

UNITED STATES BANKRUPTCY COURT  
EASTERN DISTRICT OF MISSOURI  
SOUTHEASTERN DIVISION

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

**FIFTH AMENDED NOTICE OF CURE COSTS AND  
PROPOSED ASSUMPTION AND ASSIGNMENT OF EXECUTORY  
CONTRACTS AND UNEXPIRED LEASES IN CONNECTION WITH SALE**

**PLEASE TAKE NOTICE OF THE FOLLOWING:**

On July 20, 2020, Briggs & Stratton Corporation and its affiliated debtors in the above-captioned chapter 11 cases, as debtors and debtors in possession (collectively, the “**Debtors**”) filed with the United States Bankruptcy Court for the Eastern District of Missouri (the “**Bankruptcy Court**”) a motion (Docket No. 53) (the “**Motion**”)¹ for the entry of (i) an order (the “**Bidding Procedures Order**”): (a) approving the bidding procedures, substantially in the form attached to the Bidding Procedures Order as Exhibit A (the “**Bidding Procedures**”), in connection with the sale or disposition of substantially all of the Debtors’ assets (the “**Assets**”) and equity interests in the Debtors’ non-Debtor subsidiaries and certain joint venture equity interests held by the Debtors (collectively, the “**Equity Interests**”); (b) authorizing the Debtors to designate the stalking horse bidder; (c) approving certain protections for the stalking horse bidder; (d) setting the deadline for potential bidders to submit a proposal to purchase the Debtors’ business, scheduling an auction (the “**Auction**”), and scheduling the hearing (the “**Sale Hearing**”) with respect to the approval of the sale transaction (the “**Sale Transaction**”); (e) approving the form and manner of notice of the sale of the Assets and Equity Interests, the Auction, and the Sale Hearing; (f) approving the form and manner of notice to each non-Debtor counterparty (each a “**Counterparty**”) to executory contracts and unexpired leases (each a “**Contract**”) regarding the Debtors’ potential assumption and assignment of their Contracts and of the Debtors’ calculation of the amount necessary to cure all monetary defaults thereunder (collectively, the “**Cure Costs**”); and (g) approving procedures for the assumption and assignment of Contracts (the “**Assumption and Assignment Procedures**”); and (ii) an order (a) authorizing the sale of the Assets and Equity Interests free and clear of all liens, claims, interests, and encumbrances pursuant to section 363(f) of the Bankruptcy Code; (b) authorizing the assumption and assignment of proposed assumed Contracts; and (iii) granting related relief.

¹ Capitalized terms used but not otherwise defined herein shall have the respective meanings ascribed to such terms in the Motion or Bidding Procedures, as applicable.



On August 19, 2020, the Bankruptcy Court entered the Bidding Procedures Order (Docket No. 505) approving, among other things, the Bidding Procedures, which established the key dates and times related to the Auction and Sale Order.<sup>2</sup>

On August 19, 2020 and August 21, 2020, in accordance with the Assumption and Assignment Procedures and the Bidding Procedures Order, the Debtors filed the *Notice of Cure Costs and Proposed Assumption and Assignment of Executory Contracts and Unexpired Leases In Connection With the Sale* (Docket Nos. 513-516, 537) identifying certain Contracts that may be assumed and assigned to the stalking horse bidder or other Qualified Bidder(s) and the Debtors' calculation of the Cure Costs with respect thereto (the “**Initial Assumption and Assignment Notice**”).

On August 31, 2020, the Debtors filed their *Notice of Cancellation of Auction and Designation of the Stalking Horse Bid as the Successful Bid* (Docket No. 679), which designated the stalking horse bidder, Bucephalus Buyer, LLC (the “**Purchaser**”), an affiliate of KPS Capital Partners, as the Successful Bidder and its bid (the “**Successful Bid**”) for the purchase of substantially all of the Assets and Equity Interests pursuant to that certain *Stock and Asset Purchase Agreement*, effective as of July 19, 2020 (together with the exhibits thereto, as may be amended, modified, or supplemented from time to time in accordance with the terms thereof, the “**Purchase Agreement**”) as the Successful Bid.

On September 14, 2020, in accordance with the Assumption and Assignment Procedures and the Bidding Procedures Order, the Debtors filed the *Amended Notice of Cure Costs and Proposed Assumption and Assignment of Executory Contracts and Unexpired Leases in Connection with Sale* (Docket No. 879), amending the Initial Assumption and Assignment Notice (the “**First Amended Assumption and Assignment Notice**”).

On September 15, 2020, the Bankruptcy Court entered the *Order (I) Authorizing the Sale of the Assets and Equity Interests to the Purchaser Free and Clear of Liens, Claims, Interests, and Encumbrances; (II) Authorizing the Assumption and Assignment of Certain Executory Contracts and Unexpired Leases; and (III) Granting Related Relief* (Docket No. 898) (the “**Sale Order**”) authorizing the sale of the Assets and Equity Interests to the Purchaser and authorizing the assumption and assignment of certain executory contracts and unexpired leases to the Purchaser (collectively, the “**Purchased Contracts**”).

On September 21, 2020, in accordance with the Assumption and Assignment Procedures and the Sale Order, the Debtors filed the *Second Amended Notice of Cure Costs and Proposed Assumption and Assignment of Executory Contracts and Unexpired Leases in Connection with Sale* (Docket No. 965), amending the First Amended Assumption and Assignment Notice (the “**Second Amended Assumption and Assignment Notice**”).

On September 21, 2020, the Debtors filed their *Notice of (I) Filing of Amendment to Stock and Asset Purchase Agreement, and (II) the Occurrence of Closing of the Sale Transaction*

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<sup>2</sup> To the extent of any inconsistencies between the Bidding Procedures and the summary descriptions of the Bidding Procedures in this notice, the terms in the Bidding Procedures shall control in all respects.

(Docket No. 964), which announced that on September 18, 2020 the Purchase Agreement was amended and on September 21, 2020 the Sale Transaction closed (the “**Closing Date**”).

On October 6, 2020, in accordance with the Assumption and Assignment Procedures and the Sale Order, the Debtors filed the *Third Amended Notice of Cure Costs and Proposed Assumption and Assignment of Executory Contracts and Unexpired Leases in Connection with Sale* (Docket No. 1040), amending the Second Amended Assumption and Assignment Notice (the “**Third Amended Assumption and Assignment Notice**”).

On October 26, 2020, in accordance with the Assumption and Assignment Procedures and the Sale Order, the Debtors filed the *Fourth Amended Notice of Cure Costs and Proposed Assumption and Assignment of Executory Contracts and Unexpired Leases in Connection with Sale* (Docket No. 1162), amending the Third Amended Assumption and Assignment Notice (the “**Fourth Amended Assumption and Assignment Notice**” and, together with the Initial Assumption and Assignment Notice, the First Amended Assumption and Assignment Notice, the Second Amended Assumption and Assignment Notice, and the Third Amended Assumption and Assignment Notice, the “**Assumption and Assignment Notice**”).

This notice (the “**Fifth Amended Assumption and Assignment Notice**”) amends the Assumption and Assignment Notice solely with respect to the Contracts listed on **Exhibit A**, **Exhibit B**, and **Exhibit C** annexed hereto as follows:

1. **Exhibit A**: Each of the Contracts listed on **Exhibit A** hereto is a Purchased Contract assumed and assigned to the Purchaser as of the date hereof, which was previously removed from an Assumption and Assignment Notice and has been added back.
2. **Exhibit B**: Each of the Contracts listed on **Exhibit B** hereto is a Purchased Contract previously assumed and assigned to the Purchaser, which the Debtors have revised the Cure Cost, description of the Contract, and/or the Counterparty.
3. **Exhibit C**: Each of the Contracts listed on **Exhibit C** hereto is removed from the Assumption and Assignment Notice.

**You are receiving this Fifth Amended Assumption and Assignment Notice because (i) you may be a Counterparty to a Purchased Contract that was assumed and assigned to the Purchaser in connection with a sale of the Assets and Equity Interests or (ii) you may be a Counterparty to a Contract of the Debtors that was previously listed on the Assumption and Assignment Notice and has been removed as a Purchased Contract pursuant to this Fifth Amended Assumption and Assignment Notice.**

### **Successful Bid**

The Purchase Agreement is available at Docket No. 505 (as amended by Docket No. 964) and may be obtained free of charge at the website dedicated to the Debtors’ chapter 11 cases maintained by their claims and noticing agent. Kurtzman Carson Consultants LLC, located at <http://www.kccllc.net/Briggs> or can be requested by e-mail at [BriggsInfo@kccllc.com](mailto:BriggsInfo@kccllc.com).

### **A. Cure Objections**

The Debtors' calculation of the Cure Costs with respect to the Contracts set forth on **Exhibit A** and **Exhibit B** amend and supersede any Cure Costs listed in a prior Assumption and Assignment Notice. The Cure Costs listed on **Exhibit A** and **Exhibit B** are the only amounts proposed to be paid upon the assumption and assignment of such Purchased Contracts listed therein. For the avoidance of doubt, to the extent any Purchased Contract includes liabilities that arose postpetition and have not been paid as of Closing or arise or become due and payable after Closing, subject to the terms of the Purchase Agreement, such amounts will be paid in the ordinary course of business by the Purchaser.

If you wish to object to the Debtors' calculation of the Cure Costs on **Exhibit A** and **Exhibit B** (each a "Cure Objection"), such Cure Objection must be (i) filed in accordance with the Bidding Procedures Order; (ii) filed with the Bankruptcy Court; and (iii) served on the Objection Notice Parties (as defined below) by no later than **December 4, 2020, at 5:00 p.m. (prevailing Central Time)**; *provided*, that Cure Objections to the Debtors' calculation of the Cure Costs on **Exhibit A** and **Exhibit B** are only permitted if the Cure Cost therein is lower than the Cure Costs in the most recent Assumption and Assignment Notice in which the Purchased Contract was listed.

**IF A COUNTERPARTY FAILS TO FILE WITH THE BANKRUPTCY COURT AND SERVE ON THE OBJECTION NOTICE PARTIES A TIMELY CURE OBJECTION, THE COUNTERPARTY SHALL BE FOREVER BARRED FROM ASSERTING ANY OBJECTION WITH REGARD TO THE AMOUNT TO CURE ANY DEFAULT UNDER THE APPLICABLE EXECUTORY CONTRACT OR UNEXPIRED LEASE. THE CURE COSTS SET FORTH ON EXHIBIT A AND EXHIBIT B ANNEXED HERETO SHALL BE CONTROLLING AND WILL BE THE ONLY AMOUNT NECESSARY TO CURE OUTSTANDING DEFAULTS UNDER THE APPLICABLE EXECUTORY CONTRACT OR UNEXPIRED LEASE UNDER BANKRUPTCY CODE SECTION 365(b), NOTWITHSTANDING ANYTHING TO THE CONTRARY IN THE EXECUTORY CONTRACT OR UNEXPIRED LEASE, OR ANY OTHER DOCUMENT, AND THE APPLICABLE COUNTERPARTY SHALL BE FOREVER BARRED FROM ASSERTING ANY ADDITIONAL CURE OR OTHER AMOUNTS WITH RESPECT TO SUCH EXECUTORY CONTRACT OR UNEXPIRED LEASE AGAINST THE DEBTORS, THE PURCHASER, OR THE PROPERTY OF ANY OF THEM.**

### **B. Objection Notice Parties**

"Objection Notice Parties" as used herein include: (a) 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 Purchaser, 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, 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.

The Debtors request that if you have a Cure Objection, you contact the Debtors prior to **December 4, 2020, at 5:00 p.m. (prevailing Central Time)** to attempt to resolve such dispute consensually. The Debtors' contact for such matters is Courtney Luster, Esq., at (214) 746-8215, or, by email at courtney.luster@weil.com. If such dispute cannot be resolved consensually prior to **December 4, 2020, at 5:00 p.m. (prevailing Central Time)**, you must file and serve an objection by the deadline set forth above and in accordance with the procedures set forth in this Fifth Amended Assumption and Assignment Notice to preserve your right to object.

### **C. Hearing**

If a timely Cure Objection is received and such objection cannot otherwise be resolved by the parties, such objection shall be heard before the Bankruptcy Court on **December 16, 2020, at 10:00 a.m. (prevailing Central Time)** or at such later date as the Debtors determine.

### **Additional Information**

Copies of the Motion, the Bidding Procedures Order, the Bidding Procedures, and the Sale Order, as well as all related exhibits, including the Purchase Agreement and all other agreements filed with the Bankruptcy Court, may be obtained free of charge at the website dedicated to the Debtors' chapter 11 cases maintained by their claims and noticing agent, Kurtzman Carson Consultants LLC, located at <http://www.kccellc.net/Briggs> or can be requested by e-mail at [BriggsInfo@kccellc.com](mailto:BriggsInfo@kccellc.com).

### **Other**

The inclusion of any Contract on **Exhibit A** and **Exhibit B**, or **Exhibit C** shall not constitute or be deemed a determination or admission by the Debtors that a particular Contract is an executory contract or unexpired lease within the meaning of the Bankruptcy Code. All rights of the Debtors with respect thereto are reserved. References to any Contract are to the applicable agreement and other operative documents as of the date indicated on **Exhibit A**, **Exhibit B**, or **Exhibit C** as they may have been amended, modified or supplemented from time to time and as may be further amended, modified, or supplemented by the parties thereto.

Each of the Contracts included on **Exhibit A** and **Exhibit B**, including any amendments thereto, is considered a Purchased Contract pursuant to the Sale Order.

Pursuant to the Sale Order, the Debtors may amend this Fifth Amended Assumption and Assignment Notice to assume and assign new or previously listed Contracts to the Purchaser after

the Closing Date by filing and serving upon the Counterparties to such Contracts a further amended assumption and assignment notice, which will be deemed to amend any previously filed assumption and assignment notice, including this Fifth Amended Assumption and Assignment Notice.

Dated: November 23, 2020  
St. Louis, Missouri

/s/ Robert E. Eggmann

CARMODY MACDONALD P.C.

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*Counsel to the Debtors  
and Debtors in Possession*

**Exhibit A**

**Re-Added Contracts**

Exhibit A - Re-Advised Contracts

Contract ID	Debtor	Counterparty	Contract Description	Cure Amount
27306	ALLMAND BROS., INC	BORUSAN	TERMS AND CONDITIONS	\$0.00
639	BRIGGS & STRATTON CORPORATION	GARTNER INC	SERVICE AGREEMENT, DATED JUNE 4, 2019	\$172.72
1986	BRIGGS & STRATTON CORPORATION	INTERNATIONAL BUSINESS MACHINES CORPORATION	CLOUD SERVICES AGREEMENT, AS AMENDED, ENTERED INTO NOVEMBER 26, 2018	\$110,853.00
1989	BRIGGS & STRATTON CORPORATION	INTERNATIONAL BUSINESS MACHINES CORPORATION	ORDER AND PRICING SCHEDULE FOR IBM SERVICES FOR MANAGED APPLICATION - IBM CLOUD MANAGED SAP SOLUTIONS, ENTERED INTO NOVEMBER 30, 2018	\$0.00
1990	BRIGGS & STRATTON CORPORATION	INTERNATIONAL BUSINESS MACHINES CORPORATION	ORDER AND PRICING SCHEDULE FOR IBM SERVICES FOR MANAGED APPLICATION - IBM CLOUD MANAGED ECOMMERCE SOLUTIONS, ENTERED INTO NOVEMBER 30, 2018	\$0.00
681	BRIGGS & STRATTON CORPORATION	THE NORTHERN TRUST COMPANY	BRIGGS & STRATTON CASH BALANCE RETIREMENT TRUST, DATED JUNE 29, 2017	\$0.00
682	BRIGGS & STRATTON CORPORATION	THE NORTHERN TRUST COMPANY	FIRST AMENDMENT TO THE BRIGGS & STRATTON CASH BALANCE RETIREMENT TRUST, DATED OCTOBER 17, 2018	\$0.00
18556	BRIGGS & STRATTON CORPORATION	UPS PROFESSIONAL SERVICES INC	CONSULTING AGREEMENT	\$0.00
18557	BRIGGS & STRATTON CORPORATION	UPS PROFESSIONAL SERVICES INC	CONSULTING AGREEMENT	\$0.00
18560	BRIGGS & STRATTON CORPORATION	UPS PROFESSIONAL SERVICES INC	WORK ORDER	\$0.00
18561	BRIGGS & STRATTON CORPORATION	UPS PROFESSIONAL SERVICES INC	CHANGE ORDER	\$0.00
18562	BRIGGS & STRATTON CORPORATION	UPS PROFESSIONAL SERVICES INC	CHANGE ORDER	\$0.00
18563	BRIGGS & STRATTON CORPORATION	UPS PROFESSIONAL SERVICES INC	CHANGE ORDER	\$0.00



**Exhibit B**

**Amended Contracts**

Exhibit B - Amended Contracts

Contract ID	Nov 20 Debtor	Nov 20 Counterparty	Nov 20 Contract Description	Nov 20 Cure Amount
50001	BRIGGS & STRATTON INTERNATIONAL, INC.	DE LAGE LANDEN FINANCIAL SERVICES I	EQUIPMENT LEASE AGREEMENT, DATED March 27, 2020	\$21,432.44
2710	BRIGGS & STRATTON CORPORATION	ENDECA TECHNOLOGIES, INC.	MASTER SOFTWARE LICENSE, SUPPORT AND SERVICES AGREEMENT, DATED JANUARY 11, 2008	\$0.00
14856	BRIGGS & STRATTON CORPORATION	GOOGLE INC	SERVICE AGREEMENT	\$26,146.43
41515	BRIGGS & STRATTON CORPORATION	MICROSOFT CORPORATION	BUSINESS & SERVICES AGREEMENT (U8629289) DATED 7/1/2014; MASTER AGREEMENT (E4987660) DATED 7/1/2014; ENTERPRISE ENROLLMENT (84118812) DATED 7/1/2017; ENTERPRISE ENROLLMENT (79526380) DATED 7/1/2020; ENTERPRISE ENROLLMENT (48985621) DATED 7/1/2020; AND SERVER & CLOUD ENROLLMENT (67110294) DATED (7/1/2017)	\$93,830.89
340	BRIGGS & STRATTON CORPORATION	ORACLE AMERICA, INC.	ORACLE LICENSE AND SERVICES AGREEMENT, EXECUTED NOVEMBER 23, 2010	\$0.00
4674	BRIGGS & STRATTON CORPORATION	ORACLE CORPORATION	SOFTWARE LICENSE AND SERVICES AGREEMENT AND AMENDMENT ONE TO THE SOFTWARE LICENSE AND SERVICES AGREEMENT, DATED OCTOBER 31, 1996	\$0.00
8555	BRIGGS & STRATTON CORPORATION	ORACLE USA, INC.	ORACLE LICENSE AND SERVICES AGREEMENT, DATED APRIL 23, 2007	\$0.00

**Exhibit C**

**Removed Contracts**

Exhibit C - Removed Contracts

Contract ID	Debtor	Counterparty	Contract Description	Cure Amount
11265	BRIGGS & STRATTON CORPORATION	MICROSOFT CORP - MAPPOINT	PROGRAM AGREEMENT	CONTRACT REMOVED
11266	BRIGGS & STRATTON CORPORATION	MICROSOFT CORP - MAPPOINT	PROGRAM AGREEMENT	CONTRACT REMOVED
11267	BRIGGS & STRATTON CORPORATION	MICROSOFT CORP - MAPPOINT	PROGRAM AGREEMENT	CONTRACT REMOVED
11268	BRIGGS & STRATTON CORPORATION	MICROSOFT CORP - MAPPOINT	QUOTATION	CONTRACT REMOVED
11263	BRIGGS & STRATTON CORPORATION	MICROSOFT CORPORATION	LICENSE AGREEMENT	CONTRACT REMOVED
11261	BRIGGS & STRATTON CORPORATION	MICROSOFT CORPORATION	SERVICE AGREEMENT	CONTRACT REMOVED
11262	BRIGGS & STRATTON CORPORATION	MICROSOFT CORPORATION	SERVICE AGREEMENT	CONTRACT REMOVED
11264	BRIGGS & STRATTON CORPORATION	MICROSOFT CORPORATION	PROGRAM AGREEMENT	CONTRACT REMOVED
41353	BRIGGS & STRATTON INTERNATIONAL, INC.	MICROSOFT CORPORATION	LICENSE AGREEMENT	CONTRACT REMOVED
41354	BRIGGS & STRATTON INTERNATIONAL, INC.	MICROSOFT CORPORATION	LICENSE AGREEMENT	CONTRACT REMOVED
11255	BRIGGS & STRATTON CORPORATION	MICROSOFT LICENSING GP	LICENSE AGREEMENT	CONTRACT REMOVED
11256	BRIGGS & STRATTON CORPORATION	MICROSOFT LICENSING GP	LICENSE AGREEMENT	CONTRACT REMOVED
11257	BRIGGS & STRATTON CORPORATION	MICROSOFT LICENSING GP	LICENSE AGREEMENT	CONTRACT REMOVED
11258	BRIGGS & STRATTON CORPORATION	MICROSOFT LICENSING GP	LICENSE AGREEMENT	CONTRACT REMOVED
11259	BRIGGS & STRATTON CORPORATION	MICROSOFT LICENSING GP	LICENSE AGREEMENT	CONTRACT REMOVED
11260	BRIGGS & STRATTON CORPORATION	MICROSOFT LICENSING GP	LICENSE AGREEMENT	CONTRACT REMOVED
11253	BRIGGS & STRATTON CORPORATION	MICROSOFT LICENSING, GP	LICENSE AGREEMENT	CONTRACT REMOVED
11254	BRIGGS & STRATTON CORPORATION	MICROSOFT LICENSING, GP	LICENSE AGREEMENT	CONTRACT REMOVED
16928	BRIGGS & STRATTON CORPORATION	MICROSOFT VOLUME LICENSING PROGRAM	LICENSE AGREEMENT	CONTRACT REMOVED
13333	BRIGGS & STRATTON CORPORATION	MICROSOFT.NET	SOFTWARE SUPPORT AGREEMENT	CONTRACT REMOVED