

UNITED STATES BANKRUPTCY COURT  
EASTERN DISTRICT OF MISSOURI  
SOUTHEASTERN DIVISION

<b>In re:</b>	)	
	)	<b>Chapter 11</b>
<b>BRIGGS &amp; STRATTON</b>	)	
<b>CORPORATION, et al.,</b>	)	<b>Case No. 20-43597-399</b>
	)	
<b>Debtors.</b>	)	<b>(Jointly Administered)</b>
_____	)	

**OBJECTION AND RESERVATION OF RIGHTS OF TI INVESTORS OF  
GERMANTOWN I LLC TO NOTICE OF CURE COSTS AND PROPOSED  
ASSUMPTION AND ASSIGNMENT OF EXECUTORY CONTRACTS AND  
UNEXPIRED LEASES IN CONNECTION WITH SALE**

TI Investors of Germantown I LLC ("TI Investors"), by and through its undersigned counsel, objects to the *Notice of Cure Costs and Proposed Assumption and Assignment of Executory Contracts and Expired Leases in Connection with Sale* [Docket No. 516] (the "Cure Notice"), and in support thereof, respectfully states as follows:

**BACKGROUND**

1. TI Investors, as successor in interest to ZPG Development LLC, is party to that certain Lease Agreement dated as of August 3, 2018, as amended to date, by and between TI Investors, as landlord, and Briggs & Stratton Corporation (the "Debtor"), as tenant (as so amended, the "Lease"), pursuant to which TI Investors leases to Debtor an industrial use facility on certain real property located on Holy Hill Road within the Village of Germantown, County of Washington, State of Wisconsin.

2. Pursuant to the Lease, in addition to base rent and related charges, the Debtor is responsible for (a) additional rent consisting of expenses such as real property taxes, insurance, maintenance expenses and management fees (collectively, "Operating Expenses") and (b) TI Investors' attorneys' fees and expenses incurred in connection with the Lease. While the



Operating Expenses are billed on a monthly basis, a true-up is performed at the end of the year once the actual Operating Expenses are determined.

3. Pursuant to the Debtor's *Motion for Entry of an Order (I) Approving (A) Bidding Procedures, (B) Designation of Stalking Horse Bidder and Stalking Horse Bid Protections, (C) Scheduling Auction and Sale Hearing, (D) Form and Manner of Notice of Sale, Auction, and Sale Hearing, and (E) Assumption and Assignment Procedures; (II) Authorizing (A) Sale of Debtors' Assets and Equity Interests Free And Clear of Liens, Claims, Interests, and Encumbrances and (B) Assumption and Assignment of Executory Contracts and Unexpired Leases; and (III) Granting Related Relief* [Docket No. 53] (the "Sale Motion"), the Debtors seek the Court's approval to sell substantially all of their assets to the Stalking Horse Bidder (as defined in the Sale Motion).

4. On August 19, 2020, the Court entered an *Order (I) Approving (A) Bidding Procedures, (B) Designation of Stalking Horse Bidder and Stalking Horse Bid Protections, (C) Scheduling Auction and Sale Hearing, (D) Form and Manner of Notice of Sale, Auction, and Sale Hearing, and (E) Assumption and Assignment Procedures and Form and Manner of Notice of Assumption and Assignment and (II) Granting Related Relief* [Docket No. 505] (the "Sale Procedures Order").

5. Also on August 19, 2020, pursuant to the Sale Procedures Order, the Debtors filed the Cure Notice, which included the Lease and indicated that the cure cost owed to TI Investors was \$0.00.

### **OBJECTION**

#### **A. The Cure Notice Does Not Adequately Describe the Cure Amount Owed to TI Investors and Fails to Adequately Account for Post-Petition Amounts Owed to TI Investors.**

6. The Cure Notice does not provide adequate information for TI Investors to determine the correct cure amount nor the specific contracts that the Debtor proposes to potentially assume and assign. Specifically, the Cure Notice does not provide for a proposed date of contract assumption.

7. As of July 20, 2020 (the "Petition Date"), the Debtor owed TI Investors \$0.00 for base rent under the Lease. However, as of the date of this Objection, the Debtor owes TI Investors over \$4,000 for TI Investors' attorneys' fees and costs, which the Debtor is responsible for under the Lease.

8. Additionally, the Debtor remains responsible for all accrued or accruing charges under the Lease, including actual Operating Expenses that have not yet been liquidated, whether arising pre-petition or post-petition (collectively, the "Unliquidated Operating Expenses"). In the event the Lease is assigned to the Stalking Horse Bidder, the Stalking Horse Bidder must assume all obligations owing under the Lease. Any final order authorizing the assumption and assignment of the Lease should clearly state that the Stalking Horse Bidder will assume all lease obligations and pay them when due, regardless of whether they relate to the period prior to, or after, the assumption and assignment including, without limitation, the Unliquidated Operating Expenses. Additionally, any final order authorizing the assumption and assignment of the Lease should specify that any release of the Debtor with respect to the Lease and amounts owing thereunder does not apply to obligations to pay the Unliquidated Operating Expenses.

9. Pursuant to the Sale Procedures Order and the Cure Notice, once TI Investors receives the cure amount, it will be "forever barred from asserting any additional cure *or other amounts* with respect to [the Lease] against the Debtors, the Successful Bidder, or the property of any of them." (emphasis added). While TI Investors assumes that this language is not intended

to preclude TI Investors from collecting amounts arising after the Petition Date, the language is sufficiently vague such that it could be interpreted to mean that the proposed cure amount is the only funds TI Investors will ever be entitled to under the Lease.

10. As such, all post-petition amounts owing to TI Investors must also be included in the cure amount and the Stalking Horse Bidder must expressly assume all obligations under the Lease that are not yet due and owing, including the Unliquidated Operating Expenses.

11. Unless and until TI Investors is paid in full for all amounts then owing under the Lease (including post-petition amounts) and the Unliquidated Operating Expenses have been assumed by the Stalking Horse Bidder, TI Investors objects to the assumption and assignment thereof.

#### **B. Reservation of Rights**

12. TI Investors reserves the right to supplement and amend this Objection, to raise additional grounds for objection at the hearing, and to join in any objection(s) filed by other parties in interest.

WHEREFORE, for all of the reasons discussed above, TI Investors objects to the Cure Notice and the proposed cure amount stated therein and further objects to an assumption of the Lease before TI Investors is paid in full for the correct cure amount owing at the time of said assumption. TI Investors further requests that the Cure Notice be amended to accurately reflect (1) the date of the proposed assumption, (2) the actual cure costs owed to TI Investors as of such date, including all prepetition and post-petition amounts, (3) that the Debtors will remain liable for amounts arising under the Lease through the assignment of the Lease to the Stalking Horse Bidder and (4) that the Stalking Horse Bidder will be liable for (a) payment of the Unliquidated Operating Expenses, whether arising pre-petition or post-petition, and (b) all obligations under

the Lease arising after the assignment of the Lease to the Stalking Horse Bidder. TI Investors also requests such other and further relief as this Court deems proper.

Dated: September 9, 2020

Respectfully Submitted,

SUMMERS COMPTON WELLS LLC

/s/ David A. Sosne

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**CERTIFICATE OF SERVICE**

I certify that a true and correct copy of the foregoing document was filed electronically on September 9, 2020 with the United States Bankruptcy Court for the Eastern District of Missouri and has been served on the parties in interest via e-mail by the Court's CM/ECF System as listed on the Court's Electronic Mail Notice List.

/s/ David A. Sosne