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UNITED STATES BANKRUPTCY COURT EASTERN DISTRICT OF MISSOURI SOUTHEASTERN DIVISION

In re:

BRIGGS & STRATTON CORPORATION, et al.,

Case No. 20-43597-399 (Jointly Administered)

Debtors.

LIMITED OBJECTION OF FR GEORGIA, LLC TO NOTICE OF POTENTIAL ASSUMPTION OF EXECUTORY CONTRACTS <u>AND UNEXPIRED LEASES AND CURE AMOUNTS</u>

FR Georgia, LLC ("<u>FRG</u>"), a counter-party to an unexpired lease listed in the *Notice of Cure Costs and Proposed Assumption and Assignment of Executory Contracts and Expired Leases in Connection with Sale [Docket No 514]* (the "<u>Cure Notice</u>") as one that may be assumed and assigned in connection with the Sale Transaction¹, hereby objects to the amount of the proposed Cure Costs to be paid to FRG upon assumption pursuant to 11 U.S.C. § 365 as follows:

1. On July 20, 2020 (the "<u>Petition Date</u>"), the Debtors commenced these jointly administered cases under chapter 11 of title 11 of the United States Code (the "<u>Bankruptcy Code</u>").

2. As of the Petition Date, FRG and the debtor, Briggs & Stratton Corporation ("Debtor"),

were parties to a Standard Form Industrial Building Lease dated as of December 15, 2019, as amended by the First Amendment to Lease Agreement (the "Lease Agreement"). Pursuant to the Lease Agreement, FRG agreed to lease commercial real estate and building commonly known as 5356 E Ponce de Leon, Stone Mountain, Georgia 30083 (the "<u>Factory</u>") to the Debtors in exchange for payment.

¹ Capitalized terms not herein defined shall have the meanings ascribed in the Cure Notice.



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3. As of the Petition Date, the Debtor had allowed, in violation of the terms of the Lease Agreement, multiple parties to assert mechanic's liens against the Factory in the total amount of **\$641,580.50** for work done that the Debtor failed to pay ("<u>Lien Amount</u>"). Debtor acknowledges that the amount to cure the mechanic's liens is \$641,580.50.

4. In the Cure Notice, the Debtor indicates that the Lease Agreement is among those executory contracts and unexpired leases that is subject to potential assumption by the Debtor and assignment to the highest bidder in connection with the Sale Transaction in progress. In the Cure Notice, however, the proposed "cure" payment is listed as \$0.00 and the Cure Notice is silent as to how the Debtors will cure the Lien Amount. Under the terms of the Lease Agreement, the Lien Amount needs to be paid before any assumption of the Lease Agreement may take place.

5. Nonetheless, 11 U.S.C. § 365(b)(1) states, in pertinent part:

(b)(1) If there has been a default in an executory contract or unexpired lease of the debtor, the trustee may not assume such contract or lease unless, at the time of assumption of such contract or lease, the trustee—
(A) cures, or provides adequate assurance that the trustee will promptly cure such default ...;
(B) compensates, or provides adequate assurance that the trustee will promptly compensate, a party other than the debtor to such contract or lease, for any actual pecuniary loss to such party resulting from such default; and
(C) provides adequate assurance of future performance under such contract or lease.

11 U.S.C. § 365(b)(1). A cure under 11 U.S.C. § 365 means that all unpaid amounts due under the agreement have been paid. *In re Network Access Solutions, Corp.*, 330 B.R. 67, 76 (Bankr. D. Del. 2005).

6. While FRG does not object to the proposed assumption and assignment of the Lease

Agreement generally, MSC submits that assumption of the Lease Agreement under 11 U.S.C. 365

must be conditioned on the timely payment of the Lien Amount, *plus* any post-petition invoices that

remain outstanding as of the time of assumption (the "FRG Cure").

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7. Prior to the filing of this Objection, FRG provided detail in support of the Lien Amount and FRG Cure to counsel at Weil Gotshal & Manges, LLP for internal review by the Debtor and its professionals, and the deadline for FRG to file this Objection was extended during this reconciliation process. As it appears that the Debtor has not yet completed that reconciliation, FRG files this Limited Objection out of an abundance of caution, in order to preserve its right to seek full payment of the FRG Cure amount through the contract assumption process.

8. The filing of this Objection to Cure Amount shall neither: (i) waive or release any rights of FRG against any Debtor or any other entity or person; nor (ii) elect a remedy which waives or otherwise affects any other remedy of FRG.

9. FRG reserves the right to supplement this Objection if it discovers any further amounts due and owing, including, but not limited to, accruing, unpaid post-petition obligations arising under the Supply Agreement.

WHEREFORE, FR Georgia, LLC hereby respectfully requests that this Court enter an order conditioning assumption of the Lease Agreement on payment of the FRG Cure, and granting such other relief as is just and proper.

Dated: September 14, 2020

Respectfully submitted,

ALBIN LAW

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CERTIFICATE OF SERVICE

I hereby certify that on this 14th day of September, 2020, a true and correct copy of the above and foregoing was served by the method or methods specified below:

__X__ by electronically filing with the Court using the CM/ECF system, which sent notification to all parties of interest participating in the CM/ECF system. __X__ by U.S. Mail, postage prepaid, to the following:

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