supplier, for the Duration of the Cases (as defined below), on the trade terms (the “**Customary Trade Terms**”) at least as favorable to the Company as those practices and programs (including credit limits, pricing, cash

¹ Capitalized terms used but not defined herein shall have the meanings set forth in the Critical Vendor Orders.

discounts, timing of payments, allowances (as may be incorporated or contemplated by any agreements between the Parties or based on historic practice, as applicable), product mix, availability, and other programs) in place in the 180 days prior to the Petition Date except for any partial payments or other payments (or assurances) Company made with respect to any unfinished product.

b. **“Duration of the Cases”** means the earlier of: (i) the effective date of a chapter 11 plan in the Debtors’ chapter 11 case; (ii) the closing of a sale of all or a material portion of the Debtors’ assets pursuant to Bankruptcy Code section 363 resulting in a cessation of the Debtors’ business operations; (iii) conversion of the Debtors’ chapter 11 cases to cases under chapter 7 of the Bankruptcy Code; or (iv) a default under any of the Debtors’ debtor-in-possession financing facilities that results in the Company losing access to funds available under any such facility.

c. The Customary Trade Terms may not be modified, adjusted, or reduced in a manner adverse to the Company except as agreed-to in writing by the Parties. For the avoidance of doubt, such Customary Trade Terms include, but are not limited to:

d. Supplier shall continue to honor any existing allowances, credits, contractual obligations, or balances that accrued as of the Petition Date and shall apply all such allowances, credits, or balances towards future orders in the ordinary course of business.

4. Other Matters.

a. Supplier agrees that it shall not require a lump-sum payment upon the effective date of a plan in the Debtors’ chapter 11 cases on account of any outstanding administrative claims Supplier may assert arising from the delivery of postpetition goods or services, to the extent that payment of such claims is not yet due. Supplier agrees that such claims will be paid in the ordinary course of business after confirmation of a plan pursuant to the Customary Trade Terms then in effect. The Supplier Payment will be made concurrently with payment of other outstanding administrative claims as provided in a confirmed plan.

b. Supplier will not separately seek payment from the Debtors on account of any prepetition claim (including, without limitation, any reclamation claim or any claim pursuant to section 503(b)(9) of the Bankruptcy Code) outside the terms of this Trade Agreement or a plan confirmed in the Company’s chapter 11 cases.

c. Supplier will not file or otherwise assert against the Debtors, their assets, or any other affiliated person or entity, or any of their respective assets or property (real or personal) any lien, regardless of the statute or other legal authority upon which the lien is asserted, related in any way to any remaining prepetition amounts allegedly owed to Supplier by the Debtors arising from prepetition agreements or transactions. Furthermore, if Supplier has taken steps to file or assert such a lien prior to entering into this Trade Agreement, Supplier will promptly take all necessary actions to remove such liens.

5. Breach.

a. In the event that the Company pays Supplier its Supplier Payment and Supplier is determined to have breached this Trade Agreement (a “**Supplier Breach**”), upon written notice to Supplier, Supplier shall promptly pay to the Company immediately available funds in an amount equal to, at the election of the Company, the Supplier Payment or any portion of the Supplier Payment which cannot be recovered by the Company from the postpetition receivables then owing to Supplier from the Company.

b. In the event that the Company recovers the Supplier Payment pursuant to Section 5(a) hereof or otherwise, the full Agreed Supplier Claim shall be reinstated as if the Supplier Payment had not been made.

c. Supplier agrees and acknowledges that irreparable damage would occur in the event of a Supplier Breach and remedies at law would not be adequate to compensate the Company. Accordingly, Supplier agrees that the Company shall have the right, in addition to any other rights and remedies existing in its favor, to seek an injunction or injunctions to prevent breaches of the provisions of this Trade Agreement and to enforce its rights and obligations hereunder not only by an action or actions for damages but also by an action or actions for specific performance, injunctive relief and/or other equitable relief. The right to equitable relief, including specific performance or injunctive relief, shall exist notwithstanding, and shall not be limited by, any other provision of this Trade Agreement. Supplier hereby waives any defense that a remedy at law is adequate and any requirement to post bond or other security in connection with actions instituted for injunctive relief, specific performance, or other equitable remedies. Notwithstanding the foregoing, in the event of a specific performance action by the Company, the Supplier retains its right to seek adequate assurance of payment and other similar relief pursuant to applicable law.

d. In the event the Company fails to pay for goods or services delivered postpetition in accordance with this Trade Agreement, and the Company fails to cure such default within ten (10) days after receiving notice of such default from the Supplier, the Supplier shall have the right to terminate this Trade Agreement, in which event the Supplier (i) shall have no obligation to continue to provide goods or services to the Company, and (ii) reserves its rights to file a timely proof of claim for any alleged unpaid amounts of the Supplier Payment.

6. Notice.

If to Supplier, then to the person and address identified in the signature block hereto.

If to Company:

Briggs & Stratton Corporation
12301 West Wirth Street
Wauwatosa, Wisconsin 53222
Attn: General Counsel
E-mail: generalcounsel@basco.com

– and –

Weil, Gotshal & Manges LLP
767 Fifth Avenue
New York, New York 10153
Attn: Martha Martir and Sarah Schnorrenberg
E-mail: martha.martir@weil.com and sarah.schnorrenberg@weil.com
Facsimile: (212) 310-8007

– and –

Carmody MacDonald P.C.
120 S. Central Avenue, Suite 1800
St. Louis, Missouri 63105
Attn: Robert E. Eggman, Christopher J. Lawhorn, and Thomas H. Riske
E-mail: ree@carmodymacdonald.com, cjl@carmodymacdonald.com, and
thr@carmodymacdonald.com
Facsimile: (314) 854-8660

7. Representations and Acknowledgements. The Parties agree, acknowledge and represent that:

a. the Parties have reviewed the terms and provisions of the Critical Vendor Orders and this Trade Agreement and consent to be bound by such terms and that this Trade Agreement is expressly subject to the procedures approved pursuant to the Critical Vendor Orders;

b. any payments made on account of the Agreed Supplier Claim shall be subject to the terms and conditions of the Critical Vendor Orders;

c. if Supplier refuses to supply goods or services to the Company as provided herein or otherwise fails to perform any of its obligations hereunder, the Company may exercise all rights and remedies available under the Critical Vendor Orders, the Bankruptcy Code, or applicable law; and

d. in the event of disagreement between the Parties regarding whether a breach has occurred, either Party may apply to the Court for a determination of their relative rights, in which event, no action may be taken by either Party, including, but not limited to, the discontinuing of shipment of goods from Supplier to the Company, until a ruling of the Court is obtained.

8. Confidentiality. In addition to any other obligations of confidentiality between Supplier and Company, Supplier agrees to hold in confidence and not disclose to any party: (a) this Trade Agreement; (b) any and all payments made by the Company pursuant to this Trade Agreement; (c) the terms of payment set forth herein; and (d) the Customary Trade Terms (collectively, the “**Confidential Information**”); provided that if any party seeks to compel Supplier’s disclosure of any or all of the Confidential Information, through judicial action or otherwise, or Supplier intends to disclose any or all of the Confidential Information, Supplier shall

immediately provide the Company with prompt written notice so that the Company may seek an injunction, protective order or any other available remedy to prevent such disclosure; provided, further, that, if such remedy is not obtained, Supplier shall furnish only such information as Supplier is legally required to provide.

9. Miscellaneous.

a. The Parties hereby represent and warrant that: (i) they have full authority to execute this Trade Agreement on behalf of the respective Parties; (ii) the respective Parties have full knowledge of, and have consented to, this Trade Agreement; and (iii) they are fully authorized to bind that Party to all of the terms and conditions of this Trade Agreement.

b. This Trade Agreement sets forth the entire understanding of the Parties regarding the subject matter hereof and supersedes all prior oral or written agreements between them for the Duration of the Cases, provided that any terms from prior agreements that are not addressed in the Trade Agreement continue to apply. This Trade Agreement may not be changed, modified, amended or supplemented, except in a writing signed by both Parties.

c. Signatures by facsimile or electronic signatures shall count as original signatures for all purposes.

d. This Trade Agreement may be executed in counterparts, each of which shall be deemed to be an original, but all of which shall constitute one and the same agreement.

e. The Parties hereby submit to the exclusive jurisdiction of the Court to resolve any dispute with respect to or arising from this Trade Agreement.

f. This Trade Agreement shall be deemed to have been drafted jointly by the Parties, and any uncertainty or omission shall not be construed as an attribution of drafting by any Party.

[Signature page follows]

AGREED AND ACCEPTED AS OF THE DATE SET FORTH ABOVE:

[COMPANY]

[SUPPLIER]

By:
Title:

By:
Title:
Address:

Date: