

UNITED STATES BANKRUPTCY COURT  
EASTERN DISTRICT OF MISSOURI  
SOUTHEASTERN DIVISION

<p><b>In re:</b></p> <p><b>BRIGGS &amp; STRATTON CORPORATION, et al.,</b></p> <p style="padding-left: 40px;"><b>Debtors.</b><sup>1</sup></p>	<p>§</p> <p>§</p> <p>§</p> <p>§</p> <p>§</p> <p>§</p> <p>§</p> <p>§</p> <p>§</p> <p>§</p>	<p><b>Chapter 11</b></p> <p><b>Case No. 20-43597-399</b></p> <p><b>(Joint Administration Requested)</b></p> <p>Hearing Date: July 21, 2020</p> <p>Hearing Time: 10:00 a.m. (Central Time)</p> <p>Hearing Location: Courtroom 5 North, 111 S. 10th St., St. Louis, MO 63102</p>
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**DEBTORS’ APPLICATION FOR APPOINTMENT OF KURTZMAN CARSON CONSULTANTS, LLC AS CLAIMS AND NOTICING AGENT AND ADMINISTRATIVE ADVISOR AS OF THE PETITION DATE**

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 application (the “**Application**”):

**Background**

1. On the date hereof (the “**Petition Date**”), the Debtors each commenced with this Court a voluntary case under 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

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<sup>1</sup> 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.



requesting joint administration of their chapter 11 cases pursuant to Rule 1015(b) of the Bankruptcy Rules and Rule 1015(b) of the Local Rules of Bankruptcy Procedure for the Eastern District of Missouri (and together with the Procedures Manual and Chapter 11 Guidelines accompanying the Local Rules, collectively, 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.

### **Relief Requested**

4. By this Application, 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) and 327 of the Bankruptcy Code, section 156(c) of title 28 of the United States Code, Bankruptcy Rules 2002, 2014(a), and 2016, and Local Rule 2014(A), for (i) authority to retain and employ Kurtzman Carson Consultants, LLC (“**KCC**”) as claims, ballot, and noticing agent (the “**Claims and Noticing Agent**”) and administrative advisor (the “**Administrative Advisor**”) in these chapter 11 cases effective as of the Petition Date and in accordance with the terms and conditions set forth in the engagement agreement dated as of June 25, 2020 (the “**Engagement Agreement**”) and (ii) approval of the terms of KCC’s employment and retention, including the fee and expense structure and the indemnification and reimbursement provisions set forth in the Engagement Agreement.

5. In support of this Application, the Debtors submit the declaration of Evan Gershbein, Senior Vice-President of Corporate Restructuring Services at KCC (the “**Gershbein Declaration**”), annexed hereto as **Exhibit A**. A copy of the Engagement Agreement is annexed hereto as **Exhibit B**.

### **Qualifications of KCC**

6. The Debtors propose to engage KCC to act as the Debtors’ Claims and Noticing Agent. In that capacity, KCC will transmit, receive, docket and maintain proofs of claim filed in connection with these chapter 11 cases. This retention will expedite the distribution of

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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>.

notices and the processing of claims, and the Office of the Clerk of the United States Bankruptcy Court for the Eastern District of Missouri (the “**Clerk’s Office**”) will be relieved of the administrative burden of processing what may be an overwhelming number of claims.

7. KCC is a bankruptcy administrator that specializes in providing comprehensive chapter 11 administrative services including noticing, claims processing, solicitation, balloting, and other related services critical to the effective administration of chapter 11 cases. KCC comprises leading industry professionals with significant experience in both the legal and administrative aspects of large, complex chapter 11 cases. KCC has developed efficient and cost-effective methods to handle properly the voluminous mailings associated with the noticing, claims processing and balloting portions of chapter 11 cases to ensure the orderly and fair treatment of creditors, equity security holders and all parties in interest. Further, KCC will work with the Clerk’s Office to ensure that such methodology conforms with all of the Court’s procedures, the Local Rules, and the provisions of any orders entered by this Court.

8. KCC has substantial experience in matters of this size and complexity and has acted as the official claims, ballot and noticing agent in many large chapter 11 cases. KCC’s professionals have acted as official Claims and Noticing and/or Administrative Advisor in many large bankruptcy cases in various districts nationwide. *See, e.g., In re Skillsoft Corporation, et al.*, (MFW) (Bankr. D. Del. Jun. 16, 2020) [Docket No. 81]; *In re Speedcast International Limited, et al.*, No. 20-32243 (MI) (Bankr. S.D. Tex. Apr. 24, 2020) [Docket No. 74]; *In re Pace Industries, LLC, et al.*, Case No. 20-10927 (MFW) (Bankr. D. Del. Apr. 14, 2020) [Docket No. 56]; *In re TZEW Holdco LLC, et al.*, Case No. 20-10910 (CSS) (Bankr. D. Del. Apr. 14, 2020) [Docket No. 48]; *In re Art Van Furniture, LLC, et al.*, Case No. 20-10553 (CSS) (Bankr. D. Del. Mar. 10, 2020) [Docket No. 77]; *In re Valeritas Holdings, Inc., et al.*, Case No. 20-10290 (LSS) (Bankr. D. Del.

Feb. 12, 2020) [Docket No. 51]. KCC has also previously served as Claims and Noticing Agent in this district. *See, e.g., In re Peabody Energy Corp., et al.*, No. 16-42529 (BSS) (Bankr. E.D. Mo. Apr. 20, 2016) [Docket No. 215]; *In re Falcon Prods., Inc.*, No. 05-41108 (BSS) (Bankr. E.D. Mo. Mar. 10, 2005) [Docket No. 255].

9. The Debtors have obtained and reviewed engagement proposals from three other well-respected claims, ballot and noticing agents commonly retained in large chapter 11 cases to ensure selection through a competitive process. Moreover, the Debtors submit, based on all engagement proposals obtained and reviewed, that KCC's rates are competitive and reasonable given KCC's quality of services and expertise. Accordingly, the Debtors submit that appointing KCC as the Claims and Noticing Agent is appropriate here.

#### **Services Provided by KCC**

10. This Application pertains to the work to be performed by KCC under 11 U.S.C. § 327(a) of the Bankruptcy Code and under the Clerk's delegation of duties permitted by 28 U.S.C. § 156(c). Pursuant to the Engagement Agreement, KCC will perform the following tasks in its role as Claims and Noticing Agent, pursuant to 28 U.S.C. § 156(c), as well as all quality control relating thereto:

- (a) assist the Debtors with the preparation and distribution of all required notices and documents in these chapter 11 cases in accordance with the Bankruptcy Code, the Bankruptcy Rules and the Local Rules in the form and manner directed by the Debtors and/or the Court, including: (i) notice of the commencement of these chapter 11 cases and the initial meeting of creditors under section 341(a) of the Bankruptcy Code; (ii) notice of any claims bar date; (iii) notices of transfers of claims; (iv) notices of objections to claims and objections to transfers of claims; (v) notices of hearings on motions filed by the Office of the United States Trustee for the Eastern District of Missouri (the "**United States Trustee**"); (vi) notices of any hearings on a disclosure statement and confirmation of the Debtors' plan or plans of reorganization, including under Bankruptcy Rule 3017(d); (vii) notice of the effective date of any plan; and (viii) all other notices, orders, pleadings, publications and other documents as the Debtors or Court may deem necessary or appropriate for an orderly administration of these chapter 11 cases;

- (b) maintain official copies of the Debtors' respective schedules of assets and liabilities and statements of financial affairs (collectively, the "**Schedules**"), listing the Debtors' known creditors and the other information required by the Schedules;
- (c) maintain (i) lists of all potential creditors, equity holders and other parties in interest and (ii) a "core" mailing list consisting of all parties described in Bankruptcy Rules 2002(i), (j) and (k) and those parties that have filed a notice of appearance pursuant to Bankruptcy Rule 9010(b) and update and make these lists available upon request by a party in interest or the Clerk's Office;
- (d) furnish a notice to all potential creditors of the last date for filing proofs of claim and a form for filing a proof of claim, after such notice and form are approved by the Court, and notify such potential creditors of the existence, amount and classification of their respective claims as set forth in the Schedules, which may be effected by inclusion of such information (or the lack thereof in cases where the Schedules indicate no debt due to the subject party) on a customized proof of claim form provided to potential creditors;
- (e) maintain a post office box or address for the purpose of receiving claims and returned mail, and process all mail received;
- (f) for all notices, motions, orders or other pleadings or documents served, prepare and file or cause to be filed with the Clerk's Office, pursuant to Local Rule 9004(D)(3), a certificate of service within 24 hours of such service which includes: (i) either a copy of the notice served or the docket number(s) and title(s) of the pleading(s) served; (ii) a list of persons to whom it was mailed (in alphabetical order) with their addresses; (iii) the manner of service; and (iv) the date served;
- (g) process all proofs of claim received, including those received by the Clerk's Office, check said processing for accuracy and maintain the original proofs of claim in a secure area;
- (h) maintain a duplicate claims register for each Debtor (collectively, the "**Claims Registers**"); and specify in the Claims Registers the following information for each claim docketed: (i) the claim number assigned; (ii) the date received; (iii) the name and address of the claimant and agent, if applicable, who filed the claim; (iv) the amount asserted; (v) the asserted classification(s) of the claim (e.g., secured, unsecured, priority, etc.); (vi) the applicable Debtor against which the claim is filed; and (vii) any disposition of the claim;
- (i) implement necessary security measures to ensure the completeness and integrity of the Claims Registers and the safekeeping of the original claims;
- (j) as directed by the Clerk's Office, record all transfers of claims and provide any notices of such transfers as required by Bankruptcy Rule 3001(e);
- (k) relocate, by messenger or overnight delivery, all of the court-filed proofs of claim to the offices of KCC not less than weekly;

- (l) upon completion of the docketing process for all claims received in each chapter 11 case, turn over to the Clerk's Office, at its request, copies of the Claims Registers for its review;
- (m) monitor the Court's docket for all: (i) notices of appearance; (ii) address changes; and (iii) claims-related pleadings and orders filed, and make, as directed by the Clerk's Office, notations on and/or changes to the applicable Claims Register(s) and any service or mailing lists, including identifying and eliminating duplicative names and addresses from such lists;
- (n) as directed by the Clerk's Office, identify and correct any incomplete or incorrect addresses in any mailing or service lists;
- (o) assist in the dissemination of information to the public and respond to requests for administrative information regarding these chapter 11 cases as directed by the Debtors or the Court, including through the use of a case website at <http://www.kccllc.net/Briggs> and/or call center;
- (p) if these chapter 11 cases are converted to cases under chapter 7 of the Bankruptcy Code, contact the Clerk's Office within three days of notice to KCC of entry of the order converting these chapter 11 cases;
- (q) thirty (30) days prior to the close of these chapter 11 cases, to the extent practicable, request that the Debtors submit to the Court a proposed order dismissing KCC as Claims and Noticing Agent and terminating its services in such capacity upon completion of its duties and responsibilities and upon the closing of these chapter 11 cases;
- (r) within seven (7) days of notice to KCC of entry of an order closing these chapter 11 cases, provide to the Court the final version of the Claims Registers as of the date immediately before the close of the chapter 11 cases;
- (s) at the close of these chapter 11 cases, destroy all documents related to these chapter 11 cases and certify such destruction, in writing, to the Clerk's Office, specifying the method of destruction, the date of destruction, and any reference number or other relevant information for the destruction of the paper proofs of claim; and
- (t) comply with applicable federal, state, municipal, and local statutes, ordinances, rules, regulations, orders, and other requirements.

11. The Claims Registers shall be open to the public for examination without charge during regular business hours and on a case-specific website maintained by KCC.

12. Moreover, the Debtors seek to retain KCC, pursuant to 11 U.S.C. § 327(a) to perform the following as Administrative Advisor:

- (a) assist the Debtors with plan-solicitation services including: (i) balloting, (ii) distribution of applicable solicitation materials, (iii) tabulation and calculation of votes, (iv) determining with respect to each ballot cast, its timeliness and its compliance with the Bankruptcy Code, Bankruptcy Rules, and procedures ordered by this Court; (v) preparing an official ballot certification and testifying, if necessary, in support of the ballot tabulation results; and (vi) in connection with the foregoing services, process requests for documents from parties in interest, including, if applicable, brokerage firms, bank back-offices and institutional holders;
- (b) assist the Debtors with the preparation of the Debtors' Schedules and gather data in conjunction therewith (as needed);
- (c) provide a confidential data room, if requested;
- (d) manage and coordinate any distributions pursuant to a chapter 11 plan; and
- (e) provide such other claims processing, noticing, plan solicitation, tabulation, and related administrative services as may be requested from time to time by the Debtors.

13. KCC will follow the notice, claims, solicitation and balloting procedures that conform to the guidelines promulgated by the Clerk, the Judicial Conference of the United States and as may be entered by the Court's order.

#### **Professional Compensation**

14. The Debtors request that the undisputed fees and expenses incurred by KCC in the performance of the above-listed services provided pursuant to 28 U.S.C. § 156(c) be treated as administrative expenses of the Debtors' chapter 11 estates pursuant to 28 U.S.C. § 156(c) and section 503(b)(1)(A) of the Bankruptcy Code and be paid in the ordinary course of business pursuant to the Engagement Agreement without further application to or other of the Court. KCC agrees to maintain records of all services showing dates, categories of services, fees charged and expenses incurred, and to serve monthly invoices on (i) the Debtors; (ii) the United States Trustee; (iii) counsel for the Debtors; (iv) counsel for any official committee monitoring the expenses of the Debtors; and (v) any party in interest who specifically requests service of the monthly invoices.



If any dispute arises relating to the Engagement Agreement or monthly invoices, the parties shall meet and confer in an attempt to resolve the dispute; if resolution is not achieved, the parties may seek resolution of the matter from the Court.

15. For the above-referenced services provided pursuant to section 327(a) of the Bankruptcy Code, KCC will seek compensation in accordance with and will file interim and final fee applications for allowance of its compensation and expenses pursuant to sections 330 and 331 of the Bankruptcy Code, the Bankruptcy Rules, and the Local Rules.

16. Prior to the Petition Date, the Debtors provided KCC a retainer in the amount of \$65,000. KCC seeks to first apply the retainer to all prepetition invoices, and thereafter, to have the retainer replenished to the original retainer amount, and thereafter, to hold the retainer under the Engagement Agreement during these chapter 11 cases as security for the payment of fees and expenses incurred under the Engagement Agreement.

#### **Indemnification**

17. As part of the overall compensation to KCC under the terms of the Engagement Agreement, the Debtors have agreed to certain indemnification obligations. The Engagement Agreement provides that Debtors will indemnify, defend and hold harmless KCC and its affiliates, members, directors, officers, employees, consultants, subcontractors and agents under certain circumstances specified in the Engagement Agreement, except in circumstances resulting solely from KCC's gross negligence or willful misconduct or as otherwise provided in the Engagement Agreement or Retention Order. Both the Debtors and KCC believe that such an indemnification obligation is customary, reasonable and necessary to retain the services of a Claims and Noticing Agent in these chapter 11 cases.

**No Duplication of Services**

18. The Debtors intend that the services of KCC will complement, and not duplicate, the services being rendered by other professionals retained in these chapter 11 cases. KCC understands that the Debtors have retained and may retain additional professionals during the term of the engagement, and KCC will work cooperatively with such professionals to integrate any work conducted by the professionals on behalf of the Debtors.

**Disinterestedness**

19. The Debtors have many creditors, and accordingly, KCC may have rendered and may continue to render services to certain of these creditors. KCC has not and will not represent the separate interests of any such creditor in connection with these cases. KCC may have relationships with certain of the Debtors' creditors as vendors or in connection with cases in which KCC serves or has served in a neutral capacity as claims, ballot and noticing agent for another chapter 11 debtor or as a class action settlement administrator.

20. KCC has reviewed its electronic database to determine whether it has any relationships with certain material creditors and parties in interest identified by the Debtors, and, to the best of the Debtors' knowledge, information and belief, and except as disclosed in the Gershbein Declaration, KCC has represented that it neither holds nor represents any interest materially adverse to the Debtors' estates in connection with any matter on which it would be employed.

21. To the best of the Debtors' knowledge, KCC is a "disinterested person" as that term is defined in Bankruptcy Code section 101(14), as modified by Bankruptcy Code section 1107(b), as KCC represents in the Gershbein Declaration, among other things, that:

- (a) KCC is not a creditor of the Debtors;

- (b) KCC will not consider itself employed by the United States government and shall not seek any compensation from the United States government in its capacity as the Claims and Noticing Agent and Administrative Advisor in these chapter 11 cases;
- (c) By accepting employment in these chapter 11 cases, KCC waives its right to receive any compensation from the United States government in connection with these chapter 11 cases;
- (d) In its capacity as Claims and Noticing Agent and Administrative Advisor in these chapter 11 cases, KCC will not be an agent of the United States and will not act on behalf of the United States;
- (e) KCC will not employ any past or present employees of the Debtors in connection with its work as Claims and Noticing Agent and Administrative Advisor in these chapter 11 cases;
- (f) KCC is a “disinterested person” as that term is defined in section 101(14) of the Bankruptcy Code with respect to the matters upon which it is engaged;
- (g) In its capacity as Claims and Noticing Agent and Administrative Advisor in these chapter 11 cases, KCC will not intentionally misrepresent any fact to any person;
- (h) In its capacity as Claims and Noticing Agent in these chapter 11 cases, KCC shall be under the supervision and control of the Clerk’s Office with respect to the receipt and recordation of claims and claim transfers;
- (i) In its capacity as Claims and Noticing Agent in these chapter 11 cases, KCC will comply with all requests of the Clerk’s Office and the guidelines promulgated by the Judicial Conference of the United States for the implementation of 28 U.S.C. § 156(c); and
- (j) None of the services provided by KCC as Claims and Noticing Agent and Administrative Advisor in these chapter 11 cases shall be at the expense of the Clerk’s Office.

22. KCC will supplement its disclosure to the Court if any facts or circumstances are discovered that would require such additional disclosure.

**Relief Requested Should Be Granted**

23. Section 156(c) of title 28 of the United States Code empowers the Court to utilize outside agents and facilities for notice, claims and other administrative purposes, provided that the Debtors’ estates pay the cost of such services. Section 156(c) states:

Any court may utilize facilities or services, either on or off the court's premises, which pertain to the provision of notices, dockets, calendars, and other administrative information to parties in cases filed under the provisions of title 11, United States Code, where the costs of such facilities or services are paid for out of the assets of the estate and are not charged to the United States. The utilization of such facilities or services shall be subject to such conditions and limitations as the pertinent circuit council may prescribe.

28 U.S.C. § 156(c).

24. Moreover, section 327(a) of the Bankruptcy Code provides that a debtor, subject to Court approval:

[M]ay employ one or more attorneys, accountants, appraisers, auctioneers, or other professional persons, that do not hold or represent an interest adverse to the estate, and that are disinterested persons, to represent or assist the [debtor] in carrying out of [debtor]'s duties under the title.

11 U.S.C. § 327(a).

25. Bankruptcy Rule 2014(a) requires that an application for retention include:

[S]pecific facts showing the necessity for the employment, the name of the [firm] to be employed, the reasons for the selection, the professional services to be rendered, and proposed arrangement for compensation, and, to the best of the applicant's knowledge, all of the [firm's] connections with the debtor, creditors, any other party in interest, their respective attorneys and accountants, the United States trustee, or any person employed in the office of the United States trustee.

Fed. R. Bankr. P. 2014.

26. The Debtors' selection of KCC to act as the Claims and Noticing Agent and Administrative Advisor is appropriate under the circumstances and in the best interest of the Debtors' estates. The Debtors submit, based on all engagement proposals obtained and reviewed from other Claims and Noticing Agents, that KCC's rates are competitive and reasonable given KCC's quality of services and expertise. The terms of KCC's retention are set forth in the Engagement Agreement.

27. Although the Debtors have not yet filed their schedules of assets and liabilities, they anticipate that these chapter 11 cases will involve tens of thousands of potential creditors and other parties in interest and, thus, likely will impose heavy administrative burdens upon the Clerk's Office. In view of the anticipated number of creditors and the complexity of the Debtors' business, the Debtors submit that the appointment of KCC: (i) will relieve the Debtors, the Court and the Clerk's Office of substantial administrative burdens and/or related costs; (ii) expedite the service of notices and pleadings; (iii) streamline the claims administration and vote solicitation and tabulation processes; and (iv) otherwise promote the efficient administration of these cases. For the foregoing reasons, Debtors submit that the appointment of a claims and noticing agent is both necessary and in the best interests of both the Debtors' estates and their creditors.

28. Courts in this District and others have approved similar relief in other chapter 11 cases. *See, e.g., In re Foresight Energy LP, et al.*, No. 20-41308-659 (KAS) (Bankr. E.D. Mo. Apr. 7, 2020) [Docket No. 249] (granting order to retain claims and noticing agent and administrative advisor); *In re Payless Holdings LLC, et al.*, No. 19-40883-659 (KAS) (Bankr. E.D. Mo. Mar. 15, 2019) [Docket No. 572] (granting order to retain claims and noticing agent and administrative advisor); *In re Payless Holdings LLC, et al.*, No. 17-42267-659 (KAS) (Bankr. E.D. Mo. Apr. 17, 2017) [Docket No. 237] (granting order to retain claims and noticing agent); *In re Peabody Energy Corporation, et al.*, No. 16-42529-399 (BSS) (Bankr. E.D. Mo. Apr. 20, 2016) [Docket No. 215] (granting order to retain KCC as claims and noticing agent); *In re Noranda Aluminum, Inc.*, No. 16-10083 (BAS) (Bankr. E.D. Mo. Feb. 12, 2016) [Docket No. 116] (granting order to retain and employ claims and noticing agent and administrative advisor); *In re Arch Coal, Inc.*, No. 16-40120 (CER) (Bankr. E.D. Mo. Jan. 15, 2016) [Docket No. 102] (granting order to

retain claims and noticing agent); *In re Bakers Footwear Grp., Inc.*, No. 12-49658 (CER) (Bankr. E.D. Mo. Oct. 9, 2012) [Docket No. 74] (granting order to retain claims and noticing agent); *In re Falcon Prods., Inc.*, No. 05-41108 (BSS) (Bankr. E.D. Mo. Mar. 10, 2005) [Docket No. 255] (granting order to retain and employ KCC as claims and noticing agent); *accord In re Alpha Natural Res., Inc.*, No. 15-33896 (KRH) (Bankr. E.D. Va. Aug. 5, 2015) [Docket No. 93] (granting order to retain and employee KCC as claims and noticing agent).

### **Notice**

29. Notice of this Application 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; and (v) 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 Prior Request**

30. No prior request for the relief sought in this Application has been made to this or any other Court in connection with these chapter 11 cases.

WHEREFORE, the Debtors respectfully request that the Court: (i) enter an order granting the relief requested herein; and (ii) grant such other and further relief to the Debtors as the Court may deem just and proper.

Dated: July 20, 2020  
Wauwatosa, Wisconsin

Respectfully submitted,

Briggs & Stratton Corporation (for itself and on behalf of each of its affiliated debtors as Debtors and Debtors in Possession)

/s/ Kathryn M. Buono

Name: Kathryn M. Buono

Title: Vice President, Corporate Counsel & Secretary

Filed by:

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*Proposed Counsel to the Debtors and  
Debtors in Possession*



**Exhibit A**

**Gershbein Declaration**

UNITED STATES BANKRUPTCY COURT  
EASTERN DISTRICT OF MISSOURI  
SOUTHEASTERN DIVISION

In re:	§	Chapter 11
	§	
BRIGGS & STRATTON	§	Case No. 20-43597-33
CORPORATION, <i>et al.</i> ,	§	
	§	(Jointly Administered)
Debtors. <sup>1</sup>	§	
	§	

**DECLARATION OF EVAN GERSHBEIN IN SUPPORT OF  
DEBTORS' APPLICATION FOR APPOINTMENT OF KURTZMAN  
CARSON CONSULTANTS, LLC AS CLAIMS AND NOTICING AGENT  
AND ADMINISTRATIVE ADVISOR AS OF THE PETITION DATE**

I, Evan Gershbein, under penalty of perjury, declare as follows:

1. I am an Executive Vice President of Corporate Restructuring Services of Kurtzman Carson Consultants, LLC (“KCC”), a company specializing in the administration of large bankruptcy cases. Except as otherwise noted, I have personal knowledge of the matters set forth herein, and if called and sworn as a witness, I could and would testify competently thereto.

2. This declaration (the “**Declaration**”) is made in support of the *Debtors’ Application for Appointment of Kurtzman Carson Consultants, LLC as Claims and Noticing Agent and Administrative Advisor as of the Petition Date* (the “**Application**”).<sup>2</sup>

3. KCC is a bankruptcy administrator that specializes in providing comprehensive chapter 11 administrative services including noticing, claims processing, balloting

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<sup>1</sup> 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.

<sup>2</sup> Capitalized terms not otherwise defined herein have the meanings given to them in the Application.

and other related services critical to the effective administration of chapter 11 cases. KCC comprises leading industry professionals with significant experience in both the legal and administrative aspects of large, complex chapter 11 cases. KCC has developed efficient and cost-effective methods to handle properly the voluminous mailings associated with the noticing, claims processing and balloting portions of chapter 11 cases to ensure the orderly and fair treatment of creditors, equity security holders and all parties in interest. Further, KCC will work with the Clerk's Office to ensure that such methodology conforms to all of the Court's procedures, the Local Rules and the provisions of any orders entered by this Court.

4. KCC has substantial experience in matters of this size and complexity and has acted as the official claims, ballot and noticing agent in many large chapter 11 cases. KCC's professionals have acted as official Claims and Noticing and/or Administrative Advisor in many large bankruptcy cases in various districts nationwide. *See, e.g., In re Skillsoft Corporation, et al.*, (MFW) (Bankr. D. Del. Jun. 16, 2020) [Docket No. 81]; *In re Speedcast International Limited, et al.*, No. 20-32243 (MI) (Bankr. S.D. Tex. Apr. 24, 2020) [Docket No. 74]; *In re Pace Industries, LLC, et al.*, Case No. 20-10927 (MFW) (Bankr. D. Del. Apr. 14, 2020) [Docket No. 56]; *In re TZEW Holdco LLC, et al.*, Case No. 20-10910 (CSS) (Bankr. D. Del. Apr. 14, 2020) [Docket No. 48]; *In re Art Van Furniture, LLC, et al.*, Case No. 20-10553 (CSS) (Bankr. D. Del. Mar. 10, 2020) [Docket No. 77]; *In re Valeritas Holdings, Inc., et al.*, Case No. 20-10290 (LSS) (Bankr. D. Del. Feb. 12, 2020) [Docket No. 51]. KCC has also previously served as Claims and Noticing Agent in this district. *See, e.g., In re Peabody Energy Corp, et al.*, No. 16-42529 (BSS) (Bankr. E.D. Mo. Apr. 20, 2016) [Docket No. 215]; *In re Falcon Prods., Inc.*, No. 05-41108 (BSS) (Bankr. E.D. Mo. Mar. 10, 2005) [Docket No. 255].

5. The Debtors seek to engage KCC to provide certain noticing, claims processing, balloting, and administration services as set forth in the Application. As agent and custodian of Court records pursuant to 28 U.S.C. § 156(c), KCC will perform, at the request of the Office of the Clerk of the Bankruptcy Court (the “**Clerk's Office**”), the services specified in the Application and the Engagement Agreement and, at the Debtors' request, any related administrative, technical and support services as specified in the Application and the Engagement Agreement. Moreover, KCC will perform such services pursuant to 11 U.S.C. § 327(a) as specified in the Application and the Engagement Agreement. In performing such services, KCC will charge the Debtors the rates set forth in the Engagement Agreement, which is attached as **Exhibit B** to the Application. The proposed compensation arrangement is consistent with, and typical of, arrangements of KCC and its competitor firms to provide claims, ballot, and noticing agent services, and administrative services in chapter 11 cases.

**KCC's Disinterestedness**

6. KCC represents, among other things, the following:
- (a) KCC is not a creditor of the Debtors;
  - (b) KCC will not consider itself employed by the United States government and shall not seek any compensation from the United States government in its capacity as the Claims and Noticing Agent and Administrative Advisor in these chapter 11 cases;
  - (c) By accepting employment in these chapter 11 cases, KCC waives its right to receive any compensation from the United States government in connection with these chapter 11 cases;
  - (d) In its capacity as Claims and Noticing Agent and Administrative Advisor in these chapter 11 cases, KCC will not be an agent of the United States and will not act on behalf of the United States;
  - (e) KCC will not employ any past or present employees of the Debtors in connection with its work as Claims and Noticing Agent and Administrative Advisor in these chapter 11 cases;

- (f) KCC is a “disinterested person” as that term is defined in section 101(14) of the Bankruptcy Code with respect to the matters upon which it is engaged;
- (g) In its capacity as Claims and Noticing Agent and Administrative Advisor in these chapter 11 cases, KCC will not intentionally misrepresent any fact to any person;
- (h) In its capacity as Claims and Noticing Agent in these chapter 11 cases, KCC shall be under the supervision and control of the Clerk’s Office with respect to the receipt and recordation of claims and claim transfers;
- (i) In its capacity as Claims and Noticing Agent in these chapter 11 cases, KCC will comply with all requests of the Clerk’s Office and the guidelines promulgated by the Judicial Conference of the United States for the implementation of 28 U.S.C. § 156(c); and
- (j) None of the services provided by KCC as Claims and Noticing Agent and Administrative Advisor in these chapter 11 cases shall be at the expense of the Clerk’s Office.

7. In accordance with section 327 of the Bankruptcy Code and Bankruptcy Rule 2014, I caused to be submitted for review by our conflicts system the names of certain material creditors and parties in interest in these chapter 11 cases identified by the Debtors (the “**Potential Parties in Interest**”). The results of the conflict check were compiled and reviewed by KCC professionals under my supervision. At this time, and as set forth in further detail herein, KCC is not aware of any relationship that would present a disqualifying conflict of interest. Should KCC discover any new relevant facts or relationships bearing on the matters described herein during the period of its retention, KCC will use reasonable efforts to file promptly a supplemental declaration.

8. KCC is an indirect subsidiary of Computershare Limited (“**Computershare**”). Computershare is a financial services and technologies provider for the global securities industry, including providing administrative transfer agent services such as maintaining records of shareholdings and share transfers. Within the Computershare corporate structure, KCC operates as a separate, segregated business unit. As such, any relationships that

Computershare and its affiliates maintain do not create an interest of KCC that would be materially adverse to the Debtors' estates or any class of creditors or equity security holders. Computershare provides a software solution to Briggs & Stratton Corporation that supports and assists in the filing of securities forms. Computershare provides transfer agent or other administrative services to certain note holders and significant shareholders of the Debtors including Bank of New York Mellon, Invesco Ltd., New York Life Investment Management, Wells Fargo & Co., Comerica Bank, International FCStone Financial Inc., Janney Montgomery Scott LLC, JPMorgan Chase Bank, N.A., LPL Financial Corporation, Morgan Stanley, Pershing LLC, The Northern Trust Company, U.S. Bank N.A., UBS Financial Services Inc., BlackRock, Inc. and The Vanguard Group, Inc.

9. To the best of my knowledge, and based solely upon information provided to me by the Debtors, and except as provided herein, neither KCC nor any of its professionals, has any materially adverse connection to the Debtors, their creditors or other relevant parties. KCC may have relationships with certain of the Debtors' creditors as vendors or in connection with cases in which KCC serves or has served in a neutral capacity as Claims and Noticing Agent and/or Administrative Advisor for another chapter 11 debtor.

10. KCC has and will continue to represent clients in matters unrelated to these chapter 11 cases. In addition, KCC has and will continue to have relationships in the ordinary course of its business with certain vendors, professionals and other parties in interest that may be involved in the Debtors' chapter 11 cases in matters unrelated to these cases. KCC may also provide professional services to entities or persons that may be creditors or parties in interest in these chapter 11 cases, which services do not directly relate to, or have any direct connection with, these chapter 11 cases or the Debtors.

11. KCC and its personnel in their individual capacities regularly utilize the services of law firms, accounting firms and financial advisors. Such firms engaged by KCC or its personnel may appear in chapter 11 cases representing the Debtor or parties in interest. All engagements where such firms represent KCC or its personnel in their individual capacities are unrelated to these chapter 11 cases.

12. From time to time, KCC partners or employees personally invest in mutual funds, retirement funds, private equity funds, venture capital funds, hedge funds and other types of investment funds (the “**Investment Funds**”), through which such individuals indirectly acquire a debt or equity security of many companies, often without KCC’s or its personnel’s knowledge. Each KCC employee generally owns substantially less than one percent of such Investment Fund, does not manage or otherwise control such Investment Fund and has no influence over the Investment Fund’s decision to buy, sell or vote any particular security. The Investment Fund is generally operated as a blind pool, meaning that when the KCC partners or employees make an investment in the Investment Fund, he, she or they do not know what securities the blind pool Investment Fund will purchase or sell, and have no control over such purchases or sales.

13. From time to time, KCC employees may personally directly acquire a debt or equity security of a company. KCC has a policy prohibiting its partners and employees from using confidential information that may come to their attention in the course of their work. In this regard, all KCC employees are barred from trading in securities with respect to which they possess confidential information.

14. To the best of my knowledge, neither KCC nor any of its employees represents any interest materially adverse to the Debtors’ estates with respect to any matter upon

which KCC is to be engaged. Based on the foregoing, I believe that KCC is a “disinterested person” as that term is defined in section 101(14) of the Bankruptcy Code.

Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing is true and correct to the best of my information, knowledge and belief.

Dated: July 19, 2020  
LOS ANGELES, CA

By:   
\_\_\_\_\_  
EVAN GERSHBEIN  
EXECUTIVE VICE PRESIDENT



**Exhibit B**

**Engagement Agreement**



## KCC AGREEMENT FOR SERVICES

This Agreement is entered into as of the 25th day of June 2020, between Briggs & Stratton Corporation (“B&S”, and, together with its affiliates and subsidiaries, the “Company”),<sup>1</sup> and Kurtzman Carson Consultants LLC (together with its affiliates and subcontractors, “KCC”). In consideration of the premises set forth herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

### Terms and Conditions

#### I. SERVICES

A. KCC agrees to provide the Company with consulting services regarding noticing, claims management and reconciliation, plan solicitation, balloting, disbursements and any other services agreed upon by the parties or otherwise required by applicable law, government regulations or court rules or orders.

B. KCC further agrees to provide (i) computer software support and training in the use of the support software, (ii) KCC’s standard reports as well as consulting and programming support for the Company requested reports, (iii) program modifications, (iv) data base modifications, and/or (v) other features and services in accordance with the fees outlined in a pricing schedule provided to the Company (the “KCC Fee Structure”).

C. Without limiting the generality of the foregoing, KCC agrees to, upon request by the Company, (i) provide a communications plan including, but not limited to, preparation of communications materials, dissemination of information and a call center staffed by KCC and/or (ii) provide confidential on-line workspaces or virtual data rooms and publish documents to such workspaces or data rooms (which publication shall not be deemed to violate the confidentiality provisions of this Agreement).

D. The price listed for each service in the KCC Fee Structure represents a bona fide proposal for such services, which may be accepted in whole or in part. Services will be provided when requested by the Company or required by applicable law, government regulations or court rules or orders. Services are mutually exclusive and are deemed delivered and accepted by the Company when provided by KCC.

E. The Company acknowledges and agrees that KCC will often take direction from the Company’s representatives, employees, agents and/or professionals (collectively, the “Company Parties”) with respect to the services being provided under this Agreement. The parties agree that KCC may rely upon, and the Company agrees to be bound by, any requests, advice or information provided by the Company Parties to the same extent as if such requests, advice or information were provided by the Company. The Company agrees and understands that KCC shall not provide the Company or any other party with any legal advice.

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<sup>1</sup> The term Company shall include, to the extent applicable, the Company, as debtor and debtor in possession in its chapter 11 case, together with any affiliated debtors and debtors in possession whose chapter 11 cases are jointly administered with the Company’s chapter 11 case.



## KCC AGREEMENT FOR SERVICES

### II. PRICES, CHARGES AND PAYMENT

A. KCC agrees to charge and the Company agrees to pay KCC for its services at the rates and prices set by KCC that are in effect as KCC's standard rates (including applicable discounts) as of the date of this Agreement and in accordance with the KCC Fee Structure. KCC's standard rates are generally adjusted periodically to reflect changes in the business and economic environment and are inclusive of all charges. KCC reserves the right to reasonably increase its prices, charges and rates; provided, however, that if any such increase either exceeds 15% or is specific to the Company and not a general increase to KCC's standard rates, KCC will give thirty (30) days written notice to the Company.

B. In addition to fees and charges for services, the Company agrees to pay KCC's reasonable transportation, lodging, and meal expenses incurred in connection with services provided under this Agreement.

C. In addition to all fees for services and expenses hereunder, the Company shall pay to KCC (i) any fees and charges related to, arising out of, or as a result of any error or omission made by the Company or the Company Parties, as mutually determined by KCC and the Company, and (ii) all taxes that are applicable to this Agreement or that are measured by payments made under this Agreement and are required to be collected by KCC or paid by KCC to a taxing authority, other than taxes assessed based on KCC's income which will be KCC's sole responsibility.

D. Where the Company requires services that are unusual or beyond the normal business practices of KCC, or are otherwise not provided for in the KCC Fee Structure, the cost of such services shall be charged to the Company at a competitive rate.

E. KCC agrees to submit its invoices to the Company monthly and the Company agrees that the amount invoiced is due and payable upon the Company's receipt of the invoice. KCC's invoices will contain reasonably detailed descriptions of charges for both hourly (fees) and non-hourly (expenses) case specific charges. Where total invoice amounts are expected to exceed \$10,000 in any single month and KCC reasonably believes it will not be paid, KCC may require advance payment from the Company due and payable upon demand and prior to the performance of services hereunder. If any amount is unpaid as of thirty (30) days from the receipt of the invoice, the Company further agrees to pay a late charge, calculated as one and one-half percent (1-1/2%) of the total amount unpaid every thirty (30) days. In the case of a dispute in the invoice amount, the Company shall give written notice to KCC within ten (10) days of receipt of the invoice by the Company. The undisputed portion of the invoice will remain due and payable immediately upon receipt of the invoice. Late charges shall not accrue on any amounts in dispute or any amounts unable to be paid due to Court order or applicable law. Unless otherwise agreed to in writing, the fees for print notice and media publication (including commissions) must be paid at least three (3) days in advance of those fees and expenses being incurred. Certain fees and charges may need to be adjusted due to availability related to the COVID-19 (novel coronavirus) global health issue.

F. In the event that the Company files for protection pursuant to chapter 11 of the United States Bankruptcy Code (a "Chapter 11 Filing"), the parties intend that KCC shall be employed pursuant to 28 U.S.C. § 156(c) to the extent possible and otherwise in accordance with applicable



## KCC AGREEMENT FOR SERVICES

Bankruptcy law and that all amounts due under this Agreement shall, to the extent possible, be paid as administrative expenses of the Company's chapter 11 estate. As soon as practicable following a Chapter 11 Filing (and otherwise in accordance with applicable law and rules and orders of the Bankruptcy Court), the Company shall cause pleadings to be filed with the Bankruptcy Court seeking entry of an order or orders approving this Agreement (the "Retention Order"). The form and substance of the pleadings and the Retention Order shall be reasonably acceptable to KCC. If any Company chapter 11 case converts to a case under chapter 7 of the Bankruptcy Code, KCC will continue to be paid for its services in accordance with the terms of this Agreement. The parties recognize and agree that if there is a conflict between the terms of this Agreement and the terms of the Retention Order, the terms of the Retention Order shall govern during the chapter 11 or other proceeding.

G. To the extent permitted by applicable law, KCC shall receive a retainer in the amount of \$65,000 (the "Retainer") that may be held by KCC as security for the Company's payment obligations under the Agreement. The Retainer is due upon execution of this Agreement. KCC shall be entitled to hold the Retainer until the termination of the Agreement. Following termination of the Agreement, KCC shall return to the Company any amount of the Retainer that remains following application of the Retainer to the payment of unpaid invoices.

### III. RIGHTS OF OWNERSHIP

A. The parties understand that the software programs and other materials furnished by KCC pursuant to this Agreement and/or developed during the course of this Agreement by KCC are the sole property of KCC. The term "program" shall include, without limitation, data processing programs, specifications, applications, routines, and documentation. The Company agrees not to copy or permit others to copy the source code from the support software or any other programs or materials furnished pursuant to this Agreement.

B. The Company further agrees that any ideas, concepts, know-how or techniques relating to data processing or KCC's performance of its services developed or utilized during the term of this Agreement by KCC shall be the exclusive property of KCC. Fees and expenses paid by the Company do not vest in the Company any rights in such property, it being understood that such property is only being made available for the Company's use during and in connection with the services provided by KCC under this Agreement.

### IV. NON-SOLICITATION

The Company agrees that neither it nor its subsidiaries or other affiliated companies shall directly or indirectly solicit for employment, employ or otherwise retain employees of KCC during the term of this Agreement and for a period of twelve (12) months after termination of this Agreement unless KCC provides prior written consent to such solicitation or retention; provided that the foregoing solicitation restriction shall not apply to (i) any solicitation directed at the public generally and/or found in general publications, or (ii) any targeted solicitation by a third party recruiter who was not instructed by the Company to target such employee.



## KCC AGREEMENT FOR SERVICES

### V. CONFIDENTIALITY

Each of KCC and the Company, on behalf of themselves and their respective employees, agents, professionals and representatives, agrees to keep confidential all non-public records, systems, procedures, software and other information received from the other party in connection with the services provided under this Agreement; provided, however, that if either party reasonably believes that it is required to produce any such information by order of any governmental agency or other regulatory body it may, upon not less than five (5) business days' written notice to the other party, release the required information.

### VI. SUSPENSION OF SERVICE AND TERMINATION

A. This Agreement shall remain in force until terminated or suspended by either party (i) upon thirty (30) days' written notice to the other party or (ii) immediately upon written notice for Cause (defined herein). As used herein, the term "Cause" means (i) fraud, gross negligence or willful misconduct of KCC that causes serious and material harm to the Company's reorganization under chapter 11 of the Bankruptcy Code, (ii) the failure of the Company to pay KCC invoices for more than sixty (60) days from the date of invoice, or (iii) the accrual of invoices or unpaid services in excess of the retainer held by KCC where KCC reasonably believes it will not be paid.

B. In the event that this contract is terminated, regardless of the reason for such termination, KCC shall coordinate with the Company and, to the extent applicable, the clerk of the Bankruptcy Court, to maintain an orderly transfer of record keeping functions and KCC shall provide all necessary staff, services and assistance required for an orderly transfer. The Company agrees to pay for such services in accordance with KCC's then existing standard rates for such services. If such termination occurs following entry of the Retention Order, the Company shall immediately seek entry of an order (in form and substance reasonably acceptable to KCC) that discharges KCC from service and responsibility in the Company's bankruptcy case.

C. Any data, programs, storage media or other materials furnished by the Company to KCC or received by KCC in connection with the services provided under the terms of this Agreement may be retained by KCC until the services provided are paid for, or until this Agreement is terminated with the services paid in full. The Company shall remain liable for all fees and expenses imposed under this Agreement as a result of data or physical media maintained or stored by KCC. KCC shall dispose of the data and media in the manner requested by the Company. The Company agrees to pay KCC for reasonable expenses incurred as a result of the disposition of data or media. If the Company has not utilized KCC's services under this Agreement for a period of at least ninety (90) days, KCC may dispose of the data or media, and be reimbursed by the Company for the expense of such disposition, after giving the Company thirty (30) days' notice. Notwithstanding any term herein to the contrary, following entry of the Retention Order, the disposition of any data or media by KCC shall be in accordance with any applicable instructions from the clerk of the Bankruptcy Court, local Bankruptcy Court rules and orders of the Bankruptcy Court.



## KCC AGREEMENT FOR SERVICES

### VII. SYSTEM IMPROVEMENTS

KCC strives to provide continuous improvements in the quality of service to its clients. KCC, therefore, reserves the right to make changes in operating procedure, operating systems, programming languages, general purpose library programs, application programs, time period of accessibility, types of terminal and other equipment and the KCC data center serving the Company, so long as any such changes do not materially interfere with ongoing services provided to the Company in connection with the Company's chapter 11 case.

### VIII. BANK ACCOUNTS

At the Company's request and subject to Court approval following any chapter 11 filing, KCC may be authorized to establish accounts with financial institutions in the name of and as agent for the Company. To the extent that certain financial products are provided to the Company pursuant to KCC's agreement with financial institutions, KCC may receive compensation from such financial institutions for the services KCC provides pursuant to such agreement.

### IX. LIMITATIONS OF LIABILITY AND INDEMNIFICATION

A. The Company shall indemnify and hold KCC, its affiliates, members, directors, officers, employees, consultants, subcontractors and agents (collectively, the "Indemnified Parties") harmless, to the fullest extent permitted by applicable law, from and against any and all losses, claims, damages, judgments, liabilities and expenses (including reasonable counsel fees and expenses) (collectively, "Losses") resulting from, arising out of or related to KCC's performance under this Agreement. Such indemnification shall exclude Losses resulting from KCC's fraud, gross negligence or willful misconduct. Without limiting the generality of the foregoing, Losses include any liabilities resulting from claims by any third-parties against any Indemnified Party. KCC and the Company shall notify each other in writing promptly upon the assertion, threat or commencement of any claim, action, investigation or proceeding that either party becomes aware of with respect to the services provided by KCC under this Agreement. The Company's indemnification obligations hereunder shall survive the termination of this Agreement.

B. Except as provided herein, KCC's liability to the Company or any person making a claim through or under the Company for any Losses of any kind, even if KCC has been advised of the possibility of such Losses, whether direct or indirect and unless due to fraud, gross negligence or willful misconduct of KCC, shall be limited to the total amount billed or billable to the Company for the portion of the particular work which gave rise to the alleged Loss. In no event shall KCC be liable for any indirect, special or consequential damages such as loss of anticipated profits or other economic loss in connection with or arising out of the services provided for in this Agreement. In no event shall KCC's liability to the Company for any Losses, whether direct or indirect, arising out of this Agreement exceed the total amount billed to the Company and actually paid to KCC for the services contemplated under the Agreement; provided, however, that this limitation shall not apply to the Company during any chapter 11 case in which the Company is a debtor.

C. The Company is responsible for the accuracy of the programs, data and information it or any Company Party submits for processing to KCC and for the output of such information. KCC does not verify information provided by the Company and, with respect to the preparation of



## KCC AGREEMENT FOR SERVICES

schedules and statements, all decisions are at the sole discretion and direction of the Company. The Company reviews and approves all schedules and statements filed on behalf of, or by, the Company; KCC bears no responsibility for the accuracy or contents therein. The Company agrees to initiate and maintain backup files that would allow the Company to regenerate or duplicate all programs and data submitted by the Company to KCC.

D. The Company agrees that except as expressly set forth herein, KCC makes no representations or warranties, express or implied, including, but not limited to, any implied or express warranty of merchantability, fitness or adequacy for a particular purpose or use, quality, productiveness or capacity.

### X. FORCE MAJEURE

KCC will not be liable for any delay or failure in performance when such delay or failure arises from circumstances beyond its reasonable control, including without limitation acts of God, acts of government in its sovereign or contractual capacity, acts of public enemy or terrorists, acts of civil or military authority, war, riots, civil strife, terrorism, blockades, sabotage, rationing, embargoes, epidemics, pandemics, outbreaks of infectious diseases or any other public health crises, earthquakes, fire, flood, other natural disaster, quarantine or any other employee restrictions, power shortages or failures, utility or communication failure or delays, labor disputes, strikes, or shortages, supply shortages, equipment failures, or software malfunctions.

### XI. INDEPENDENT CONTRACTORS

The Company and KCC are and shall be independent contractors of each other and no agency, partnership, joint venture or employment relationship shall arise, directly or indirectly, as a result of this Agreement.

### XII. NOTICES

All notices and requests in connection with this Agreement shall be given or made upon the respective parties in writing and shall be deemed as given as of the third day following the day it is deposited in the U.S. Mail, postage pre-paid or on the day it is given if sent by electronic mail or on the day after the day it is sent if sent by overnight courier to the appropriate address set forth below:

Kurtzman Carson Consultants LLC  
222 N. Pacific Coast Highway, 3rd Floor  
El Segundo, CA 90245  
Attn: Drake D. Foster  
Tel: (310) 823-9000  
Fax: (310) 823-9133  
E-Mail: [dfoster@kccllc.com](mailto:dfoster@kccllc.com)

Briggs & Stratton Corporation  
12301 West Wirth Street  
Wauwatosa, WI 53222  
Attn: General Counsel  
E-mail: [generalcounsel@basco.com](mailto:generalcounsel@basco.com)

Or to such other address as the party to receive the notice or request so designates by written notice to the other.



## KCC AGREEMENT FOR SERVICES

### XIII. APPLICABLE LAW

The validity, enforceability, and performance of this Agreement shall be governed by and construed in accordance with the laws of the State of California.

### XIV. ENTIRE AGREEMENT/ MODIFICATIONS

Each party acknowledges that it has read this Agreement, understands it, and agrees to be bound by its terms and further agrees that it is the complete and exclusive statement of the agreement between the parties, which supersedes and merges all prior proposals, understandings, other agreements, and communications oral and written between the parties relating to the subject matter of this Agreement. The Company represents that it has the authority to enter into this Agreement, and the Agreement is non-dischargeable under any applicable statute or law. If any provision of this Agreement shall be held to be invalid, illegal or unenforceable, the validity, legality and enforceability of the remaining provisions shall in no way be affected or impaired thereby. This Agreement may be modified only by a written instrument duly executed by an authorized representative of B&S and an officer of KCC.

### XV. COUNTERPARTS; EFFECTIVENESS

This Agreement may be executed in two or more counterparts, each of which will be deemed an original but all of which together will constitute one and the same instrument. This Agreement will become effective when one or more counterparts have been signed by each of the parties and delivered to the other parties, which delivery may be made by exchange of copies of the signature page by facsimile or electronic mail.

### XVI. ASSIGNMENT

This Agreement and the rights and duties hereunder shall not be assignable by the parties hereto except upon written consent of the other, with the exception that this Agreement can be assigned without written consent by KCC to a wholly-owned subsidiary or affiliate of KCC.

### XVII. ATTORNEYS' FEES

In the event that any legal action, including an action for declaratory relief, is brought to enforce the performance or interpret the provisions of this Agreement, the parties agree to reimburse the prevailing party's reasonable attorneys' fees, court costs, and all other related expenses, which may be set by the court in the same action or in a separate action brought for that purpose, in addition to any other relief to which the prevailing party may be entitled.

[SIGNATURE PAGE FOLLOWS]





## KCC AGREEMENT FOR SERVICES

IN WITNESS WHEREOF, the parties hereto have executed this Agreement effective as of the first date mentioned above.

Kurtzman Carson Consultants LLC

Handwritten signature of Evan Gershbein in black ink.

6/26/20

BY: Evan Gershbein

DATE:

TITLE: EVP, Corporate Restructuring Services

Briggs & Stratton Corporation

Handwritten signature of Mark A. Schwertfeger in black ink.

6/26/20

BY: Mark A. Schwertfeger

DATE:

TITLE: Senior Vice President and Chief Financial Officer