

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.	§	

APPLICATION OF DEBTORS FOR ORDER  
AUTHORIZING THE RETENTION AND EMPLOYMENT OF  
CBRE, INC. AS REAL ESTATE BROKER AND ADVISOR FOR THE DEBTORS

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 (this “**Application**”):

**Background**

1. On July 20, 2020 (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. The Debtors’ chapter 11 cases are being jointly administered for procedural purposes only pursuant to Rule 1015(b) of the Federal Rules of Bankruptcy Procedure (the “**Bankruptcy Rules**”) and Rule 1015(b) of the Local Rules of Bankruptcy Procedure for the Eastern District of Missouri (the “**Local Rules**”).

2. On August 5, 2020, the United States Trustee appointed an official committee of unsecured creditors (the “**Creditors’ Committee**”) in these chapter 11 cases pursuant to section 1102 of the Bankruptcy Code. No trustee or examiner has been appointed in these chapter 11 cases.



3. On the Petition Date, the Debtors filed their Bidding Procedures Motion.<sup>1</sup> On August 19, 2020, the Court entered the Bidding Procedures Order<sup>2</sup> that, among other things, (i) approved bidding procedures in connection with the sale of the Debtors' assets, (ii) approved the designation of a stalking horse bidder and stalking horse bid, (iii) scheduled an auction to take place on September 1, 2020, and (iv) scheduled a sale hearing for September 15, 2020. On September 15, 2020, the Court entered the Sale Order<sup>3</sup> authorizing the Debtors to sell substantially all of their assets (the "**Sale Transaction**") to Bucephalus Buyer, LLC (the "**Purchaser**"), pursuant to that certain *Stock and Asset Purchase Agreement*, effective as of July 19, 2020, as amended by that certain *Amendment No. 1 to Stock and Asset Purchase Agreement*, dated as of September 18, 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**"). On September 21, 2020 (the "**Sale Closing**"), the Debtors closed the Sale Transaction.<sup>4</sup>

4. On November 9, 2020, the Court entered the *Order (I) Authorizing Use, Sale, or Lease of Certain Property of the Estate, (II) Establishing Procedures for De Minimis*

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<sup>1</sup> *Motion of Debtors 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 "**Bidding Procedures Motion**").

<sup>2</sup> *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 "**Bidding Procedures Order**").

<sup>3</sup> *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**").

<sup>4</sup> *See Notice of (I) Filing of Amendment to Stock and Asset Purchase Agreement, And (II) the Occurrence of Closing of the Sale Transaction* [Docket No. 964].

*Asset Sales, and (III) Granting Related Relief* [Docket No. 1222] (the “**De Minimis Sale Order**”), which established procedures for the Debtors to sell the Properties (as defined below) and authorized the Debtors to pay commission fees to brokers in connection with such sale transaction. De Minimis Sale Order ¶¶ 1, 5.

5. Following the successful sale of substantially all of their assets, the Debtors have focused their efforts and resources on developing and filing a workable and confirmable chapter 11 plan of liquidation supported by the Creditors’ Committee. On October 9, 2020, the Debtors filed the *Joint Chapter 11 Plan of Briggs & Stratton Corporation and its Affiliated Debtors* [Docket No. 1066] and the *Disclosure Statement for Joint Chapter 11 Plan of Briggs & Stratton Corporation and Its Affiliated Debtors* [Docket No. 1067]. On November 9, 2020, the Debtors filed the *Amended Joint Chapter 11 Plan of Briggs & Stratton Corporation and its Affiliated Debtors* (the “**Amended Plan**”) [Docket No. 1226] and the *Amended Disclosure Statement for Amended Joint Chapter 11 Plan of Briggs & Stratton Corporation and its Affiliated Debtors* [Docket No. 1227] (the “**Amended Disclosure Statement**”). On November 10, 2020, the Court entered an order approving the Amended Disclosure Statement and scheduled the hearing for confirmation of the Amended Plan for December 18, 2020.<sup>5</sup>

6. The Debtors continue to honor their post-closing sale obligations, wind down their estates, pursue confirmation of the Amended Plan, and otherwise work on concluding these chapter 11 cases.

7. Additional information regarding the Debtors’ business and capital structure and the circumstances leading to the commencement of these chapter 11 cases is set

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<sup>5</sup> See Order (I) Approving Disclosure Statement; (II) Establishing Notice and Objection Procedures for Confirmation of Plan; (III) Approving Solicitation Packages and Procedures for Distribution Thereof; (IV) Approving the Form of Ballots and Establishing Procedures for Voting on the Plan; and (V) Granting Related Relief [Docket No. 1233].

forth in the Disclosure Statement and the *Declaration of Jeffrey Ficks, Financial Advisor of Briggs & Stratton Corporation, in Support of the Debtors' Chapter 11 Petitions and First Day Relief* [Docket No. 51] (the “**Ficks Declaration**”).

### **Jurisdiction**

8. 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.

### **Relief Requested**

9. By this Application, the Debtors seek immediate entry of an order (the “**Proposed Order**”)<sup>6</sup> on a provisional basis pursuant to sections 327(a), 328, 330, and 331 of the Bankruptcy Code, Bankruptcy Rules 2014 and 2016, and Rules 2014 and 2016-1 of the Local Rules, for authority to retain and employ CBRE, Inc. (“**CBRE**”) to serve as their real estate broker in connection with the sale of the Properties (as defined below), effective as of December 2, 2020, in accordance with the terms and conditions set forth in that certain Exclusive Sales Listing Agreement, dated September 3, 2020 (the “**Murray Listing Agreement**”),<sup>7</sup> a copy of which is attached hereto as **Exhibit B**, and incorporated herein by reference, along with the terms and conditions set forth in that certain Exclusive Sales Listing Agreement, dated November 12, 2020 (the “**Fort Pierce Listing Agreement**” and, together with the Murray Listing Agreement, the “**Listing Agreements**”), a copy of which is attached hereto as **Exhibit C**, and incorporated herein by reference, or as otherwise agreed to by the Debtors (as discussed herein). The Debtors

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<sup>6</sup> Copies of the Proposed Order will be made available on the Debtors' case information website at <http://www.kccllc.net/Briggs>.

<sup>7</sup> Capitalized terms used herein have the meaning ascribed to them in the respective Listing Agreements. Any description of the terms of the Listing Agreements contained herein is a summary provided for convenience purposes only. In the event of any inconsistency between the summary of terms as set forth herein and the respective Listing Agreement, the Listing Agreement shall control.

respectfully request the Application be heard on shortened notice, to allow for prompt retention of CBRE.

**Retention and Qualifications of CBRE**

10. CBRE has worked with the Debtors and their advisors to market certain properties of the Debtors since 2017. With respect to the marketing of (i) the property located at 110 Main Street, Murray, Kentucky 42071 and related equipment (the “**Murray Property**”), and (ii) the property located at 3001 Industrial Avenue 2, Fort Pierce, Florida 34946 and related equipment (the “**Fort Pierce Property**” and, together with the Murray Property, the “**Properties**”), the Debtors have chosen CBRE to list the Properties because CBRE is well suited to provide the real estate services the Debtors require.

11. CBRE is a global leader in commercial real estate services and has been included on the Fortune 500 since 2008. CBRE is a known, reputable, and diversified firm with over 100,000 professionals and 530 offices. CBRE has also been named one of Fortune’s “Most Admired Companies” for eight (8) years in a row, including being ranked number one in the real estate sector in 2020 for the second consecutive year. CBRE’s professionals have experience in providing services regarding the review, analysis, restructuring, disposition, and negotiation of real property, both inside and outside of bankruptcy. *See, e.g., LSC Communications, Inc.*, No. 20-10950 (Bankr. S.D.N.Y. Jun. 28, 2020) [Docket No. 511] (authorizing the retention and employment of CBRE as real estate broker and advisor to the debtors); *Gibson Brands, Inc.*, No. 18-11025 (D. Del. Aug. 1, 2018) [Docket No. 605] (authorizing the employment and retention of CBRE as real estate broker); *In re Toys “R” Us Property Company I, LLC*, No. 18-31429 (Bankr. E.D. Va. Sept. 19, 2018) [Docket No. 705] (authorizing the retention and employment of CBRE as real estate broker and advisor to the debtors); *In re Emas Chiyoda Subsea Limited*, No. 17-31146 [Docket No. 316] (authorizing the employment and retention of CBRE as real estate

broker); *In re Capsule Int'l Holdings, LLC*, No. 13-13281 (Bankr. D. Del. May 26, 2015) [Docket No. 958] (authorizing the retention of CBRE as property manager and real estate broker); *In re Old HB, Inc.*, No. 12-22052 (Bankr. S.D.N.Y. Jun. 28, 2013) [Docket No. 2653] (authorizing retention of CBRE as broker for specific property).

12. Members include the Corporate Advisory account team of Bill Bonifas, Matt Cariello, and Kenzie Kiefer out of the Milwaukee, Wisconsin office, along with Doug Butcher and Preston Schilling out of CBRE's Louisville, Kentucky office for the Murray Property disposition and Robert Smith and Kirk Nelson out of CBRE's West Palm Beach, Florida office for the Fort Pierce Property disposition. Collectively, the team is involved in over \$250,000,000 in annual real estate transactions and are uniquely suited to handle the dispositions at hand. The collective team has over one hundred years of combined experience and are considered CBRE's top brokerage professionals in each applicable market. While the Listing Agreements enumerate certain CBRE professionals who will provide services to the Debtors, the Debtors and CBRE have agreed that other CBRE professionals and paraprofessionals will also provide services to the Debtors, as necessary.

13. The Debtors seek to retain CBRE to broker the sale of the Murray Property and the Fort Pierce Property because of the firm's extensive experience and knowledge of the specific real estate markets in which the Properties are located. The employment of CBRE is necessary to ensure that the Properties are marketed to the fullest extent possible so as to maximize their value for the benefit of the Debtors' estates and creditors. The plant located at the Murray Property has closed, and moreover, both Properties are excluded assets in the Purchase Agreement and were not sold pursuant to the Sale Order. Accordingly, on November 9,

2020, the Court entered the De Minimis Sale Order, establishing procedures for the Debtors to sell the Properties (as defined below). De Minimis Sale Order ¶ 1.

14. CBRE's services will not be duplicative of the services performed by any of the other professionals and advisors engaged by the Debtors. CBRE will coordinate with the Debtors and the Debtors' other professionals to avoid any unnecessary duplication efforts among the Debtors' professionals.

#### **Scope of Services**

15. As set forth more fully in the Listing Agreements, CBRE shall assist the Debtors in selling the Properties.

16. As set forth in the Listing Agreements, CBRE will provide, among other things, the following services to the Debtors:

- a. create and implement sales strategy for certain properties, including the preparation of appropriate and customary marketing materials;
- b. accept delivery of and present to the Debtors all offers and counteroffers to sell such properties;
- c. assist the Debtors in developing, communicating, negotiating, and presenting offers and counteroffers; and
- d. advise the Debtors and answer any questions related to the process.

17. The Debtors believe that CBRE is qualified to perform all services contemplated by the respective Listing Agreements, and to represent the Debtors' interests in these chapter 11 cases in a cost effective, efficient, and timely manner.

**Terms and Professional Compensation**

18. Subject to the Bankruptcy Court's approval, the Debtors will compensate CBRE in accordance with the terms and conditions set forth in the Murray Listing Agreement. It is contemplated that CBRE shall be compensated as follows:

- a. Commission – The Debtors shall pay CBRE a sales commission in the amount of six percent (6%) of the gross sales price, upon consummation of a sale of the Murray Property.
- b. Expense Reimbursement – The Debtors shall reimburse CBRE for reasonable, substantiated out-of-pocket marketing expenses approved by the Debtors up to a maximum of ten thousand dollars (\$10,000).

19. Pursuant to the Murray Listing Agreement, all reimbursable marketing expenses for goods or services provided by third parties will be billed and payable without markup by CBRE and with respect to reimbursable expenses incurred by CBRE directly, will represent the actual out-of-pocket expense to CBRE for providing such goods or services.

20. Subject to the Bankruptcy Court's approval, the Debtors will compensate CBRE in accordance with the terms and conditions set forth in the Fort Pierce Listing Agreement. It is contemplated that CBRE shall be compensated as follows:

- a. Commission – The Debtors shall pay CBRE a sales commission in the amount of six percent (6%) of the gross sales price, upon consummation of a sale of the Fort Pierce Property.

21. Subject to the Bankruptcy Court's approval, CBRE's fees shall be earned if any of the following occur:<sup>8</sup>

- a. upon the execution and full delivery of all necessary documents for consummating the sale transaction during the applicable term;

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<sup>8</sup> For the avoidance of doubt, the vesting of the Properties in (i) the Debtors or (ii) any successor to the Debtors, by merger, consolidation or otherwise, pursuant to and under the Debtors' chapter 11 plan on or after the effective date of the plan in the chapter 11 cases, shall not be considered a sale of the Property for any purpose under the applicable Listing Agreement.



- b. during the term the Debtors enter into an agreement to sell the Fort Pierce Property to a purchaser, which subsequently closes, including after the term; or
- c. within 120 days following the expiration or termination of the Listing Agreements (the “**Tail Period**”), a Property is sold to a prospective buyer who (i) negotiated directly with CBRE during the applicable term period or (ii) CBRE had received a written offer to purchase from such prospective buyer during the applicable term period, then in that event, CBRE shall be entitled to a commission (together, the “**Existing Prospects**”). Notwithstanding the fact that the applicable Listing Agreement has expired or been terminated, CBRE is entitled to continue negotiations with Existing Prospects until the relevant Properties are sold, but will not be entitled to a commission for any sale that closes more than 180 days after the expiration of the applicable Listing Agreement.

22. To date, CBRE has not been paid any commission or other fees and expenses in connection with the sale of the Properties.

23. The Debtors submit that the compensation structures described above and as set forth in the Listing Agreements are comparable to compensation generally charged by real estate brokers of similar stature to CBRE for comparable engagements, both in and out of bankruptcy. The Debtors have been advised that the compensation structure is also consistent with CBRE’s normal and customary billing practices for the complexity required by the level and scope of services to be provided in this case.

#### **Basis for Relief**

24. The Debtors seek approval of the Listing Agreements, including their commission structure, and to retain and employ CBRE as their real estate broker pursuant to section 327(a) of the Bankruptcy Code. Section 327(a) of the Bankruptcy Code provides that the debtor in possession “may employ one or more attorneys, accountants, appraisers, auctioneers, and 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 possession in carrying out its duties. 11 U.S.C. § 327(a).

25. Furthermore, section 328(a) provides, in relevant part, that a debtor, “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). Accordingly, section 328 of the Bankruptcy Code permits the compensation of professionals, including real estate brokers, on more flexible terms that reflect the nature of their services and market conditions. *See Payless Holdings LLC*, No. 19-40883 (KSS) (Bankr. E.D. Mo. Mar. 21, 2019) [Docket No. 628] (authorizing the retention and employment, including the fee structure, of real estate advisor for Debtors sale of certain properties).

26. Numerous courts have recognized that Congress intended section 328(a) to enable a debtor to retain professionals pursuant to specific fee arrangements to be determined at the time of the court’s approval of the retention, subject to review if the terms are found to be improvident in light of “developments not capable of being anticipated at the time of the fixing of such terms and conditions.” *See Donaldson, Lufkin & Jenrette Sec. Corp. v. Nat’l Gypsum Co. (In re Nat’l Gypsum Co.)*, 123 F.3d 861, 862–63 (5th Cir. 1997); *Henry A. Leonard & Co. v. United States Trustee (In re River Foal, Inc.)*, 161 B.R. 568, 569 (Bankr. S.D.N.Y. 1993). The Debtors submit that the fee structures set forth in the Listing Agreements are reasonable under section 328(a) of the Bankruptcy Code in light of the (i) nature and scope of services to be provided by CBRE, (ii) industry practice with respect to the fee structure proposed by CBRE, (iii) market rates charged for comparable services both in and out of chapter 11, and (iv) CBRE’s substantial experience with respect to real estate issues. *See Payless Holdings LLC*, No. 19-

40883 (KSS) (Bankr. E.D. Mo. Mar. 21, 2019) [Docket No. 628] (authorizing the retention and employment, including the fee structure, of real estate advisor for Debtors sale of certain properties). Additionally, the terms of the Listing Agreements were negotiated in good faith and at arm's-length between the Debtors and CBRE and reflect the Debtors' evaluation of the value and expertise of the work to be performed by CBRE.

27. Bankruptcy Rule 2014 requires that an application for retention include "specific 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, any proposed arrangement for compensation, and to the best of the applicant's knowledge, all of the firm's connections with the debtor, creditors, and 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. This Application, the *Declaration of Christopher Zube In Support of Application of Debtors for Order Authorizing the Retention and Employment of CBRE, Inc. as Real Estate Broker for the Debtors* (the "**Zube Declaration**"), attached hereto as **Exhibit A**, and the Listing Agreements set forth the information required under Bankruptcy Rule 2014.

#### **Fee Application**

28. The Debtors respectfully submit that because CBRE's compensation is result-oriented and directly related to benefits received by the Debtors' estates as a result of consummating a transaction, requiring CBRE to file detailed time records and periodic fee applications in accordance with sections 330 and 331 of the Bankruptcy Code and in compliance with Bankruptcy Rule 2016, is unnecessary under the circumstances.

29. As set forth herein, CBRE is being retained under section 328(a) of the Bankruptcy Code and will be employed by the Debtors to perform a specialized and discrete task and accordingly, will not be compensated based upon time and effort expended. Instead, CBRE

will be compensated based on a percentage of the proceeds of each transaction. Requiring CBRE to record and submit detailed time entries in light of the transactional nature of the services to be rendered by CBRE herein and the flat fee, percentage-based fee structure proposed under the Listing Agreements would be unduly burdensome to CBRE. The Debtors further acknowledge and agree that the ultimate benefit to the Debtors from CBRE's services likely could not be measured merely by reference to the number of hours to be expended by the CBRE professionals in the performance of such services. Accordingly, the Debtors request that CBRE be relieved of the requirement to maintain detailed time records.

30. As will be set forth in the Zubel Declaration, it is standard practice in CBRE's industry for professionals providing services relating to marketing properties to be compensated on a flat fee percentage basis, rather than on an incremental basis, for such services. CBRE has informed the Debtors that it is not their practice to keep detailed time records similar to those customarily kept by attorneys and other professionals who are compensated on an hourly basis.

31. The Debtors propose that for all fees and expenses incurred in connection with selling the Properties, CBRE shall file fee applications for monthly, interim, and final compensation and reimbursement of expenses, as necessary, pursuant to the procedures set forth in sections 330 and 331 of the Bankruptcy Code, the Bankruptcy Rules, the Local Rules, and any other applicable procedures and orders of the Court; provided, however, that CBRE and its professionals shall be excused from the requirement to maintain or provide detailed time records for the services provided to the Debtors and CBRE shall be compensated and reimbursed pursuant to section 328(a) of the Bankruptcy Code. The U.S. Trustee, however, shall have the right to object to CBRE's request for compensation and reimbursement based on the

reasonableness standard provided in section 330 of the Bankruptcy Code, and not section 328(a) of the Bankruptcy Code.

32. The Debtors' believe that the applications submitted in the manner set forth herein will provide the Bankruptcy Court and other parties in interest with sufficient information to monitor the amount and type of service rendered by CBRE and is necessary and in the best interests of the Debtors, their creditors, and their estates.

### **Disinterestedness**

33. As noted above, Bankruptcy Code Section 327(a) requires that the professional person proposed to be retained "does not hold or represent an interest adverse to the debtor or to the estate." 11 U.S.C. § 327(a). Section 101(14) of the Bankruptcy Code defines a "disinterested person" as a person that: (i) is not a creditor, an equity security holder, or an insider; (ii) is not and was not, within two years before the date of the filing of the petition, a director, officer, or employee of the debtor; and (iii) does not have an interest materially adverse to the interest of the estate or of any class of creditors or equity security holders, by reason of any direct or indirect relationship to, connection with, or interest in, the debtor, or for any other reason. 11 U.S.C. § 101(14).

34. As disclosed in the Zubel Declaration, CBRE was retained as an appraiser for KPS Capital Partners ("KPS"), an affiliate of the Purchaser, in connection with the Purchase Agreement. Since the Sale Closing, CBRE has not performed services for KPS related to the chapter 11 cases.

35. To the best of the Debtors' knowledge and belief and except to the extent disclosed herein and in the Zubel Declaration, CBRE: (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.

36. CBRE is not owed any amounts by the Debtors as of the Petition Date and does not hold a claim against the Debtors' estates. To the extent CBRE discovers any material facts bearing on the matters described herein, during the period of CBRE's retention, CBRE has undertaken to amend and supplement the information contained in this Application and the Zubei Declaration to disclose such facts.<sup>9</sup>

37. The Debtors have also been advised that CBRE has not shared or agreed to share any of its compensation from the Debtors with any other persons or firm, other than principals and employees of CBRE, as permitted by section 504 of the Bankruptcy Code.

#### **Notice**

38. Notice of this Application will be provided to (i) the Office of the United States Trustee for the Eastern District of Missouri (Attn: Sirena Wilson, Esq.); (ii) the holders of the thirty (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 United States Attorney's Office for the Eastern District of Missouri; (vi) Brown Rudnick LLP (Attn: Oksana P. Lashko, Esq.), as counsel to the Creditors' Committee; (vii) any other party that has requested notice pursuant to Bankruptcy Rule 2002; and (viii) any other party entitled to notice pursuant to Local Rule 9013-3(E) (collectively, the

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<sup>9</sup> On or about November 23, 2020, the Debtors provided CBRE a supplemental list of parties in interest (the "**Supplemental List**"). CBRE is in the process of reviewing the Supplemental List, and will provide a supplement to this Declaration upon completing its review of the Supplemental List.

“**Notice Parties**”). Notice of this Application and any order entered hereon will be served in accordance with Local Rule 9013-3(E)(1).

**No Previous Request**

39. No previous request for the relief sought herein has been made by the Debtors to this or any other court.

WHEREFORE, the Debtors respectfully request that the Court enter the Proposed Order, granting the relief requested in this Application and such other and further relief as may be just and proper.

Dated: December 2, 2020  
Delafield, Wisconsin

Respectfully submitted,

**BRIGGS & STRATTON CORPORATION** for  
itself and on behalf of each of its affiliated Debtors  
and Debtors in Possession

/s/ Kathryn M. Buono

Kathryn M. Buono  
Vice President and Secretary

**Exhibit A**

**Zubel Declaration**



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.	§	
	§	
	§	

DECLARATION OF CHRISTOPHER ZUBEL IN  
SUPPORT OF APPLICATION OF DEBTORS FOR  
ORDER AUTHORIZING THE RETENTION AND EMPLOYMENT  
OF CBRE, INC. AS REAL ESTATE BROKER AND ADVISOR FOR THE DEBTORS

I, Christopher Zubel, declare, hereby declare under penalty of perjury and pursuant to 28 U.S.C. §1746 that the following is true and correct to the best of my knowledge, information and belief:

1. I currently serve as a Senior Managing Director at CBRE, Inc. (“**CBRE**”) where my responsibilities primarily involve overseeing and executing many real estate transactions with which CBRE is involved. I have over nineteen (19) years of experience in the commercial real estate industry.

2. I am authorized to execute and submit this declaration (this “**Declaration**”) on behalf of CBRE in support of the application (the “**Application**”)<sup>1</sup> of the debtors and debtors in possession in the above-captioned cases (the “**Debtors**”) for entry of an order authorizing the employment and retention of CBRE as a real estate broker and advisor for the Debtors as of December 2, 2020, under the terms and conditions set forth in that certain Exclusive Sales Listing Agreement, dated September 3, 2020 (the “**Murray Listing Agreement**”), a copy of which is

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<sup>1</sup> Capitalized terms not otherwise defined herein shall have the meaning ascribed to such terms in the Application or the Listing Agreements (as defined herein), as applicable.

attached to the Application as **Exhibit B**, along with the terms and conditions set forth in that certain Exclusive Sales Listing Agreement, dated November 12, 2020 (the “**Fort Pierce Listing Agreement**” and, together with the Murray Listing Agreement, the “**Listing Agreements**”), a copy of which is attached to the Application as **Exhibit C**, or as otherwise agreed to by the Debtors.

3. I submit this Declaration in accordance with sections 327(a), 328, 330, and 331 of title 11 of the United States Code (the “**Bankruptcy Code**”), Rules 2014 and 2016 of the Federal Rules of Bankruptcy Procedure (the “**Bankruptcy Rule**”), and Rules 2014-1 and 2016-1 of the Local Rules of the United States Bankruptcy Court for the Eastern District of Missouri (the “**Local Rules**”).

4. The facts set forth in this Declaration are based upon my personal knowledge, information and belief, or client matter records kept in the ordinary course of business that were reviewed by me or other employees of CBRE under my supervision and direction. If called and sworn as a witness, I could and would testify competently to the facts set forth herein.

#### **CBRE’s Qualifications**

5. CBRE is well suited to provide the real estate services that the Debtors require and have requested that CBRE provide in these chapter 11 cases. CBRE is the global leader in real estate brokerage and related services with 2019 revenues of nearly \$24 billion and has been included on the Fortune 500 since 2008, ranking #128 in 2020. It has also been named one of Fortune’s “Most Admired Companies” for eight years in a row, including being ranked number one in the real estate sector in 2020 for the second consecutive year. CBRE is renowned for providing strategic commercial real estate advice to clients, including those involved in

distressed situations. In addition, CBRE's professionals have extensive experience in providing services regarding the review, analysis and structuring of disposition and sale agreements for real property, and the structuring and negotiation of lease agreements. CBRE also has significant experience facilitating the disposition of properties in bankruptcy. *See, e.g., LSC Communications, Inc.*, No. 20-10950 (Bankr. S.D.N.Y. Jun. 28, 2020) [Docket No. 511] (authorizing the retention and employment of CBRE as real estate broker and advisor to the debtors); *Gibson Brands, Inc.*, No. 18-11025 (D. Del. Aug. 1, 2018) [Docket No. 605] (authorizing the employment and retention of CBRE as real estate broker); *In re Toys "R" Us Property Company I, LLC*, No. 18-31429 (Bankr. E.D. Va. Sept. 19, 2018) [Docket No. 705] (authorizing the retention and employment of CBRE as real estate broker and advisor to the debtors); *In re Emas Chiyoda Subsea Limited*, No. 17-31146 [Docket No. 316] (authorizing the employment and retention of CBRE as real estate broker); *In re Capsule Int'l Holdings, LLC*, No. 13-13281 (Bankr. D. Del. May 26, 2015) [Docket No. 958] (authorizing the retention of CBRE as property manager and real estate broker); *In re Old HB, Inc.*, No. 12-22052 (Bankr. S.D.N.Y. Jun. 28, 2013) [Docket No. 2653] (authorizing retention of CBRE as broker for specific property).

6. Accordingly, I believe CBRE is well qualified to perform all services contemplated by the Listing Agreements and to represent the Debtors' interests in these chapter 11 cases in a cost-effective, efficient, and timely manner.

7. The sale of the Properties (as defined below) will be complementary to rather than duplicative of the services to be performed by the Debtors' other professionals retained in these chapter 11 cases. I understand that the Properties are excluded assets in the Debtors' *Stock and Asset Purchase Agreement*, effective as of July 19, 2020, by and between the

Debtors and Bucephalus Buyer, LLC (the “**Purchaser**”), as amended by that certain *Amendment No. 1 to Stock and Asset Purchase Agreement*, dated as of September 18, 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**”) and were not sold pursuant to 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].

8. CBRE will use commercially reasonable efforts to coordinate with the Debtors and their other professionals retained in these chapter 11 cases to avoid any unnecessary duplication of services.

#### **Services to be Performed**

9. As set forth more fully in the Listing Agreements, CBRE shall assist the Debtors in selling (i) the property located at 110 Main Street, Murray, Kentucky 42071 and related equipment (the “**Murray Property**”), and (ii) the property located at 3001 Industrial Avenue 2, Fort Pierce, Florida 34946 and related equipment (the “**Fort Pierce Property**” and, together with the Murray Property, the “**Properties**”). CBRE will provide, among other things, the following services to the Debtors:

- a. create and implement sales strategy for certain properties, including the preparation of appropriate and customary marketing materials;
- b. accept delivery of and present to the Debtors all offers and counteroffers to sell such properties;
- c. assist the Debtors in developing, communicating, negotiating, and presenting offers and counteroffers; and

- d. advise the Debtors and answer any questions related to the process.

**Professional Compensation**

10. Subject to the Bankruptcy Court's approval, the Debtors will compensate CBRE in accordance with the terms and conditions set forth in the Murray Listing Agreement. It is contemplated that CBRE shall be compensated as follows:

- a. Commission – The Debtors shall pay CBRE a sales commission in the amount of six percent (6%) of the gross sales price, upon consummation of a sale of the Murray Property.
- b. Expense Reimbursement – The Debtors shall reimburse CBRE for reasonable, substantiated out-of-pocket marketing expenses approved by the Debtors up to a maximum of ten thousand dollars (\$10,000).

11. Pursuant to the Murray Listing Agreement, all reimbursable marketing expenses for goods or services provided by third parties will be billed and payable without markup by CBRE and with respect to reimbursable expenses incurred by CBRE directly, will represent the actual out-of-pocket expense to CBRE for providing such goods or services.

12. Subject to the Bankruptcy Court's approval, the Debtors will compensate CBRE in accordance with the terms and conditions set forth in the Fort Pierce Listing Agreement. It is contemplated that CBRE shall be compensated as follows:

- a. Commission – The Debtors shall pay CBRE a sales commission in the amount of six percent (6%) of the gross sales price, upon consummation of a sale of the Fort Pierce Property.

13. Subject to the Bankruptcy Court's approval, CBRE's fees shall be earned if any of the following occur:<sup>2</sup>

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<sup>2</sup> For the avoidance of doubt, the vesting of the Properties in (i) the Debtors or (ii) any successor to the Debtors, by merger, consolidation or otherwise, pursuant to and under the Debtors' chapter 11 plan on or after the effective

- a. upon the execution and full delivery of all necessary documents for consummating the sale transaction during the applicable term;
- b. during the term the Debtors enter into an agreement to sell the Fort Pierce Property to a purchaser, which subsequently closes, including after the term; or
- c. within 120 days following the expiration or termination of the Listing Agreements (the “**Tail Period**”), a Property is sold to a prospective buyer who (i) negotiated directly with CBRE during the applicable term period or (ii) CBRE had received a written offer to purchase from such prospective buyer during the applicable term period, then in that event, CBRE shall be entitled to a commission (together, the “**Existing Prospects**”). Notwithstanding the fact that the applicable Listing Agreement has expired or been terminated, CBRE is entitled to continue negotiations with Existing Prospects until the relevant Properties are sold, but will not be entitled to a commission for any sale that closes more than 180 days after the expiration of the applicable Listing Agreement.

14. To date, CBRE has not been paid any of Commission or any other fees and expenses in connection with the sale of the Properties.

15. Furthermore, CBRE has not shared or agreed to share any of its compensation from the Debtors with any other persons, or firm, other than principals and employees of CBRE, as permitted by section 504 of the Bankruptcy Code.

16. I believe that the compensation structures described above and set forth in the Listing Agreements are reasonable, comparable to compensation generally charged by real estate consultants of similar stature to CBRE for comparable engagements, both in and out of bankruptcy, and merited by CBRE’s experience and expertise. The proposed compensation structure is also consistent with CBRE’s normal and customary billing practices for cases of comparable size and complexity that require the level and scope of services to be provided in these chapter 11 cases.

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date of the plan in the chapter 11 cases, shall not be considered a sale of the Property for any purpose under the applicable Listing Agreement.

**Payment of Compensation and Expenses**

17. CBRE understands that fees and expenses in these chapter 11 cases shall be subject to approval of the Bankruptcy Court upon proper application by CBRE in accordance with procedures for the allowance of final compensation applicable to professionals in these chapter 11 cases and in accordance with the requirements of the Bankruptcy Code. However, because CBRE's compensation is results-oriented, CBRE has informed the Debtors that it is not its practice to keep detailed time records similar to those customarily kept by attorneys and other professionals who are compensated on an hourly basis. It is standard practice in CBRE's industry for professionals providing services relating to dispositions to be compensated on a flat fee percentage basis, rather than on an incremental hourly basis, for such services. Consistent with industry practice, CBRE intends to bill the Debtors on a flat fee percentage basis for the services as set forth in the Listing Agreement.

18. Therefore, CBRE submits that the requirement to file detailed time records in compliance with Bankruptcy Rule 2016 and the U.S Trustee's *Chapter 11 Operating Guidelines for Debtors-in-Possession and Trustees* is unnecessary and burdensome under the circumstances and requests that these requirements be waived. CBRE, will however, file monthly, interim, and final fee applications, as necessary, for allowance of its compensation and reimbursement of its expenses with the Court and in accordance with applicable Bankruptcy Rules, Local Rules, and any other orders of this Court upon completion of their services for review pursuant to section 330 and 331 of the Bankruptcy Code; provided, that CBRE shall be compensated and reimbursed pursuant to section 328(a) of the Bankruptcy Code.

**Disinterestedness**

19. The Debtors have numerous creditors and other parties in interest with which they maintain business relationships. In connection with the Debtors' proposed retention

of CBRE in these chapter 11 cases, CBRE has reviewed the list of parties in interest provided by the Debtors, a copy of which is attached hereto as **Schedule 1**.<sup>3</sup> CBRE undertook a comprehensive review of these parties from the Petition Date to the present to determine whether it had any conflicts or other relationships that might cause it to not be disinterested or to hold or represent an interest adverse to the Debtors.

20. CBRE was retained as an appraiser for KPS Capital Partners (“**KPS**”), an affiliate of the Purchaser, in connection with the Purchase Agreement. Since September 21, 2020, the closing of the Purchase Agreement, CBRE has not performed services for KPS related to the chapter 11 cases.

21. Except as expressly stated in Paragraph 20, to the best of my knowledge and belief after reasonable inquiry, CBRE: (i) does not hold any interest materially adverse to the Debtors’ estates in connection with the Properties; (ii) has no connection with the parties listed on **Schedule 1**; and (c) is a “disinterested person” within the meaning of section 101(14) of the Bankruptcy Code (as modified by section 1107(b) of the Bankruptcy Code).

22. To the best of my knowledge, information, and belief, insofar as I have been able to ascertain after reasonable inquiry, CBRE has not been retained to assist any entity or person other than the Debtors on matters relating to, or in direct connection with, the Properties, except as otherwise disclosed herein. CBRE will, however, continue to provide professional services to entities or persons that may be creditors of the Debtors or parties in interest in these chapter 11 cases, provided that such services do not relate to, or have any direct connection with, the Properties.

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<sup>3</sup> On or about November 23, 2020, the Debtors provided CBRE a supplemental list of parties in interest (the “**Supplemental List**”). CBRE is in the process of reviewing the Supplemental List, and will provide a supplement to this Declaration upon completing its review of the Supplemental List.



23. Neither I nor any other professional of CBRE who will work on this engagement, to the best of my knowledge after reasonable inquiry, is related or connected to the United States Bankruptcy Judge assigned to these chapter 11 cases, the U.S. Trustee, or any persons employed by the U.S. Trustee.

24. As part of its diverse practice, CBRE appears in numerous cases, proceedings, and transactions that involve many different professionals, including attorneys, accountants, and financial consultants, who may represent claimants and parties in interest in these chapter 11 cases. Also, CBRE has performed in the past, and may perform in the future, real estate consulting and advisory services for various attorneys and law firms, and has been represented by several attorneys and law firms, some of whom may be involved in this proceeding. In addition, CBRE may have in the past, may currently, and may in the future work with or against other professionals involved in these cases in matters unrelated to the Debtors and these chapter 11 cases.

25. I do not believe that CBRE is a “creditor” of the Debtors listed on **Schedule 1** within the meaning of section 101(10) of the Bankruptcy Code. Further, neither I nor any other member of the CBRE team serving the Debtors in connection with the Properties, to the best of my knowledge, is a holder of any outstanding debt instrument of the Debtors.

26. Consequently, to the best of my knowledge, CBRE is “disinterested” as that term is defined in section 101(14) of the Bankruptcy Code as modified by section 1107(b) of the Bankruptcy Code, because:

- a. neither CBRE nor any professional at CBRE working on this engagement is or was a creditor, equity security holder, or insider of the Debtors;
- b. neither CBRE nor any professional at CBRE working on this engagement is or was, within two (2) years before the

commencement of these chapter 11 cases, a director, officer, or employee of the Debtors; and

- c. CBRE has no interest materially adverse to the interests of the estates or of any class of creditors, by reason of any direct or indirect relationship to, connection with, or interest in the Debtors.

27. Given the large number of parties in interest in these cases, despite the efforts described above to identify and disclose CBRE's relationships with parties in interest in these cases, I am unable to state with absolute certainty that every client relationship or other connection has been disclosed in this Declaration. If CBRE discovers additional information requiring disclosure, CBRE will file supplemental disclosures with the Bankruptcy Court as promptly as possible. CBRE further understands that it has a duty to continue to check for conflicts and connections, and in the event that any new facts or relationships subsequently are discovered during the pendency of these chapter 11 cases, CBRE will supplement this Declaration and file the same with the Bankruptcy Court.

*[Remainder of Page Intentionally Left Blank]*

Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing statements are true and correct.

Dated: December 2, 2020

**CBRE, INC.**

/s/ Christopher Zubel

Christopher Zubel  
Senior Managing Director

**Exhibit B**

**Murray Listing Agreement**



September 3, 2020

**BY ELECTRONIC MAIL**

Andrea Golvach  
Vice President and Treasurer  
Briggs & Stratton Corporation  
12301 W. Wirth Street  
Wauwatosa, WI 53222

**Re: *Exclusive Sales Listing Agreement*  
*110 Main Street, Murray, Calloway County, Kentucky 42071* ("Property")**

Dear Andrea:

Thank you for selecting CBRE, Inc. ("CBRE", "us", "we", "our") to represent Briggs & Stratton Corporation, a Wisconsin corporation ("Owner", "you", "your"). The terms of this engagement are contained in this agreement ("Agreement").

1. Owner and certain of its affiliates are debtors and debtors in possession (collectively, the "Debtors") in the chapter 11 cases, *In re Briggs & Stratton Corporation*, Case No. 20-43597 (as jointly administered, the "Chapter 11 Cases"), pending in the United States Bankruptcy Court for the Eastern District of Missouri (the "Bankruptcy Court"). This Agreement shall become effective upon entry of an order approving CBRE's retention pursuant to the terms of this Agreement by the Bankruptcy Court.
2. Unless otherwise extended or terminated according to the terms hereof, this Agreement shall terminate at midnight on March 31, 2021 ("Term"). Notwithstanding the foregoing, this Agreement may be terminated by either party for any reason or no reason upon thirty (30) days' prior written notice to the other party, subject to the terms set forth in Section 12 hereof. You agree that, for purposes of KRS 376.075(4), we will be deemed to have "ceased to provide services" hereunder on the date on which a commission (if any) is due and payable to us pursuant to this Agreement.
3. During the Term, Owner appoints CBRE as its exclusive agent with the right to list and market the Property for sale and to negotiate agreements for the sale of the Property (the "Transaction"). For the avoidance of doubt, solely as to the Property, this Agreement supersedes that certain Exclusive Sales Listing Agreement – Briggs & Stratton Portfolio, dated February 24, 2020 between CBRE (on behalf of CBRE Capital Markets, Inc.) and Owner (the "Prior Agreement"). CBRE acknowledges, understands, and agrees that only one commission shall be paid to CBRE for the Transaction set forth hereunder. CBRE further acknowledges, understands, and agrees that such commission shall be paid pursuant to the terms set forth in this Agreement and not the Prior Agreement, and that CBRE may not and has no claim for an additional commission pursuant to the Prior Agreement for the Transaction contemplated under this Agreement. For the avoidance of doubt, under no circumstances shall CBRE Capital Markets, Inc. ("CCM") be due a commission under this Agreement.
4. The parties have previously entered into a separate Transaction Management and Brokerage Agreement, dated January 1, 2017, as amended October 7, 2019 (the "Master Agreement"). The parties acknowledge and agree that this Agreement shall govern the Transaction, provided, however, that in addition to the services outlined in this Agreement, CBRE shall also provide the services outlined in the Master Agreement, at no additional cost to Owner. The parties also acknowledge and agree that the provisions of that certain Mutual Confidentiality Agreement,

Briggs & Stratton Corporation  
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dated as of January 1, 2020 (the "Confidentiality Agreement") shall continue in full force and effect as the parties execute their respective duties under this Agreement and the Transaction contemplated herein.

5. We will commit the appropriate number of qualified and licensed professionals to this engagement. The "Listing Team" is comprised of Doug Butcher and Preston Schilling. We will have the right to change members of the Listing Team as necessary and appropriate.
6. We will offer the Property at an initial listing price of \$3,900,000.00. However, it is Owner's right to: (a) approve, modify, reject or disapprove any and all proposals and offers, (b) approve prospective purchasers for the Property and (c) adjust the terms and conditions of any offer made, including but not limited to, adjusting the Property's listing price. CBRE understands that any sale of the Property is subject to approval of the Bankruptcy Court.
7. CBRE will work with Owner to create and implement a sales strategy for the Property, including implementing a "flexible bidding" structure and preparation of appropriate and customary marketing materials (such as an investment introduction and offering memorandum). In developing the strategy, CBRE will rely on (without requirement to verify) any information provided to us by Owner, Owner's agents, affiliates and/or any of the Property's managers. However, CBRE will not issue any written marketing materials without Owner's prior written approval. Further, you authorize us to place one or more signs on the Property as we deem appropriate. Owner agrees to reimburse CBRE for reasonable, substantiated out-of-pocket marketing expenses approved by Owner up to a maximum of Ten Thousand Dollars (\$10,000). Reimbursement is due at closing or upon the receipt of an invoice. You have not set forth any special directions, restrictions or limitations regarding showings of the Property other than to impose on CBRE the obligation to use commercially reasonable efforts to ensure that CBRE complies with all COVID-19 related social distancing protocols to the extent required by Owner and provided to CBRE at the time of any showing.
8. The success of this engagement relies, in part, on cooperation and communication between Owner and CBRE. Therefore, Owner agrees to: (i) provide us with all available information to assist us in marketing the Property; (ii) immediately refer to us all purchase inquiries for the Property; and (iii) conduct all negotiations with prospective purchasers exclusively through us.
9. Owner represents that Owner is either the fee owner of or otherwise has control, subject to applicable bankruptcy laws and rules, over the Property. Owner further represents that, subject to Bankruptcy Court approval, Owner has full authority to enter into this Agreement without violating anyone else's rights, or any other agreements or contractual obligations.
10. Unless directed otherwise, CBRE shall, at a minimum, provide the following services: (a) accept delivery of and present to Owner all offers and counteroffers to sell Owner's Property; (b) assist Owner in developing, communicating, negotiating, and presenting offers, counteroffers, and notices that relate to the offers and counteroffers until purchase agreements are signed and all contingencies are satisfied or waived; and (c) answer Owner's questions relating to the offers, counteroffers, notices, and contingencies.
11. Owner agrees that it and/or its legal counsel are solely responsible for determining the legal sufficiency of the documents related to this engagement and the tax consequences of any transaction. Owner is also responsible for evaluating any offers and determining with whom Owner will negotiate or enter into a transaction. While CBRE may assist Owner in gathering reasonably available information, CBRE cannot represent or warrant the creditworthiness of any prospect and/or their ability to satisfy their obligations under a purchase agreement. All final business and legal decisions shall be made solely by Owner. Notwithstanding any designation of us as "agent" in this Agreement, CBRE will have no right, power, or authority to enter into any

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agreement with any prospective purchaser or lender, real estate broker, or any other person in the name of, on behalf of, or otherwise binding upon Owner.

12. We will earn, and Owner agrees to pay us, a commission in accordance with this Agreement and the attached Exhibit A – Commission Schedule to this Agreement (the “Commission Schedule”) if either of the following occur:
  - (a) during the Term, Owner sells the Property to a purchaser procured by CBRE, Owner, or anyone else; or
  - (b) within one hundred twenty (120) days after the expiration of the Term or after the Agreement otherwise terminates (the “Post-Term”), the Property is sold to, or negotiations continue, resume or commence and thereafter continue leading to a sale of the Property whether during the Post-Term or after to, any person or entity (including his/her/its successors, assigns or affiliates) with whom, during the Term, CBRE either negotiated (either directly or through another broker or agent) or from whom CBRE or Owner received a written offer to purchase the Property which was submitted during the Term (“Existing Prospect”). Owner agrees that CBRE is authorized to continue negotiations with Existing Prospects until such time as the relevant Property is sold, and CBRE will submit to Owner a list of such Existing Prospects no later than ten (10) business days following the expiration or termination of the Term. Notwithstanding the foregoing, in no event shall CBRE be entitled to a commission for any sale to an Existing Prospect that closes more than one hundred eighty (180) days after either the expiration of the Term.
  - (c) Notwithstanding anything to the contrary set forth herein, Owner acknowledges and agrees that CBRE shall be paid a commission by Owner as set forth hereunder in the event the Transaction is delayed due to events and circumstances, including but not limited to any environmental issues, rezoning, governmental orders, etc., beyond CBRE’s reasonable control but the Transaction ultimately closes.

For the avoidance of doubt, neither (i) the vesting of the Property in the Debtors, or as reorganized, the “Reorganized Debtors,” pursuant to a plan in the Chapter 11 Cases nor (ii) a sale of all or substantially all of the Debtors assets, which assets include the Property, pursuant to section 363 of the Bankruptcy Code, shall be considered a sale of the Property for any purpose under this Agreement.

13. Owner agrees that we are authorized to cooperate with and, if appropriate, share our commission with “Cooperating Brokers” (such as a broker representing a purchaser). We will be responsible for paying the fee or commission due to the Cooperating Broker (if any) provided the Cooperating Broker: (i) represents the prospective purchaser pursuant to a written agreement, a copy of which is furnished to us prior to the execution of the transaction; (ii) is properly licensed; and (iii) executes and delivers to us an acceptable cooperating brokerage agreement.
14. Owner consents to the appointment of the Listing Team as the Owner’s designated agents to the exclusion of all of CBRE’s other licensees. All other CBRE licensees shall be referred to as “Non-Listing Team Agents” and shall be considered Cooperating Brokers. Owner acknowledges that we are an international brokerage firm and that we may represent prospective purchasers through Non-Listing Team Agents. In the event that a Non-Listing Team agent represents a prospective purchaser, then Owner acknowledges that our principal Kentucky broker shall act as a dual agent with limited fiduciary obligations to both Owner and such purchasers; that the Listing Team shall owe duties of loyalty, trust, and confidence exclusively to Owner; and that Non-Listing Team Agents shall owe duties of trust, confidence and loyalty exclusively to their clients. In the event that the Listing Team, or any member thereof, has a potential conflict of interest (such as a Listing Team member proposing to act for a potential purchaser), then we will disclose the

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conflict to Owner and obtain Owner's written consent to the conflict in advance of any negotiations with that potential purchaser. The Listing Team and Non-Listing Team Agents shall not disclose the confidential information of one principal to the other, and shall implement all measures to maintain the confidentiality of Owner's confidential information as required by Kentucky law. Notwithstanding the foregoing or anything contained in the Agreement to the contrary, Owner acknowledges that the Listing Team is obligated by law to disclose to prospective purchasers any defects about which it has knowledge that materially affect the value of the Property.

15. Questions regarding environmental and zoning issues may arise during the course of our representation. CBRE is not obligated to perform, and has not made any investigation of the physical conditions or zoning issues relating to the Property. Owner agrees to disclose to us and allow us to disclose to prospective purchasers everything Owner knows (after reasonable inquiry by Owner) regarding present and future property issues including, but not limited to, structural, mechanical, hazardous materials, zoning and environmental matters affecting the Property and/or the Property's condition.
16. If the Property becomes the subject of foreclosure proceedings, and the automatic stay under 11 U.S.C. § 362 is lifted or modified to allow such foreclosure, before the expiration of the Term, then in our sole and absolute discretion we may: (a) suspend this Agreement until we may elect to reinstate it or (b) terminate this Agreement and enter into a listing agreement with any receiver, party initiating foreclosure, party purchasing the Property at a foreclosure sale, or any other third party.
17. While we are confident that this relationship will be mutually satisfactory, the parties agree to resolve any disputes in the Bankruptcy Court and subject to the following:
  - (a) if either party institutes a legal proceeding against the other party relating to this Agreement, the prevailing party shall recover from the non-prevailing party all of its (i) reasonable attorneys' fees and costs, (ii) expert-related fees and costs and (iii) other related expenses. All past due amounts shall bear interest at twelve percent (12%) per annum or the maximum rate permitted in the state in which the Property is located. No party will be entitled to punitive, special and/or consequential damages, and we each waive all rights to and claims for relief other than for compensatory damages; and
  - (b) **EACH PARTY KNOWINGLY AGREES TO WAIVE ANY AND ALL RIGHTS TO HAVE A DISPUTE ON ANY MATTER RELATING TO, OR ARISING FROM THIS AGREEMENT DETERMINED BY A JURY.**
18. Owner and CBRE agree to comply with all applicable laws, regulations, codes, ordinances and administrative orders governing each party's respective participation in any transaction contemplated by this Agreement. Further, Owner and CBRE each acknowledge that: (a) discrimination, including refusing to display or lease or sell to or from any person, because of one's membership in a protected class, including, race, color, religion, national origin, sex, ancestry, age, marital status, disability, familial status, marital status or any other class protected by applicable law is illegal, and (b) the Property will be offered in compliance with all applicable anti-discrimination laws.
19. Owner acknowledges that our affiliate, CCM, may assist prospective purchasers with financing the purchase of the Property and may earn fees or other compensation in connection with the financing of a sale or sales of the Property; however, in no circumstance will Owner be liable for compensating CCM. Owner also acknowledges and agrees that CCM may pay us referral fees in connection with such financing. Owner further acknowledges that CBRE and its affiliates provide a wide range of real estate services and certain CBRE affiliates (including employees), may: (a) assist with the sale of the Property; (b) represent clients who have competing interests in such



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transaction(s), including assisting prospective purchasers with the financing or valuation of the Property, and (c) pay and/or receive referral fees and other compensation relating to the foregoing, including to and from CBRE.

20. This Agreement, the Master Agreement and the Confidentiality Agreement constitute our entire agreement in regards to the Transaction, and supersede all prior understandings between CBRE and Owner regarding this engagement and is governed by the laws of the state of Kentucky, without regard to its conflict of laws principles. Upon Bankruptcy Court approval, this Agreement will be binding on and inure to the benefit of our lawful representatives, heirs, successors, designees and assignees. It may not be altered or terminated except in a writing signed by both Owner and CBRE, and approved by the Bankruptcy Court. Neither party's failure to exercise any of its rights under this Agreement will relieve the other party of its obligations hereunder. Nothing herein is or may be deemed a waiver or full statement of any of our rights or remedies, whether at law or in equity, all of which are expressly reserved. If any provision of this Agreement is unenforceable or void under applicable law, the remaining provisions will continue to be binding. This Agreement and the rights, interests or obligations created hereunder will not be assigned by either of the parties without the prior written consent of the other party. Owner and CBRE each agree that they have both participated in the negotiation and drafting of this Agreement. Each party acknowledges that the person signing this Agreement on its behalf has full authority to execute it. This Agreement will be binding whether signatures are exchanged electronically or by hand, by mail, by fax, by electronic transfer or image, by photocopy, or in counterparts.

Thank you again for this opportunity. We look forward to working with you.

Very truly yours,

**CBRE, Inc.**

DocuSigned by:



By: A53F92E64A85449...  
Name: David L. Hardy, CCIM  
Title: Managing Director  
Date: 9/8/2020 Time: 11:55 am

**AGREED:**

**Briggs & Stratton Corporation**

By: 

Andrea Golvach

Vice President and Treasurer

Date: September 4, 2020

Time: 4:19pm

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**EXHIBIT A – Commission Schedule**

If the Property is sold, CBRE's commission shall be six percent (6%) of the gross sales price. Gross sales price shall include any and all consideration received or receivable, in whatever form, including but not limited to assumption or release of existing liabilities. The commission shall be earned and paid on the date title to the Property is transferred to the purchaser; provided, however, that if the transaction involves an installment contract, then payment shall be made upon execution of such contract.

1. *Definitions.* Under this Agreement the terms "sell," "sale" or "sold" shall mean: (a) an exchange of the Property; (b) the granting of an option to purchase the Property; or (c) any other transfer, conveyance or contribution of a controlling interest in the Property or in the entity which owns the Property, including, but not limited to, situations where you are a corporation, partnership or other business entity and a controlling interest in such corporation, partnership or other business entity is transferred, whether by merger, outright purchase or otherwise, in lieu of a sale of the Property.
2. *Option to Purchase.* If you grant an option to purchase the Property, you agree to pay us a commission in accordance with this Commission Schedule, on the price paid for the option and for any extensions when you receive payment for any such option and/or extensions. If the option is exercised, whether during the Term or after, we will earn a further commission in accordance with this Agreement. Notwithstanding the foregoing, to the extent that all or part of the price paid for the option or any extension thereof is applied to the sales price of the Property, then any commission previously paid by you to us on account of the option payments will be credited against the commission payable to us on account of the exercise of the option.

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## Kentucky Sale/Lease Disclosures

**Property:** 110 Main Street, Murray, KY 42071

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**Seller/Landlord Disclosure of Material Facts, Delivery of Reports, and Compliance with Laws.**

Sellers/landlords are hereby requested to disclose directly to buyers/tenants all facts known to sellers/landlords that materially affect the value or desirability of the Property and are not readily observable nor known to the buyer/tenant, including, but not limited to, facts regarding hazardous materials, zoning, construction, design, engineering, soils, title, survey, fire/life safety, proneness to natural hazards such as earthquakes, and other matters, and to provide buyers/tenants with copies of all reports in the possession of or accessible to sellers/landlords regarding the Property. Sellers/landlords and buyers/tenants must comply with all applicable federal, state and local laws, regulations, codes, ordinances and orders, including, but not limited to, the 1964 Civil Rights Act and all amendments thereto, the Foreign Investment in Real Property Tax Act, the Comprehensive Environmental Response Compensation and Liability Act, and The Americans With Disabilities Act.

**Americans with Disabilities Act (ADA).** The Americans With Disabilities Act (42 United States Code §12101 et seq.) and other federal, state and local requirements may require changes to the Property. Have your experts investigate and evaluate these matters.

**Taxes.** Sales, leases and other real estate transactions can have federal, state and local tax consequences. In sales transactions, Internal Revenue Code §1445 requires buyers to withhold and pay to the IRS 15% of the gross sales price within 20 days of the date of a sale unless the buyers can establish that the sellers are not foreigners, generally by having the sellers sign a Non-Foreign Seller Affidavit. Depending on the structure of the transaction, the tax withholding liability can exceed the net cash proceeds to be paid to sellers at closing. Have your experts investigate and evaluate these matters.

**Flood Zones.** Many lenders require flood insurance for properties located in flood zones, and government authorities may regulate development and construction in flood zones. Whether or not located in a flood zone, properties can be subject to flooding and moisture problems, especially properties on a slope or in low-lying areas. Buyers/tenants should have their experts confirm whether the Property is in a flood zone and otherwise investigate and evaluate these matters.

**Fires.** Properties, whether or not located in a fire hazard zone, are subject to fire/life safety risks and may be subject to state and local fire/life safety-related requirements, including retrofit requirements. Have your experts investigate and evaluate these matters.

**Hazardous Materials and Underground Storage Tanks.** Due to prior or current uses of the Property or in the areas or the construction materials used, the Property may have hazardous or undesirable metals (including but not limited to lead-based paint), minerals (including but not limited to asbestos), chemicals, hydrocarbons, petroleum-related compounds, or biological or radioactive/emissive items (including but not limited to electrical and magnetic fields) in soils, water, building components, above or below-ground tanks/containers or elsewhere in areas that may or may not be accessible or noticeable. Such items may leak or otherwise be released. If the Property was built before 1978 and has a residential unit, sellers/landlords must disclose all reports, surveys and other information known to them regarding lead-based paint to buyers/tenants and allow for inspections (42 United States Code §4851 et seq.). Have your experts investigate and evaluate these matters.

**Property Inspections and Evaluations.** Buyers/tenants should have the Property thoroughly inspected and all parties should have the transaction thoroughly evaluated by the experts of their choice. Ask your experts what investigations and evaluations may be appropriate as well as the risks of not performing any such investigations or evaluations. Information regarding the Property supplied by the real estate brokers has been received from third party sources and has not been independently verified by the brokers. Have your experts verify all information regarding the Property, including any linear or area measurements, the availability of all utilities, applicable zoning, and entitlements for the intended use. All work should be inspected and evaluated by your experts, as they deem

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appropriate. Any projections or estimates are for example only, are based on assumptions that may not occur, and do not represent the current or future performance of the property. Real estate brokers are not experts concerning, nor can they determine if any expert is qualified to provide advice on, legal, tax, design, ADA, engineering, construction, soils, title, survey, fire/life safety, insurance, hazardous materials, or other such matters. Such areas require special education and, generally, special licenses not possessed by real estate brokers. Consult with the experts of your choice regarding these matters.

**CONSULT YOUR ADVISORS** – This document has legal consequences. No representation or recommendation is made by Broker as to the legal or tax consequences of this Agreement or the transaction(s) which it contemplates. This form is not intended to substitute for any disclosures the law requires that the parties make to each other. These are questions for your attorney and financial advisors.

**Exhibit C**

**Fort Pierce Listing Agreement**



November 12, 2020

**BY ELECTRONIC MAIL**

Briggs & Stratton Corporation  
Attn: Kathryn M. Buono  
Vice President & Secretary  
P.O. Box 702  
Milwaukee, WI 53201  
E-mail: buono.kathryn@basco.com

**Re: *Exclusive Sales Listing Agreement***  
***3001 Industrial 2 Avenue, Fort Pierce, Florida 34946 (the "Property")***

Dear Kathryn:

Thank you for selecting CBRE, Inc. ("CBRE", "us", "we", "our") to represent Briggs & Stratton Corporation ("Owner", "you", "your"). The terms of this engagement are contained in this agreement ("Agreement").

1. Owner and certain of its affiliates are debtors and debtors in possession (collectively, the "Debtors") in the chapter 11 cases, captioned *In re Briggs & Stratton Corporation*, Case No. 20-43597 (as jointly administered, the "Chapter 11 Cases"), pending in the United States Bankruptcy Court for the Eastern District of Missouri (the "Bankruptcy Court"). This Agreement shall become effective upon entry of an order approving CBRE's retention pursuant to the terms of this Agreement by the Bankruptcy Court.
2. Unless otherwise extended or terminated according to the terms hereof, this Agreement shall terminate at midnight of the one hundred eightieth (180<sup>th</sup>) day following the date of this correspondence, which is set forth above ("Term"). Notwithstanding the foregoing, in the event the Term is extended by mutual agreement of the parties, this Agreement may be terminated by either party for any reason or no reason upon thirty (30) days' prior written notice to the other party, subject to the terms set forth in Section 12 hereof.
3. During the Term, you appoint us as your agent with the exclusive right to list and market the Property for sale and to negotiate agreements for the sale of the Property (the "Transaction").
4. The parties have previously entered into a separate Mutual Confidentiality Agreement, dated as of January 1, 2020 (the "Confidentiality Agreement"), which shall continue in full force and effect as the parties execute their respective duties under this Agreement and the Transaction contemplated herein.
5. We will commit the appropriate number of qualified and licensed professionals to this engagement. Your "Listing Team" is comprised of Robert Smith, Kirk Nelson, and Jeff Kelly. We will have the right to change members of the Listing Team as necessary and appropriate. The Listing Team shall owe you duties of trust, confidence and loyalty.
6. We will offer the Property at an initial listing price of \$500,000.00. However, it is your right to: (a) approve, modify, reject or disapprove any and all proposals and offers, (b) approve or reject any prospective purchasers for the Property, and (c) adjust the terms and conditions of any offer made, including but not limited to, adjusting the Property's listing price. CBRE understands that any sale of the Property is subject to approval of the Bankruptcy Court.

7. We will work with you to create and implement a sales strategy for the Property, including implementing a “flexible bidding” structure and preparation of appropriate and customary marketing materials (such as an offering brochure). In developing the strategy, we will rely on (without requirement to verify) any information provided to us by you, your agents, affiliates and/or any of the Property’s managers. However, we will not issue any written marketing materials without your prior written approval. Further, you authorize us to place one or more signs on the Property as we deem appropriate. You have not set forth any special directions, restrictions or limitations regarding showings of the Property other than to impose on CBRE the obligation to use commercially reasonable efforts to ensure that CBRE complies with all COVID-19 related social distancing protocols to the extent required by you and provided to CBRE at the time of any showing or otherwise as required by applicable law.
8. The success of this engagement relies, in part, on cooperation and communication between you and CBRE. Therefore, you agree to: (i) provide us with all available information to assist us in marketing the Property; (ii) immediately refer to us all purchase inquiries for the Property; and (iii) conduct all negotiations with prospective purchasers exclusively through us.
9. You represent that you either are the fee owner of or otherwise have control, subject to applicable bankruptcy laws and rules, over the Property. You further represent that, subject to Bankruptcy Court approval, you have full authority to enter into this Agreement without violating anyone else’s rights, or any other agreements or contractual obligations.
10. Unless directed otherwise, CBRE shall, at a minimum, provide the following services: (a) accept delivery of and present to you all offers and counteroffers to sell the Property; (b) assist you in developing, communicating, negotiating, and presenting offers, counteroffers, and notices that relate to the offers and counteroffers until a purchase agreement is signed and all contingencies are satisfied or waived; and (c) answer your questions relating to the offers, counteroffers, notices, and contingencies.
11. You agree that you or your legal counsel are solely responsible for determining the legal sufficiency of any documents to be executed by you in any transaction contemplated by this engagement as well as the tax consequences of any such transaction. You are also responsible for evaluating any offers and determining with whom you will negotiate or enter into a transaction. While we may assist you in gathering reasonably available information, we cannot represent or warrant the creditworthiness of any prospect and/or their ability to satisfy their obligations under a purchase agreement. All final business and legal decisions shall be made solely by you. Notwithstanding any designation of us as “agent” in this Agreement, we will have no right, power, or authority to enter into any agreement with any prospective purchaser, real estate broker, or any other person in the name of, on behalf of, or otherwise binding upon you.
12. We will earn, and you agree to pay us, a commission in accordance with this Agreement and the attached Exhibit A to this Agreement (the “Commission Schedule”) if either of the following occur:
  - (a) during the Term, you enter into an agreement to sell the Property to a purchaser, whether procured by us, you or anyone else, and the sale of the Property subsequently closes (whether during or after the Term); or
  - (b) within one hundred twenty (120) days after the expiration of the Term or after the Agreement otherwise terminates (the “Post-Term”), the Property is sold to, or negotiations continue, resume, or commence, leading to a sale of the Property at any time during the Post Term or thereafter to any person or entity with whom, CBRE negotiated (either directly or through another broker or agent) or to whom the Property was submitted during the Term, or to any such person’s or entity’s successors, assigns, or affiliates (“Existing Prospect”), or you enter into an agreement to sell the Property to an



Existing Prospect and the sale of the Property subsequently closes (whether during or after the Post-Term). You agree that CBRE is authorized to continue negotiations with Existing Prospects until such time as the Property is sold, and we will submit to you a list of such Existing Prospects no later than ten (10) business days following the expiration or termination of the Term. Notwithstanding the foregoing, in no event shall CBRE be entitled to a commission for any sale to an Existing Prospect that closes more than one hundred eighty (180) days after the expiration of the Term.

For the avoidance of doubt, the vesting of the Property in (i) the Debtors or (ii) any successor to the Debtors, by merger, consolidation or otherwise, pursuant to and under the Debtors' chapter 11 plan on or after the effective date of the plan in the Chapter 11 Cases, shall not be considered a sale of the Property for any purpose under this Agreement.

13. You agree that we are authorized to cooperate with and, if appropriate, share our commission with "Cooperating Brokers" (such as a broker representing a purchaser). We will be responsible for paying the fee or commission due to the Cooperating Broker (if any) provided the Cooperating Broker: (i) represents the prospective purchaser pursuant to a written agreement, a copy of which is furnished to us prior to the execution of the transaction; (ii) is properly licensed; and (iii) executes and delivers to us an acceptable cooperating brokerage agreement.
14. This agreement establishes us as your single agent under Florida law. You acknowledge that we are an international brokerage firm and that we may represent prospective purchasers. In the event that a prospective purchaser is also represented by us, you either (a) consent to us transitioning from a single agent to a transaction broker, or (b) upon request and consent, authorizes us to appoint designated agents, if permitted by Florida Statute §475.2755, for both you and such prospective purchaser. We shall, in such event, make either (i) the transaction broker transition disclosure required by Florida Statute § 475.278(3)(2) and obtain your consent thereto, or (ii) the designated agent disclosure required by Florida Statute § 475.2755 and obtain your consent thereto. CBRE licensees other than the Listing Team shall be referred to as "Non-Listing Team Agents" and shall be considered Cooperating Brokers for purposes of this Agreement.
15. Questions regarding environmental and zoning issues may arise during the course of our representation. CBRE is not obligated to perform and has not made any investigation of the physical conditions or zoning issues relating to the Property. You agree to disclose to us and allow us to disclose to prospective purchasers everything you know (after reasonable inquiry by you) regarding present and future property issues including, but not limited to, structural, mechanical, hazardous materials, zoning and environmental matters affecting the Property and/or the Property's condition.
16. If the Property becomes the subject of foreclosure proceedings, and the automatic stay under 11 U.S.C. § 362 is lifted or modified to allow such foreclosure, before the expiration of the Term, then in our sole and absolute discretion we may: (a) suspend this Agreement until we may elect to reinstate it or (b) terminate this Agreement and enter into a listing agreement with any receiver, party initiating foreclosure, party purchasing the Property at a foreclosure sale, or any other third party.
17. While we are confident that this relationship will be mutually satisfactory, the parties agree to resolve any disputes in the Bankruptcy Court and subject to the following:
  - (a) if either party institutes a legal proceeding against the other party relating to this Agreement, subject to Bankruptcy Court approval, the prevailing party shall recover from the non-prevailing party all of its (i) reasonable attorneys' fees and costs, (ii) expert-related fees and costs and (iii) other related expenses. All past due amounts shall bear interest at twelve percent (12%) per annum or the maximum rate permitted in the state in which the Property is located. No party will be entitled to punitive, special and/or

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consequential damages, and we each waive all rights to and claims for relief other than for compensatory damages; and

- (b) **EACH PARTY KNOWINGLY AGREES TO WAIVE ANY AND ALL RIGHTS TO HAVE A DISPUTE ON ANY MATTER RELATING TO, OR ARISING FROM THIS AGREEMENT DETERMINED BY A JURY.**

18. You and CBRE agree to comply with all applicable laws, regulations, codes, ordinances and administrative orders governing each party's respective participation in any transaction contemplated by this Agreement. Further, Owner and CBRE acknowledge that: (a) it is illegal to refuse to display or lease or sell to or from any person because of one's membership in a protected class, *e.g.*, race, color, religion, national origin, sex, ancestry, age, marital status, physical or mental handicap, familial status or any other class protected by applicable law and (b) the Property will be offered in compliance with all applicable anti-discrimination laws.

The Florida Commercial Real Estate Sales Commission Lien Act provides that when a broker has earned a commission by performing licensed services under a brokerage agreement with you, the broker may claim a lien against your net sales proceeds for the broker's commission. The Florida Commercial Real Estate Leasing Commission Lien Act provides that when a broker has earned a commission by performing licensed services under a brokerage agreement with you, the broker may claim a lien against your interest in the property for the broker's commission. The broker's lien rights under either of these Acts cannot be waived before the commission is earned.

19. This Agreement and the Confidentiality Agreement constitute our entire agreement in regards to the Transaction, and supersede all prior understandings between you and CBRE regarding this engagement. The Agreement is governed by the laws of the State of Florida, without regard to its conflict of laws principles. Upon Bankruptcy Court approval, this Agreement will be binding on and inure to the benefit of your and CBRE's lawful representatives, heirs, successors, designees and assignees. It may not be altered or terminated except in a writing signed by both you and CBRE, and approved by the Bankruptcy Court. Neither party's failure to exercise any of its rights under this Agreement will relieve the other party of its obligations hereunder. Nothing herein is or may be deemed a waiver or full statement of any of either party's respective rights or remedies, whether at law or in equity, all of which are expressly reserved. If any provision of this Agreement is unenforceable or void under applicable law, the remaining provisions will continue to be binding. This Agreement and the rights, interests or obligations created hereunder will not be assigned by either of the parties without the prior written consent of the other party. Each party agrees that each has participated equally in the negotiation and drafting of this Agreement. Each party acknowledges that the person signing this Agreement on its behalf has full authority to execute it. This Agreement will be binding whether signatures are exchanged electronically or by hand, by mail, by fax, by electronic transfer or image, by photocopy or in counterparts.

Thank you again for this opportunity. We look forward to working with you.

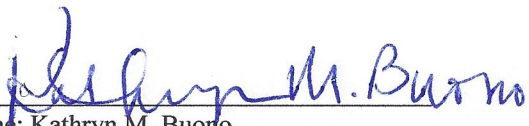
Very truly yours,

**CBRE, Inc.**  
**Licensed Real Estate Broker**

DocuSigned by:  
  
By: 8C99E1A499BB408...  
Name: Mr. David Bateman  
Title: Managing Director

**AGREED:**

Briggs & Stratton Corporation

By:   
Name: Kathryn M. Buono  
Title: Vice President & Secretary

**EXHIBIT A – Commission Schedule**

- A. *Sale.* If the Property is sold, CBRE's commission shall be six percent (6%) of the gross sales price. Gross sales price shall include any and all consideration received or receivable, in whatever form, including but not limited to assumption or release of existing liabilities. The commission shall be earned and paid on the date title to the Property is transferred to the purchaser; provided, however, that if the transaction involves an installment contract, then payment shall be made upon execution of such contract.
1. *Definitions.* Under this Agreement the terms "sell," "sale" or "sold" shall include: (a) an exchange of the Property or (b) the granting of an option to purchase the Property.
  2. *Option to Purchase.* If you grant an option to purchase the Property, you agree to pay us a commission in accordance with this Commission Schedule, on the price paid for the option and for any extensions when you receive payment for any such option and/or extensions. If the option is exercised, whether during the Term or after, we will earn a further commission in accordance with this Agreement. Notwithstanding the foregoing, to the extent that all or part of the price paid for the option or any extension thereof is applied to the sales price of the Property, then any commission previously paid by you to us on account of the option payments will be credited against the commission payable to us on account of the exercise of the option.