

Provisionally granted until an order is entered after the final hearing on this document.

No later than two (2) business days after entry of this Order, the Debtors shall serve a copy of this Order, and shall file a certificate of service no later than 24 hours after service.

Jul 20, 2020

*Barry S. Schermer*

BARRY S. SCHERMER  
United States Bankruptcy Judge

UNITED STATES BANKRUPTCY COURT  
EASTERN DISTRICT OF MISSOURI  
SOUTHEASTERN DIVISION

In re: § Chapter 11  
BRIGGS & STRATTON §  
CORPORATION, et al., § Case No. 20-43597-399  
§ (Joint Administration Requested)  
Debtors.<sup>1</sup> § 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

**DEBTORS' APPLICATION FOR AUTHORITY TO EMPLOY  
AND RETAIN HOULIHAN LOKEY CAPITAL, INC. AS INVESTMENT  
BANKER FOR THE DEBTORS 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 title 11 of the United States Code (the “Bankruptcy Code”). The Debtors are authorized to continue to operate their business and manage their properties as debtors in possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code. No trustee, examiner, or statutory committee of creditors has been appointed in these chapter 11 cases. The Debtors have also filed a motion requesting joint administration of their chapter 11 cases pursuant to Rule 1015(b) of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”) and

<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.



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 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. This Court has jurisdiction to hear and determine this matter pursuant to 28 U.S.C. §§ 157 and 1334. This matter is a core proceeding pursuant to 28 U.S.C. § 157(b)(2). Venue is proper before this 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 Application are to the U.S. dollar, unless stated otherwise.

### **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 327 and 328 of the Bankruptcy Code, Bankruptcy Rules 2014(a) and 2016(a), and Local Rules 2014(A) and 2016-2, (i) authorizing them to employ and retain Houlihan Lokey Capital, Inc. (“**Houlihan Lokey**”) as their investment banker in accordance with the terms and conditions set forth in that certain engagement agreement, dated as of April 4, 2020 and as amended on May 5, 2020, and as further amended on June 25, 2020 (together, the “**Engagement Agreement**”) <sup>4</sup>, a copy of which is attached hereto as **Exhibit B**, (ii) approving the terms of Houlihan Lokey’s employment and retention, including the fee and expense structure and the indemnification, contribution, reimbursement, and related provisions set forth in the Engagement Agreement, (iii) waiving certain informational requirements, and (iv) granting such other and further relief as is just and proper. In support of this Application, the Debtors submit the Declaration of Reid Snellenbarger, a Managing Director of Houlihan Lokey (the “**Snellenbarger Declaration**”), which is attached hereto as **Exhibit A** and incorporated herein.

### **Houlihan Lokey’s Qualifications**

5. The Debtors seek to retain Houlihan Lokey as their investment banker because, among other things, Houlihan Lokey has extensive experience and an excellent reputation in

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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>.

<sup>4</sup> Under the Engagement Agreement, Houlihan Lokey was retained by the Debtors’ proposed counsel, Weil, Gotshal & Manges LLP (“**Weil**”), and is engaged by both the Debtors and Weil to perform the services under the Engagement Letter.

providing high quality investment banking services to debtors and creditors in financial restructurings and bankruptcy proceedings.

6. Houlihan Lokey, together with the other subsidiaries of its direct parent company, Houlihan Lokey, Inc., is an internationally recognized investment banking firm, with offices worldwide and more than 900 professionals. Houlihan Lokey is a leader in providing such services to debtors, unsecured and secured creditors, acquirers and other parties-in-interest involved with financially troubled companies both in and outside of bankruptcy. Houlihan Lokey has been, and is, involved in some of the largest restructurings in the United States, both out of court and in chapter 11 cases. Houlihan Lokey has been retained to provide investment banking services in many large bankruptcy cases in various districts nationwide. Houlihan Lokey's recent retentions as investment banker to the Debtor include, but are not limited to: *In re Exide Holdings, Inc.*, Case No. 20-11157-CSS (Bankr. D. Del. July 16, 2020) [Docket No. 546]; *In re Bumble Bee Parent, Inc.*, Case No. 19-12502-LSS (Bankr. D. Del. December 26, 2019) [Docket No. 98]; *In re Bristow Group Inc.*, Case No. 19-32713 (Bankr. D. Del. July 30, 2019) [Docket No. 482]; *In re PHI, Inc.*, Case No. 19-30923 (Bankr. D. Del. May 13, 2019) [Docket No. 441]; *In re Ditech Holding Corporation*, Case No. 19-10412-JLG (Bankr. D. Del. March 20, 2019) [Docket No. 225]. Houlihan Lokey has previously served as investment banker in this district. *See In re Noranda Aluminum, Inc.*, Case No. 16-10083 (Bankr. E.D. Mo. April 13, 2016) [Docket No. 413].

7. The resources, capabilities and experience of Houlihan Lokey in advising the Debtors are crucial to enabling the Debtors to implement a successful restructuring. An investment banker with a deep bench of experience, such as Houlihan Lokey, fulfills a critical need that complements the services offered by the Debtors' other restructuring professionals.

8. Since its retention on April 4, 2020 and up to the Petition Date, Houlihan Lokey provided extensive prepetition services to the Debtors in preparation for the Debtors' restructuring efforts, including assisting management in evaluating strategic alternatives, developing marketing materials, executing capital structure amendment transactions, leading dual-track financing and M&A processes, conducting extensive meetings and negotiations with the various parties in interest, facilitating extensive diligence for the various parties in interest, and providing additional financial advice and investment banking services in preparation for the filing of these chapter 11 cases. In addition, Houlihan Lokey advised the Debtors in the evaluation and negotiation of its proposed DIP Financing and conducted outreach to potential lenders on the Debtors' behalf.

9. As a result of the prepetition work performed on behalf of the Debtors, Houlihan Lokey has acquired significant knowledge of the Debtors and their businesses and is intimately familiar with the Debtors' financial affairs, debt structure, operations, and related matters. In providing prepetition services to the Debtors, Houlihan Lokey has worked closely with the Debtors' senior management and their other advisors and has familiarity with the other major stakeholders that will be involved in these chapter 11 cases. Accordingly, Houlihan Lokey has developed relevant experience and expertise regarding the Debtors that (i) makes Houlihan Lokey a natural selection as the Debtors' investment banker and (ii) will assist Houlihan Lokey in providing effective and efficient services in these chapter 11 cases. Indeed, if the Debtors were required to retain an investment banker other than Houlihan Lokey in connection with these chapter 11 cases, the Debtors, their estates, and all parties in interest would be prejudiced by the time and expense necessary to familiarize another firm with the intricacies of the Debtors and their business operations.

**Services to Be Provided by Houlihan Lokey**

10. The parties have entered into the Engagement Agreement, as amended, which governs the relationship between the Debtors and Houlihan Lokey. The terms and conditions of the Engagement Agreement were negotiated at arm's length and in good faith between the Debtors and Houlihan Lokey and reflect the parties' mutual agreement as to the substantial efforts that will be required in this engagement. Under the Engagement Agreement, in consideration for the compensation contemplated thereby, Houlihan Lokey has provided and has agreed to provide the following services:<sup>5</sup>

- a. Assisting the Debtors in the development and distribution of selected information, documents and other materials in an effort to create an interest in and to consummate any Transaction(s) (as defined in the Engagement Agreement), including, if appropriate, advising the Debtors in the preparation of an offering memorandum;
- b. Soliciting and assisting the Debtors in evaluating indications of interest and proposals regarding any Transaction(s) from current and/or potential lenders and/or other counterparties;
- c. Assisting the Debtors with the development, structuring, negotiation, and implementation of any Transaction(s), including participating in negotiations with creditors and other parties involved in any Transaction(s) and evaluation of any forward looking impact of any Transaction(s);
- d. Providing expert advice and testimony regarding financial matters related to any Transaction(s), if necessary;
- e. Advising, attending, and presenting with Weil, in meetings of the Debtors' Board of Directors, creditor groups, official constituencies, and other interested parties, as the Debtors and Houlihan Lokey determine to be necessary or desirable;

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<sup>5</sup> The summaries provided in this Application are provided for convenience only. In the event of any inconsistency between any summary and the terms and provisions of the Engagement Agreement, the terms of the Engagement Agreement shall control. Capitalized terms used but not otherwise defined in the summaries of the Engagement Agreement contained herein shall have the meanings ascribed to such terms in the Engagement Agreement. In the event of any inconsistency between any summary and the terms and provisions of the Proposed Order, the terms of the Proposed Order shall control.

- f. Reviewing the financial condition, liquidity, operations, competitive environment, prospects and related matters of the Debtor, including the impact of COVID-19;
- g. Analyzing the Debtors' current operational strategy and capital structure, including assessment of covenants and potential cross defaults under existing obligations;
- h. Providing strategic advice with regard to various alternatives being considered by the Debtors; and
- i. Providing such other investment banking services as may be required by additional issues and developments not anticipated on the Effective Date.

#### **No Duplication of Services**

The Debtors believe that Houlihan Lokey's services will complement, and not duplicate, the services that other professionals will be providing to the Debtors in these chapter 11 cases. Houlihan Lokey will carry out unique functions and will use reasonable efforts to coordinate with the Debtors' other retained professionals to avoid unnecessary duplication of services.

#### **Houlihan Lokey's Compensation**

11. In consideration of the services to be provided by Houlihan Lokey, and as more fully described in the Engagement Agreement, subject to the Court's approval, the Debtors have agreed to pay Houlihan Lokey the following proposed compensation, which is set forth in the Engagement Agreement (the "**Fee and Expense Structure**"):

- a. **Initial Fee:** The Company has paid a nonrefundable cash fee of \$200,000 in consideration of Houlihan Lokey accepting the engagement ("**Initial Fee**").
- b. **Monthly Fees:** In addition to the other fees provided for in the Engagement Agreement, upon the first monthly anniversary of the Original Date and on every monthly anniversary of April 4, 2020 (the "**Original Date**") during the term of the Engagement Agreement, the Company has or shall, as applicable, pay Houlihan Lokey in advance, without notice or invoice, a nonrefundable cash fee of \$200,000 ("**Monthly Fee**"). Each Monthly Fee shall be earned upon Houlihan Lokey's receipt thereof in consideration of Houlihan Lokey accepting the engagement and performing services as described in the Engagement Agreement. Houlihan Lokey shall be entitled

to receive a minimum of two Monthly Fees regardless of a termination of the Engagement Agreement within the first three months following the Original Date. 50% of the Monthly Fees previously paid to Houlihan Lokey after the sixth (6th) month following the Original Date shall be credited against any Restructuring Transaction Fee, Financing Transaction Fee, and/or Sale Transaction Fee (each as defined below) to which Houlihan Lokey becomes entitled under the Engagement Agreement (it being understood and agreed that no Monthly Fee shall be credited more than once), except that, in no event shall such Restructuring Transaction Fee, Financing Transaction Fee, and/or Sale Transaction Fee be reduced below zero.

- c. **Transaction Fee(s):** In addition to the Initial Fee and the Monthly Fees provided for in the Engagement Agreement, the Company shall pay Houlihan Lokey the following transaction fee(s).
- i. **Restructuring Transaction Fee.** Upon the earlier to occur of: (A) in the case of an out-of-court Restructuring Transaction (as defined below), the closing of such Restructuring Transaction; and (B) in the case of an in-court Restructuring Transaction, the date of confirmation of a plan of reorganization under Chapter 11 of the Bankruptcy Code (as defined below) pursuant to an order of the applicable bankruptcy court, Houlihan Lokey shall earn, and the Company, solely, shall promptly pay to Houlihan Lokey, a cash fee (“**Restructuring Transaction Fee**”) equal to 1.05% of the total principal amount of the Company’s outstanding indebtedness for borrowed money that is, without duplication, exchanged, tendered, materially amended, retired, repaid and/or extinguished in such Restructuring Transaction (“**Subject Debt**”).
  - ii. **Financing Transaction Fee.** Upon the closing of each Financing Transaction (as defined below), Houlihan Lokey shall earn, and the Company, solely, shall thereupon pay immediately and directly from the gross proceeds, if any, of such Financing Transaction, as a cost of such Financing Transaction, a cash fee (“**Financing Transaction Fee**”) equal to the sum of: (A) 1.0% of the aggregate principal amount of any indebtedness for borrowed money raised, placed or committed and available at close that is senior to other indebtedness of the Company, secured by a first priority lien and unsubordinated, with respect to both lien priority and payment, to any other indebtedness for borrowed money of the Company (other than with respect to debtor-in-possession financing); (B) 3.0% of the aggregate principal amount of any indebtedness for borrowed money raised, placed or committed and available at close that is secured by a lien (other than a first lien), is unsecured and/or is contractually subordinated, including for the avoidance of doubt any indebtedness with warrants attached where such warrants represent



less than five percent (5.0%) ownership of the Company on a fully diluted basis; and (C) 5.0% of the aggregate amount of all equity or equity-linked securities (including, without limitation, convertible securities, preferred stock, and indebtedness with warrants attached where such warrants represent five percent (5.0%) or more of the ownership of the Company on a fully diluted basis) raised, placed or committed and available at close. It is understood and agreed that if the proceeds of any such Financing Transaction are committed at close but not available at close, Houlihan Lokey shall be entitled to an additional Financing Transaction Fee with respect to any such committed amounts when such proceeds become available. The Financing Transaction Fee(s) shall be payable in respect of any underwritten or privately placed sale of Securities that constitutes a Financing Transaction whether such sale has been arranged by Houlihan Lokey, by another agent (or other issuer of the Securities (as defined below) in such Financing Transaction) or directly by the Company. Any non-cash consideration provided to or received in connection with the Financing Transaction (including but not limited to intellectual or intangible property) shall be valued for purposes of calculating the Financing Transaction Fee as equaling the number of Securities issued in exchange for such consideration multiplied by (in the case of debt securities) the face value of each such Security or (in the case of equity securities) the price per Security paid in the then current round of financing. The fees set forth in the Engagement Agreement shall be in addition to any other fees that the Company may be required to pay to any investor or other purchaser of Securities to secure its financing commitment. The Financing Transaction Fee payable under the Engagement Agreement shall be subject to a \$1,500,000 minimum Financing Transaction Fee payable upon the first closing of a Financing Transaction. In the event debtor-in-possession financing is raised, a Financing Transaction Fee shall be payable on any incremental capital raised, placed or committed and available at close as part of such debtor-in-possession financing. For the avoidance of doubt, a Financing Transaction Fee shall not be payable on any amount of the pre-petition ABL Facility (as defined below) that is “rolled up” in connection with any debtor-in-possession financing.

To the extent proceeds of any Financing Transaction are used to retire, repay or extinguish existing indebtedness on which a Restructuring Transaction Fee is, or would otherwise be, earned, the amount of such proceeds shall be deducted from the amount of Subject Debt for purposes of calculating the Restructuring Transaction Fee otherwise due to Houlihan Lokey, as provided in Section 3(iii)(a) of the Engagement Agreement.

- iii. **Amendment Transaction Fee.** Upon the closing of any Amendment Transaction (as defined below), Houlihan Lokey shall earn, and the Company, solely, shall promptly pay to Houlihan Lokey, a cash fee (“**Amendment Transaction Fee**”) of \$250,000. In the event more than one Amendment Transaction closes contemporaneously (or substantially contemporaneously) with the Company’s lenders and/or note holders, then the total Amendment Transaction Fees in respect of such Amendment Transactions shall be no greater than \$350,000. If one or more Amendment Transaction Fees are earned and payable, 50% of each Amendment Transaction Fee shall be credited against any Restructuring Transaction Fee and/or Sale Transaction Fee to which Houlihan Lokey becomes entitled under the Engagement Agreement.
- iv. **Sale Transaction Fee.** Upon the closing of a Sale Transaction, Houlihan Lokey shall earn, and the Company shall thereupon pay immediately and directly from the gross proceeds of such Sale Transaction, as a cost of such Sale Transaction, a cash fee (“**Sale Transaction Fee**”) based upon Aggregate Gross Consideration (“**AGC**”), calculated in the manner set forth in (A) and (B) below; subject, however, to a minimum Sale Transaction Fee of \$4,000,000:
- A. For AGC up to \$550 million: 1.25% of AGC, plus
  - B. For AGC in excess of \$550 million: 3.00% of such incremental AGC.

If more than one Sale Transaction is consummated, Houlihan Lokey shall be compensated based on the AGC from all Sale Transactions, calculated in the manner set forth in (A) and (B) below; subject, however, to a minimum Sale Transaction Fee of (x) the greater of \$1,000,000 or 4% of AGC for each Sale Transaction with AGC of less than \$40 million, and (y) \$1,750,000 for each other Sale Transaction:

- A. For AGC up to \$550 million: 1.50% of AGC, plus
- B. For AGC in excess of \$550 million: 3.00% of such incremental AGC.

If both a Restructuring Transaction Fee and a Sale Transaction Fee are earned, Houlihan Lokey shall be paid the higher of a Restructuring Transaction Fee and a Sale Transaction Fee.

**The Fee and Expense Structure is Appropriate and Reasonable  
and Should be Approved under Section 328(a) of the Bankruptcy Code**

12. The Debtors believe that the Fee and Expense Structure is comparable to those generally charged by investment bankers of similar stature to Houlihan Lokey for comparable engagements, both in and out of bankruptcy proceedings, and reflects a balance between a fixed fee and a contingency amount tied to the consummation and closing of the transactions and services contemplated by the Debtors and Houlihan Lokey in the Engagement Agreement.

13. The Fee and Expense Structure is consistent with Houlihan Lokey's normal and customary billing practices for comparably sized and complex cases and transactions, both in and out of bankruptcy proceedings, involving the services to be provided in connection with these chapter 11 cases. Moreover, the Fee and Expense Structure is consistent with and typical of arrangements entered into by Houlihan Lokey and other investment banks in connection with the rendering of comparable services to clients such as the Debtors.

14. Houlihan Lokey's restructuring expertise, as well as its capital markets knowledge, financing skills and mergers and acquisitions expertise, some or all of which may be required by the Debtors during the term of Houlihan Lokey's engagement, were important factors in determining the Fee and Expense Structure. The ultimate benefit to the Debtors derived from the services provided by Houlihan Lokey pursuant to the Engagement Agreement cannot be measured by a reference to the number of hours expended by Houlihan Lokey's professionals.

15. The Debtors and Houlihan Lokey negotiated the Fee and Expense Structure to function as an interrelated, integrated unit corresponding to Houlihan Lokey's overall services. It would be contrary to the intention of Houlihan Lokey and the Debtors for any isolated component of the Fee and Expense Structure to be treated as sufficient consideration for any isolated portion of Houlihan Lokey's services. Instead, the Debtors and Houlihan Lokey intend that Houlihan

Lokey's services be considered as a whole for which Houlihan Lokey is to be compensated by the Fee and Expense Structure in its entirety.

16. In light of the foregoing and given the numerous issues that Houlihan Lokey may be required to address in the performance of its services pursuant to the Engagement Agreement, Houlihan Lokey's commitment to the variable level of time and effort necessary to address all such issues as they arise, and the market prices for Houlihan Lokey's services for both in court and out of court engagements of this nature, the Debtors believe that the Fee and Expense Structure is fair and reasonable and market-based under the standards set forth in section 328(a) of the Bankruptcy Code.

**Record Keeping and Applications for Compensation**

17. It is not the general practice of investment banking firms, including Houlihan Lokey, to keep detailed time records similar to those customarily kept by attorneys. Because Houlihan Lokey is paid on a fixed monthly fee structure and does not ordinarily maintain contemporaneous time records, the Debtors request that Houlihan Lokey not be required to submit time records in support of its fee applications.

18. Houlihan Lokey will also maintain reasonably detailed records of any actual and necessary costs and expenses incurred in connection with the aforementioned services.

19. Houlihan Lokey's applications for compensation and expense reimbursement will be paid by the Debtors pursuant to the terms of the Engagement Agreement and the applicable provisions of the Bankruptcy Code, the Bankruptcy Rules, the Local Rules, and any other applicable procedures established by the Court.

**Houlihan Lokey's Disinterestedness**

20. To the best of the Debtors' knowledge and belief and except to the extent disclosed herein and in the Snellenbarger Declaration, Houlihan Lokey: (i) is a "disinterested person" within

the meaning of section 101(14) of the Bankruptcy Code, as required by Bankruptcy Code section 327(a); and (ii) does not hold or represent any interest materially adverse to the Debtors or their estates.

21. As set forth in further detail in the Snellenbarger Declaration, Houlihan Lokey has certain connections with creditors and other parties in interest in these chapter 11 cases. The Debtors and Houlihan Lokey do not believe that any of these connections constitute an interest materially adverse to the interest of the estate or of any class of creditors or equity holders in these chapter 11 cases.

22. To the extent Houlihan Lokey discovers any material facts bearing on the matters described herein during the period of Houlihan Lokey's retention, Houlihan Lokey has undertaken to amend and supplement the information contained in this Application and the Snellenbarger Declaration to disclose such facts.

23. During the ninety (90) days immediately preceding the Petition Date, the Debtors paid Houlihan Lokey \$950,000 in fees and \$12,541.10 in expense reimbursements, which includes \$10,000 paid on account of anticipated expenses. Other than as set forth herein, Houlihan Lokey did not receive any payments from the Debtors during the ninety (90) days immediately preceding the Petition Date.

24. Within one (1) year prior to the Petition Date, the Debtors paid Houlihan Lokey \$1,150,000 in fees and \$12,541.10 in expense reimbursements, which includes the expense reimbursement reserve described in the immediately preceding paragraph.

25. As of the Petition Date, the Debtors did not owe Houlihan Lokey for any fees or expenses incurred prior to the Petition Date. It is possible that certain expenses that were incurred by Houlihan Lokey that are reimbursable under the terms of the Engagement Agreement were not

yet reflected on Houlihan Lokey's books and records as of the Petition Date. Upon entry of an order approving the Application, Houlihan Lokey will waive any claim for such unreimbursed expenses in excess of amounts paid to Houlihan Lokey prepetition.

26. As set forth in the Snellenbarger Declaration, Houlihan Lokey has not shared or agreed to share any of its compensation from the Debtors with any other person, other than as permitted by section 504 of the Bankruptcy Code. If any such agreement is entered into, Houlihan Lokey has undertaken to amend and supplement the information contained in this Application and the Snellenbarger Declaration to disclose the terms of any such agreement.

27. No promises have been received by Houlihan Lokey, or by any professionals engaged hereunder, as to compensation in connection with this case other than in accordance with the provisions of the Bankruptcy Code.

#### **Indemnification Provisions**

28. Among other things, the Engagement Agreement provides that the Debtors shall indemnify Houlihan Lokey and the other indemnified HL Parties (as defined in the Engagement Agreement) against any and all losses, claims, damages, or liabilities to which the indemnified HL Parties may become subject in connection with the Engagement Agreement, except to the extent such losses are finally judicially determined to have resulted primarily from such indemnified HL Indemnified Party's gross negligence or willful misconduct.

29. The Debtors and Houlihan Lokey believe that the indemnification, contribution, reimbursement, and other related provisions contained in the Engagement Agreement are customary and reasonable for investment banking engagements, both in and out of court, and, as modified by the Proposed Order, reflect the qualifications and limitations on indemnification provisions that are customary in this district and other jurisdictions.

30. The terms and conditions of the Engagement Agreement, including these provisions, were negotiated by the Debtors and Houlihan Lokey at arm's length and in good faith. The Debtors respectfully submit that such provisions, viewed in conjunction with the other terms of Houlihan Lokey's proposed retention, are reasonable and in the best interests of the Debtors, their estates and creditors in light of the fact that the Debtors require Houlihan Lokey's services in these chapter 11 cases.

**Basis for Relief**

31. The Debtors seek authority to employ and retain Houlihan Lokey as their investment banker under section 327 of the Bankruptcy Code, which provides that a debtor is authorized to employ professional persons "that do not hold or represent an interest adverse to the estate, and that are disinterested persons, to represent or assist the [Debtors] in carrying out the [Debtors'] duties under this title." 11 U.S.C. § 327(a). Section 1107(b) of the Bankruptcy Code elaborates upon sections 101(14) and 327(a) of the Bankruptcy Code in cases under chapter 11 of the Bankruptcy Code and provides that "a person is not disqualified for employment under section 327 of [the Bankruptcy Code] by a debtor in possession solely because of such person's employment by or representation of the debtor before the commencement of the case." 11 U.S.C. § 1107(b).

32. In addition, the Debtors seek approval of the Engagement Agreement (including the Fee and Expense Structure and the indemnification, contribution, reimbursement and other related provisions) pursuant to section 328(a) of the Bankruptcy Code, which provides, in relevant part, that the Debtors "with the court's approval, may employ or authorize the employment of a professional person under section 327 . . . on any reasonable terms and conditions of employment, including on a retainer, on an hourly basis, on a fixed or percentage fee basis, or on a contingent fee basis." 11 U.S.C. § 328(a). Section 328 of the Bankruptcy Code permits the compensation of

professionals, including investment bankers, on more flexible terms that reflect the nature of their services and market conditions. As the United States Court of Appeals for the Fifth Circuit recognized in *Donaldson Lufkin & Jenrette Sec. Corp. v. Nat'l Gypsum Co.* (*In re Nat'l Gypsum Co.*), 123 F.3d 861 (5th Cir. 1997):

Prior to 1978 the most able professionals were often unwilling to work for bankruptcy estates where their compensation would be subject to the uncertainties of what a judge thought the work was worth after it had been done. That uncertainty continues under the present § 330 of the Bankruptcy Code, which provides that the court award to professional consultants “reasonable compensation” based on relevant factors of time and comparable costs, etc. Under present § 328 the professional may avoid that uncertainty by obtaining court approval of compensation agreed to with the trustee (or debtor or committee).

*Id.* at 862 (citations omitted), *cited in Riker, Danzig, Scherer, Hyland & Perretti LLP v. Official Comm. of Unsecured Creditors (In re Smart World Techs. LLC)*, 383 B.R. 869, 874 (S.D.N.Y. 2008).

33. The Engagement Agreement appropriately reflects (i) the nature and scope of services to be provided by Houlihan Lokey, (ii) Houlihan Lokey’s substantial experience with respect to investment banking services, and (iii) the Fee and Expense Structures typically utilized by Houlihan Lokey and other leading investment bankers that do not bill their clients on an hourly basis.

34. Similar fixed and contingency fee arrangements have been approved and implemented by this jurisdiction in other large chapter 11 cases. *See, e.g., In re Foresight Energy LP*, Case No. 20-41308 (Bankr. E.D. Mo. Mar. 10, 2020) [Docket No. 32]; *In re Payless Holdings LLC*, Case No. 19-40883 (Bankr. E.D. Mo. Mar. 19, 2019) [Docket No. 34]; *In re Abengoa Bioenergy US Holding, LLC*, Case No. 16-41161 (Bankr. E.D. Mo. May 6, 2016) [Docket No. 159]; *In re Noranda Aluminum, Inc.*, Case No. 16-10083 (Bankr. E.D. Mo. April 13, 2016) [Docket



No. 479]; *In re Peabody Energy Corp.*, Case No. 16-42529 (Bankr. E.D. Mo. May 18, 2016) [Docket No. 532]. Accordingly, the Debtors believe that Houlihan Lokey's retention on the terms and conditions proposed herein is appropriate.

### **Notice**

35. 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; (v) the Internal Revenue Service; (vi) the United States Attorney's Office for the Eastern District of Missouri; (vii) the Securities and Exchange Commission; and (viii) any other party that has requested notice pursuant to Bankruptcy Rule 2002 (collectively, the "**Notice Parties**"). Notice of this Application and any order entered hereon will be served in accordance with Local Rule 9013-3(A)(1).

### **No Prior Request**

36. No prior application for the relief requested herein has been made by the Debtors to this or any other court.

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

Dated: July 20, 2020  
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*

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