

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE EASTERN DISTRICT OF MISSOURI
SOUTHEASTERN DIVISION**

<hr style="border: 0.5px solid black;"/> <div style="display: flex; justify-content: space-between;"><div style="width: 80%;"><p>In re:</p><p>BRIGGS & STRATTON CORPORATION, <i>et al.</i>¹,</p><p style="text-align: right;">Debtors.</p></div><div style="width: 10%; text-align: center;">:</div><div style="width: 10%; vertical-align: top;"><p>Chapter 11</p><p>:</p><p>Case No. 20-43597-399</p><p>:</p><p>Jointly Administered</p><p>:</p><p>RE: D.I. 516</p><p>:</p></div></div> <hr style="border: 0.5px solid black;"/>	
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**LIMITED OBJECTION AND RESERVATION OF RIGHTS
OF ROI SOLUTIONS, LLC TO PROPOSED CURE AMOUNT**

ROI Solutions, LLC (“ROI”), by and through its undersigned counsel, hereby files this limited objection and reservation of rights (the “Limited Objection”) to the *Notice of Cure Costs and Proposed Assumption and Assignment of Executory Contracts and Unexpired Leases in Connection with Sale* (the “Cure Notice”) [D.I. 516]. In support of its Limited Objection, ROI respectfully sets forth as follows:

1. On July 20, 2020, (the “Petition Date”), the above-captioned debtors and debtors-in-possession (collectively, the “Debtors”) each commenced a case under chapter 11 of title 11 of the United States Code, 11 U.S.C. §§ 101, *et seq.* (the “Bankruptcy Code”). The Debtors’ chapter 11 cases have been consolidated for procedural purposes only and are being administered jointly.

2. ROI is an executory contract counterparty of the Debtors. Specifically, ROI provides staffing services to the Debtors pursuant to that certain Master Services Agreement dated

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



February 22, 2016, between ROI and Briggs & Stratton Corporation (the “Agreement”).² By way of the Agreement, ROI provides certain technical support services and general product information to the Debtors’ customers. The Agreement is in place for a period of twenty-eight (28) months, with subsequent twelve (12) month renewal periods. ROI was actively providing services to the Debtors prior to the Petition Date, and has continued to provide post-petition services.

3. On August 19, 2020, the Debtors filed the Cure Notice and Exhibit A to the Cure Notice. Exhibit A to the Cure Notice, as filed by the Debtors, includes a schedule of the proposed cure amounts. The Debtors’ proposed cure amount related to the Agreement is \$209,959.10 (the “Cure Amount”).

4. The Cure Amount is incorrect and understated. The total outstanding pre-petition amount owed to ROI under the Agreement is no less than \$342,136.90 (the “Actual Cure Amount”). A true and correct statement of account is attached hereto as **Exhibit A** and incorporated by reference herein. Moreover, certain additional amounts may remain due for the post-petition period.

5. Section 365 of the Bankruptcy Code provides:

(b)(1) If there has been a default in an executory contract or unexpired lease of the debtor, the trustee may not assume such contract or lease unless, at the time of assumption of such contract or lease, the trustee –

- (A) cures, or provides adequate assurance that the trustee will promptly cure, such default . . .;
- (B) compensates, or provides adequate assurance that the trustee will promptly compensate, a party other than the debtor to such contract or lease, for any actual pecuniary loss to such party resulting from such default; and
- (C) provides adequate assurance of future performance under such contract or lease.

² The Agreement is already in the Debtors’ possession and therefore is not attached hereto; however, a copy is available upon reasonable request.

11 U.S.C. § 365(b)(1). Moreover, the Bankruptcy Code provides that an executory contract or unexpired lease can only be assigned to a third party if the assignee provides adequate assurance of future performance of such contract or lease. *See* 11 U.S.C. § 365(b)(1)(C) and (f)(2).

6. Section 365 of the Bankruptcy Code makes clear that executory contracts and unexpired leases cannot be assumed and assigned by a debtor in bankruptcy without concurrent cure of all arrearages owed at the time of assumption. *See e.g., In re Genuity, Inc.*, 323 B.R. 79, 84 (Bankr. S.D.N.Y. 1995).

7. ROI reserves all rights to object to any assumption without payment in full of an amount that is not less than Actual Cure Amount, plus additional amounts due (either pre or post-petition) and requests that the proposed assumption and assignment of the Agreement only be granted on the condition that Debtors pay all amounts due under the Agreement, and cure any and all nonmonetary defaults in accordance with section 365(b) of the Bankruptcy Code.

8. Moreover, before the Agreement can be assigned, the Debtors must provide “adequate assurance of future performance” up to the contract standards. 11 U.S.C. §365(f)(2)(B).

Notice

9. Notice of this Limited Objection will be provided to: the Debtors, 12301, West Wirth Street, Wauwatosa, Wisconsin 53222 (Attn: Kathryn M. Buono, Esq.); (b) counsel for the Debtors, Weil, Gotshal & Manges LLP, 767 Fifth Avenue, New York, NY 10053 (Attn: Ronit J. Berkovich, Esq., Debora A. Hoehne, Esq., and Martha E. Martir, Esq.) and Carmody MacDonald P.C., 120 S. Central Ave., Suite 1800, St. Louis, Missouri 63105 (Attn: Robert E. Eggmann, Esq., Christopher J. Lawhorn, Esq., and Thomas H. Riske, Esq.); (c) counsel for the Stalking Horse Bidder, Kirkland & Ellis LLP, 300 N. LaSalle, Chicago, IL 60654 (Attn: Chad Husnick, P.C., Esq. and Gregory F. Pesce, Esq.); (d) counsel to the Official Committee of Unsecured Creditors

appointed in the Debtors' chapter 11 cases (the "Creditors' Committee"), Brown Rudnick LLP, Seven Times Square, New York, NY 10036 (Attn: Robert J. Stark, Esq., Oksana P. Lashko, Esq., and Andrew Carty, Esq.); (e) counsel for the ABL Agent and DIP Agent, Latham & Watkins LLP (Attn: Peter P. Knight and Jonathan C. Gordon); (f) counsel for Wilmington Trust, N.A., as successor indenture trustee under the Senior Notes, Pryor Cashman LLP (Attn: Seth H. Lieberman, Esq. and David W. Smith, Esq.); (g) counsel for the United States Trustee for the Eastern District of Missouri (Attn: Sirena T. Wilson, Esq.); and (h) the United States Attorney's Office for the Eastern District of Missouri.; and all parties requesting notice pursuant to Rule 2002 of Federal Rules of Bankruptcy Procedures.

RESERVATION OF RIGHTS

10. ROI reserves its rights to supplement this Limited Objection at or prior to the hearing to consider this Limited Objection.

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WHEREFORE, ROI respectfully requests that the Court (i) sustain this Limited Objection, (ii) condition the approval of the sale of the Debtors' assets on the payment of all amounts due as of the date of assumption of the Agreement, and (iii) grant such other and further relief as is just and proper under the circumstances.

Dated: September 8, 2020

**BENESCH, FRIEDLANDER, COPLAN
& ARONOFF LLP**

/s/ Kevin M. Capuzzi

Jennifer R. Hoover (DE #5111)

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Counsel to ROI Solutions, LLC

EXHIBIT A



ROI Solutions
792 East 280 South
American Fork Utah 84003
U.S.A

Statement of Accounts

01 Jun 2020 To 08 Sep 2020

To
Briggs & Stratton
3300 N. 124th St.
Wauwatosa
53222 Wisconsin
U.S.A

Account Summary

Opening Balance	\$ 401,543.55
Invoiced Amount	\$ 556,041.11
Amount Received	\$ 474,209.01
Balance Due	\$ 483,375.65

Date	Transactions	Details	Amount	Payments	Balance
01 Jun 2020	***Opening Balance***		401,543.55		401,543.55
30 Jun 2020	Invoice	INV-6246 - due on 30 Jun 2020	209,959.10		611,502.65
03 Jul 2020	Payment Received	\$166,021.76 for payment of INV-6084		166,021.76	445,480.89
09 Jul 2020	Payment Received	\$235,521.79 for payment of INV-6139		235,521.79	209,959.10
19 Jul 2020	Invoice	INV-6278 - due on 19 Jul 2020	132,177.80		342,136.90
31 Jul 2020	Invoice	INV-6357 - due on 31 Jul 2020	72,665.46		414,802.36
31 Aug 2020	Invoice	INV-6422 - due on 31 Aug 2020	141,238.75		556,041.11
04 Sep 2020	Payment Received	\$72,665.46 for payment of INV-6357		72,665.46	483,375.65
Balance Due					\$ 483,375.65

CERTIFICATE OF SERVICE

The undersigned hereby certifies that, on September 8, 2020, I caused a copy of the foregoing *Limited Objection and Reservation of Rights of ROI Solutions LLC to Proposed Cure Amount* to be filed electronically with the Court and served through the Court's CM/ECF system upon all registered electronic filers appearing in these cases and upon the following via FedEx overnight delivery:

Briggs & Stratton
12301 W. Wirth St.
Wauwatosa, Wisconsin 53222
Attn: Kathryn M. Buono, Esq.

Pryor Cashman LLP
Seven Times Square
New York, NY 10036
Attn: Seth H. Lieberman, Esq.

Weil, Gotshal & Manges LLP
767 Fifth Avenue
New York, NY 10053
Attn: Ronit J. Berovich, Esq.

Office of the United States Trustee
for the Eastern District of Missouri
111 S. 10th Street
St. Louis, MO 63102
Attn: Sirena T. Wilson, Esq.

Carmody MacDonald P.C.
120 S. Central Ave., Ste. 1800
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/s/ Kevin M. Capuzzi
Kevin M. Capuzzi (DE #5462)