

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 ENTRY OF ORDERS (I) AUTHORIZING DEBTORS TO (A) CONTINUE EXISTING CASH MANAGEMENT SYSTEM, (B) HONOR CERTAIN PREPETITION OBLIGATIONS RELATED TO THE USE THEREOF, (C) CONTINUE INTERCOMPANY TRANSACTIONS AND PROVIDE ADMINISTRATIVE EXPENSE PRIORITY FOR POSTPETITION INTERCOMPANY CLAIMS, AND (D) CONTINUE SUPPLY CHAIN FINANCING; (II) WAIVING REQUIREMENTS OF SECTION 345(B) OF THE BANKRUPTCY CODE; AND (III) 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,

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.



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 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**”),<sup>2</sup> 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.

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<sup>2</sup> 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.

### **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, together with the Proposed Interim Order, the “**Proposed Orders**”),<sup>3</sup> pursuant to sections 105(a), 345(b), 363, and 503 of the Bankruptcy Code, (i) authorizing, but not directing, the Debtors to (a) continue using their existing cash management system, as described herein, (the “**Cash Management System**”), including the maintenance of existing bank accounts at their existing banks, listed on **Exhibit A** attached hereto, consistent with Debtors’ prepetition practices, (b) honor certain prepetition obligations related to the Cash Management System, (c) maintain existing business forms in the ordinary course of business, (d) continue to maintain intercompany business relationships with Debtor and non-Debtor affiliates consistent with historical practice and pay prepetition and postpetition obligations related thereto in the ordinary course of business, and (e) continue the Supply Chain Financing in the ordinary course; (ii) waiving the requirements of section 345(b) of the Bankruptcy Code; and (iii) granting related relief.

### **The Cash Management System**

5. The Debtors are leading manufacturers and distributors of gasoline engines and outdoor power equipment in North America, South America, Europe, Asia, South Africa, and Australia. For years, the Debtors have been the trusted suppliers of both residential and commercial engines, generators, lawn mowers, pressure washers, snow blowers, and other outdoor machinery. The Debtors generate and receive funds primarily from agreements with various customers, chiefly through their two operating segments—engines and products.

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

6. In the ordinary course of business, the Debtors utilize an integrated, centralized Cash Management System to collect, concentrate, and disburse funds generated by their operations. The Cash Management System is similar to those commonly employed by corporate enterprises comparable to the Debtors in size and complexity. The Cash Management System is tailored to meet the Debtors' operating needs and enables the Debtors to (i) collect and disburse cash generated by their business effectively and efficiently, (ii) pay their financial obligations in a timely manner, (iii) centrally control and monitor corporate funds and available cash, (iv) comply with the requirements of their financing agreements, (v) reduce administrative expenses, and (vi) obtain accurate account balances and other financial data.

7. The Company's Cash Management System has three main components (i) cash collection and concentration, (ii) cash disbursement, and (iii) financing and credits. To provide a general overview of the movement of cash through the Company's Cash Management System, attached hereto as **Exhibit B** is a schematic diagram illustrating the flow of funds through the Cash Management System. As described herein, any disruption to the Cash Management System would have an immediate adverse impact on the Debtors' business, as their businesses require prompt access to cash. Accordingly, to minimize the disruption and maximize the value of the Debtors' estates for the benefit of their creditors and stakeholders, the Debtors request the authority to continue to utilize their existing Cash Management System during the pendency of these chapter 11 cases.

#### **A. Bank Accounts and Cash Flow**

8. The Cash Management System facilitates cash monitoring, forecasting, and reporting. It enables the Company to maintain control over the administration of 107 Bank Accounts, twenty (20) of which are held by certain Debtors (collectively, the "**Bank Accounts**"). As set forth below, the Bank Accounts are maintained by Bank of America, N.A. ("**BoA**"),

JPMorgan Chase Bank, N.A. (“**JPM**”), U.S. Bank National Association (“**US Bank**”), Bank of Montreal, BMO Wealth Management (together with the Bank of Montreal, “**BMO**”), and SunTrust Community Capital, LLC (“**SunTrust**” and, collectively with BoA, JPM, US Bank, and BMO, the “**Banks**”). The Debtors’ corporate treasury and accounting departments, which are located at the Company’s headquarters in Wauwatosa, Wisconsin, maintain daily oversight over the Cash Management System, implement controls for processing funds, and regularly reconcile the Debtors’ books and records to ensure all transactions, including Intercompany Transactions (as defined below), are accounted for properly.

9. The Company’s operations consist of its (i) North American operations (“**Briggs Americas**”) and (ii) European and other international operations (“**Briggs International**”). The Company maintains separate and independent cash pool systems for Briggs Americas (the “**Americas Cash Pool**”) and Briggs International (the “**International Cash Pool**”), each of which aggregates cash receipts and disbursements within the bank accounts that comprise their respective systems. The Americas Cash Pool is comprised of twenty (20) bank accounts, all held by the Debtors:<sup>4</sup> eighteen (18) held by Briggs & Stratton Corporation (“**Debtor B&S**”), one (1) held by Billy Goat Industries, Inc. (“**Debtor BG**”), and one (1) held by Briggs & Stratton International, Inc. The International Cash Pool is comprised of eighty-seven (87) bank accounts held by non-Debtors (collectively, the “**International Bank Accounts**”). In the ordinary

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<sup>4</sup> Debtor B&S also holds a Rabbi Trust account (\*3600) with Wells Fargo, N.A. bank that holds restricted cash for the benefit of the Debtors’ former workforce. This is described more fully in the *Motion of Debtors for Interim and Final Orders (I) Authorizing Debtors to (A) Pay Prepetition Wages, Salaries, Commissions, Employee Benefits, and Other Obligations, (B) Maintain Employee Benefit Programs, (C) Pay Related Administrative Obligations, (D) Pay Supplemental Workforce Obligations, and (E) Terminate Deferred Compensation Plans; and (II) Granting Related Relief.*

Additionally, Debtor B&S holds four (4) accounts with SunTrust (\*0942, \*0959, \*0967, \*0975) that hold restricted cash in connection with the New Market Tax Credits, as described more fully in the Ficks Declaration.

course of business, other than Intercompany Transactions (as described herein), funds do not flow between the Americas Cash Pool and International Cash Pool.

10. As explained in further detail below, the Cash Management System generally has five types of accounts: (a) collection accounts into which cash, customer receipts, and other receivables generated from the Debtors' operations are deposited (collectively, the "**Collection Accounts**"), (b) disbursement accounts for designated disbursements (collectively, the "**Disbursement Accounts**"), (c) hybrid accounts that are both Collection Accounts and Disbursement Accounts (collectively, the "**Hybrid Accounts**"), (d) accounts relating to the New Market Tax Credit program (collectively, the "**NMTC Accounts**"), and (e) standalone accounts that are not integrated into the Cash Management System but are segregated accounts used for specific purposes (collectively, the "**Standalone Accounts**").

11. Funds in the Main Collection Account are swept daily to pay down outstanding revolver amounts in accordance with the terms of the ABL Credit Facility (as defined in the Ficks Declaration).<sup>5</sup> To fund the Debtors' ongoing operations, Debtor B&S, for itself and/or its subsidiaries, may access undrawn amounts available under the ABL Facility by submitting a Notice of Borrowing, as defined in and submitted in accordance with the ABL Credit Facility (each, a "**Draw Notice**"). Draw Notices are submitted by Debtor B&S on an as-needed basis to pay the Debtors' operating expenses. Upon receipt of a Draw Notice, the ABL Facility advances

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<sup>5</sup> As more fully described in 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**"), filed concurrently herewith, cash dominion will remain in effect, at all times during the period between entry of the Interim Order and Final Order approving the DIP Motion, to pay down the obligations under the ABL Credit Facility, but on and after the entry of the Final Order, dominion will be springing if (a) the Aggregate Availability is less than the greater of (i) 10% of the Line Cap and (ii) \$40 million for five (5) consecutive Business Days, until such date as (b) Aggregate Availability shall have been at least equal to the greater of 10% of the Line Cap and (ii) \$40 million for thirty (30) consecutive calendar days (all capitalized terms in this footnote are as defined in the DIP Motion).

funds to the Main Disbursement Account. Funds remain in the Main Disbursement Account until they are transferred to other Disbursement Accounts or disbursed in the ordinary course of business.

12. The following tables summarize the functions and flow of funds to and from the Bank Accounts in the Cash Management System:

<b>Debtors Bank Accounts</b>		
<b>Account</b>	<b>Debtor</b>	<b>Description of Account and Flow of Funds To / From</b>
<b>Collection Accounts</b>		
Main Collection Account USD (*4049)	Debtor B&S	<p>The JPM collection account (the “<b>Main Collection Account</b>”) is comprised of U.S. customer receipts, dividends, hedge settlements, intercompany trade receivables, and intercompany royalties.</p> <p>The Main Collection Account is subject to cash dominion; it is automatically swept daily by JPM to pay down the ABL Credit Facility.</p> <p>As of the Petition Date, the Main Collection Account had a balance of approximately \$8,070,910.</p> <p>Additionally, the Debtors maintain three lockboxes with JPM, each held by Debtor B&amp;S (*27397), Debtor BG (*28280), and Allmand Bros., Inc. (*28060), where U.S.-based customer checks are directed (the “<b>Lock Box Accounts</b>”). Checks received by the Lock Box Accounts are deposited into the Main Collection Account daily.</p>
EUR Collection Account (*8011)	Debtor B&S	<p>This BoA collection account (the “<b>EUR Collection Account</b>”) collects receipts from European customers, dividends from foreign subsidiaries, and intercompany trade receivables.</p> <p>Each week, the Debtors manually transfer funds from the EUR Collection Account to the Main Collection Account (*4049).</p> <p>As of the Petition Date, the EUR Collection account had a balance of approximately €5,003.</p>
CAD Collection Account (*1266)	Debtor B&S	<p>This Bank of Montreal collection account (the “<b>CAD Collection Account</b>”) collects receipts from Canadian</p>

Debtors Bank Accounts		
		<p>customers and certain dividends received from non-Debtor Briggs &amp; Stratton Canada Inc. The CAD Collection Account previously issued checks, some of which are still outstanding. However, this account no longer issues new checks.</p> <p>As of the Petition Date, the CAD Collection Account had a balance of approximately CA\$508,740.</p>
Disbursement Accounts		
Main Disbursement Account (*1465)	Debtor B&S	<p>This US Bank disbursement account (the “<b>Main Disbursement Account</b>”) is used to fund payroll, health benefits, 401(k) accounts, travel reimbursements, corporate credit card charges, and derivative payments. This account also receives credit card payments from certain customers. The Main Disbursement Account also transfers funds to other Disbursement Accounts.</p> <p>The Main Disbursement Account is funded through periodic draws from the ABL Credit Facility.</p> <p>As of the Petition Date, the Main Disbursement Account had a balance of approximately \$5,858,972.</p>
Control Disbursement Account (*3619)	Debtor B&S	<p>This US Bank disbursement account (the “<b>Control Disbursement Account</b>”) is used to pay the Debtors’ accounts payables, including vendor payments, warranty reimbursement claims to dealers, and to fund the JPY Hybrid Account.</p> <p>The Control Disbursement Account is funded as needed from the Main Disbursement Account.</p> <p>As of the Petition Date, the Control Disbursement Account had a balance of approximately \$93,391.</p>
EUR Disbursement Account (*8029)	Debtor B&S	<p>This BoA disbursement account (the “<b>EUR Disbursement Account</b>”) is used to make payments to European vendors, make intercompany transfers to European subsidiaries, and pay any warranty claims submitted within Europe.</p> <p>The EUR Disbursement Account is funded as needed from the Main Disbursement Account, which currency is exchanged into the applicable European currency.</p> <p>As of the Petition Date, the EUR Disbursement Account had a balance of approximately €196,189.</p>



<b>Debtors Bank Accounts</b>		
CAD Disbursement Account (*1253)	Debtor B&S	<p>This US Bank disbursement account (the “<b>CAD Disbursement Account</b>”) is used to pay operating expenses, payments to Canadian vendors, intercompany transfers to Canadian entities, taxes, corporate credit card payments, and travel reimbursements.</p> <p>The CAD Disbursement Account is funded through intercompany transfers from the Main Disbursement Account, which funds are converted to Canadian dollars.</p> <p>As of the Petition Date, the CAD Disbursement Account had a balance of approximately CA\$865,972.</p>
ACH Disbursement Account (*0362)	Debtor B&S	<p>Due to the Main Disbursement Account being a controlled disbursement account, US Bank requested the Debtors establish a disbursement account to handle automated clearing house transfers separate from checks.</p> <p>As of the Petition Date, the ACH Disbursement Account had zero balance.</p>
<b>Hybrid Accounts</b>		
JPY Hybrid Account (*1014)	Debtor B&S	<p>This hybrid BoA account (the “<b>JPY Hybrid Account</b>”) is used by Debtor B&amp;S to fund the purchase of Japanese parts by non-Debtor Briggs &amp; Stratton Japan Yugen Kaisha (“<b>B&amp;S Japan</b>”) on behalf of Debtor B&amp;S for use in U.S. manufacturing plants.</p> <p>The JPY Hybrid Account is funded through intercompany transfers from the Main Disbursement Account and funds are converted to Japanese yen.</p> <p>In the ordinary course of business, payments to B&amp;S Japan are made in JPY from existing JPY in the JPY Hybrid Account or through the use of spot trades.<sup>6</sup></p> <p>As of the Petition Date, the JPY Hybrid Account had a balance of approximately ¥131,969,959.</p>
<b>NMTC Accounts</b>		
NMTC Operating Account (*0934)	Debtor B&S	<p>The NMTC Operating Account is maintained with SunTrust in connection with the NMTC program. Historically, each quarter, Debtor B&amp;S transferred approximately \$45,000 into this account from the Main</p>

<sup>6</sup> The Debtors intend to continue the use of spot trades in the ordinary course of business.

<b>Debtors Bank Accounts</b>		
		<p>Disbursement Account to make interest payments associated with the project.</p> <p>As of the Petition Date, the NMTC Operating Account had a balance of approximately \$60,069.</p>
New Market Tax Credit (*3304)	Debtor BG	<p>This US Bank account receives quarterly interest payments from SunTrust due under the NMTC program. Currently, these funds are stagnant and do not disburse to other accounts.</p> <p>As of this Petition Date, the New Market Tax Credit account had a balance of approximately \$39,876.</p>
<b>Standalone Accounts</b>		
Certificate of Deposit Account (*6598)	Debtor B&S	<p>The Debtors maintain a certificate of deposit account with BoA to support a letter of credit issued in India for the benefit of B&amp;S Switzerland L.R.O. (India). This account has no activity.</p> <p>As of the Petition Date, the Certificate of Deposit account had a balance of approximately \$10,500.</p>
Investment Account (*8717)	Debtor B&S	<p>This BMO account receives a small amount of dividends from corresponding shares in Toyota Motor Corporation.</p> <p>As of this Petition Date, this account had a balance of approximately \$17,256.</p>
DMC Liability (*6422)	Debtor B&S	<p>This US Bank account was established in connection with the Daihatsu joint venture, which was recently wound down. This account has no activity.</p> <p>As of this Petition Date, this account had a balance of approximately \$79,430.</p>
B&S Int'l Standalone (*4237)	Debtor Briggs & Stratton International	<p>This US Bank account (the “<b>B&amp;S Int'l Standalone</b>”) receives dividends from certain subsidiaries, historically its non-Debtor China subsidiaries. Upon receipt of dividends, the account funds are transferred to the Main Disbursement Account.</p> <p>As of the Petition Date, the B&amp;A Int'l Standalone account had zero balance.</p>

**B. Company Business Forms and Books and Records**

13. The Company uses a variety of preprinted business forms, including checks, letterhead, correspondence forms, invoices, and other business forms in the ordinary course of

business (collectively, and as they may be modified from time to time, the “**Business Forms**”). The Debtors also maintain books and records to document their financial results and a wide array of necessary operating information (collectively, the “**Books and Records**”). To avoid a significant disruption to their business operations that would result from a disruption of the Cash Management System, and to avoid unnecessary expense, the Debtors request authority to continue using all Business Forms and Books and Records in use immediately before the Petition Date—without reference to the Debtors’ status as chapter 11 debtors in possession—rather than being required to incur the expense and delay of ordering or printing new Business Forms and creating new Books and Records; *provided, however*, that with respect to checks that the Debtors print themselves, the Debtors will include the “Debtor in Possession” legend on those checks reasonably promptly after the date of entry of the Proposed Interim Order.

### **C. Bank Fees**

14. In the ordinary course of business, the Debtors incur periodic foreign transaction fees, service charges, and other charges in connection with the maintenance of the Debtors’ Cash Management System (such charges and fees, the “**Bank Fees**”). The Debtors incur approximately \$34,554 in Bank Fees each month under the Cash Management System in the aggregate; these Bank Fees are automatically deducted from the Bank Accounts as they are assessed by their respective Banks. The Debtors respectfully request that the Court authorize the Debtors to continue to pay the Bank Fees, including any prepetition Bank Fees, on or subsequent to the Petition Date, in the ordinary course of business. As of the Petition Date, the Debtors believe that approximately \$54,554 of prepetition Bank Fees are outstanding, \$34,554 of which are due and payable within thirty (30) days from the Petition Date.

#### **D. Intercompany Transactions**

15. The Intercompany Transactions are an essential component of the Debtors' operations and centralized Cash Management System. The Intercompany Transactions generate operational efficiencies, increase operational flexibility, provide significant cost savings, and improve the market position of both the Debtors and their non-Debtor affiliates, all of which benefit the Debtors' estates.

16. In the ordinary course of business, the Debtors maintain business relationships with each other and with non-Debtor affiliates. Intercompany transactions (the "**Intercompany Transactions**") between entities result in intercompany receivables and payables and short term or long term notes (the "**Intercompany Claims**"). At any given time as a result of the Intercompany Transactions, there may be claims by one Debtor to another Debtor or to non-Debtor affiliate and vice-versa. Some of the Intercompany Claims result from the use of the Cash Management System—for example revenues belonging to Debtor BG being deposited in a Debtor B&S Bank Account result in an Intercompany Claim from Debtor B&S to Debtor BG. In addition, the Debtors' ordinary course Intercompany Transactions with Debtors and non-Debtor affiliates include (i) procurements, (ii) commissioned sales, (iii) royalties, (iv) dividend payments, and (v) warranty payments.

17. Procurement. Intercompany supplier arrangements assist the Company to purchase various materials and components needed for the manufacturing process. For example, in the ordinary course of business, Debtor B&S purchases finished products from Briggs & Stratton (Chongqing) Engine Co., Ltd ("**B&S China**"). Ninety-nine percent (99%) of the product B&S China produces is purchased by Debtor B&S or non-Debtor affiliates, a significant portion of which is subsequently sold to Debtor B&S. Without Debtor B&S's intercompany payments, B&S China would suffer a substantial loss, perhaps being unable to operate. Ultimately, this could

cause the Debtors to be unable to receive necessary product causing them hardship, as well as loss of value. Similarly, as discussed above, B&S Japan purchases certain parts from local Japanese suppliers on behalf of Debtor B&S, which creates an Intercompany Claim between the two entities. Debtor B&S settles the Intercompany Claim by paying B&S Japan in cash; B&S Japan then uses the cash to pay the Japanese supplier.

18. Commissioned Sales. Sales of the Debtors' products are, in part, performed through a network of commissionaires, which consist of foreign non-Debtor affiliates. Commissionaires do not purchase or take title to the finished goods, rather they assist the seller by facilitating the sale in the applicable foreign regional territory. Customer receipts from sales generated under this arrangement are the Debtors' property and deposited into Debtor B&S's Bank Account, and each month or quarter, as applicable, the commissionaire receives a commission payment.

19. Royalties. A majority of the Company's intellectual property ("IP") portfolio has been conveyed to Debtor Briggs & Stratton Tech, LLC ("**Debtor B&S Tech**"). In exchange for use of the IP between Debtor B&S Tech and non-Debtor affiliates, Debtor B&S Tech charges the Company affiliate that uses the IP a royalty, which results in an Intercompany Claim. In addition, Debtor B&S Tech also licenses the Company's IP to third parties in exchange for a royalty. Debtor B&S Tech receives approximately \$5,200,000 in royalties from non-Debtor affiliates and third parties each year. Such royalties are deposited into the Main Collection Account at Debtor B&S and recorded as an Intercompany Transaction (a payable from Debtor B&S to Debtor B&S Tech, for Debtor B&S Tech does not have its own bank account).

20. Dividend Payments. Debtor B&S receives periodic dividends from its subsidiaries and joint ventures, including, among others, B&S China, Power Distributors, LLC,

Starting USA Corporation, and Briggs & Stratton Canada Inc. The Debtors receive approximately \$2,000,000 to \$5,000,000 in dividends each year, subject to the financial performance of the subsidiaries and joint ventures.

21. Warranty Payments. Intercompany Transactions are also used to facilitate and process global warranty claims. Foreign non-Debtor affiliates service Debtor B&S warranted product, and Debtor B&S reimburses such affiliates for their parts and labor.

22. The Company tracks all Intercompany Transactions electronically in its accounting system, and such transactions concurrently are recorded on the applicable Company entities' balance sheets. The accounting system requires that all general-ledger entries be balanced at the legal entity level; therefore, when the accounting system enters an intercompany receivable on one entity's balance sheet, it also automatically creates a corresponding intercompany payable on the applicable affiliate's balance sheet. This results in a net balance of zero when accumulating all intercompany accounts. The Company maintains records of all transactions processed through its Cash Management System and is able to ascertain, trace, and account for all Intercompany Transactions, including all Intercompany Claims held by and against non-Debtor affiliates. Intercompany Claims between the Debtors and foreign non-Debtor affiliates are generally settled by actual transfers of cash<sup>7</sup> between and among such Company entities, sometimes after amounts between Company affiliates have been netted. On the other hand, Intercompany Claims between Debtor entities, some of which arise from the fact that most of the Debtors' operations are conducted using Debtor B&S Bank Accounts, are recorded in the central Books and Records,

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<sup>7</sup> The majority of payments in cash from Debtor B&S are in support of B&S China for finished products that Debtor B&S sells in both domestic and foreign markets.

denoting the amount paid by which Debtor entity and the amount received from the respective Debtors, and not settled in cash.

23. To preserve the value of the Debtors' estates and ensure that the Company's global business is not interrupted by these chapter 11 cases, the Debtors seek (i) authorization, but not direction, to continue to undertake and engage in the Intercompany Transactions in the ordinary course and consistent with past practice, (ii) authorization, but not direction, to continue to make payments on Intercompany Claims on account of obligations arising both before and after the Petition Date, between Debtors and non-Debtor Affiliates, including payments by Debtor B&S to B&S China and B&S Japan, subject in all respects to the terms of the Debtors' DIP Facility (as defined herein) (and, together with any order entered by the court approving the Debtors' entry into such DIP Facility, the "**DIP Order**") and (iii) request Court approval to accord administrative expense priority status to all claims arising after the Petition Date as a result of an Intercompany Transaction between Debtors in the ordinary course of business.

#### **E. Credit Card Program**

24. In the ordinary course of business, the Debtors maintain company-paid credit cards (the "**Credit Cards**") issued by U.S. Bank. In general, the Credit Cards are used for travel and expenses and various other corporate expenses, as well as small procurement purchases, marketing, and professional development. Prior to the pandemic, the Debtors incurred average liabilities of approximately \$850,000 per month on account of the Credit Cards. U.S. Bank hold security for the Debtors' repayment obligations in the form of a letter of credit in the amount of \$333,365 issued under the ABL Credit Agreement (as defined in the Ficks declaration) and a cash deposit of approximately \$577,421.90 as security collateral. The Company is currently transitioning to a prepaid credit system. As of the Petition Date, the Debtors believe that approximately \$78,000 of prepetition Credit Card charges are outstanding on the original program,

all of which is due and payable within thirty (30) days from the Petition Date. The Debtors request authority to continue to make all payments in connection with the Credit Cards in the ordinary course of business, and consistent with the Debtors' past practices.

#### **F. Supply Chain Financing**

25. As a means to generate additional liquidity and to ensure against the credit risk of certain of their customers, the Debtors are parties to several agreements with institutions that purchase the accounts receivable generated by the Debtors from the sale of goods to those customers.

26. Debtor B&S has entered into (i) a supplier agreement, dated as of April 16, 2013 (as amended, restated, amended and restated, supplemented or otherwise modified from time to time, the "**Citi SCF Agreement**"), between Debtor B&S, as supplier, and Citibank, N.A. ("**Citi**"), (ii) a receivables purchase agreement, dated on or about August 2017 (as amended, restated, amended and restated, supplemented or otherwise modified from time to time, the "**JPM SCF Agreement**"), between Debtor B&S and JPM, (iii) a purchase agreement, dated as of October 16, 2018 (as amended, restated, amended and restated, supplemented or otherwise modified from time to time, the "**BoA SCF Agreement**"), between Debtor B&S and BoA, and (iv) the supplier agreement, dated as of May 27, 2014 (as amended, restated, amended and restated, supplemented or otherwise modified from time to time, the "**PrimeRevenue Agreement**"), between Debtor B&S and PrimeRevenue, Inc. ("**PrimeRevenue**"), pursuant to which PrimeRevenue facilitates the purchase by Bank of Montreal of accounts receivables under the terms of an accounts receivable purchase agreement, dated as of May 27, 2014 (as amended, restated, amended and restated, supplemented or otherwise modified from time to time, and collectively with the PrimeRevenue Agreement, the Citi SCF Agreement, the JPM SCF Agreement and the BoA SCF Agreement, the "**AR Purchase Agreements**") between Debtor B&S and Bank of Montreal (collectively, with Citi,



JPM and BoA, the “**AR Purchasers**”). Pursuant to the terms of the AR Purchase Agreements, Debtor B&S has agreed to sell from time to time, and the AR Purchasers have agreed to purchase from Debtor B&S, certain accounts receivables (the “**Receivables**”) in connection with the sale by Debtor B&S of products and services to certain buyers (the “**Supply Chain Financing**”).<sup>8</sup>

27. The Debtors do not guarantee the obligations under the AR Purchase Agreements and the various AR Purchasers do not have recourse against the Debtors except in limited circumstances relating to a breach of the AR Purchase Agreement. The sale of the Receivables from Debtor B&S to the AR Purchaser provides Debtor B&S with liquidity to fund operating disbursements and limits certain risks of non-collection associated with the Receivables. Pursuant to the AR Purchase Agreements, proceeds received from third parties on account of their purchases from Debtor B&S are received directly by the AR Purchasers, and thus never become property of the Debtors’ bankruptcy estates.

28. By this Motion, the Debtors request authority, but not direction, to continue in the ordinary course to perform under the AR Purchase Agreements, including, but not limited to, the sale of Receivables from Debtor B&S to the AR Purchasers, the immediate payment by the AR Purchasers of the appropriate purchase price, and the subsequent cash proceeds of such third purchases being paid directly to the AR Purchasers consistent with the terms of the relevant agreements with the AR Purchasers and past practices in the ordinary course of business.

**Relief Requested Should Be Granted**

29. The Cash Management System, Intercompany Transactions, Credit Cards, and Supply Chain Financing constitute ordinary-course and essential business practices that

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<sup>8</sup> Upon the sale of the Receivables to the AR Purchasers, pursuant to the applicable AR Purchase Agreements, the ABL Lenders’ lien on the Receivables under the ABL Credit Facility is released.

provide significant benefit to the Debtors, including the ability to control corporate funds, ensure the maximum availability of funds when and where necessary, reduce borrowing costs and administrative expenses by facilitating the movement of funds, and ensure the availability of timely and accurate account balance information consistent with prepetition practices. The use of the Cash Management System has historically reduced the Debtors' expenses by enabling them to use funds in an optimal and efficient manner. Accordingly, the continued use of the Cash Management System and ability to utilize Intercompany Transactions, Credit Cards, and the Supply Chain Financing without interruption is vital to the Debtors' business operations and the success of these chapter 11 cases.

**A. Continuation of the Cash Management System Is in the Best Interests of the Debtors and All Parties in Interest**

30. The efficient and economical operation of the Debtors' businesses requires that the Cash Management System continue during the pendency of these chapter 11 cases. As a practical matter, because of the Debtors' corporate and financial structure, it would be difficult and expensive to establish and maintain a separate cash management system for each Debtor. Further, requiring the Debtors to adopt new, segmented cash management systems at this early and critical stage of these cases would be expensive, create unnecessary administrative burdens, and be extraordinarily disruptive to their business operations. Any such disruption would have a severe and adverse impact upon the Debtors' reorganization efforts.

31. Accordingly, the Debtors seek authority to continue using the Cash Management System consistent with the same manner as the Cash Management System was utilized prior to the Petition Date and to implement ordinary-course changes to the Cash Management System consistent with past practice. Section 363(c)(1) of the Bankruptcy Code authorizes the debtor in possession to "use property of the estate in the ordinary course of business

without notice or a hearing.” The purpose of section 363(c)(1) is to provide a debtor in possession with the flexibility to engage in the ordinary transactions required to operate its business without unneeded oversight by its creditors or the court. *See In re Roth Am., Inc.*, 975 F.2d 949, 952 (3d Cir. 1992); *Habinger, Inc. v. Metropolitan Cosmetic and Reconstructive Surgical Clinic, P.A.*, 124 B.R. 784, 786 (Bankr. D. Minn. 1990) (citing *United States ex rel. Harrison v. Estate of Deutscher*, 115 B.R. 592 (Bankr. M.D. Tenn. 1990)). Included within the purview of section 363(c) is a debtor’s ability to continue the “routine transactions” necessitated by a debtor’s cash management system. *Amdura Nat’l Distrib. Co. v. Amdura Corp. (In re Amdura Corp.)*, 75 F.3d 1447, 1453 (10th Cir. 1996). The Company’s Cash Management System overall benefits the Debtors, through, among other things, the ability to control corporate funds, ensure the maximum availability of funds when and where necessary, and reduce borrowing costs and administrative expenses by facilitating the movement of funds and more timely and accurate account balance information. Accordingly, as stated, the Debtors seek authority under section 363(c)(1) to continue the Cash Management System as it operated prepetition.

32. In addition, the Court also may rely on its general equitable powers to grant the relief requested herein. Section 105(a) of the Bankruptcy Code empowers the Court to “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 Foresight Energy LP*, No. 20-41308 (KSS) (Bankr. E.D. Mo. Apr. 7, 2020) [Docket No. 241]; *In re Abengoa Bioenergy US Holding, LLC*, No. 16-41161-659 (KSS) (Bankr. E.D. Mo. Mar. 4, 2016) [Docket No. 93]. Courts have consistently permitted postpetition payment of prepetition obligations “where the payment is necessary to permit the effectuation of the rehabilitative purposes of the Bankruptcy Code.” *In re Sharon Steel Corp.*, 159 B.R. 730, 736 (Bankr. W.D. Penn. 1993); *see also In re Lehigh & New England Ry. Co.*, 657 F.2d

570, 581 (3d Cir. 1981) (holding that a court may authorize payment of prepetition claims if such payment is essential to continued operation of the debtor); *See In re Chinichian*, 784 F.2d 1440, 1443 (9th Cir. 1986) (“Section 105 sets out the power of the bankruptcy court to fashion orders as necessary pursuant to the purposes of the Bankruptcy Code.”); *In re NWFx, Inc.*, 864 F.2d 588, 590 (8th Cir. 1988) (“The overriding consideration in bankruptcy, however, is that equitable principles govern”); *Steinberg v. Esposito*, 33 B.R. 812, 813 (Bankr. N.D. Ill. 1983) (The “bankruptcy court is vested with great latitude to protect the assets of the debtor’s estate, including the use of equitable remedies”). Continuing the Company’s Cash Management System without interruption is vital to the Company’s business operations and success of these chapter 11 cases. Therefore, it is within the Court’s equitable powers under section 105(a) to approve the continued use of the Cash Management System.

33. Moreover, these procedures are similar to those employed by comparable corporate enterprises, and the relief requested herein seeking to maintain the Company’s existing Cash Management System is routinely granted in chapter 11 cases by bankruptcy courts in this district. *See, e.g., In re Payless Holdings LLC*, No. 19-40883 (KSS) (Bankr. E.D. Mo. Apr. 13, 2019) [Docket No. 783]; *In re Payless Holdings LLC*, No. 17-42267 (KSS) (Bankr. E.D. Mo. May 25, 2017) [Docket No. 892]; *In re Abengoa Bioenergy US Holding, LLC*, No. 16-41161 (KSS) (Bankr. E.D. Mo. Aug. 14, 2016) [Docket No. 473]; *In re Peabody Energy Corp.*, No. 16-42529 (BSS) (Bankr. E.D. Mo. May 17, 2016); *In re Noranda Aluminum, Inc.*, No. 16-10083 (BSS) (Bankr. E.D. Mo. April 13, 2016) [Docket No. 643]; *In re Arch Coal*, No. 16-40120 (CER) (Bankr. E.D. Mo. Apr. 8, 2016).

**B. Maintenance of the Debtors' Existing Bank Accounts and Business Forms Is Warranted**

34. The U.S. Trustee's *Operating Guidelines and Financial Reporting Requirements for Debtors in Possession and Trustees* (the "**UST Operating Guidelines**"), generally requires that a chapter 11 debtor, among other things: (i) establish one debtor in possession account for all estate monies required for the payment of taxes (including payroll taxes); (ii) close all existing bank accounts and open new debtor in possession accounts with an authorized depository that agrees with the requirements of the Office of the U.S. Trustee for the District of Missouri (the "**U.S. Trustee**"); (iii) maintain a separate debtor in possession account for cash collateral; and (iv) obtain checks that bear the designation "Debtor in Possession." See UST Operating Guidelines § 7-1.

35. If the Debtors were required to open new debtor in possession accounts and modify the Cash Management System accordingly, the Debtors would be forced to reconstruct the Cash Management System in its entirety, which would prove unnecessarily cumbersome during a critical time for the Company. The Debtors' treasury department, including accounting and bookkeeping employees, would need to focus their efforts on immediately opening new bank accounts and working to establish controls for cash to flow properly, thereby diverting their attention from stabilizing their operations and their daily responsibilities, all of which would have a negative impact on the Debtors' ability to operate their business, and ultimately, the Debtors' estates.

36. The Debtors request that the Court waive the requirements of the UST Operating Guidelines. Any benefits of the Debtors' strict compliance with the UST Operating Guidelines would be far outweighed by the resulting expense, inefficiencies, and disruption to the Debtors' businesses. Moreover, this Court has authority to waive the strict enforcement of the

bank account closing requirements imposed pursuant to the guidelines adopted by the U.S. Trustee. Such relief is routinely granted in this district. *See, e.g., In re Foresight Energy LP*, No. 20-41308 (KSS) (Bankr. E.D. Mo. Apr. 7, 2020) [Docket No. 241]; *In re Payless Holdings LLC*, 19-40883 (KSS) (Bankr. E.D. Mo. Apr. 3, 2019) [Docket No. 783]; *In re Abengoa Bioenergy US Holding, LLC*, No. 16-41161 (KSS) (Bankr. E.D. Mo. Aug. 14, 2016) [Docket No. 473]; *In re Noranda Aluminum, Inc.*, No. 16-10083 (BSS) (Bankr. E.D. Mo. April 13, 2016) [Docket No. 643]; *In re Peabody Energy Corp.*, No. 16-42529 (BSS) (Bankr. E.D. Mo. May 17, 2016); *In re Arch Coal, Inc.*, No. 16-40120 (CER) (Bankr. E.D. Mo. Apr. 8, 2016).

37. To minimize expenses, the Debtors further request authority to continue to use their Business Forms substantially in the forms existing immediately prior to the commencement of these chapter 11 cases, without reference to their status as debtors in possession. If the Debtors re-order checks or generate new checks during the pendency of these chapter 11 cases, such checks shall include a legend referring to the Debtors as “Debtors in Possession.” By virtue of the nature and scope of the Debtors’ business operations and the large number of vendors and customers with which the Debtors transact, it is important that the Debtors be permitted to continue to use their existing Business Forms without alteration. In other cases, courts in this district have allowed debtors to use their prepetition business forms without the “debtors in possession” label. *See, e.g., In re Foresight Energy LP*, No. 20-41308 (KSS) (Bankr. E.D. Mo. Apr. 7, 2020) [Docket No. 241]; *In re Payless Holdings LLC*, 19-40883 (KSS) (Bankr. E.D. Mo. Apr. 3, 2019) [Docket No. 783]; *In re Peabody Energy Corp.*, No. 16-42529 (BSS) (Bankr. E.D. Mo. May 17, 2016); *In re Arch Coal, Inc.*, No. 16-40120 (CER) (Bankr. E.D. Mo. Apr. 8, 2016); *In re Noranda Aluminum, Inc.*, No. 16-10083 (Bankr. E.D. Mo. Feb. 9, 2016) [Docket No. 79]. Because parties doing business with the Debtors undoubtedly will be aware of the Debtors’ status

as debtors in possession as a result of the publicized nature of these chapter 11 cases and the notice of commencement that the Debtors will distribute to parties in interest, changing the Business Forms, except as noted above, would be unnecessary and unduly burdensome.

38. In furtherance of the foregoing, the Debtors request that all Banks at which the Bank Accounts are maintained be authorized to continue administering such accounts as they were maintained prepetition, without interruption, and in the ordinary course of business. The Banks should also be authorized to pay any and all checks, drafts, wires, or automated clearing house transfers issued or drawn on the Bank Accounts for payment of any claims arising on or after the Petition Date, or prior to the Petition Date to the extent such claims were approved by an order of the Court, in each case so long as sufficient funds exist in the relevant accounts.

**C. The Court Should Authorize the Debtors to Pay Prepetition Bank Fees and Similar Service Charges**

39. The Court should authorize the Debtors to pay Bank Fees and any similar service charges, including foreign transaction fees, incurred prior to the Petition Date. Payment of the prepetition Bank Fees and other, similar service charges are in the best interests of the Debtors and all parties in interest in these chapter 11 cases because it will prevent any disruption to the Cash Management System. Further, because the Banks likely have setoff rights for the Bank Fees, payment of prepetition Bank Fees should not alter the rights of unsecured creditors in these chapter 11 cases.

40. Because the Banks likely have setoff rights for the Bank Fees, payment of prepetition Bank Fees should not alter the rights of unsecured creditors in these chapter 11 cases. Accordingly, the Debtors seek authority, pursuant to sections 105(a) and 363(b) of the Bankruptcy Code to pay any outstanding prepetition Bank Fees and similar charges to maintain the Cash Management System.

**D. The Court Should Authorize Debtors to (i) Continue Intercompany Transactions in the Ordinary Course, (ii) Grant Administrative Expense Priority Status to Postpetition Intercompany Claims Against the Debtors, and (iii) Pay Prepetition Intercompany Claims**

41. Central to the Debtors' operations are a variety of ordinary course Intercompany Transactions between the Debtors and their foreign non-Debtor affiliates. Such transactions are crucial to have the Company as a whole maintain sufficient funds to pay the costs associated with their operations. Because the Debtors engage in Intercompany Transactions on a regular basis and such transactions are routine among similar enterprises, the Debtors respectfully submit that postpetition Intercompany Transactions arising in the ordinary course of business are authorized as a matter of law pursuant to section 363(c)(1) of the Bankruptcy Code, and thus, do not require Court approval. *Shields v. Cumberland Surety Ins. Co. (In re Am. Coal Corp.)*, 1996 Bankr. LEXIS 2013, \*16 (Bankr. D. Minn. Oct. 7, 1996)

42. The Company as a whole relies on Intercompany Transactions to order parts and finished products internationally, as well as to sell products to end users around the world. Discontinuing the Intercompany Transactions postpetition would cripple the Cash Management System and the Debtors' operations to the detriment of the Debtors and their stakeholders. Thus, the Intercompany Transactions are integral to the Debtors' ability to continue operating without disruption. *Amdura Nat'l Distrib. Co. v. Amdura Corp. (In re Amdura Corp.)*, 75 F.3d 1447, 1453 (10th Cir. 1996).

43. These type of intercompany transfers are common among corporations of the Debtors' size and complexity, and courts have approved requests to continue intercompany funding arrangements between debtors and non-debtors. *See, e.g., In re Foresight Energy LP*, No. 20-41308 (KSS) (Bankr. E.D. Mo. Mar. 10, 2020) (authorizing intercompany transactions) [Docket No. 241]; *In re Payless Holdings LLC*, No. 19-40883-659 (Bankr. E.D. Mo. Apr. 13,



2019) (same) [Docket No. 892]; *In re Peabody Energy Corp.*, No. 16-42529 (BSS) (Bankr. E.D. Mo. May 17, 2016) (same) [Docket No. 515]; *In re Abengoa Bioenergy US Holding, LLC*, No. 16-41161-659 (Bankr. E.D. Mo. Mar. 4, 2016) (same) [Docket No. 93]; *In re Noranda Aluminum, Inc.*, No. 16-10083-399 (Bankr. E.D. Mo. Feb. 9, 2016) (same) [Docket No. 79].

44. The Debtors further request that pursuant to section 503(b)(1) of the Bankruptcy Code, any postpetition Intercompany Claims against the Debtors on account of the Intercompany Transactions be accorded administrative expense status and, except as otherwise provided for in the DIP Facility and DIP Order, granted pursuant to the DIP Order (subject and junior to claims, including adequate protection claims). 11 U.S.C. §§ 364(a), 503(b)(1); *see also Pillar Capital Holdings, LLC v. Williams (In re Living Hope Southwest Med. Servs., LLC)*, 509 Fed. Appx. 578, 583 (8th Cir. 2013); *Shields v. Duggan (In re Dartco, Inc.)*, 197 B.R. 860, 870 (Bankr. D. Minn. 1996); *In re Temple Stephens Co., Inc.*, 145 B.R. 975, 977 (Bankr. W.D. Mo. 1992). If all Intercompany Claims against the Debtors are accorded administrative expense status, each entity will continue to bear ultimate payment responsibility for such ordinary course transactions, thereby reducing the risk that these transactions will jeopardize the recoveries available to each Debtor's respective creditors.

45. The continuation of intercompany transactions, including intercompany transactions with non-debtor affiliates to preserve and protect the value of a debtor's enterprise, and granting administrative expense status for such transactions, as requested here, has been granted in this and other districts in large chapter 11 cases. *See, e.g., In re Noranda Aluminum, Inc.*, No. 16-10083 (Bankr. E.D. Mo. Feb. 9, 2016) (Docket No. 79) (interim order authorizing the continuation of intercompany transactions and granting super-priority administrative expense

status to postpetition intercompany claims); *In re Arch Coal Co.*, No. 16-40120 (Bankr. E.D. Mo. Jan. 13, 2016 and April 8, 2016) (Docket No. 56 and 671) (same).

46. The Debtors also seek authority to pay prepetition Intercompany Claims. Courts have recognized that it is appropriate to authorize the payment of prepetition obligations where necessary to protect and preserve the estate, including an operating business's going-concern value. *See, 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."); *see also In re Just for Feet, Inc.*, 242 B.R. 821, 825–26 (D. Del. 1999); *In re CoServ, L.L.C.*, 273 B.R. 487, 497 (Bankr. N.D. Tex. 2002); *In re Ionosphere Clubs, Inc.*, 98 B.R. 174, 175–76 (Bankr. S.D.N.Y. 1989); *Armstrong World Indus., Inc. v. James A. Phillips, Inc. (In re James A. Phillips, Inc.)*, 29 B.R. 391, 398 (S.D.N.Y. 1983). In so doing, these courts acknowledge that several legal theories rooted in sections 105(a) and 363(b) of the Bankruptcy Code support the payment of prepetition claims.

47. Section 363(b) of the Bankruptcy Code permits a bankruptcy court, after notice and a hearing, to authorize a debtor to "use, sell, or lease, other than in the ordinary course of business, property of the estate." 11 U.S.C. § 363(b)(1). A court may authorize non-ordinary course transactions using property of the estate pursuant to section 363(b) "when a sound business purpose dictates such action." *Stephens Indus. Inc. v. McClung*, 789 F. 2d 386, 390 (6th Cir. 1986) (approving a sale of assets pursuant to section 363(b)). Courts have authorized payment of certain prepetition claims pursuant to section 363(b) where there is a sound business purpose for doing so. *See, e.g., In re Montgomery Ward Holding Corp.*, 242 B.R. 147, 153 (D. Del. 1999) (collecting cases); *In re James A. Phillips, Inc.*, 29 B.R. at 397 (relying on section 363 to allow contractor to pay prepetition claims of suppliers who were potential lien claimants because the payments were

necessary for general contractors to release funds owed to debtors); *In re Ionosphere Clubs, Inc.*, 98 B.R. at 175 (finding that a sound business justification existed to justify payment of certain prepetition wages).

48. Courts also authorize payment of prepetition claims in appropriate circumstances based on section 105(a) of the Bankruptcy Code, which codifies a bankruptcy court's inherent equitable powers to "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). Under section 105(a), courts may authorize pre-plan payments of prepetition obligations when essential to the continued operation of a debtor's businesses. *See In re Eagle-Picher Indus.*, 124 B.R. at 1023 (authorizing payment of prepetition indebtedness where the "payment is necessary to avert a serious threat to the Chapter 11"); *In re Just for Feet, Inc.*, 242 B.R. at 825-26. Specifically, a court may use its power under section 105(a) of the Bankruptcy Code to authorize payment of prepetition obligations pursuant to the "necessity of payment" rule (also referred to as the "doctrine of necessity"). *See, e.g., In re Ionosphere Clubs, Inc.*, 98 B.R. at 176; *In re Lehigh & New England Railway Co.*, 657 F.2d 570, 581 (3d Cir. 1981) (stating that courts may authorize payment of prepetition claims when there "is the possibility that the creditor will employ an immediate economic sanction, failing such payment"); *see also In re Quality Interiors, Inc.*, 127 B.R. 391, 396 (Bankr. N.D. Ohio 1991) ("A general practice has developed however, where bankruptcy courts permit the payment of certain pre-petition claims pursuant to 11 U.S.C. §105, where the debtor will be unable to reorganize without payment."). A bankruptcy court's use of its equitable powers to "authorize the payment of prepetition debt when such payment is needed to facilitate the rehabilitation of the debtor is not a novel concept." *In re Ionosphere Clubs, Inc.*, 98 B.R. at 175-76 (citing *Miltenberger v. Logansport, C. & S.W. Ry. Co.*, 106 U.S. 286 (1882)). Indeed, at

least one court has recognized that there are instances when a debtor's fiduciary duty can "only be fulfilled by the preplan satisfaction of a prepetition claim." *CoServ*, 273 B.R. at 497.

49. As described above, the Debtors in the ordinary course of business engage in Intercompany Transactions with Debtor and non-Debtor affiliates, which are an essential component of the Debtors' operations and Cash Management System. The routine nature of Intercompany Transactions has created an interdependent network within the Company, and the Company's business relies on the payment of Intercompany Claims to function in the ordinary course.

50. The payment of prepetition Intercompany Claims will prevent unnecessary disruptions to the Debtors' business and foreign suppliers, ensure continued performance under the Debtors' prepetition business arrangements with and sale of Debtors products through their non-Debtor foreign affiliates and related parties, and indirectly benefit the Debtors' through their equity interests in their non-Debtor affiliates. Any interruption of the Intercompany Transactions, or non-payment of prepetition amounts due in connection with the Cash Management System, would severely disrupt the Debtors' operations to the detriment of Debtors and their estates. For example, as described above, the Debtors' affiliates in China and Japan would not be able to provide products and supplies to the Debtors without the Debtors making such payments. Moreover, the Debtors expect their non-Debtor affiliates to continue to honor their obligations to the Debtors on account of Intercompany Claims.

51. As such the Debtors respectfully request that the Court authorize the Debtors to pay any prepetition amounts owed in connection with the Cash Management System and Intercompany Transactions, subject in all respects to the terms of the Debtors' DIP Facility and DIP Order. The Debtors respectfully submit that the relief requested herein fairly balances

the Debtors' needs to facilitate the ordinary course operation of their business, minimize disruption, and preserve value.

52. For the avoidance of doubt, the relief requested herein with respect to the Intercompany Transactions and Intercompany Claims shall not constitute an admission of the Debtors or any other party as to the validity, priority, or status of any Intercompany Claims or the Intercompany Transaction(s) from which such Intercompany Claims may have arisen.

**E. Continuation of Company Credit Cards**

53. As stated above, under section 363(c)(1) of the Bankruptcy Code, a debtor in possession may use property of the estate in the ordinary course of business without a hearing. Furthermore, section 364(a) of the Bankruptcy Code permits a debtor in possession to "obtain unsecured credit and incur unsecured debt in the ordinary course of business" without a court order. Purchases made using the Credit Cards fall within the ordinary course of business under section 363(c)(1). The use of credit cards and similar payment methods is widespread as a means of facilitating day-to-day business activities. As a result, the Debtors believe that they do not require the Court's approval to continue using the Credit Cards on a postpetition basis. Further, pursuant to sections 363(b)(1) and 105(a) of the Bankruptcy Code, the Debtors request authority to pay any prepetition obligations related to the Credit Cards.

54. The payment of Debtors' Credit Cards is integral to the success and stability of the Debtors' businesses. If the Debtors do not pay outstanding amounts owing, there is a significant risk that (i) the Credit Card Providers could set-off amounts owing against cash in the Debtors' Bank Accounts they maintain, (ii) the Credit Card Providers could restrict the Debtors' access to their Credit Card programs, and (iii) US Bank could pay the Credit Card by drawing on the letter of credit. To avoid any disruption, the Debtors could be forced to ask employees to front

the cost of purchases and expenses on their own (and seek reimbursement later), which would more than likely damage the Debtors' relationships with such employees. Accordingly the Debtors should be authorized to pay any outstanding amounts owing to the Credit Card Providers on account of the Credit Cards. Courts in this district regularly permit debtors to continue using their existing corporate credit cards and similar purchasing programs as well as pay prepetition amounts owing. *See In re Foresight Energy LP*, No. 20-41308 (KSS) (Bankr. E.D. Mo. Apr. 7, 2020) [Docket No. 241]; *In re Payless Holdings LLC*, 19-40883 (KSS) (Bankr. E.D. Mo. Apr. 3, 2019) [Docket No. 783]; *In re Payless Holdings LLC*, No. 17-42267 (KSS) (Bankr. E.D. Mo. May 25, 2017) [Docket No. 892]; *In re Peabody Energy Corp.*, No. 16-42529 (BSS) (Bankr. E.D. Mo. May 17, 2016); *In re Noranda Aluminum, Inc.*, No. 16-10083 (BSS) (Bankr. E.D. Mo. April 13, 2016) [Docket No. 643].

**F. Continued Performance the Supply Chain Financing Is Warranted**

55. The Supply Chain Financing constitutes an ordinary-course and essential business practice providing significant benefits to the Debtors, including access to liquidity, limitation to risk exposure, and, accordingly, an increased level of certainty in cash flow forecasting and reduced need for cash reserves. As stated above, section 363(c)(1) of the Bankruptcy Code authorizes the debtor in possession to use property of the estate in the ordinary course of business without notice or a hearing. Without authorization to continue performance under the terms of the Supply Chain Financing, the Debtors have to borrow additional amounts under the DIP Facility<sup>9</sup> to cover liquidity needs, thereby increasing interest expense, and account

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<sup>9</sup> As used herein, “**DIP Facility**” is the \$677.5 million debtor-in-possession superpriority financing facility, as contemplated in the DIP Motion.

for risk of receivables non-payment, which would result in a diminution of value of Debtors' estates compared to continued performance under the Supply Chain Financing.

**Waiver of the Deposit Requirements of 11 U.S.C. § 345**

56. By this Motion, the Debtors are also requesting that the Court waive the requirements of section 345(b) of the Bankruptcy Code and permit Debtors to maintain any deposits in their Bank Accounts in accordance with their existing practices. Section 345(a) of the Bankruptcy Code authorizes deposits or investments of money of a bankruptcy estate, such as cash, in a manner that will "yield the maximum reasonable net return on such money, taking into account the safety of such deposit or investment." 11 U.S.C. § 345(a). For deposits or investments that are not "insured or guaranteed by the United States or by a department, agency or instrumentality of the United States or backed by the full faith and credit of the United States," section 345(b) of the Bankruptcy Code provides that the estate must require from the entity with which the money is deposited or invested a bond in favor of the United States secured by the undertaking of an adequate corporate surety. 11 U.S.C. § 345(b).

57. Sixteen (16) of the Debtors' Bank Accounts are held by BoA, SunTrust, US Bank, and Wells Fargo Bank, N.A., all of which are considered authorized banking institutions ("**Authorized Depositories**") within Region 13. The remaining four (4) accounts are maintained by BMO and JPM; however, despite BMO and JPM not being included on the Authorized Depository list, they are insured by the Federal Deposit Insurance Corporation ("**FDIC**") and are therefore in compliance with section 345(b) of the Bankruptcy Code. With respect to any of the Debtors' Bank Accounts, particularly the JPM and BMO accounts, the Debtors submit that cause exists to waive any such noncompliance because (i) in addition to being FDIC insured, such funds are deposited safely and prudently at JPM and BMO, both of which are financially-stable and well-capitalized banking institutions, and (ii) it would be unnecessarily and administratively harmful

for the Debtors to restructure their Cash Management System to move their Bank Accounts to other Banks, particularly the Main Collection Account, which is maintained at JPM, and is the central account in the Company's Cash Management System.

58. A court may relieve a debtor in possession of the restrictions imposed by section 345(b) of the Bankruptcy Code for "cause." 11 U.S.C. § 345(b). As this Motion is being filed on the first day of the Debtors' chapter 11 cases and the Debtors have in excess of 35,000 creditors, the Debtors respectfully request that the Court enter an order waiving the requirements of section 345(b) of the Bankruptcy Code. Given the structure and relative security of the Cash Management System, the Debtors submit that cause exists to grant a waiver of the requirements of section 345(b) of the Bankruptcy Code.

59. Court in this district and in other jurisdictions have liberally construed the requirements of Bankruptcy Code section 345(b) and have waived the requirements of Bankruptcy Code section 345(b). *See, e.g., In re Foresight Energy LP*, No. 20-41308 (KSS) (Bankr. E.D. Mo. Apr. 7, 2020) [Docket No. 241]; *In re Payless Holdings LLC*, No. 19-40883 (KSS) (Bankr. E.D. Mo. Apr. 13, 2019) [Docket No. 783]; *In re Payless Holdings LLC*, No. 17-42267 (KSS) (Bankr. E.D. Mo. May 25, 2017) [Docket No. 892]; *In re Abengoa Bioenergy US Holding, LLC*, No. 16-41161 (KSS) (Bankr. E.D. Mo. Aug. 14, 2016) [Docket No. 473]; *In re Peabody Energy Corp.*, No. 16-42529 (BSS) (Bankr. E.D. Mo. May 17, 2016); *In re Noranda Aluminum, Inc.*, No. 16-10083 (BSS) (Bankr. E.D. Mo. April 13, 2016) [Docket No. 643].

**Applicable Financial Institutions Should Be  
Authorized to Receive, Process, Honor, and Pay Checks Issued and  
Transfers Requested to Pay in Connection with the Cash Management System**

60. The Debtors further request that the Court authorize, but not direct, at the Debtors' direction applicable financial institutions 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 or



on behalf of the Debtors relating to the Cash Management System, to the extent that sufficient funds are on deposit and standing in the Debtors' credit in the applicable Bank Accounts to cover such payment. The Debtors represent that these checks are drawn on identifiable disbursement accounts and can be readily identified as relating directly to payment authorized by this Court or as a matter of law. Accordingly, the Debtors believe that checks other than those relating to authorized payments will not be honored inadvertently. Any such financial institution may rely on the representations of such Debtors as to which checks are issued or wire transfers are made (or, as applicable, requested to be issued or made) and authorized to be paid in accordance with this Motion without any duty of further inquiry and without liability for following the Debtors' instructions. The Debtors also seek authority to issue new postpetition checks or effect new postpetition electronic funds transfers in replacement of any checks or funds transfer requests on account of prepetition obligations relating to the Cash Management System dishonored or rejected as a result of the commencement of the Debtors' chapter 11 cases.

**Bankruptcy Rule 6003(b) Has Been Satisfied**

61. 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)**

62. 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**

63. 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, (vi) an admission as to the validity of any liens satisfied pursuant to this Motion, or (vii) 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**

64. 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; and (x) 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**

65. 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 Order(s) 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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-and-

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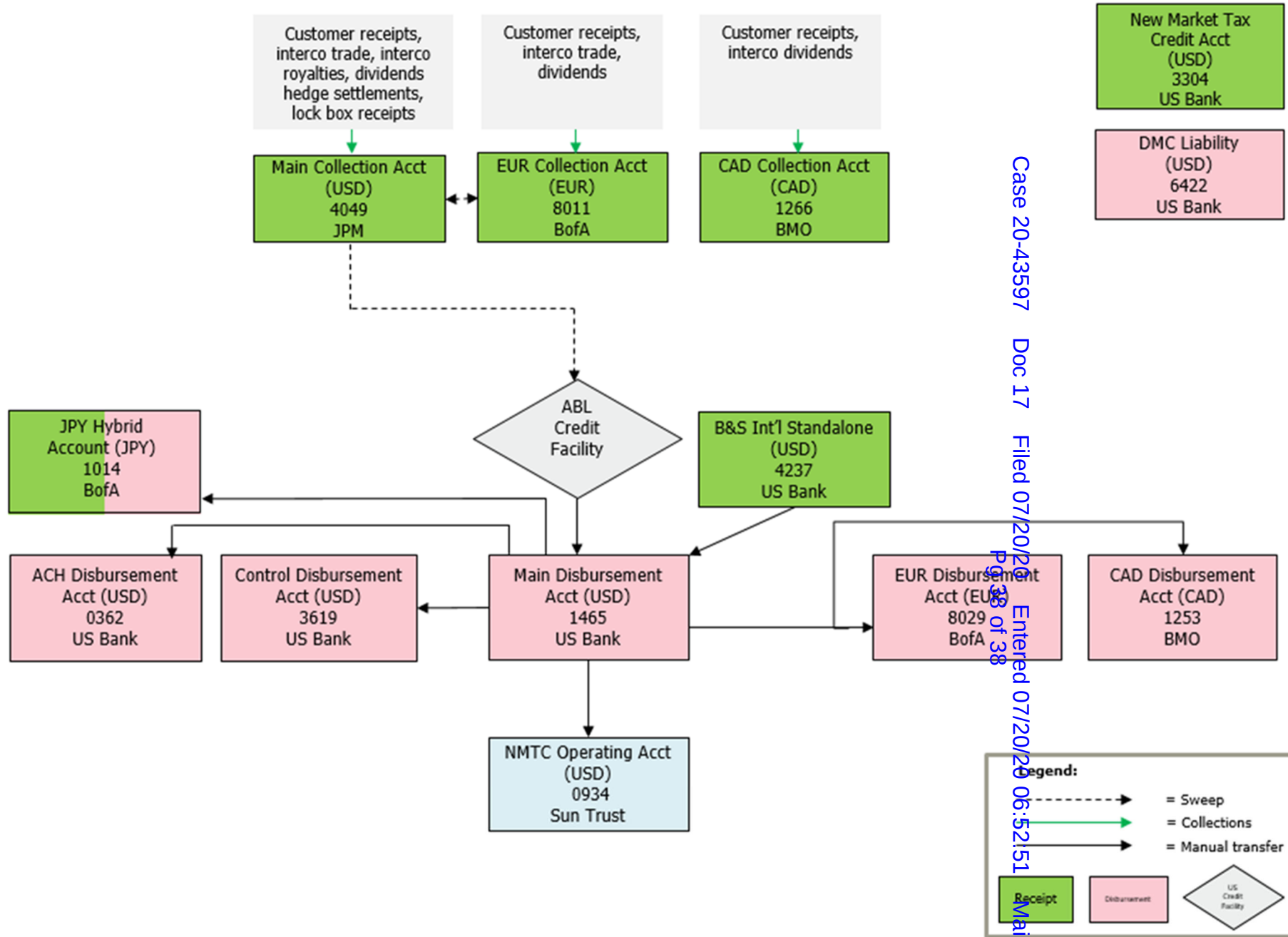
**Exhibit A**

**Bank Accounts**

<b>Debtor</b>	<b>Bank Name</b>	<b>Account Name</b>	<b>Type of Account</b>	<b>Last 4 Digits of Account No.</b>
Briggs & Stratton Corporation	Bank of America	EUR Collection Account	Collection	8011
Briggs & Stratton Corporation	Bank of Montreal	CAD Collection Account	Collection	1266
Briggs & Stratton Corporation	JPMorgan Chase	Main Collection Account	Collection	4049
Briggs & Stratton Corporation	Bank of America	EUR Disbursement Account	Disbursement	8029
Briggs & Stratton Corporation	Bank of Montreal	CAD Disbursement Account	Disbursement	1253
Briggs & Stratton Corporation	U.S. Bank	Main Disbursement Account	Disbursement	1465
Briggs & Stratton Corporation	U.S. Bank	USD Control Disbursement	Disbursement	3619
Briggs & Stratton Corporation	U.S. Bank	ACH Disbursements Account	Disbursement	0362
Briggs & Stratton Corporation	Bank of America	JPY Hybrid Account	Hybrid	1014
Briggs & Stratton Corporation	BMO Wealth Management	Investment Account	Standalone	8717
Briggs & Stratton Corporation	Bank of America	Certificate of Deposit Account	Standalone	6598
Briggs & Stratton Corporation	U.S. Bank	DMC Liability	Standalone	6422
Briggs & Stratton Corporation	Wells Fargo Bank	Rabbi Trust	Standalone	3600
Briggs & Stratton Corporation	SunTrust Bank	NMTC - Construction Disbursement Account	NMTC Accounts	0942
Briggs & Stratton Corporation	SunTrust Bank	NMTC Operating Account	NMTC Accounts	0934
Briggs & Stratton Corporation	SunTrust Bank	NMTC - ST Fee Reserve Account	NMTC Accounts	0959
Briggs & Stratton Corporation	SunTrust Bank	NMTC - MUNI Fee Reserve Account	NMTC Accounts	0975
Briggs & Stratton Corporation	SunTrust Bank	NMTC - DVCII Fee Reserve Account	NMTC Accounts	0967
Billy Goat Industries Inc.	U.S. Bank	New Market Tax Credit	NMTC Accounts	3304
Briggs & Stratton Corporation	Lock Box	N/A	Lock Box	27397
Billy Goat Industries Inc.	Lock Box	N/A	Lock Box	28380
Allmand Bros., Inc.	Lock Box	N/A	Lock Box	28060
Briggs & Stratton International	U.S. Bank	B&S Int'l Standalone	Standalone	4237

**Exhibit B**

**Cash Management System**



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