IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

IN RE:	)	Chapter 11
AMERICA'S GARDENING RESOURCE, INC., *et al.*,[1]	)	Case No. 25-11180 (BLS)
Debtors.	)	(Jointly Administered)

MOTION OF ESOP TRUST COMPANY TO CONFIRM RESIGNATION OF ESOP TRUST COMPANY AS TRUSTEE OF THE AMERICA'S GARDENING RESOURCE, INC. EMPLOYEE STOCK OWNERSHIP PLAN OR, IN THE ALTERNATIVE, COMPEL THE IMMEDIATE ASSUMPTION OR REJECTION OF AN UNEXPIRED EXECUTORY CONTRACT

COMES NOW ESOP Trust Company, as the independent trustee ("ETC") for the America's Gardening Resource, Inc. Employee Stock Ownership Plan (the "ESOP"), by and through undersigned counsel, and pursuant to 11 U.S.C. 365(d)(2), for its Motion to Confirm the Resignation of ETC as Trustee of the ESOP or, in the Alternative, to Compel the Immediate Assumption or Rejection of the Engagement Agreement (defined below), states as follows:

BACKGROUND

1. On June 25, 2025 (the "Petition Date"), America's Gardening Resource, Inc., d/b/a Gardener's Supply Company ("Debtor"), among others, filed a voluntary Petition for relief under Chapter 11 of Title 11 of the United States Code (the "Bankruptcy Code"). Upon information and belief, since the Petition Date, the Debtor has remained in possession of certain of its assets and

[1] The Debtors in these cases, along with the last four digits of each Debtor's federal tax identification number, are: America's Gardening Resource, Inc. (9604); Gardener's Home LLC (0498); IGH, Inc. (9336); Serac Corporation (9800); Innovative Gardening Solutions, Inc. (3325). The location of the Debtors' corporate headquarters and the Debtors' service address in these chapter 11 cases is 128 Intervale Road, Burlington, Vermont 05401.

continues to manage its business as a debtor-in-possession pursuant to sections 1107 and 1108 of the Bankruptcy Code.

2. Prior to the Petition Date, on April 28, 2025, ETC entered into a written Trustee Engagement Agreement with the Debtor to serve as the independent trustee of the Debtor's ESOP, and to specifically navigate the ESOP through the pending bankruptcy and corresponding asset sale (the "Engagement Agreement"). A copy of the Engagement Agreement is attached hereto and incorporated herein as **Exhibit A**.

3. Pursuant to the Engagement Agreement, ETC is the sole and independent trustee of the ESOP.

4. Since the Petition Date, ETC has encountered persistent post-petition breaches of the Engagement Agreement, including:

a) Debtor's failure to execute the engagement for and pay ETC's legal counsel fees as required under the Engagement Agreement;

b) Debtor's failure to provide necessary information to enable continued performance of fiduciary obligations under the Employee Retirement Income Security Act of 1974 ("ERISA"); and,

c) Debtor's unwillingness or inability to comply with reporting or cooperation duties required under applicable law.

5. On July 14, 2025, during a telephone call with ETC, Debtors' bankruptcy counsel advised that Debtors would be promptly filing a motion to reject the Engagement Agreement, the company and court would not pay for ETC's legal counsel fees and that ETC should resign, noting that "he does not like to see professionals go unpaid." Debtors' bankruptcy counsel also stated to

ETC that ETC's legal counsel would not be engaged by the Debtors and this Court would not approve of payment of counsel's fees.

6. ETC has made multiple requests for full and complete access to information required by ETC to evaluate the Company, the ESOP and the contemplated sale of Debtors. Debtors have failed to provide full and complete information to ETC.

7. Relying in good faith on the above-described communication with Debtors' counsel, and in view of the ongoing post-petition breaches and exposure to liability under ERISA, ETC submitted a written resignation letter dated July 14, 2025, which was served on the Debtors and appropriate parties in interest. A copy of the resignation letter is attached hereto and incorporated herein as **Exhibit B**.

<u>ARGUMENT AND RELIEF REQUESTED</u>

A. ETC's Resignation is Valid as of July 14, 2025.

8. It is well settled law, that as an ERISA fiduciary, ETC owes duties under 29 U.S.C. § 1104(a) and cannot continue to serve when doing so would violate its obligations of prudence and loyalty. *See Donovan v. Bierwirth*, 680 F.2d 263, 271 (2d Cir. 1982).

9. ERISA fiduciaries are entitled to resign where continued performance is made impractical or exposes them to potential liability. *See In re World Marketing Chicago, LLC*, 564 B.R. 587, 598 (Bankr. N.D. Ill. 2017).

10. ESOP trustees are entitled to resign when they cannot obtain adequate legal support to perform their fiduciary duties. *Id.*; *see also Friend v. Sanwa Bank California*, 35 F.3d 466, 468 (9th Cir. 1994).

11. Moreover, Paragraph 1, Section F – Due Diligence of the Engagement Agreement provides, in relevant part, "If the Company fails to provide complete and timely access to such

information, the Trustee shall have the right to suspend or terminate its duties under this Agreement without liability arising from such failure." Ex. A, p. 2.

12. Here, ETC cannot serve as trustee because doing so without the resources, without the requested information and without legal counsel would violate ETC's obligations of prudence and loyalty that it owes to the ESOP participants under ERISA.

13. ETC must be entitled to resign because performance as a fiduciary is made impractical here and exposes ETC to potential liability under ERISA.

14. ETC provided its resignation as trustee under the ESOP as of July 14, 2025, and pursuant to relevant case law and the agreement of the parties, this Court should recognize July 14, 2025, as the effective resignation date.

B. In the Alternative, the Debtor Must Immediately Elect to Reject the Engagement Agreement.

15. The Engagement Agreement is an executory contract subject to rejection. The Debtors' failure to pay fees or perform material obligations under the agreement constitutes grounds for rejection. *See In re Physician Healthcorp, Inc.*, 262 B.R. 290, 296 (Bankr. D. Del. 2001).

16. The Debtors are in default under the terms of the Engagement Agreement for a number of reasons, including, but not limited to, Debtors' failure to execute the engagement for and pay ETC's legal counsel fees as required under the Engagement Agreement, Debtors' failure to provide necessary information to enable ETC's continued performance of fiduciary obligations under ERISA and Debtors' failure with regard to reporting or cooperation duties required under applicable law.

17. ETC is being damaged due to Debtor's failures and inability to comply with the requirements of the Engagement Agreement prior to and since the Petition Date.

18. Moreover, ETC attempted to engage legal counsel to advise on the Engagement Agreement. Based on the Debtors' delays in providing information, preventing ETC from engaging legal counsel and the timeline to evaluate and provide advice, proposed legal counsel for ETC has declined the representation, harming ETC.

19. Pursuant to section 365(d)(2) of the Bankruptcy Code, this Court may order the Debtors to determine within a specified time whether to assume, assume and assign or reject an executory contract. The Debtors have failed to comply with the provisions of the Engagement Agreement and its counsel has affirmatively stated the Debtors' intent to reject the Engagement Agreement along with refusing to provide ETC with the resources to engage legal counsel. Accordingly, ETC requests that this Court direct the Debtors to immediately elect to reject the Engagement Agreement and to make all outstanding payments due since the Petition Date.

20. Section 365(b)(1) of the Bankruptcy Code, in conjunction with Section 1107, provides that if there has been a default under an executory contract, the debtor may not assume such a contract unless at the time of assumption the debtor: (i) cures, or provides adequate assurance that the debtor will cure all defaults under such contract, (ii) compensates, or provides adequate assurance that the debtor will promptly compensate the non-defaulting party to such contract for any pecuniary loss to such party resulting from such default; and (iii) provides adequate assurance of future performance under such contract. *See* 11 U.S.C. §§ 365(b)(1), 1107.

21. If the Debtors wish to assume or assume and assign the Engagement Agreement, the Debtors must demonstrate how the Debtors, or any assignee of the Engagement Agreement, will satisfy the requirements of Section 365(b)(1) of the Bankruptcy Code.

22. Furthermore, bankruptcy courts recognize that fiduciary engagements involving discretion and trust are personal services contracts. *See e.g.*, *In re Compass Van & Storage Corp.*,

61 B.R. 230, 234 (Bankr. E.D.N.Y. 1986); *In re Noonan*, 17 B.R. 793 (Bankr. S.D.N.Y. 1982). As such, the Engagement Agreement cannot be assumed or assigned under § 365(c)(1)(A) without the consent of the fiduciary, in this instance, ETC.

23. The Debtor cannot assume or assume and assign the Engagement Agreement because it cannot satisfy the requirements of Section 365(b)(1) of the Bankruptcy Code, including, but not limited to, curing the existing default for failure to provide the resources to ETC to obtain legal counsel in a timely manner.

24. Finally, if this Court is not inclined to confirm ETC"s resignation on July 14, 2025, ETC requests that this court compel the Debtors to reject the Engagement Agreement, based on the Debtors' failure to provide ETC with the requested resources and requested information required to competently serve as the ESOP Trustee and based on the Debtors' stated unwillingness to cure defaults while promising a prompt filing of a rejection motion that has yet to be filed.

25. In either scenario, ETC should immediately be relieved of further obligations to the ESOP or the Debtors.

NOTICE

26. Notice of this Motion has been provided to: (i) counsel to the Debtors; (ii) the Office of the United States Trustee; (iii) counsel to the Official Committee of Unsecured Creditors; and (iv) counsel to the Debtors' prepetition lenders.

CONCLUSION

WHEREFORE, for the reasons set forth herein, ETC respectfully requests that this Court enter an Order:

A. Confirming ETC's resignation as Trustee under the Engagement Agreement, effective as of July 14, 2025;

B. Directing the Debtor to pay to ETC an amount to be determined by this Court for legal expenses incurred in connection with this Motion;

C. Alternatively, compelling the Debtor to immediately reject the Engagement Agreement and pay all post-petition obligations owing to ETC; and,

D. Granting ETC such other and further relief as this Court deems just and proper under the circumstances.

Dated: August 1, 2025
Wilmington, Delaware

/s/ Domenic E. Pacitti

Domenic E. Pacitti (DE Bar No. 3989)
Alyssa M. Radovanovich (DE Bar No. 7101)
KLEHR HARRISON HARVEY BRANZBURG LLP
919 N. Market Street, Suite 1000
Wilmington, Delaware 19801
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-and-

Rob Maher (*pro hac vice* admission pending)
SEIGFREID BINGHAM, PC
2323 Grand Blvd., Ste. 1000
Kansas City, Missouri 64108
Telephone: (816) 265-4119
Email: rmaher@sb-kc.com

Counsel for ESOP Trust Company

Exhibit A

Engagement Agreement

TRUSTEE ENGAGEMENT AGREEMENT
ESOP TRUST COMPANY
AND
AMERICA'S GARDENING RESOURCE, INC.

This Trustee Engagement Agreement ("Agreement") is effective as of April 28, 2025 ("Effective Date") by and between ESOP Trust Company, a Washington corporation ("Trustee"), and America's Gardening Resource, Inc. a Delaware corporation d/b/a Gardener's Supply Company ("Company"). The Trustee and the Company are hereinafter referred to individually as a "Party" and collectively as the "Parties".

RECITALS

The Company established an employee stock ownership plan ("Plan") for the benefit of the Company's eligible employees and their beneficiaries.

The Plan owns 100% of the shares of the Company's common stock ("Company Stock").

The Company is contemplating a sale of all or substantially all of its assets to a third-party buyer ("Contemplated Transaction").

The Company desires to retain the Trustee as the sole and independent trustee of the Plan for purposes of the Contemplated Transaction.

The Company desires to retain Trustee as the trustee of the Plan, and the Trustee is willing to serve as the trustee of the Plan, subject to the terms and conditions set forth in this Agreement.

AGREEMENT

In consideration of the mutual covenants and agreements set forth in this Agreement, the Parties agree as follows:

1. APPOINTMENT AND DUTIES

A. Appointment of Trustee. The Company hereby appoints the Trustee to serve as the sole trustee of the Plan and the Trustee accepts this appointment. The Trustee acknowledges that it is a fiduciary, as that term is defined in Section 3(21) of the Employee Retirement Income Security Act of 1974, as amended ("ERISA"), with respect to the Plan. John S. Zollo, Trust Officer at ESOP Trust Company, shall serve as the primary contact with the Company for this engagement.

B. Continuing Service. The Trustee will continue to serve as the trustee of the Plan, unless it resigns or is removed by the Company's board of directors ("Board"). The Trustee may resign at any time by providing thirty (30) days' advance written notice to the Board. The Board may remove the Trustee at any time by providing the Trustee with thirty (30) days' advance written notice. In the event the Company has not appointed a successor trustee upon the resignation or removal of the Trustee, the members of the Board will be deemed the successor trustee of the Plan and they acknowledge and accept such default appointment and their role as fiduciaries as defined in ERISA Section 3(21)(A).

C. Standard of Care. The Trustee will act in the best interest of the participants and beneficiaries of the Plan in a manner that is consistent with the terms and provisions of the plan documents, as amended, and applicable laws and regulations, including without limitation, ERISA, the Internal Revenue Code of 1986, as amended ("Code"), and the regulations issued thereunder.

D. Retention of Financial Advisor. The Trustee will engage the services of a qualified independent financial advisor who will report solely to the Trustee and not to the Company. The Company shall be responsible for payment of all fees and expenses charged by the independent financial advisor that are not properly paid by the Plan's trust.

E. Retention of Legal Counsel. The Trustee may engage its own independent legal counsel who shall report solely to the Trustee and not to the Company. The Company shall be responsible for payment of all reasonable fees and expenses charged by the Trustee's legal counsel that are not properly paid by the Plan's trust.

F. Due Diligence. The Company shall provide the Trustee and its representatives full and complete access to all information required by the Trustee to evaluate the Company, the Plan, and the Contemplated Transaction. This includes, without limitation, the property, books, business and accounting records, financial statements, licenses, governmental notices, surveys, policies and procedures, and personnel of the Company and its subsidiaries and affiliates, and documents, records, correspondence and transactional materials related to the Plan. The Company will keep the Trustee informed with respect to the Company's business activities, financial condition, and prospects. The information and documents provided by the Company to the Trustee and its representatives shall not make any untrue statement, and the financial projections and forecasts provided by the Company to the Trustee and its representatives shall be the Company's good faith estimate of the Company's most likely financial performance. If the Company fails to provide complete and timely access to such information, the Trustee shall have the right to suspend or terminate its duties under this Agreement without liability arising from such failure.

G. Trustee Duties. The duties of the Trustee will include, but are not limited to, voting the shares of the Plan's trust in the election of members of the Board, determination of the fair market value of Company stock, and authorizing the disbursement of trust funds for distributions to participants as directed by the plan administrator. The Trustee will work with the Plan's service providers as necessary to accomplish these tasks. The Trustee reserves the right to establish bank accounts for the Plan's trust at a bank of its choosing and the Company will facilitate the transfer of any Plan assets to such accounts. The duties of the Trustee will not include investment management, investment advising, plan administration, or legal services. Plan assets other than Company stock shall be managed by the Board or one or more professional investment managers selected by the Company. To the fullest extent permitted by

ERISA, the duties of the Trustee will not include investigating the acts or omissions of any and all predecessor or successor fiduciaries of the Plan. If the Company and the Trustee desire that the Trustee shall continue to serve as the trustee of the Plan more than thirty (30) days following the consummation of the Contemplated Transaction, the Company and the Trustee shall enter into a separate agreement for ongoing trustee services.

H. Confidentiality. The Trustee shall keep all information provided by the Company confidential and restrict disclosure of the confidential information that it obtains from the Company to those persons assisting the Trustee in performing its duties. These individuals include, but are not limited to, employees, board members, agents, and advisors of the Trustee. The Trustee may disclose confidential information regarding the Company as may be required by a court of competent jurisdiction, ERISA, or other laws, or as may be requested by the Department of Labor, the Internal Revenue Service ("IRS"), the Securities and Exchange Commission, or any other federal or state agencies. The Trustee shall not be obligated to maintain the confidentiality of any information that is publicly available or that becomes publicly available.

2. COMPENSATION

A. Transaction Responsibility Fee. The Company shall pay the Trustee a non-refundable fee of one hundred thousand dollars ($100,000) for entering into this Agreement. This amount shall be paid in three (3) installments. The first payment of twenty-five thousand dollars ($25,000) shall be paid no later than fifteen (15) days after the Effective Date of this Agreement. The second payment of twenty-five thousand dollars ($25,000) shall be paid no later than the earlier of the six (6) months after the Effective Date or the date of the Contemplated Transaction. The third payment of fifty thousand dollars ($50,000) shall be paid no later than the earlier of the twelve (12) months after the Effective Date or the date of the Contemplated Transaction. The Parties understand that no fee or expense under this Agreement is contingent on the consummation of any transaction.

B. Fee for Extraordinary Services. The Company will pay the Trustee for time spent on matters beyond the scope of standard trustee services at the rate of five hundred dollars ($500) per hour. This would include, but is not limited to time spent on litigation, plan investigations, responding to document requests, and evaluating offers and transactions related to the Plan (other than the Contemplated Transaction). This Section 2B shall survive if the Trustee resigns or is removed or this Agreement is otherwise terminated.

C. Reimbursement of Expenses. The Company shall reimburse the Trustee for reasonable expenses it incurs performing its services under this Agreement. These expenses include, but are not limited to, charges for copying, postage, private express mail deliveries, and travel expenses (with travel expenses in 2025 limited to the IRS standard mileage rates and reasonable hotel expenses for any diligence meetings related to the Contemplated Transaction). This Section 2C shall survive if the Trustee resigns or is removed or this Agreement is otherwise terminated.

D. Late Payment Clause. The Trustee reserves the right to collect interest at one and one half percent (1.5%) per month for any fees or expenses that are not paid within ninety (90) days after the due date.

3. REPRESENTATIONS, WARRANTIES, AND COVENANTS

The Company hereby represents, warrants, and covenants to the Trustee as follows:

A. The Company is a corporation duly organized, validly existing, and in good standing under the laws of the jurisdiction of its organization.

B. The Company has the requisite corporate power and authority to execute and deliver this Agreement, and to perform its obligations contemplated hereunder. All acts or proceedings required to be taken by the Company to authorize the execution and delivery of this Agreement and the performance of the Company's obligations hereunder have been properly taken.

C. This Agreement has been duly authorized, executed, and delivered by the Company, and constitutes legal, valid, and binding obligations of the Company, except as limited by applicable bankruptcy, insolvency, reorganization, moratorium, or similar laws affecting or relating to creditors' rights generally and general equitable principles.

D. The execution and delivery of this Agreement by the Company and its compliance with the obligations hereunder will not: (i) violate any provision of the organizational documents of the Company; (ii) violate any law applicable to, binding upon, or enforceable against the Company; or (iii) require the consent or approval of any governmental authority or other person other than the Board.

E. The Plan is qualified under Code Section 401(a) and qualifies as an "employee stock ownership plan" within the meaning of Code Section 4975(e)(7) and ERISA Section 407(d)(6). The Plan's trust is exempt from taxation under Code Section 501(a).

F. The Company has applied or will timely apply to the IRS for a letter of determination that: (i) the Plan constitutes an "employee stock ownership plan" within the meaning of Code Section 4975(e)(7); (ii) the Plan is qualified under Code Section 401(a); and (iii) the Plan's trust is exempt from taxation under Code Section 501(a). The Company will adopt on a timely basis any amendments required by the IRS as a condition for the maintenance of such letter of determination. Alternatively, if the Plan is a pre-approved plan, the IRS has issued an opinion letter on the pre-approved plan document and the Plan is entitled to rely on such IRS opinion letter.

G. There are no actions pending, threatened in writing, or, to the knowledge of the Company, threatened orally against the Company, at law or in equity, or before or by any governmental authority or other person which reasonably would be expected to affect the legality, validity, or enforceability of this Agreement.

H. The appointment of the Trustee has been duly authorized and approved by the Board and documented in written resolutions adopted by the Board.

I. From and after the Effective Date, the Company shall maintain fiduciary liability insurance coverage with commercially reasonable terms and naming the Company's officers and directors each as an insured.

4. INDEMNIFICATION

A. Indemnification. For purposes of this Section 4A, the term "Indemnitees" shall mean the Trustee and its advisors, employees, and agents. Subject to the applicable provisions of ERISA, the Company shall indemnify the Indemnitees for any loss, cost, expense, or other damage, including reasonable attorneys' fees, suffered by any of the Indemnitees resulting from or incurred with respect to (i) a breach of the Company's representations, warranties, or covenants contained in this Agreement; and (ii) any investigation, claim, or legal proceedings related in any way to the performance of services by any one or more of the Indemnitees pursuant to this Agreement. The indemnification provided for in this Section 4A shall extend to (i) any action taken or not taken in good faith by any of the Indemnitees; (ii) any action taken or not taken by any of the Indemnitees at the direction or request of the Company, the plan administrator, or of any agent of the Company or plan administrator; and (iii) all reasonable costs and expenses incurred by the Indemnitees in enforcing the indemnification provisions of this Section 4A, including reasonable attorneys' fees, litigation expenses, and court costs. However, these indemnification provisions shall not apply to the extent that any loss, cost, expense, or damage with respect to which any of the Indemnitees shall seek indemnification is held by a court of competent jurisdiction, in a final judgment from which no appeal can be taken, to have resulted either from the gross negligence or willful misconduct of that Indemnitee or from the breach of any fiduciary duty imposed under ERISA on the Trustee. The indemnification provided for in this Section 4A shall survive if the Trustee resigns or is removed as Trustee or this Agreement is otherwise terminated.

B. Defense of Actions. If one or more of the Indemnitees receives notice of any claim, legal proceeding, or government agency action with respect to which indemnification may be sought against the Company ("Proceeding"), the Indemnitee(s) shall notify the Company of the Proceeding in writing within thirty (30) business days of its receipt of notice of the commencement of the Proceeding. However, the failure by the Indemnitee(s) to so notify the Company shall not relieve the Company from any liability, except to the extent that the failure to notify the Company shall have actually prejudiced the defense of the Proceeding.

C. Reimbursement of Expenses. The Company shall reimburse the Indemnitees for all reasonable costs that they incur in connection with any Proceeding, including costs of investigation, of testifying in any hearing, of responding to discovery proceedings, and of consulting with the Company or the attorneys of the Company. The Indemnitees shall have the right to employ their own counsel in any Proceeding, and fees and expenses of the Indemnitees' counsel shall be paid by the Company as they are incurred. If the Proceeding involves allegations of gross negligence or willful misconduct of that Indemnitee or breach of any fiduciary duty imposed under ERISA on the Trustee, the fees and expenses specifically associated with the defense of such allegations of gross negligence or willful misconduct of that Indemnitee or breach of any fiduciary duty imposed under ERISA on the Trustee shall be paid by the Company upon reservation of the Company's rights to recoup such payments in the event that a final judgment from which no appeal can be taken includes a finding that that Indemnitee's gross negligence or willful misconduct or the Trustee's breach of any fiduciary duty imposed under ERISA was the proximate cause of the damages or judgment sought in the Proceeding.

D. Limitation. If a court of competent jurisdiction shall hold that any payment or award of indemnification pursuant to the terms of this Agreement shall be unavailable to any one or more of the Indemnitees from the Company for any reason other than gross negligence or willful misconduct of that Indemnitee or breach of any fiduciary duty imposed under ERISA on the Trustee, the Company then shall reimburse the affected Indemnitees taking into account the basis for and effect of the denial of full indemnification by the court.

5. MISCELLANEOUS

A. Successors and Assigns. The provisions of this Agreement shall be binding upon and inure to the benefit of the successors and assigns, and legal representatives of the Parties. Neither termination nor completion of the engagement of the Trustee or any of the Indemnitees shall affect indemnification provisions of this Agreement, which shall remain operative and in full force and effect after the termination or completion of the engagement.

B. Notice. Any notice required or permitted to be given under this Agreement shall be in writing and shall be delivered in person or sent by certified or private express mail, postage prepaid, and properly addressed as follows:

To the Company: America's Gardening Resource, Inc.
128 Intervale Road
Burlington, VT 05401
Attn: Board of Directors

To the Trustee: ESOP Trust Company
6106 E. Stoneman Road
Spokane, WA 99217
Attn: John S. Zollo

Any Party wishing to change the person or address to which notices shall be delivered or sent shall give at least five (5) days' written notice of such change to the other Party.

C. Partial Invalidity. If any portion of this Agreement shall be determined to be unenforceable, the remaining provisions shall remain in full force and effect.

D. Waivers. By written notice to the other Party, either the Company or the Trustee may: (i) extend the time for the performance of any of the obligations or other actions of the other Party under this Agreement or (ii) waive performance of any of the obligations of the other Party under this Agreement. Except as provided in the preceding sentence, no action taken pursuant to this Agreement shall be deemed to constitute a waiver by the Party of compliance with any of the obligations contained in this Agreement. The waiver by either Party of a breach of any provision of this Agreement shall not operate or be construed as a waiver of any subsequent breach.

E. Governing Laws. This Agreement shall be interpreted and enforced in accordance with, and governed by, the laws of the State of Washington, except to the extent this Agreement is governed by ERISA or otherwise preempted by federal law.

F. Counterparts. This Agreement may be executed in any number of counterparts, each of which shall be deemed an original, but all of which shall only constitute one instrument.

G. Entire Agreement. This Agreement supersedes all prior agreements and understandings between the Parties and may not be changed or terminated orally. In the event of any conflicts or inconsistencies between this Agreement and any current or future agreement among the Parties, this Agreement shall control. No attempted change, termination, or waiver of any of the provisions of this Agreement shall be binding, unless in writing and signed by the Party against whom the charge, termination, or waiver is sought to be enforced, specifically referencing this Agreement and the provisions of this Agreement to be modified.

(signature page follows)

IN WITNESS WHEREOF, the Company and the Trustee have caused this Agreement to be effective as of the Effective Date.

America's Gardening Resource, Inc.

By: Rebecca Gray (Apr 29, 2025 12:40 EDT)
Signature

Rebecca Gray CEO & President
Print Name and Title

28-apr-2025
Date

By: Ken Kacere (Apr 29, 2025 13:05 EDT)
Signature

Ken Kacere, Board Chair
Print Name and Title

29-Apr-2025
Date

By: Craig Johnson
Signature

Craig Johnson, Board Member
Print Name and Title

29-Apr-2025
Date

ESOP Trust Company

By: John S Zollo
Signature

John S. Zollo, Trust officer
Print Name and Title

April 30, 2025
Date

Exhibit B

ETC Resignation Letter

ETC

ESOP TRUST
COMPANY

INDEPENDENT ESOP TRUSTEE SERVICES

Katy Whitehead
Trust Officer
ESOP Trust Company
6106 E. Stoneman Road
Spokane, WA 99217

July 14, 2025

America's Gardening Resource, Inc.
128 Intervale Road
Burlington, VT 05401

Attn: Board of Directors

Re: Resignation as Trustee

Dear Members of the Board:

This letter is our formal notification of our resignation, effective immediately, as the Trustee of the Employee Stock Ownership Plan (the "Plan") for America's Gardening Resource, Inc. ("Company"), pursuant to Section 1.B of the Trustee Engagement Agreement dated April 28, 2025.

We are exercising the Trustee's right to resign due to the Company's failure to (i) timely execute our counsel's engagement agreement and (ii) provide complete and timely access to the information required to evaluate the Plan, the Company, the contemplated transaction, and the related bankruptcy.

Sincerely,

Katy Whitehead
Trust Officer
ESOP Trust Company

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

IN RE:	)	Chapter 11
AMERICA'S GARDENING RESOURCE, INC., *et al.*,[1]	)	Case No. 25-11180 (BLS)
Debtors.	)	(Jointly Administered)

ORDER GRANTING MOTION OF ESOP TRUST COMPANY TO CONFIRM RESIGNATION OF ESOP TRUST COMPANY AS TRUSTEE OF THE AMERICA'S GARDENING RESOURCE, INC. EMPLOYEE STOCK OWNERSHIP PLAN OR, IN THE ALTERNATIVE, COMPEL THE IMMEDIATE ASSUMPTION OR REJECTION OF AN UNEXPIRED EXECUTORY CONTRACT

Upon the *Motion of ESOP Trust Company to Confirm Resignation of ESOP Trust Company as Trustee of the America's Gardening Resource, Inc. Employee Stock Ownership Plan or, in the Alternative, Compel the Immediate Assumption or Rejection of an Unexpired Executory Contract* (the "Motion"); and the United States District Court for the District of Delaware having jurisdiction over this matter pursuant to 28 U.S.C. § 1334, which was referred to the Court under 28 U.S.C. § 157 and the *Amended Standing Order of Reference* from the United States District Court for the District of Delaware, dated February 29, 2012; and this Court having found that this is a core proceeding pursuant to 28 U.S.C. § 157(b)(2); and this Court having found that this Court may enter a final order consistent with Article III of the United States Constitution; and this Court having found that venue of this proceeding and the Motion in this district is proper pursuant to 28 U.S.C. §§ 1408 and 1409; and this Court having determined that the legal and

[1] The Debtors in these cases, along with the last four digits of each Debtor's federal tax identification number, are: America's Gardening Resource, Inc. (9604); Gardener's Home LLC (0498); IGH, Inc. (9336); Serac Corporation (9800); Innovative Gardening Solutions, Inc. (3325). The location of the Debtors' corporate headquarters and the Debtors' service address in these chapter 11 cases is 128 Intervale Road, Burlington, Vermont 05401.

factual bases set forth in the Motion establish just cause for the relief granted herein; and this Court having determined that the notice given was sufficient; and after due deliberation and sufficient cause appearing therefor, it is **HEREBY ORDERED THAT**:

1. The Motion is granted and it is confirmed that ESOP Trust Company's resignation as Trustee of the ESOP was effective as of July 14, 2025;

2. Notwithstanding any Bankruptcy Rule to the contrary, the terms and conditions of this order shall be immediately effective and enforceable upon its entry; and

3. This Court retains jurisdiction with respect to all matters arising from or related to the implementation, interpretation, and enforcement of this order.

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

IN RE:	)	Chapter 11
AMERICA'S GARDENING RESOURCE, INC., *et al.*,[1]	)	Case No. 25-11180 (BLS)
Debtors.	)	(Jointly Administered)
	)	Objection Deadline: August 8, 2025, at 4:00 p.m. Hearing Date: TBD

NOTICE OF MOTION OF ESOP TRUST COMPANY TO COMPEL THE IMMEDIATE ASSUMPTION OR REJECTION OF AN UNEXPIRED EXECUTORY CONTRACT OR, IN THE ALTERNATIVE, TO CONFIRM RESIGNATION OF ESOP TRUST COMPANY AS TRUSTEE OF THE AMERICA'S GARDENING RESOURCE, INC. EMPLOYEE STOCK OWNERSHIP PLAN

PLEASE TAKE NOTICE that on August 1, 2025, the *Motion of ESOP Trust Company to Compel the Immediate Assumption or Rejection of an Unexpired Executory Contract or, In the Alternative, to Confirm Resignation of ESOP Trust Company as Trustee of the America's Gardening Resource, Inc. Employee Stock Ownership Plan* (the "Motion") was filed with the United States Bankruptcy Court for the District of Delaware ("Bankruptcy Court").

PLEASE TAKE FURTHER NOTICE that any objection or response to the Motion must be made in writing and be filed with the Bankruptcy Court, on or before **August 8, 2025, at 4:00 p.m. prevailing Eastern Time**.

PLEASE TAKE FURTHER NOTICE that at the same time, you must also serve a copy of the response or objection upon the following: (a) proposed counsel for the Debtors, Cole Schotz P.C., at (i) 500 Delaware Avenue, Suite 600, Wilmington, Delaware 19801, Attn: Patrick J. Reilley (preilley@coleschotz.com) and Jack M. Dougherty (jdougherty@coleschotz.com), and at (ii) 1201 Will Street, Suite 320, Baltimore, Maryland 21231, Attn: Gary H. Leibowitz (gleibowitz@coleschotz.com) and H.C. Jones III (hjones@coleschotz.com); (b) counsel to the Debtors' prepetition lenders, Bank of America, Chapman & Cutler LLC, 1270 Avenue of the Americas, 30th Floor, New York, New York 10020-1708, Attn: Dan Flores, Esq. (dflores@chapman.com) and Alex Kress (akress@chapman.com), and Northfield Savings Bank, Dinse P.C., 209 Battery St., Burlington, Vermont 05402, Attn: Afi Ahmadi (aahmadi@dinse.com) and Molly Langan (mollylangan@dinse.com); (c) the United States Trustee for the District of Delaware, 844 King Street, Suite 2207, Wilmington, Delaware 19801, Attn: Hannah McCollum

[1] The Debtors in these cases, along with the last four digits of each Debtor's federal tax identification number, are: America's Gardening Resource, Inc. (9604); Gardener's Home LLC (0498); IGH, Inc. (9336); Serac Corporation (9800); Innovative Gardening Solutions, Inc. (3325). The location of the Debtors' corporate headquarters and the Debtors' service address in these chapter 11 cases is 128 Intervale Road, Burlington, Vermont 05401.

(hannah.mccollum@usdoj.gov); (d) undersigned counsel to ESOP Trust Company, Klehr Harrison Harvey Branzburg LLP, 919 Market Street, Suite 1000, Wilmington, Delaware 19801, Attn: Domenic E. Pacitti (dpacitti@klehr.com) and Alyssa M. Radovanovich (aradovanovich@ klehr.com); and (e) counsel to any statutory committee appointed in the chapter 11 cases.

PLEASE TAKE FURTHER NOTICE THAT IF AN OBJECTION IS PROPERLY FILED AND SERVED IN ACCORDANCE WITH THE ABOVE PROCEDURES AND NOT RESOLVED BETWEEN THE DEBTORS AND OBJECTING PARTY, A HEARING WILL BE HELD WITH RESPECT TO THE MOTION ON **A DATE TO BE DETERMINED** BEFORE THE HONORABLE BRENDAN L. SHANNON, UNITED STATES BANKRUPTCY JUDGE FOR THE DISTRICT OF DELAWARE, 824 MARKET STREET, 6th FLOOR, COURTROOM NO. 1, WILMINGTON DELAWARE 19801. ONLY OBJECTIONS MADE IN WRITING AND TIMELY FILED WILL BE CONSIDERED BY THE BANKRUPTCY COURT AT SUCH HEARING.

PLEASE TAKE FURTHER NOTICE THAT IF YOU FAIL TO RESPOND IN ACCORDANCE WITH THIS NOTICE, THE COURT MAY GRANT THE RELIEF DEMANDED BY THE MOTION WITHOUT FURTHER NOTICE OR HEARING.

Dated: August 1, 2025
Wilmington, Delaware

/s/ Domenic E. Pacitti

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Counsel for ESOP Trust Company

IN RE:	)	Chapter 11
AMERICA'S GARDENING RESOURCE, INC., *et al.*,	)	Case No. 25-11180 (BLS)
Debtors.	)	(Jointly Administered)

CERTIFICATE OF SERVICE

I, Domenic E. Pacitti, Esq., of Klehr Harrison Harvey Branzburg LLP, hereby certify that on the 1st day of August 2025, I served a copy of the ***Motion of ESOP Trust Company to Confirm Resignation of ESOP Trust Company as Trustee of the America's Gardening Resource, Inc. Employee Stock Ownership Plan or, in the Alternative, Compel the Immediate Assumption or Rejection of an Unexpired Executory Contract*** on the parties registered to receive electronic notifications via CM/ECF, and upon the parties listed and in the manner indicated on the attached service list.

/s/ Domenic E. Pacitti
Domenic E. Pacitti (DE Bar No. 3989)

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