

SO ORDERED: May 2, 2017.



Robyn L. Moberly
Robyn L. Moberly
United States Bankruptcy Judge

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE SOUTHERN DISTRICT OF INDIANA

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In re	:	Chapter 11
	:	
hhgregg, Inc. , <i>et al.</i> ¹	:	Case No. 17-01302(RLM)
	:	
Debtors.	:	(Jointly Administered)
	:	
	:	Ref. Docket Nos. 18, 50
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FINAL ORDER (I) AUTHORIZING DEBTORS IN POSSESSION TO OBTAIN POST-PETITION FINANCING PURSUANT TO 11 U.S.C. §§ 105, 362, 363, AND 364, (II) GRANTING LIENS AND SUPERPRIORITY CLAIMS TO POST-PETITION LENDERS PURSUANT TO 11 U.S.C. §§ 364 AND 507; AND (III) AUTHORIZING THE USE OF CASH COLLATERAL AND PROVIDING ADEQUATE PROTECTION TO PREPETITION SECURED PARTIES AND MODIFYING THE AUTOMATIC STAY PURSUANT TO 11 U.S.C. §§ 361, 362, 363, AND 364

Upon the motion (the "*Motion*")² of Gregg Appliances, Inc., on behalf of itself and its affiliated debtors and debtors-in-possession in the above-captioned cases (collectively, the

¹ The Debtors in these cases, along with the last four digits of each Debtor's their respective taxpayer identification number, are: hhgregg, Inc. (47-4850538); Gregg Appliances, Inc. (35-1049508); HHG Distributing LLC (20-2455875). The location of the Debtors' corporate headquarters is 4151 East 96th Street, Indianapolis, IN 46240.

“*Debtors*”), pursuant to sections 105, 361, 362, 363, 364, and 507 of title 11 of the United States Code, 11 U.S.C. §§ 101 *et seq.* (the “*Bankruptcy Code*”) and in accordance with Rules 2002, 4001 and 9014 of the Federal Rules of Bankruptcy Procedure (the “*Bankruptcy Rules*”) and Rule B-4001-2 of the Local Rules of Bankruptcy Practice and Procedure (the “*Local Rules*”) of the United States Bankruptcy Court for the Southern District of Indiana (this “*Court*”), in these chapter 11 cases (the “*Chapter 11 Cases*”), for entry of a final order (this “*Final Order*”), granting the following relief on a final basis in accordance with the terms and provisions of the DIP Financing Agreements (defined below) and this Final Order:

(I) DIP Financing

- (A) Authorizing the Debtors to obtain up to \$80,000,000 in post-petition financing (the “*DIP Facility*”) pursuant to that certain *Debtor-in-Possession Loan and Security Agreement* (as may be amended, modified, or supplemented, the “*DIP Credit Agreement*”), dated as of March 6, 2017, by and among the Debtors, as borrowers, and Wells Fargo Bank, National Association, as Administrative Agent and Collateral Agent (the “*DIP Agent*”), GACP Finance Co., LLC, as FILO Agent (the “*FILO Agent*”) each Revolving Lender and each FILO Lender party thereto (collectively, the “*DIP Lenders*” and, together with the DIP Agent and the FILO Agent, the “*DIP Secured Parties*”), and each other party signatory thereto, which may be used for the following:
- (i) funding the Debtors’ day-to-day operations and working capital needs in accordance with and as limited by the Approved Budget (as defined below);
 - (ii) making adequate protection payments and other payments as provided in this Final Order; and
 - (iii) paying in full all outstanding prepetition amounts under the Prepetition Credit Agreement (as defined below);
- (B) Approving the DIP Credit Agreement and all other agreements, documents, notes, certificates, and instruments executed and/or delivered with, to, or in favor of the DIP Agent, the FILO Agent and/or the DIP Lenders, including,

² Capitalized terms used in this Final Order but not defined herein shall have the meanings ascribed to such terms in the DIP Financing Agreements (as defined below).

without limitation, any guarantees and all other related agreements, documents, notes, certificates, and instruments executed and/or delivered in connection therewith or related thereto (collectively, as may be amended, modified, or supplemented and in effect from time to time, the “*DIP Financing Agreements*”);

- (C) Granting the DIP Agent for the benefit of the DIP Secured Parties the following Liens (as defined in section 101(37) of the Bankruptcy Code) (the “*DIP Liens*”) and claims:
 - (i) first priority priming, valid, perfected, and enforceable Liens (as defined below), subject only to the Carve Out (as defined below) and the Permitted Prior Liens (as defined below), upon the DIP Collateral (as defined below), as provided in and as contemplated by this Final Order and the DIP Financing Agreements; and
 - (ii) an allowed superpriority administrative claim status in respect of all obligations under the DIP Financing Agreements (collectively, the “*DIP Obligations*”), subject to the Carve Out as provided herein;
- (II) **Adequate Protection** – Granting certain adequate protection, including, among other things, Adequate Protection Liens and Adequate Protection Superpriority Claims (each as defined below) and certain other adequate protection as described in this Final Order, to Wells Fargo Bank, National Association, as Administrative Agent, Collateral Agent and FILO Agent (the “*Prepetition Agent*”) under that Second Amended and Restated Loan and Security Agreement dated March 29, 2011 (as amended and in effect, the “*Prepetition Credit Agreement*”) by and among the Debtors, the Prepetition Agent and each Revolving Lender and each FILO Lender party thereto (collectively, the “*Prepetition Secured Lenders*”), in each case, to the extent of any diminution in the value of the Prepetition Agent’s interests in the Prepetition Collateral (as defined below), having the priority set forth in this Final Order, as adequate protection for the granting of the DIP Liens to the DIP Agent, the use of Cash Collateral, subordination to the Carve Out, and for the imposition of the automatic stay;
- (III) **Modifying the Automatic Stay** – Modifying the automatic stay imposed by section 362 of the Bankruptcy Code to the extent necessary to implement and effectuate the terms and provisions of the DIP Financing Agreements and this Final Order;
- (IV) **Waiving Any Applicable Stay** – Waiving any applicable stay (including under Bankruptcy Rule 6004) and provision for immediate effectiveness of this Final Order; and
- (V) **Final Roll-Up** – Paying in full all remaining Prepetition Secured Debt (the “*Final Roll-Up*”).

and upon consideration of the *Declaration of Kevin J. Kovacs in Support of Chapter 11 Petitions and Requests for First Day Relief* (the “**First Day Declaration**”), filed contemporaneously with the Motion; and this Court having reviewed the Motion and held an interim hearing with respect to the Motion on March 7, 2017 (the “**Interim Hearing**”); and the Court having entered its *Interim Order (I) Authorizing Debtors in Possession to Obtain Post-Petition Financing Pursuant to 11 U.S.C. §§ 105, 362, 363 and 364; (II) Granting Liens and Superpriority Claims to Post-Petition Lenders Pursuant to 11 U.S.C §§ 364 and 507; (III) Authorizing the Use of Cash Collateral and Providing Adequate Protection to Prepetition Secured Parties and Modifying the Automatic Stay Pursuant to 11 U.S.C §§ 361, 362, 363 and 364; and (IV) Scheduling a Final Hearing Pursuant to Bankruptcy Rules 4001(b) and (c) and Local Rule 4001-2*, dated March 7, 2017 [Docket No. 50] (the “**Interim Order**”, and, together with this Final Order, the “**Financing Orders**”), providing for approval of the Motion on an interim basis; and notice of the Final Hearing (defined below) on the Motion having been given in accordance with Bankruptcy Rules 4001(b) and (c) and Local Rule 4001-2 and as provided in the Interim Order; and the Final Hearing having been held and concluded on March 31, 2017 (the “**Final Hearing**”); and upon the Motion, the First Day Declaration, the record of the Interim Hearing and Final Hearing, and all objections, if any, to the entry of this Final Order having been withdrawn, resolved, or overruled by this Court; and after due deliberation and consideration, and for good and sufficient cause appearing therefor:

THIS COURT HEREBY MAKES THE FOLLOWING FINDINGS OF FACT AND CONCLUSIONS OF LAW:

I. Procedural Findings of Fact

A. **Petition Date.** On March 6, 2017 (the “**Petition Date**”), each of the Debtors filed a voluntary petition with this Court for relief under chapter 11 of the Bankruptcy Code. The Debtors continue to operate their business and manage their properties as debtors in

possession pursuant to sections 1107 and 1108 of the Bankruptcy Code. No trustee or examiner has been appointed in the Chapter 11 Cases.

B. **Jurisdiction and Venue.** This Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157(b) and 1334. Venue is proper pursuant to 28 U.S.C. §§ 1408 and 1409. This matter is a core proceeding pursuant to 28 U.S.C. § 157(b).

C. **Committee Formation.** On March 10, 2017, the Office of the United States Trustee (the “*U.S. Trustee*”) appointed an official committee of unsecured creditors (the “*Committee*”) in the Chapter 11 Cases.

D. **Notice.** The Final Hearing is being held pursuant to the authorization of Bankruptcy Rule 2002, 4001(b), (c), and (d) and Rule 9014, the Local Rules, and as set forth in the Interim Order. Notice of the Final Hearing and the relief requested in the Motion has been provided by the Debtors to certain parties-in-interest, as set forth in the Interim Order, including the Committee. Under the circumstances, such notice of the Final Hearing and the relief requested in the Motion is due, proper and sufficient notice, complies with Bankruptcy Rules 2002 and 4001 and Local Rule 4001-2 and no other or further notice need be given.

II. Debtors’ Acknowledgements and Agreements

E. Without prejudice to the rights of parties-in-interest as set forth in Paragraphs 23-25 below, each of the Debtors admits, stipulates, acknowledges, and agrees that (collectively, Paragraphs E(1) through E(6) hereof shall be referred to herein as the “*Debtors’ Stipulations*”):

- (1) Prepetition Financing Documents. Prior to the commencement of the Chapter 11 Cases, certain of the Debtors were parties to (A) the Prepetition Credit Agreement, (B) that certain Amended and Restated Guarantee dated July 25, 2007 and (C) all other agreements, documents, notes, certificates, and instruments executed and/or delivered with, to, or in favor of Prepetition Agent or the Prepetition Secured Lenders, including, without limitation, security agreements, guaranties, and UCC financing statements

and all other related agreements, documents, notes, certificates, and instruments executed and/or delivered in connection therewith or related thereto (as amended, modified or supplemented and in effect, collectively, the “*Prepetition Financing Documents*”).

- (2) Prepetition Secured Debt Amount. As of the Petition Date, the Debtors were liable to the Prepetition Agent and the Prepetition Secured Lenders under the Prepetition Financing Documents, on account of “Revolving Loans” in the approximate principal amount of \$36,197,741.46, on account of “FILO Loans” in the approximate principal amount of \$20,000,000.00, and on account of letters of credit in the approximate stated amount of not less than \$10,694,763.00, plus interest accrued prior to and including the Petition Date at the non-default rate and thereafter accruing at the default rate, costs, expenses, fees (including attorneys’ fees and legal expenses), other charges and other obligations, including, without limitation, on account of cash management, credit card, depository, investment, hedging and other banking or financial services secured by the Prepetition Financing Documents (collectively the “*Prepetition Secured Debt*”).
- (3) Prepetition Collateral. To secure the Prepetition Secured Debt, certain of the Debtors granted continuing security interests and Liens (collectively, the “*Prepetition Liens*”) to the Prepetition Agent and the Prepetition Secured Lenders upon substantially all of their property, real and personal, including the following, all as defined in the Prepetition Financing Documents (collectively, the “*Prepetition Collateral*”):

(A) all Accounts; (B) all general intangibles, including, without limitation, all Intellectual Property; (C) all goods, including, without limitation, Inventory and Equipment; (D) all fixtures; (E) all chattel paper, including, without limitation, all tangible and electronic; (F) all instruments, including, without limitation, all promissory notes; (G) all documents and all credit card sales drafts, credit card sales slips or charge slips or receipts and other forms of store receipts; (H) all deposit accounts; (I) all letters of credit, banker’s acceptances and similar instruments and including all letter-of-credit rights; (J) all supporting obligations and all present and future Liens, security interests, rights, remedies, title and interest in, to and in respect of Receivables and other Prepetition Collateral, including (i) rights and remedies under or relating to guaranties, contracts of suretyship, letters of credit and credit and other insurance related to the Prepetition Collateral, (ii) rights of stoppage in transit, replevin, repossession, reclamation and other rights and remedies of an unpaid vendor, lienor or secured party, (iii) goods described in invoices, documents, contracts or instruments with respect to, or otherwise representing or evidencing, Receivables or other Prepetition Collateral, including returned, repossessed and reclaimed goods, and (iv) deposits by and

property of account debtors or other persons securing the obligations of account debtors; (K) all (i) investment property (including securities, whether certificated or uncertificated, securities accounts, security entitlements, commodity contracts or commodity accounts) and (ii) monies, credit balances, deposits and other property of the Debtors now or hereafter held or received by or in transit to the Prepetition Agent, the Prepetition Secured Lenders or their Affiliates or at any other depository or other institution from or for the account of any Debtor, whether for safekeeping, pledge, custody, transmission, collection or otherwise; (L) all commercial tort claims; (M) to the extent not otherwise described above, all Receivables; (N) all Records; and (O) all products and proceeds of the foregoing, in any form, including insurance proceeds and all claims against third parties for loss or damage to or destruction of or other involuntary conversion of any kind or nature of any or all of the other Prepetition Collateral.

(4) Prepetition Liens.

- (a) The Prepetition Liens of the Prepetition Agent and the Prepetition Secured Lenders have priority over all other Liens except any Liens which are valid, properly perfected, unavoidable, and senior to the Prepetition Liens (collectively, the “*Permitted Prior Liens*”); provided that in no event shall any alleged right of reclamation or return (whether asserted under Section 546(c) of the Bankruptcy Code or otherwise) be deemed or treated as a Permitted Prior Lien.
- (b) As of the Petition Date, (i) the Prepetition Liens are valid, binding, enforceable, and perfected first priority Liens, subject only to any Permitted Prior Liens, and are not subject to avoidance, recharacterization, or subordination pursuant to the Bankruptcy Code or applicable non-bankruptcy law, (ii) (a) the Prepetition Secured Debt constitutes legal, valid, and binding obligations of the Debtors, enforceable in accordance with the terms of the Prepetition Financing Documents (other than in respect of the stay of enforcement arising from Section 362 of the Bankruptcy Code), (b) no offsets, defenses, or counterclaims to any of the Prepetition Secured Debt exists, and (c) no portion of the Prepetition Secured Debt is subject to avoidance, recharacterization, or subordination pursuant to the Bankruptcy Code or applicable non-bankruptcy law, (iii) the Debtors have no valid claims (as such term is defined in section 101(5) of the Bankruptcy Code) or causes of action against the Prepetition Agent or any Prepetition Secured Lender with respect to the Prepetition Financing Documents or otherwise, whether arising at law or at equity, including, without limitation, any recharacterization, subordination, disallowance, avoidance or other claims arising under or pursuant to sections 105, 510, 541 or

542 through 553, inclusive, of the Bankruptcy Code, and (iv) the Prepetition Secured Debt constitutes allowed secured claims.

- (c) On the date of the entry of the Interim Order, each of the Debtors waived, discharged, and released the Prepetition Agent or the Prepetition Secured Lenders, together with their respective successors, assigns, subsidiaries, parents, affiliates, agents, attorneys, officers, directors, and employees (the “**Released Parties**”), of any right the Debtors may have (i) to challenge or object to any of the Prepetition Secured Debt, (ii) to challenge or object to the Prepetition Liens or any other security for the Prepetition Secured Debt, and (iii) to bring or pursue any and all claims, objections, challenges, causes of action, and/or choses in action arising out of, based upon, or related to the Prepetition Financing Documents, or otherwise.
- (d) None of the Debtors possesses and will not assert any claim, counterclaim, setoff, or defense of any kind, nature, or description against any of the Released Parties including any claim which would in any way affect the validity, enforceability, and non-avoidability of any of the Prepetition Secured Debt, the Prepetition Financing Documents or the Prepetition Liens, or any claim of the Prepetition Agent or the Prepetition Secured Lenders pursuant to the Prepetition Financing Documents, or otherwise.
- (5) Cash Collateral. The Prepetition Agent has a continuing security interest in and Lien on all or substantially all of the Debtors’ Cash Collateral, including all amounts on deposit in the Debtors’ banking, checking, or other deposit accounts and all proceeds of the Prepetition Collateral, to secure the Prepetition Secured Debt.
- (6) No Priming of DIP Facility. In entering into the DIP Financing Agreements and the consent to use of Cash Collateral, and as consideration therefor, each of the Debtors hereby agrees that until such time as all DIP Obligations and all Prepetition Secured Debt have been irrevocably paid in full in cash and the DIP Financing Agreements have been terminated in accordance with the terms thereof, the Debtors shall not in any way prime or seek to prime the security interests and DIP Liens provided to the DIP Agent and the DIP Secured Parties or the Prepetition Liens or Adequate Protection Liens granted to the Prepetition Agent or Prepetition Secured Lenders under this Final Order by offering a subsequent lender or a party-in-interest a superior or *pari passu* Lien or claim pursuant to section 364(d) of the Bankruptcy Code or otherwise.

III. Findings Regarding the DIP Financing.

F. **Need for DIP Financing.** An immediate need exists for the Debtors to obtain funds from the DIP Facility in order to administer and preserve the value of their estates for the benefit of their stakeholders. The ability of the Debtors to finance their operations, to preserve and maintain the value of the Debtors' assets, and to maximize a return for all stakeholders requires the availability of working capital from the DIP Facility, the absence of which would immediately and irreparably harm the Debtors, their estates and their stakeholders.

G. **No Credit Available on More Favorable Terms.** As discussed in the First Day Declaration and the record of these Chapter 11 Cases, the Debtors have been unable to obtain any of the following:

- (1) unsecured credit allowable under section 503(b)(1) of the Bankruptcy Code as an administrative expense,
- (2) credit for money borrowed with priority over any or all administrative expenses of the kind specified in sections 503(b) or 507(b) of the Bankruptcy Code,
- (3) credit for money borrowed secured solely by a Lien on property of the estate that is not otherwise subject to a Lien, or
- (4) credit for money borrowed secured by a junior Lien on property of the estate which is subject to a Lien,

in each case, on more favorable terms and conditions than those provided in the DIP Facility and this Final Order. The Debtors are unable to obtain credit for borrowed money without granting to the DIP Secured Parties the DIP Protections (as defined below).

H. **Prior Liens.** Nothing herein shall constitute a finding or ruling by this Court that any Permitted Prior Liens are valid, senior, perfected, or unavoidable. Moreover, except as provided in Paragraphs 23-25 below, nothing shall prejudice the following:

- (1) the rights of any party-in-interest, including, but not limited to, the Debtors, the DIP Secured Parties, the Prepetition Agent, Prepetition Secured

Lenders, and the Committee, to challenge the validity, priority, perfection, and extent of any such Permitted Prior Liens, or

- (2) the rights of any party-in-interest (but not the Debtor or the Committee) to challenge the validity, priority, perfection, and extent of the Prepetition Liens as set forth in this Final Order.³

I. **Adequate Protection for Prepetition Secured Lenders.** As a result of the granting of the priming DIP Liens, the subordination of the Prepetition Liens to the Carve Out, the use of Cash Collateral authorized herein, and the imposition of the automatic stay, the Prepetition Agent and the Prepetition Secured Lenders are entitled to receive adequate protection pursuant to sections 361, 362, 363, and 364 of the Bankruptcy Code for any diminution in the value of their interests in the Prepetition Collateral (including Cash Collateral). As adequate protection, the Prepetition Agent and the Prepetition Secured Lenders will receive the Adequate Protection (as defined below) described in Paragraph 14 of this Final Order. In exchange for such Adequate Protection, the Prepetition Agent has agreed to the Debtors' use of Cash Collateral on the terms set forth in this Final Order. The extension of the DIP Facility to the Debtors and the repayment of the Prepetition Secured Debt are part of an integrated transaction.

J. **Prepetition Agent's Consent to Priming.** The Prepetition Agent has consented to the priming of the Prepetition Liens by the DIP Liens to the extent set forth herein.

³ On March 20, 2017, Electrolux Home Products, Inc. ("*Electrolux*") filed an adversary proceeding (the "*Electrolux Adversary Proceeding*") in the U.S. Bankruptcy Court for the Southern District of Indiana (Case No. 17-50098) against the Debtors, Wells Fargo Bank, National Association, Hilco Merchant Resources, LLC, and Gordon Brothers Retail Partners, LLC. The Electrolux Adversary Proceeding involves a dispute related to the consignment relationship between Electrolux and the Debtors. Prior to the date of the entry of this Final Order, the DIP Agent has transferred certain funds on deposit in the Debtors' accounts to a segregated account in respect of the proceeds of the sale of certain goods in which Electrolux asserts an interest. From and after the date hereof, the DIP Agent shall continue to segregate funds upon receipt from the Debtors of a report stating the amount of the applicable sale proceeds. The DIP Agent shall have no responsibility to determine the amount of proceeds to be segregated or to verify the accuracy of the reports provided by the Debtors. Such segregation shall not impair the rights of any party under applicable law or this Final Order or any other Order of this Court, under any applicable contractual obligations or any other rights or defenses that may be asserted in the Electrolux Adversary Proceeding. Notwithstanding anything herein, the DIP Secured Parties, the Prepetition Agent, and the Prepetition Secured Lenders and Electrolux reserve all rights with respect to the Electrolux Adversary Proceeding.

K. **Adequacy of the Approved Budget.** The Approved Budget, attached hereto as *Exhibit "1,"* is adequate, considering all of the Debtors' available assets, to pay the administrative expenses due and accruing during these Chapter 11 Cases for the period covered by the Approved Budget.

L. **Sections 506(c), 550 and 552 of the Bankruptcy Code.** In light of their agreement to subordinate their Liens and superpriority claims (1) to the Carve Out, in the case of the DIP Secured Parties, and (2) to the Carve Out and the DIP Liens, in the case of the Prepetition Agent, and their consent to the use of Cash Collateral in accordance with the Approved Budget, the DIP Agent, the other DIP Secured Parties, the Prepetition Agent, and the Prepetition Secured Lenders are each entitled to (a) a waiver of the provisions of sections 506(c) and 550 of the Bankruptcy Code and (b) all rights and benefits of section 552(b) of the Bankruptcy Code, including a waiver of the "equities of the case" exception.

M. **Conditions Precedent to DIP Lenders' Extension of Financing.** The DIP Agent and the other DIP Secured Parties have indicated a willingness to provide financing to the Debtors in accordance with the DIP Credit Agreement and the other DIP Financing Agreements and subject to the following:

- (1) the entry of this Final Order, and
- (2) findings by this Court that such financing is essential to the Debtors' estates, that the DIP Agent and the other DIP Secured Parties are good faith financiers, and that the DIP Agent and the other DIP Secured Parties' claims, superpriority claims, security interests, and Liens and other protections granted pursuant to this Final Order and the DIP Facility will not be affected by any subsequent reversal, modification, vacation, or amendment of this Final Order or any other order, as provided in section 364(e) of the Bankruptcy Code.

N. **Business Judgment and Good Faith Pursuant to Section 364(e) of the Bankruptcy Code.** The extension of credit under the DIP Facility, the DIP Credit Agreement, and

the other DIP Financing Agreements, and the fees paid and to be paid thereunder (i) are fair, reasonable, and the best available under the circumstances, (ii) reflect the Debtors' exercise of prudent business judgment consistent with their fiduciary duties and (iii) are supported by reasonably equivalent value and consideration. The DIP Facility was negotiated in good faith and at arms' length between the Debtors and the DIP Agent and the other DIP Secured Parties, and the use of the proceeds to be extended under the DIP Facility will be so extended in good faith, and for valid business purposes and uses, as a consequence of which the DIP Agent and the other DIP Secured Parties are entitled to the protections and benefits of section 364(e) of the Bankruptcy Code.

O. **Relief Essential; Best Interest.** The relief requested in the Motion (and as provided in this Final Order) is necessary, essential and appropriate for the continued operation of the Debtors' business and the management and preservation of the Debtors' assets during these Chapter 11 Cases. It is in the best interest of the Debtors' estates that the Debtors be allowed to establish and maintain the DIP Facility contemplated by the DIP Credit Agreement and the other DIP Financing Agreements. The Debtors have demonstrated good and sufficient cause for the relief granted herein.

NOW, THEREFORE, IT IS HEREBY ORDERED AS FOLLOWS:

1. The DIP Motion is granted on a final basis as set forth herein.

I. DIP FINANCING.

A. Approval of Entry into the DIP Financing Agreements.

2. Upon entry of the Interim Order, the Debtors were expressly and immediately authorized and empowered to execute and deliver the DIP Credit Agreement and the other DIP Financing Agreements and to incur and to perform the DIP Obligations in accordance with, and subject to, the terms of the Interim Order and the DIP Financing Agreements, and to

execute and deliver all instruments, certificates, agreements, and documents which may be required or necessary for the performance by the Debtors under the DIP Facility and the creation and perfection of the DIP Liens described in and provided for by the Interim Order and the DIP Financing Agreements. The foregoing authorizations and empowerment are hereby ratified and confirmed on a final basis. In the event of any inconsistency between the terms and conditions of the Interim Order and this Final Order, from and after entry of this Final Order, the terms and conditions of this Final Order shall control. The Debtors are hereby authorized to do and perform all acts and pay the principal, interest, fees, expenses, and other amounts described in the DIP Credit Agreement and all other DIP Financing Agreements as such become due, including, without limitation, any closing fees, arrangement fees and agency fees contemplated by the DIP Financing Agreements, and reasonable attorneys', financial advisors', and accountants' fees and disbursements as provided for in the DIP Credit Agreement, which amounts, subject to the provisions of Paragraph 43 below, shall not otherwise be subject to approval of this Court. Upon the entry of the Interim Order, all cash management services, bank products and letters of credit outstanding under the Prepetition ABL Financing Documents were deemed to have been issued pursuant to and are currently outstanding under the DIP Credit Agreement in accordance with the Interim Order and this Final Order. Upon execution and delivery, the DIP Credit Agreement and the other DIP Financing Agreements were and shall represent valid and binding obligations of the Debtors enforceable against each of the Debtors, jointly and severally, in accordance with their terms.

B. Authorization to Borrow.

3. The Debtors' authority to borrow funds under the DIP Credit Agreement shall be governed by the terms of this Final Order. In order to enable them to continue to operate their businesses during these Chapter 11 Cases, and subject to the terms and conditions of this

Final Order, the DIP Credit Agreement, the other DIP Financing Agreements, and the Approved Budget (subject to any variances thereto permitted under the terms and conditions of the DIP Credit Agreement), the Debtors are hereby authorized under the DIP Facility to incur DIP Obligations in accordance with the terms and conditions of the DIP Financing Agreements.

C. Use of DIP Proceeds.

4. The proceeds of the DIP Facility shall be used in each case in a manner consistent with the terms and conditions of the DIP Financing Agreements, and in accordance with and as may be limited by the Approved Budget (subject to any variances thereto permitted under the terms and conditions of the DIP Credit Agreement), solely as follows:

- (a) to pay fees, costs, and expenses as provided in the DIP Financing Agreements, including amounts incurred in connection with the preparation, negotiation, execution, and delivery of the DIP Credit Agreement and the other DIP Financing Agreements;
- (b) for general operating and working capital purposes, for the payment of transaction expenses, for the payment of fees, expenses, and costs incurred in connection with the Chapter 11 Cases, and other proper corporate purposes of the Debtors not otherwise prohibited by the terms hereof for working capital, and other lawful corporate purposes of the Debtors;
- (c) to make adequate protection payments and other payments as provided in this Final Order and as otherwise required in the Chapter 11 Cases;
- (d) to fund the Prepetition Indemnity Account (as defined in the Interim Order) and the Litigation Cash Collateral Reserve (as defined in the Waiver and Amendment referred to below); and
- (e) to effect the Final Roll-Up.

5. Final Roll-Up. Subject to the rights of parties set forth in Paragraphs 23-25 below, the Debtors shall use the proceeds of the next advance under the DIP Credit Agreement to satisfy all remaining Prepetition Secured Debt in full in accordance with the terms of the Prepetition Credit Agreement. The Final Roll-Up will be without prejudice to the rights of any third party set forth in Paragraphs 23-25 below.

D. Conditions Precedent.

6. The DIP Agent and the other DIP Secured Parties shall have no obligation to make any loan or advance under the DIP Credit Agreement unless the conditions precedent to make such loan under the DIP Credit Agreement have been satisfied in full or waived, as determined by the DIP Agent in its reasonable discretion, in accordance with the DIP Credit Agreement.

E. The DIP Liens.

7. Subject to the limitations set forth in Paragraph 8 below, effective immediately upon the entry of the Interim Order and continuing upon the entry of this Final Order, the DIP Agent was granted and hereby is granted the DIP Liens on a final basis for the benefit of the DIP Secured Parties pursuant to sections 361, 362, 364(c)(2), 364(c)(3) and 364(d) of the Bankruptcy Code, which constitute priming first priority, continuing, valid, binding, enforceable, non-avoidable, and automatically perfected postpetition security interests and Liens senior and superior in priority to all other secured and unsecured creditors of the Debtors' estates except as otherwise provided in this Final Order, upon and to all property of the Debtors' estates, including, without limitation the following (collectively, the "*DIP Collateral*"):

(a) The Collateral, as defined in the DIP Financing Agreements, including:

all (A) Accounts; (B) general intangibles, including, without limitation, all Intellectual Property; (C) goods, including, without limitation, Inventory and Equipment; (D) fixtures; (E) chattel paper, including, without limitation, all tangible and electronic; (F) instruments, including, without limitation, all promissory notes; (G) documents and all credit card sales drafts, credit card sales slips or charge slips or receipts and other forms of store receipts; (H) deposit accounts; (I) letters of credit, banker's acceptances and similar instruments and including all letter-of-credit rights; (J) supporting obligations and all present and future Liens, security interests, rights, remedies, title and interest in, to and in respect of Receivables and other DIP Collateral, including (i) rights and remedies under or relating to guaranties, contracts of suretyship, letters of credit and credit and other insurance related to the DIP Collateral, (ii) rights of stoppage in transit, replevin, repossession, reclamation and other rights and remedies of an unpaid

vendor, lienor or secured party, (iii) goods described in invoices, documents, contracts or instruments with respect to, or otherwise representing or evidencing, Receivables or other DIP Collateral, including returned, repossessed and reclaimed goods, and (iv) deposits by and property of account debtors or other persons securing the obligations of account debtors; (K) all (i) investment property (including securities, whether certificated or uncertificated, securities accounts, security entitlements, commodity contracts or commodity accounts) and (ii) monies, credit balances, deposits and other property of the Debtors now or hereafter held or received by or in transit to the DIP Agent, any other DIP Secured Party or their Affiliates or at any other depository or other institution from or for the account of any Debtor, whether for safekeeping, pledge, custody, transmission, collection or otherwise; (L) all commercial tort claims; (M) to the extent not otherwise described above, all Receivables; (N) all Records; and (O) all products and proceeds of the foregoing, in any form, including insurance proceeds and all claims against third parties for loss or damage to or destruction of or other involuntary conversion of any kind or nature of any or all of the other DIP Collateral;

- (b) the Bankruptcy Recoveries; as used herein, “**Bankruptcy Recoveries**” shall mean any claims and causes of action to which the Debtors may be entitled to assert by reason of any avoidance or other power vested in or on behalf of the Debtors or the estates of the Debtors under chapter 5 of the Bankruptcy Code and any and all proceeds in whatever form, recoveries and settlements thereof; and
- (c) all owned real property and the proceeds of all of the Debtors’ interests in leaseholds, but not the leaseholds themselves, whether or not so granted or perfected prior to the Petition Date.

F. DIP Lien Priority.

8. The DIP Liens created and granted to the DIP Agent, under the Interim

Order and as provided herein, are:

- (a) created pursuant to sections 364(c)(2), 364(c)(3) and 364(d) of the Bankruptcy Code,
- (b) first, valid, prior, perfected, unavoidable, and superior to any security, mortgage, or collateral interest or Lien or claim to the DIP Collateral, and
- (c) subject only to (i) the Carve Out and (ii) the Permitted Prior Liens.

The DIP Liens shall secure all DIP Obligations and the proceeds of the DIP Collateral shall be applied in the same order and priority set forth in the DIP Credit Agreement. The DIP Liens shall not be made subject to or *pari passu* with any Lien or security interest or any claim for reclamation

or return by any court order heretofore or hereafter entered in the Chapter 11 Cases and shall be valid and enforceable against any trustee appointed in the Chapter 11 Cases, upon the conversion of the Chapter 11 Cases to cases under chapter 7 of the Bankruptcy Code, or in any other proceedings related to any of the foregoing (each a “*Successor Case*”), and/or upon the dismissal of the Chapter 11 Cases. The DIP Liens shall not be subject to sections 510, 546(c), 549, 550, or 551 of the Bankruptcy Code. The DIP Liens securing the extensions of credit under the DIP Facility, the Interim Order and this Final Order shall not be subject to the “equities of the case” exception of section 552 of the Bankruptcy Code and shall not be subject to section 506(c) of the Bankruptcy Code.

G. Enforceable Obligations.

9. The DIP Financing Agreements shall constitute and evidence the valid and binding obligations of the Debtors, and shall be enforceable against the Debtors, their estates, and any successors thereto, jointly and severally, and their creditors in accordance with their terms.

H. Protections of the DIP Secured Parties and Other Rights.

10. From and after the Petition Date, the Debtors shall use the proceeds of the extensions of credit under the DIP Facility only for the purposes specifically set forth in the DIP Financing Agreements and this Final Order, in compliance with and as limited by the Approved Budget (subject to any variances thereto permitted under the terms and conditions of the DIP Credit Agreement).

I. Superpriority Administrative Claim Status.

11. Subject to the Carve Out, all DIP Obligations shall be and hereby are an allowed superpriority administrative expense claim (the “*DIP Superpriority Claim*” and, together with the DIP Liens, collectively, the “*DIP Protections*”) with priority in the Chapter 11 Cases under sections 364(c)(1), 503(b) and 507(b) of the Bankruptcy Code and otherwise with priority

over all administrative expense, priority and priority tax claims and unsecured claims against the Debtors and their estates, now existing or hereafter arising, of any kind or nature whatsoever including, without limitation, administrative expenses of the kinds specified in, arising, or ordered pursuant to sections 105, 326, 328, 330, 331, 503(a), 503(b), 506(c), 507(a), 507(b), 546(c), 546(d), 552, 726, 1113 and 1114 of the Bankruptcy Code, whether or not such expenses or claims may become secured by a judgment Lien or other non-consensual Lien, levy or attachment.

12. Other than the Carve Out, no costs or expenses of administration, including, without limitation, professional fees allowed and payable under sections 327, 328, 330, or 331 of the Bankruptcy Code, or otherwise, that have been or may be incurred in the Chapter 11 Cases, or in any Successor Case, and no priority or priority tax claims are, or will be, senior to, prior to, or on a parity with the DIP Protections or the DIP Obligations or with any other claims of the DIP Secured Parties arising hereunder and the DIP Facility.

II. USE OF CASH COLLATERAL

A. Authorization to Use Cash Collateral.

13. Subject to the terms and conditions of this Final Order, the DIP Facility, the DIP Credit Agreement, and the other DIP Financing Agreements, and in accordance with and as limited by the Approved Budget, the Debtors are authorized under this Final Order to use Cash Collateral until the earlier of (i) receipt of a Termination Notice (as defined in Paragraph 32 herein) and (ii) the occurrence of a Cash Collateral Termination Event (as defined below) (the date of the earlier to occur of such events, the “***Final Order Termination Date***”); ***provided, however***, that during the Remedies Notice Period (as defined in Paragraph 33 herein), the Debtors may use Cash Collateral solely to meet payroll (other than severance) and to pay expenses critical to the preservation of the Debtors and their estates as agreed by the DIP Agent, FILO Agent, the Prepetition Agent and the Committee in their reasonable discretion, in each case in accordance

with the terms and provisions of the Approved Budget (subject to permitted variances), and to pay amounts covered by (or to fund a reserve to pay) the Carve Out. As used in this Final Order, “*Cash Collateral Termination Event*” shall mean (a) the failure of the Debtors to make any adequate protection payment as and when required by the terms of this Final Order, or (b) the dismissal of any of the Chapter 11 Cases, the conversion of any Chapter 11 Case to a case under chapter 7 of the Bankruptcy Code, or the appointment of a chapter 11 trustee with expanded powers in any of the Chapter 11 Cases.

III. ADEQUATE PROTECTION FOR PREPETITION AGENT AND PREPETITION SECURED LENDERS.

14. As adequate protection for the interests of the Prepetition Agent and the Prepetition Secured Lenders in the Prepetition Collateral (including Cash Collateral) on account of the granting of the DIP Liens, the subordination of the Prepetition Liens to the Carve Out, the Debtors’ use of Cash Collateral, and any other diminution in value arising out of the automatic stay or the Debtors’ use, sale, depreciation, or disposition of the Prepetition Collateral, including the disposition of assets in connection with the Initial Store Closings and any Permitted Sale, the Prepetition Agent and the Prepetition Secured Lenders shall receive adequate protection as follows (collectively, “*Adequate Protection*”):

- (a) **Adequate Protection Liens.** Solely to the extent of the diminution in the value of the interest of the Prepetition Agent and the Prepetition Secured Lenders in the Prepetition Collateral, the Prepetition Agent (for the benefit of the Prepetition Secured Lenders) shall have, subject to the terms and conditions set forth below, pursuant to sections 361 and 363(e) of the Bankruptcy Code, valid, perfected, and enforceable additional and replacement security interests and Liens in the DIP Collateral (the “*Adequate Protection Liens*”) which shall be junior only to the Carve Out, the DIP Liens securing the DIP Facility, and Permitted Prior Liens.
- (b) **Adequate Protection Superpriority Claim.** Solely to the extent of the diminution in the value of the interests of the Prepetition Agent and the Prepetition Secured Lenders in the Prepetition Collateral, the Prepetition Agent and the Prepetition Secured Lenders shall have an allowed

superpriority administrative expense claim (the “*Adequate Protection Superpriority Claim*”) which shall have priority (except with respect to (i) the DIP Liens, (ii) the DIP Superpriority Claim, (iii) the Permitted Prior Liens and (iv) the Carve Out), in the Chapter 11 Cases under sections 364(c)(1), 503(b) and 507(b) of the Bankruptcy Code and otherwise over all administrative expense claims and unsecured claims against the Debtors and their estates, now existing or hereafter arising, of any kind or nature whatsoever including, without limitation, administrative expenses of the kinds specified in or ordered pursuant to sections 105, 326, 328, 330, 331, 503(a), 503(b), 506(c), 507(a), 507(b), 546(c), 546(d), 552, 726, 1113 and 1114 of the Bankruptcy Code, whether or not such expenses or claims may become secured by a judgment Lien or other non-consensual Lien, levy, or attachment.

Other than the DIP Liens, the DIP Superpriority Claim, the Permitted Prior Lien and the Carve Out, no costs or expenses of administration, including, without limitation, professional fees allowed and payable under sections 328, 330 and 331 of the Bankruptcy Code, or otherwise, that have been or may be incurred in the Chapter 11 Cases, or in any Successor Case, will be senior to, prior to, or on parity with the Adequate Protection Superpriority Claim.

(c) **Adequate Protection Payments.**

- (i) Until the repayment in full of the obligations under the Prepetition Credit Agreement, on the last business day of each month, the Prepetition Agent shall receive, for the benefit of the Prepetition Secured Lenders, payment of all accrued and unpaid interest at the default rate set forth in the Prepetition Credit Agreement and, subject to the provisions of Paragraph 4 hereto, reimbursement of any costs due to the Prepetition Agent and Prepetition Secured Lenders under the Prepetition Credit Agreement;
- (ii) Subject to the provisions of Paragraph 43 hereof, the Prepetition Agent and the Prepetition Secured Lenders shall be reimbursed, on a current basis, for all reasonable and documented out-of-pocket costs and expenses of the financial advisors and outside attorneys engaged by such parties, solely to the extent permitted under the Prepetition Credit Agreement.

- (d) **Adequate Protection With Respect to the Initial Store Closings and any Permitted Sale.** The sale process to be implemented under Section 363 of the Bankruptcy Code in connection with the Initial Store Closings and any Permitted Sale, including the timeline and milestones contained therein, shall not be materially modified without the prior written consent of the DIP Agent, the FILO Agent and the Prepetition Agent. The Prepetition Collateral to be sold in connection with the Initial Store Closings and any

Permitted Sale shall be sold free and clear of the Prepetition Liens, the Adequate Protection Liens, and the DIP Liens, *provided, however*, that (x) such Prepetition Liens, Adequate Protection Liens, and DIP Liens shall attach to the proceeds of any such sale and (y) unless the Final Order Termination Date has occurred, those proceeds shall be paid to the Prepetition Agent for the benefit of the Prepetition Secured Lenders but, (z) to the extent the Final Order Termination Date has occurred, all such cash, collections, and proceeds of the Prepetition Collateral and DIP Collateral shall be applied to the DIP Obligations in accordance with the terms and conditions of the DIP Financing Agreements.

- (e) **Access to Records.** In addition to, and without limiting, whatever rights to access the Prepetition Agent has under the Prepetition Financing Documents, upon reasonable notice, at reasonable times during normal business hours, the Debtors shall permit representatives, agents, and employees of the Prepetition Agent (i) to have access to and inspect the Debtors' properties, (ii) to examine the Debtors' books and records, (iii) to discuss the Debtors' affairs, finances, and condition with the Debtors' officers and financial advisors, and (iv) otherwise to have the full cooperation of the Debtors. In addition, the Debtors shall provide to the Prepetition Agent all of the financial, collateral, and related reporting required under the DIP Financing Agreements as and when provided to the DIP Agent and/or the FILO Agent.

15. Nothing herein shall impair or modify the Prepetition Agent and the Prepetition Secured Lenders' rights under section 507(b) of the Bankruptcy Code in the event that the Adequate Protection provided to the Prepetition Agent and the Prepetition Secured Lenders hereunder is insufficient to compensate for the diminution in value of the interest of the Prepetition Agent in the Prepetition Collateral during the Chapter 11 Cases or any Successor Case; *provided, however*, that any section 507(b) claim granted in the Chapter 11 Cases to the Prepetition Agent and the Prepetition Secured Lenders shall be junior in right of payment to all DIP Obligations and subject to the Carve Out.

IV. LITIGATION CASH COLLATERAL RESERVE.

16. Upon the effective date of the Waiver and Amendment (as defined in Paragraph 64), all monies in the Prepetition Indemnity Account (as defined in the Interim Order) shall be used to fund on an initial basis the Litigation Cash Collateral Reserve in a segregated

account in the control of the DIP Agent in accordance with the Waiver and Amendment, which Litigation Cash Collateral Reserve shall be increased on a weekly basis in accordance with the Waiver and Amendment. The funds in the Litigation Cash Collateral Reserve shall secure all costs, expenses, and other amounts (including reasonable attorneys' fees) incurred by the Prepetition Agent and the DIP Agent in connection with or responding to (x) formal or informal inquiries and/or discovery requests, any adversary proceeding, cause of action, objection, claim, defense, or other challenge permitted in Paragraphs 23-25 hereof, or (y) any adversary proceeding, cause of action, objection, claim, defense, or other challenge against the Prepetition Agent or the Prepetition Secured Lenders related to the Prepetition Secured Debt or the DIP Agent or the other DIP Secured Parties related to the DIP Facility, whether in the Chapter 11 Cases or independently in another forum, court, or venue (together, a "**Challenge Proceeding**"). All reimbursement, indemnification or similar continuing obligations of the Debtors in favor of the Prepetition Agent and the DIP Agent under the Prepetition Financing Documents and the DIP Financing Documents, including, without limitation, the provisions of Sections 11.5 of the Prepetition Credit Agreement and Section 11.5 of the DIP Credit Agreement, shall be secured by a first priority lien on Litigation Cash Collateral Reserve and the funds therein and by a lien on the DIP Collateral (the "**Indemnity Obligations**"). The DIP Agent may apply amounts in the Litigation Cash Collateral Reserve against the Indemnity Obligations as and when they arise upon compliance with the provisions of Paragraph 43 below.

V. POSTPETITION LIEN PERFECTION.

17. This Final Order shall be sufficient and conclusive evidence of the validity, perfection, and priority of the DIP Liens and the Adequate Protection Liens without the necessity of filing or recording any financing statement, deed of trust, mortgage, security agreement, notice of Lien or other instrument or document which may otherwise be required under the law of any

jurisdiction or the taking of any other action (including, for the avoidance of doubt, entering into any deposit account control agreement or securities account control agreement) to validate or perfect the DIP Liens and the Adequate Protection Liens or to entitle the DIP Liens and the Adequate Protection Liens to the priorities granted herein.

18. Notwithstanding the foregoing, the DIP Agent and/or the Prepetition Agent may, in their discretion, file such financing statements, deeds of trust, mortgages, security agreements, notices of Liens, and other similar instruments and documents, and are hereby granted relief from the automatic stay of section 362 of the Bankruptcy Code in order to do so, and all such financing statements, deeds of trust, mortgages, security agreements, notices of Liens and other similar instruments and documents shall be deemed to have been filed or recorded at the time and on the date of the commencement of the Chapter 11 Cases.

19. The Debtors shall execute and deliver to the DIP Agent all such financing statements, deeds of trust, mortgages, security agreements, notices of Liens and other similar instruments and documents as the DIP Agent may reasonably request to evidence, confirm, validate, or perfect, or to ensure the contemplated priority of, the DIP Liens granted pursuant hereto.

20. The DIP Agent and the Prepetition Agent, in their discretion, may file a photocopy of this Final Order as a financing statement with any recording office designated to file financing statements or with any registry of deeds or similar office in any jurisdiction in which any of the Debtors has real or personal property, and in such event, the subject filing or recording office shall be authorized to file or record such copy of this Final Order.

21. The DIP Agent shall, in addition to the rights granted to it under the DIP Financing Agreements, be deemed to have co-equal rights with the Prepetition Agent and

succeed to the rights of the Prepetition Agent with respect to all third party notifications in connection with the Prepetition Financing Documents, all prepetition collateral access agreements, and all other agreements with third parties (including any agreement with a landlord, customs broker, freight forwarder, or credit card processor) relating to, or waiving claims against, any Prepetition Collateral, including without limitation, each collateral access agreement duly executed and delivered by any landlord of the Debtors and including, for the avoidance of doubt, all deposit account control agreements, securities account control agreements, and credit card agreements.

22. The automatic stay imposed under section 362(a) of the Bankruptcy Code is hereby modified pursuant to the terms of the DIP Financing Agreements as necessary to:

- (a) permit the Debtors to grant the DIP Liens and the Adequate Protection Liens and to incur all liabilities and obligations to the DIP Agent and the other DIP Secured Parties under the DIP Financing Agreements, the DIP Facility, and this Final Order, and
- (b) authorize the DIP Agent, the other DIP Secured Parties, the Prepetition Agent and the Prepetition Secured Lenders to retain and apply payments hereunder as provided by the DIP Financing Agreements, the Prepetition Financing Agreements and this Final Order.

VI. RESERVATION OF CERTAIN THIRD-PARTY RIGHTS AND BAR OF CHALLENGES AND CLAIMS.

23. Nothing in this Final Order or the DIP Credit Agreement or the other DIP Financing Agreements shall prejudice the rights of any person (other than the Debtors and, as set forth in Paragraph 65, the Committee) with requisite standing that has been sought and granted by this Court may have to bring a “*Challenge Proceeding*”, including any of the following:

- (a) to object to or challenge the Debtors’ Stipulations set forth in Paragraphs E(1) through E(6), including (i) the validity, extent, perfection, or priority of the security interests and Liens of the Prepetition Agent and the Prepetition Secured Lenders in and to the Prepetition Collateral, (ii) the validity, allowability, priority, status, or amount of the Prepetition Secured Debt, (iii) the secured status of the Prepetition Secured Debt, or (iv) any

liability of the Prepetition Agent or any Prepetition Secured Lender with respect to anything arising from any of the Prepetition Financing Documents or any of the Prepetition Secured Debt, or

- (b) to bring suit against the Prepetition Agent and/or the Prepetition Secured Lenders in connection with or related to the Prepetition Secured Debt or the repayment thereof, including any suit seeking the disgorgement of funds, or the actions or inactions of the Prepetition Agent and the Prepetition Secured Lenders arising out of or related to the Prepetition Secured Debt;

provided, however, that any such person with requisite standing that has been sought and granted by this Court must commence a Challenge Proceeding asserting such objection or challenge, including, without limitation, any claim against the Prepetition Agent or the Prepetition Secured Lenders in the nature of a setoff, counterclaim, or defense to the Prepetition Secured Debt (including but not limited to, those under sections 506, 544, 547, 548, 549, 550, and/or 552 of the Bankruptcy Code or by way of adversary proceeding), by May 21, 2017 (the “**Challenge Period**” and the date that is the next calendar day after the termination of the Challenge Period, in the event that no Challenge Proceeding has been commenced during the Challenge Period, shall be referred to as the “**Challenge Period Termination Date**”). The Challenge Period Termination Date may occur as to some, but not all, of the Prepetition Agent and the Prepetition Secured Lenders, if a Challenge Proceeding is brought against one or more but not all of them. For the avoidance of doubt, in the event any Chapter 11 Case is converted to Chapter 7 or a Chapter 11 trustee is appointed prior to expiration of the Challenge Period described in this paragraph, such Challenge Period shall not expire until 60 days after the applicable trustee’s appointment. In the event any party in interest has commenced a Challenge Proceeding prior to the conversion to Chapter 7 or appointment of a Chapter 11 trustee, the trustee shall be entitled to assume the prosecution of any pending Challenge Proceeding.

24. Upon the Challenge Period Termination Date with respect to one or more or all of the Prepetition Agent or the Prepetition Secured Lenders, as the case may be, any and all

challenges and objections (including any Challenge Proceeding) by any party (including, without limitation, any chapter 11 or chapter 7 trustee appointed herein or in any Successor Case, and any other party-in-interest) *shall be deemed to be forever waived and barred*, and the Prepetition Secured Debt as to the Prepetition Agent or one or more or all of the Prepetition Secured Lenders, as the case may be, shall be deemed to be allowed in full as a fully secured claim within the meaning of section 506 of the Bankruptcy Code for all purposes in connection with the Chapter 11 Cases and any Successor Cases and the Debtors' Stipulations as to one or more or all of the Prepetition Agent or the Prepetition Secured Lenders, as the case may be, shall be binding on all creditors, interest holders, and parties-in-interest.

25. To the extent any such Challenge Proceeding is commenced, the Prepetition Agent and the Prepetition Secured Lenders, or any of them as the case may be, shall be entitled to include the costs and expenses, including but not limited to reasonable attorneys' fees and disbursements, incurred in responding to any inquiry, producing documents and/or witnesses in response to formal or informal discovery requests, or otherwise defending the objection or complaint, as part of the Prepetition Secured Debt to the extent permitted pursuant to the relevant Prepetition Financing Documents. To the extent any such inquiry or discovery is undertaken or any such objection or complaint is filed (or as part of any agreed upon resolution thereof), the Prepetition Agent and the Prepetition Secured Lenders, or any of them as the case may be, shall be entitled to include such costs and expenses (subject to the rights of parties set forth in Paragraphs 23-24 above), including but not limited to reasonable attorneys' fees, incurred in responding to the inquiry or discovery or in defending the objection or complaint as part of the Prepetition Secured Debt and as part of the Indemnity Obligations which shall be reimbursed by the Debtors including (x) each month as provided for in Paragraph 43 below and (y) out of the Litigation Cash Collateral

Reserve, and as one of the Adequate Protection Superpriority Claims, and the Litigation Cash Collateral Reserve shall be maintained until the final resolution of all such objections or claims. The Debtors shall remain liable to the Prepetition Agent and the Prepetition Secured Lenders and the DIP Agent and the other DIP Secured Parties, or any of them as the case may be, for all unpaid Indemnity Obligations to the extent that the funds in the Litigation Cash Collateral Reserve are insufficient to satisfy them in full.

VII. CARVE OUT AND PAYMENT OF PROFESSIONALS.

26. Subject to the terms and conditions contained in this Paragraph 26, the DIP Liens, DIP Superpriority Claim, the Prepetition Liens, the Adequate Protection Liens and the Adequate Protection Superpriority Claims are subordinate to the following (collectively, the “*Carve Out*”):

- (a) allowed administrative expenses pursuant to 28 U.S.C. § 1930(a)(6) and 31 U.S.C. § 3717 for fees payable to the Office of the United States Trustee, as determined by agreement of the U.S. Trustee or by final order of this Court and 28 U.S.C. § 156(c) and 31 U.S.C. § 3717 for fees required to be paid to the Clerk of this Court;
- (b) all accrued and unpaid fees, disbursements, costs and expenses allowed at any time by this Court (pursuant to a final order that has not been reversed, vacated or stayed) and incurred by professionals retained by the Debtors or the Committee (the “*Case Professionals*”), through and including the date of service by the DIP Agent or FILO Agent of a Carve Out Trigger Notice (as defined below), up to and as limited by the respective Approved Budget amounts for each Case Professional or category of Case Professional through the date of service of said Carve Out Trigger Notice, less the amounts of (i) the Debtors’ cash on hand available to pay such fees, disbursements, costs and expenses and (ii) prepetition retainers received by such Case Professionals and not previously applied to such fees, disbursements, costs and expenses; and
- (c) all accrued and unpaid fees, disbursements, costs and expenses incurred by the Case Professionals from and after the date of service of a Carve Out Trigger Notice, to the extent allowed at any time, in an aggregate amount not to exceed \$1,000,000 (the “*Carve Out Cap*”), less the amounts of (i) the Debtors’ cash on hand available to pay such fees, disbursements, costs and expenses, and (ii) prepetition retainers received by such Case Professionals

and not applied to the fees, disbursements, costs and expenses set forth in clause (b) above or this clause (c). The Carve Out shall be reduced on a dollar-for-dollar basis by any payments of fees or expenses of the Case Professionals. For purposes of the foregoing, “*Carve Out Trigger Notice*” shall mean a written notice delivered by the DIP Agent to the Debtors and their counsel, the Prepetition Agent, the FILO Agent, the United States Trustee, and lead counsel to the Committee, which notice may be delivered at any time following the occurrence and continuance of any DIP Order Event of Default.

Immediately upon delivery of a Carve Out Trigger Notice, the Debtors shall be required to transfer from their applicable Blocked Account(s) to a segregated account (the “*Carve Out Account*”) not subject to the control of the DIP Agent an amount equal to the sum of the Carve Out Cap plus the aggregate amount of unpaid fees, disbursements, costs and expenses described in clause (b) of the definition of “Carve Out”. The proceeds on deposit in the Carve Out Account shall be available only to satisfy obligations benefitting from the Carve Out, and (i) the DIP Agent shall not sweep or foreclose on cash of the Debtors necessary to fund the Carve Out Account and (ii) the DIP Liens shall attach to any residual interest in the Carve Out Account available following satisfaction in full of all obligations benefitting from the Carve Out.

27. For the avoidance of doubt, the Carve Out shall be senior to the DIP Liens, the DIP Superpriority Claim, the Adequate Protection Liens, and the Adequate Protection Superpriority Claims. The Carve Out shall exclude and shall not be used to pay any fees and expenses (x) incurred in connection with the assertion or joinder in any Challenge Proceeding or any other claim, counterclaim, action, proceeding, application, motion, objection, defenses or other contested matter, the purpose of which is to seek any order, judgment, determination or similar relief at law, in equity or mixed (A) invalidating, setting aside, avoiding, or subordinating, in whole or in part, (i) the DIP Obligations, (ii) the DIP Agent’s Liens on the DIP Collateral, (iii) the Prepetition Secured Debt, (iv) the Prepetition Agent’s Liens on the Prepetition Collateral, or (v) the Adequate Protection Liens or claims, or (B) preventing, hindering, or delaying, whether

directly or indirectly, the DIP Agent, the other DIP Secured Parties, the Prepetition Agent or the Prepetition Secured Lenders' assertion or enforcement of their Liens and security interests, or their efforts to realize upon any DIP Collateral, Prepetition Collateral, the Adequate Protection Liens, or the Indemnity Account; *provided, however*, that such exclusion does not encompass any investigative work conducted by the Case Professionals retained by the Committee, but only up to \$25,000 of the Carve Out may be used for such investigative work.

28. Nothing herein, including the inclusion of line items in the Approved Budget for Case Professionals, shall be construed as consent to the allowance of any particular professional fees or expenses of the Debtors, of the Committee, or of any other person or shall affect the right of the DIP Agent, the FILO Agent or the Prepetition Agent to object to the allowance and payment of such fees and expenses. Notwithstanding anything herein to the contrary, from and after the entry of this Final Order, no amount shall be paid to any Case Professional until the principal amount of the DIP Obligations is less than \$24,000,000.

VIII. FINAL ORDER TERMINATION DATE, DIP ORDER EVENT OF DEFAULT, AND REMEDIES

A. Final Order Termination Date.

29. On the Final Order Termination Date, (i) all DIP Obligations and the Prepetition Secured Debt shall be immediately due and payable, (ii) all commitments to extend credit under the DIP Facility may be terminated by the DIP Agent, and (iii) all authority to use Cash Collateral hereunder shall cease; provided, however, that during the Remedies Notice Period (as defined herein), the Debtors may use Cash Collateral solely as set forth in Paragraph 13 of this Final Order.

30. Unless and until the Prepetition Secured Debt and the DIP Obligations have been indefeasibly repaid in full in cash and all commitments to extend credit under the DIP Facility have been irrevocably terminated, the protections afforded to the Prepetition Agent, the

Prepetition Secured Lenders, the DIP Agent and the other DIP Secured Parties pursuant to this Final Order and under the DIP Financing Agreements, and any actions taken pursuant thereto, shall survive the Final Order Termination Date or the entry of any order confirming any Plan or converting any Chapter 11 Case to a Successor Case, and the DIP Liens, the DIP Superpriority Claim, the Adequate Protection Liens, and the Adequate Protection Superpriority Claims shall continue in the Chapter 11 Cases and in any Successor Case, and such DIP Liens, DIP Superpriority Claim, Adequate Protection Liens, and Adequate Protection Superpriority Claims shall maintain their respective priorities as provided by this Final Order.

B. Rights and Remedies Upon DIP Order Event of Default.

31. The occurrence of any of the following shall constitute an event of default under this Final Order (each, a “*DIP Order Event of Default*”):

- (a) the occurrence of an Event of Default (as defined in the DIP Credit Agreement) under the DIP Credit Agreement; or
- (b) the occurrence of the Final Order Termination Date.

32. Immediately upon and at any time during the continuance of a DIP Order Event of Default, the DIP Agent or the FILO Agent may in its discretion, respectively, (i) declare the DIP Facility terminated (a “*Termination Notice*”) or (ii) send a reservation of rights notice to the Debtors, which notice may advise the Debtors that any further advances under the DIP Facility shall be made in the sole discretion of the DIP Agent and/or the other DIP Secured Parties. Upon the issuance of a Termination Notice to the Debtors: (I) all or any portion of the commitments of the relevant DIP Secured Parties to make loans or otherwise extend credit under the DIP Financing Agreements may be suspended or terminated; (II) all DIP Obligations may be deemed immediately due and payable in accordance with the DIP Financing Agreements; (III) after the expiration of the Remedies Notice Period, the DIP Agent and the other DIP Secured Parties may

exercise all other rights and remedies available to them under the DIP Financing Agreements; and (IV) any remaining right or ability of the Debtors to use any Cash Collateral may be terminated, reduced or restricted by the DIP Agent or the FILO Agent. With respect to the DIP Collateral, after expiration of the Remedies Notice Period, the DIP Agent and the other DIP Secured Parties may exercise all rights and remedies available to them under the DIP Financing Agreements or applicable law against the DIP Collateral including: (i) entering onto the premises of any Debtor in connection with an orderly liquidation of the DIP Collateral, and/or (ii) exercising any rights and remedies provided under the DIP Financing Agreements, or at law or equity, including all remedies provided under the Bankruptcy Code and pursuant to this Final Order. After the expiration of the Remedies Notice Period, the DIP Agent or the FILO Agent may require the Debtors to seek authority from the Court to retain an Approved Liquidator (as defined in the DIP Credit Agreement) for the purpose of conducting a liquidation or “going out of business” sale and/or the orderly liquidation of the DIP Collateral and, if the Debtors refuse to seek such authority, the DIP Agent or the FILO Agent shall be entitled to seek such authority directly from the Court on behalf of the Debtors’ estates.

33. *Termination Notice.* Any Termination Notice shall be given by facsimile and electronic mail to counsel to the Debtors, counsel to the Prepetition Agent, counsel to the FILO Agent, counsel to the Committee and the U.S. Trustee (the first Business Day any such Termination Notice has been delivered to all of the foregoing parties, the “***Termination Declaration Date***”). The automatic stay otherwise applicable to the DIP Agent and the other DIP Secured Parties is hereby modified so that five (5) Business Days after the Termination Declaration Date (the “***Remedies Notice Period***”), the DIP Agent and the FILO Agent shall be entitled to exercise all rights and remedies against the DIP Collateral in accordance with the DIP

Financing Agreements and this Final Order, and shall be permitted to satisfy the DIP Obligations, the DIP Liens, the Prepetition Secured Debt, the Prepetition Senior Liens, the DIP Superpriority Claims, the Adequate Protection Liens, and the Adequate Protection Superpriority Claims, subject only to the Carve-Out and Prepetition Permitted Liens. During the Remedies Notice Period, the Debtors and the Committee shall be entitled to seek an emergency hearing with the Court for the sole purpose of contesting whether a DIP Order Event of Default or Cash Collateral Termination Event, as applicable, has occurred (or for any other reason that the Court may wish to consider). Unless the Court determines during the Remedies Notice Period that a DIP Order Event of Default or Cash Collateral Termination Event, as applicable, has not occurred, the automatic stay and Debtors' exclusive right to propose and solicit acceptance of a Plan shall automatically be terminated at the end of the Remedies Notice Period (unless otherwise ordered by the Court) without further notice or order and the DIP Agent and FILO Agent shall be permitted to exercise all remedies set forth herein, in the DIP Financing Agreements and this Final Order, and as otherwise available at law against the DIP Collateral, without further order of or application or motion to the Court and, without restriction or restraint by any stay under Sections 105 or 362 of the Bankruptcy Code, or otherwise, against the enforcement of the DIP Liens and security interest in the DIP Collateral or any other rights and remedies granted to the DIP Agent and FILO Agent with respect thereto pursuant to the DIP Financing Agreements or this Final Order.

34. *Access to Leased Premises.* The DIP Agent's and the FILO Agent's exercise of its remedies pursuant to the DIP Financing Agreements and this Final Order shall be subject to: (w) any agreement in writing between the DIP Agent or Prepetition ABL Agent and any applicable landlord, (x) pre-existing rights of the DIP Agent, FILO Agent and any applicable

landlord under applicable non-bankruptcy law, (y) consent of the applicable landlord, or (z) further order of the Court following notice and a hearing.

35. Nothing included herein shall prejudice, impair or otherwise affect the Prepetition Agent's, the DIP Agent's or the FILO Agent's rights to seek any other or supplemental relief in respect of the Debtors, or the DIP Secured Parties' rights, as provided in the DIP Credit Agreement, to suspend or terminate the making of loans and granting financial accommodations under the DIP Credit Agreement.

C. No Waiver of Remedies.

36. The delay in or the failure of the Prepetition Agent, the DIP Agent or the FILO Agent to seek relief or otherwise exercise their rights and remedies shall not constitute a waiver of any of the Prepetition Agent's, the DIP Agent's, the FILO Agent's or other DIP Secured Parties' rights and remedies. Notwithstanding anything herein, the entry of this Final Order is without prejudice to, and does not constitute a waiver of, expressly or implicitly, or otherwise impair the rights and remedies of the Prepetition Agent, the DIP Agent, the FILO Agent or other DIP Secured Party under the Bankruptcy Code or under non-bankruptcy law, including without limitation, the rights of the Prepetition Agent and the DIP Agent to (i) request conversion of the Chapter 11 Cases to cases under chapter 7 of the Bankruptcy Code, dismissal of the Chapter 11 Cases, or the appointment of a trustee in the Chapter 11 Cases; (ii) propose, subject to the provisions of section 1121 of the Bankruptcy Code, a Plan; or (iii) exercise any of the rights, claims, or privileges (whether legal, equitable, or otherwise) the Prepetition Agent, the DIP Agent and the FILO Agent may have.

IX. CERTAIN LIMITING PROVISIONS

A. Section 506(c) Claims and Waiver.

37. Nothing contained in this Final Order shall be deemed a consent by the Prepetition Agent or the DIP Agent to any charge, Lien, assessment, or claim against the DIP Collateral, the DIP Liens, the Prepetition Collateral, the Prepetition Liens or the Adequate Protection Liens under section 506(c) of the Bankruptcy Code or otherwise.

38. As a further condition of the DIP Facility and any obligation of the DIP Lenders to make credit extensions pursuant to the DIP Financing Agreements and to the Prepetition Agent's consent to use of Cash Collateral, the Debtors (and any successors thereto or any representatives thereof, including any trustees appointed in the Chapter 11 Cases or any Successor Case) shall be deemed to have waived any rights or benefits of sections 506(c) and 550 of the Bankruptcy Code with respect to the Prepetition Agent, the Prepetition Secured Lenders, the DIP Agent, the other DIP Secured Parties, the Prepetition Collateral, and the DIP Collateral.

B. Proceeds of Subsequent Financing.

39. If at any time prior to the indefeasible repayment in full in cash of all Prepetition Secured Debt and DIP Obligations and the termination of the DIP Financing Agreements in accordance with the terms thereof, including subsequent to the confirmation of the Plan with respect to the Debtors, the Debtors' estates, any trustee, any examiner with enlarged powers, or any responsible officer subsequently appointed, shall obtain credit or incur debt pursuant to sections 364(c)(1) or 364(d) of the Bankruptcy Code in violation of the DIP Financing Agreements, then all of the cash proceeds derived from such credit or debt and all Cash Collateral shall immediately be turned over to the DIP Agent and applied in reduction of the DIP Obligations and thereafter to the Prepetition Agent to be applied in reduction of the Prepetition Secured Debt.

40. In entering into the DIP Financing Agreements, and consenting to the use of Cash Collateral, and as consideration therefor, each of the Debtors hereby agrees that until such time as all Prepetition Secured Debt and all DIP Obligations have been indefeasibly paid in full in cash and the DIP Financing Agreements have been terminated in accordance with the terms thereof, the Debtors shall not (unless otherwise agreed to by the DIP Agent, the other DIP Secured Parties, the Prepetition Agent and the Prepetition Secured Lenders, in their sole respective discretion) in any way prime or seek to prime the security interests and DIP Liens provided to the DIP Agent or the other DIP Secured Parties or the Prepetition Liens or Adequate Protection Liens granted to the Prepetition Agent or Prepetition Secured Lenders under this Final Order by offering a subsequent lender or a party-in-interest a superior or *pari passu* Lien or claim pursuant to sections 364(c) or 364(d) of the Bankruptcy Code or otherwise.

X. OTHER RIGHTS AND OBLIGATIONS

A. Good Faith Under Section 364(e) of the Bankruptcy Code. No Modification or Stay of this Final Order.

41. Based on the findings set forth in this Final Order and in accordance with section 364(e) of the Bankruptcy Code, in the event any or all of the provisions of this Final Order are hereafter modified, amended, or vacated by a subsequent order of this or any other court, the DIP Agent and the other DIP Secured Parties are entitled to the protections provided in section 364(e) of the Bankruptcy Code and, no such appeal, modification, amendment, or vacation shall affect the validity and enforceability of any advances made hereunder or the Liens or priority authorized or created by the Interim Order and hereby.

42. Notwithstanding any modification, amendment, or vacation of any or all of the provisions of the Interim Order or this Final Order, any claim or protection granted to the Prepetition Agent, the Prepetition Secured Lenders, the DIP Agent or the other DIP Secured

Parties thereunder or hereunder arising prior to the effective date of such modification, amendment, or vacation of any such claim or protection granted to the Prepetition Agent, the Prepetition Secured Lenders, the DIP Agent or the other DIP Secured Parties shall be governed in all respects by the original provisions of the Interim Order and this Final Order, and the Prepetition Agent, the Prepetition Secured Lenders, the DIP Agent and the other DIP Secured Parties shall be entitled to all of the rights, remedies, privileges, and benefits, including the Adequate Protection and the DIP Protections granted therein and herein, with respect to any such claim, including those found under section 364(e) of the Bankruptcy Code.

B. Prepetition Agent, Prepetition Secured Lenders', DIP Agent's, and DIP Secured Parties' Expenses.

43. As provided in the Prepetition Financing Documents and in the DIP Financing Agreements, all reasonable out-of-pocket costs and expenses of the Prepetition Agent, the Prepetition Secured Lenders, the DIP Agent, and the other DIP Secured Parties, including, without limitation, reasonable legal, accounting, collateral examination, monitoring and appraisal fees and disbursements, financial advisory fees, fees and expenses of other consultants, indemnification and reimbursement obligations with respect to fees and expenses, and other out of pocket expenses, whether or not contained in the Approved Budget and without limitation with respect to the dollar estimates contained in the Approved Budget, are DIP Obligations and will be paid by the Debtors. Payment of such fees shall not be subject to allowance by this Court; *provided, however*, the U.S. Trustee, the Debtors or the Committee may seek a determination by this Court regarding whether such fees and expenses are reasonable. Under no circumstances shall professionals for the DIP Agent, the other DIP Secured Parties, the Prepetition Agent or the Prepetition Secured Lenders be required to comply with the United States Trustee fee guidelines; *provided, however*, the Prepetition Agent, the Prepetition Secured Lenders, the DIP Agent, and the

other DIP Secured Parties shall provide to Debtors, the Office of the United States Trustee and the Committee a copy of any invoices for professional fees and expenses during the pendency of the Chapter 11 Cases and the Debtors shall pay or reimburse the DIP Agent, the other DIP Secured Parties, the Prepetition Agent and the Prepetition Secured Lenders for all such fees in expenses within ten (10) days of receipt of a copy of each invoice, in the absence of a specific written objection as to the reasonableness of the amounts contained in the subject invoice. The Debtors shall timely pay, and/or the DIP Agent is hereby authorized to make an advance under the DIP Facility to timely pay, the submitted invoices after the expiration of the ten (10) day notice period if no objection is received in such ten (10) day period. If an objection is timely received, the undisputed amount of the invoice shall be paid and the Court shall have jurisdiction to determine the disputed portion of such invoice if the parties are unable to resolve the dispute.

C. Indemnification.

44. The Debtors shall indemnify and hold harmless the DIP Agent and each other DIP Secured Party, and each of their respective shareholders, members, directors, agents, officers, subsidiaries and affiliates, successors and assigns, attorneys and professional advisors, in their respective capacities as such, from and against any and all damages, losses, settlement payments, obligations, liabilities, claims, actions or causes of action, whether groundless or otherwise, and reasonable costs and expenses incurred, suffered, sustained or required to be paid by an indemnified party of every nature and character arising out of or related to the DIP Loan Documents, the DIP Facility or the transactions contemplated thereby and by the Interim Order and this Final Order, whether such indemnified party is party thereto, as provided in and pursuant to the terms of the DIP Loan Documents and as further described therein and herein, or in connection with these Chapter 11 Cases, any plan, or any action or inaction by the Debtors; *provided*, that such indemnity shall not, as to any indemnified party, be available to the extent that

such losses, claims, damages, liabilities or related expenses are determined by a court of competent jurisdiction by final and non-appealable judgment to have resulted directly from the gross negligence or willful misconduct of such indemnified party. The indemnity includes indemnification for the DIP Agent's and any other DIP Secured Party's exercise of discretionary rights granted under the DIP Facility or hereunder. In all such litigation, or the preparation therefor, each of the DIP Agent and each other DIP Secured Party shall be entitled to select its own counsel and, in addition to the foregoing indemnity, the Debtors agree to promptly pay the reasonable fees and expenses of such counsel as DIP Obligations.

45. [Reserved].

D. Binding Effect.

46. The provisions of this Final Order shall be binding upon and inure to the benefit of the DIP Agent, the other DIP Secured Parties, the Prepetition Agent, the Prepetition Secured Lenders, all other creditors of any of the Debtors, the Debtors and their respective successors and assigns (including any trustee or other fiduciary hereinafter appointed as a legal representative of the Debtors or with respect to the property of the estates of the Debtors), the Committee, whether in the Chapter 11 Cases, in any Successor Case, or upon dismissal of any such chapter 11 or chapter 7 case, and all other persons and parties-in-interest and their respective successors and assigns.

E. No Third Party Rights.

47. Except as explicitly provided for herein, this Final Order does not create any rights for the benefit of any third party, creditor, equity holder, Case Professional or any direct, indirect or incidental beneficiary, other than the Debtors, the DIP Agent, the other DIP Secured Parties, the Prepetition Agent, and the Prepetition Secured Lenders.

F. No Superior Rights of Reclamation.

48. Based on the findings and rulings herein concerning the integrated nature of the DIP Facility and the Prepetition Financing Documents and the relation back of the DIP Liens, in no event shall any alleged right of reclamation or return (whether asserted under Section 546(c) of the Bankruptcy Code or otherwise) be deemed to have priority over the DIP Liens.

G. No Effect on Certain Rights.

49. Notwithstanding anything in this Final Order to the contrary: (i) nothing herein shall impair, extinguish, subordinate or prime any party's right to offset or recoup prepetition credits (if any) owed to the Debtors against pre-petition amounts (if any) that the Debtors owe to such party; (ii) nothing herein shall impair, extinguish, subordinate or prime any party's rights under 2-702 of the Uniform Commercial Code, subject, however, to section 546(c) of the Bankruptcy Code, and the DIP Secured Parties' rights and entitlements under the Interim Order; (iii) all rights, if any, of any and all parties in interest, including any trustee in the Chapter 11 Cases, to contest or defend against any such claims or equitable remedies and to avoid and recover any interest such party may have in property of the Debtors' estates, and/or to seek to recover any monies owed by such party to the Debtors, are fully preserved; (iv) nothing in this Final DIP Order shall, or be deemed to, modify, terminate, abridge or annul the stay invoked by section 362 of the Bankruptcy Code or any other stay applicable to any party's exercise of a valid right of setoff or other equitable remedies; and (v) nothing in this Final DIP Order shall, or be deemed to, modify, terminate, abridge or annul the terms of any intercreditor agreement applicable to such party.

50. Notwithstanding anything in this Final Order to the contrary, each party's right to assert a claim pursuant to section 503(b)(9) of the Bankruptcy Code are fully preserved and

all rights of any and all parties in interest, including any trustee in the Chapter 11 Cases, to contest or defend against any such claims are fully preserved.

H. No Marshaling.

51. The DIP Agent, the other DIP Secured Parties, the Prepetition Agent and the Prepetition Secured Lenders shall not be subject to the equitable doctrine of “marshaling” or any other similar doctrine with respect to any of the DIP Collateral or Prepetition Collateral, as applicable.

I. Section 552(b) of the Bankruptcy Code.

52. The DIP Agent, the other DIP Secured Parties, the Prepetition Agent and the Prepetition Secured Lenders shall each be entitled to all of the rights and benefits of section 552(b) of the Bankruptcy Code and the “equities of the case” exception under section 552(b) of the Bankruptcy Code shall not apply to the DIP Agent, the other DIP Secured Parties, the Prepetition Agent or the Prepetition Secured Lenders with respect to proceeds, product, offspring, or profits of any of the Prepetition Collateral or the DIP Collateral.

J. Amendments.

53. The Debtors and the DIP Agent may, with the consent of the FILO Agent, amend, modify, supplement, or waive any provision of the DIP Financing Agreements in accordance with the terms thereof without further approval of this Court, but only after notice to the Committee, unless such amendment, modification, supplement, or waiver (i) increases the interest rate (other than as a result of the imposition of the Default Rate), (ii) increases the DIP Commitments, or (iii) changes the maturity date of the DIP Facility. All waivers, modifications, or amendments of any of the provisions of this Final Order shall not be effective unless set forth in writing, signed by and on behalf of the Debtors, the DIP Agent, the FILO Agent and the Prepetition Agent, and, if required, approved by this Court.

K. Survival of Final Order.

54. The provisions of this Final Order and any actions taken pursuant hereto shall survive entry of any order which may be entered:

- (a) confirming any Plan in the Chapter 11 Cases,
- (b) converting the Chapter 11 Cases to cases under chapter 7 of the Bankruptcy Code,
- (c) dismissing the Chapter 11 Cases,
- (d) withdrawing of the reference of the Chapter 11 Cases from this Court, or
- (e) providing for abstention from handling or retaining of jurisdiction of the Chapter 11 Cases in this Court.

55. The terms and provisions of this Final Order, including the DIP Protections granted pursuant to this Final Order and the DIP Financing Agreements and any protections granted the Prepetition Agent or the Prepetition Secured Lenders, shall continue in full force and effect notwithstanding the entry of any order described in Paragraph 54, and such DIP Protections and protections for the Prepetition Agent or the Prepetition Secured Lenders shall maintain their priority as provided by this Final Order until all of the DIP Obligations and the Prepetition Secured Debt have been indefeasibly and irrevocably paid and repaid in full in cash and satisfied and all commitments under the DIP Facility irrevocably extinguished (such payment being without prejudice to any terms or provisions contained in the DIP Facility or the Prepetition Financing Agreements which survive such discharge by their terms).

L. Inconsistency.

56. In the event of any inconsistency between the terms and conditions of the DIP Credit Agreement, the DIP Financing Agreements, the Interim Order and this Final Order, the provisions of this Final Order shall govern and control.

M. Enforceability.

57. This Final Order shall constitute findings of fact and conclusions of law pursuant to Bankruptcy Rule 7052 and shall take effect and be fully enforceable *nunc pro tunc* to the Petition Date immediately upon execution hereof.

N. Objections Overruled.

58. Notwithstanding any reservations of rights made on the record at the Final Hearing with respect to this Final Order, all objections to the Motion to the extent not withdrawn or resolved, are hereby overruled on the merits.

O. Waiver of Any Applicable Stay.

59. Any applicable stay (including, without limitation, under Bankruptcy Rule 6004(h)) is hereby waived and shall not apply to this Final Order.

P. Proofs of Claim.

60. The Prepetition Agent, the Prepetition Secured Lenders, the DIP Agent, and the other DIP Secured Parties will not be required to file proofs of claim in the Chapter 11 Cases or in any Successor Case.

Q. Treatment of Stub Rent.

61. On or before June 30, 2017, the Debtors shall pay the entire amount of rent and related charges that accrued from March 6, 2017 through March 31, 2017 (the “*Stub Rent*”) to each landlord party to a lease of nonresidential real property to which the Debtors are a party that has consented in writing (the “*Consenting Landlords*”) to the Stub Rent settlement described in Paragraphs 61 through 63 of this Final Order (the “*Stub Rent Settlement*”). The Stub Rent shall be paid to the Consenting Landlords on such date regardless of whether the DIP Lenders have been paid in full. Acceptance of the Stub Rent Settlement shall also be a consent by the Consenting Landlords to agree and adopt for all purposes in these cases the so-called “pro-ration” or

“per-diem” rule for the treatment of lease obligations (rather than the so-called “billing theory”) and, therefore, post-petition lease obligations under section 365 of the Bankruptcy Code shall be pro-rated on a daily basis. Acceptance of the Stub Rent Settlement by a Consenting Landlord shall also constitute consent to reduce Stub Rent by an amount equal to the per diem portion of April rent following the effective date of rejection of any lease rejected in April on a “day for day” basis. For example, and for illustrative purposes only, if a lease is rejected effective as of April 20th, then the ten (10) days of per diem rent “overpaid” for April shall be applied to reduce the twenty-five (25) days of Stub Rent such that fifteen (15) days of Stub Rent would instead be paid in full satisfaction of the claim for Stub Rent. Similarly, the Debtors will pay May rent on May 1, 2017; however, if a lease is rejected in May, any “overpayment” of May rent (on a per diem basis) shall be applied as a credit against Stub Rent (or returned to the Debtors). All other objections, claims, and rights of the Consenting Landlords, the Debtors, the DIP Agent, the FILO Agent and the Committee are fully preserved and remain unaffected.

62. A landlord may elect to receive the accelerated payment of Stub Rent (as reduced by the April or May overpayment, if any, described above for leases rejected during April or May) by sending an email to counsel to the Debtors, Neil E. Herman and Rachel Jaffe Mauceri of Morgan, Lewis & Bockius LLP, at neil.herman@morganlewis.com and rachel.mauceri@morganlewis.com, respectively, and Jeffrey A. Hokanson and Sarah L. Fowler of Ice Miller LLP, at jeff.hokanson@icemiller.com and sarah.fowler@icemiller.com stating that such landlord consents to the pro-ration rule and the Stub Rent Settlement. Landlords who do not elect to have Stub Rent treated in accordance with the provisions of Paragraphs 61 through 63 of this Final Order shall have all of their rights fully preserved (as are the rights of Debtors, the DIP Agent, the FILO Agent and the Committee) and the timing and amount of Stub Rent claims of

non-consenting landlords shall be resolved by this Court through the traditional claims reconciliation process.

63. If the amount of the Stub Rent due to a Consenting Landlord is still in dispute on June 30, 2017, then, on June 30, 2017, the Debtors shall pay to the Consenting Landlord only the undisputed portion of the Stub Rent and the Debtors shall reserve the remaining amount of the disputed portion of the Stub Rent. Once the dispute over the remaining portion of the claim for Stub Rent is resolved, the Debtors shall pay the remaining amount of the Stub Rent due, if any, within ten (10) days.

R. Resolution of Committee's Objection.

64. The Committee has agreed to withdraw its objections to the Motion in consideration of the terms and conditions set forth in this Final Order and the Waiver and First Amendment to Debtor-In-Possession Loan and Security Agreement, a copy of which is attached hereto as *Exhibit "2"* and incorporated herein by reference (the "*Waiver and Amendment*"). The Debtors, the Committee, DIP Agent, DIP Lenders, FILO Agent and the FILO Lenders believe that the terms and conditions of this Final Order and the Waiver and Amendment are a fair and reasonable resolution of the Committee's objections to, among other things, the Motion and that this Final Order and the Waiver and Amendment are in the best interests of the Debtors, their estates and their creditors. The Debtors, the Committee, DIP Agent, DIP Lenders, FILO Agent and FILO Lenders engaged in arms' length negotiations in reaching the resolutions set forth in this Final Order and the Waiver and Amendment.

65. For purposes of clarification and in consideration of the mutual promises set forth in the Waiver and Amendment, the Committee waives any and all rights to challenge the Debtors' Stipulations contained in this Final Order and has agreed that (a) the Committee and its

counsel have completed their review of the Prepetition Financing Documents, the Prepetition Secured Debt and the Prepetition Liens granted to the Prepetition Agent, (b) the Committee will not initiate or commence a Challenge Proceeding with respect thereto, and (c) as between the Committee, the Prepetition Agent and each Prepetition Secured Lender, the Challenge Period Termination Date has occurred.

66. The Committee is hereby granted the exclusive right, authority, standing and discretion to determine and to initiate, file, prosecute, enforce, abandon, settle, compromise, monetize, assign, transfer, release, withdraw, or litigate to judgment the Estate Claims (as defined below), and/or to decline to do any of the foregoing, in consultation with the DIP Agent and the FILO Agent, without the consent or approval of any other third party or further notice to or action, order or approval of the Court; provided, however, that in the case of any settlement of more than \$1,000,000, the Committee will seek Court approval. “*Estate Claims*” shall include the following assets: (i) any and all Bankruptcy Recoveries; (ii) the Debtors’ interest in any commercial tort claims and any other tort causes of action and any and all proceeds in whatever form, recoveries and settlements thereof; (iii) the Debtors’ interest in any claims and causes of action (separate from the Bankruptcy Recoveries), defenses, objections to claims, rights of setoff and recoupment under which the Debtors may be entitled to recover amounts due and owing to the Debtors from third parties, including, but not limited to, trade vendors, suppliers, credit card companies, utility companies and holders of letters of credit, and any and all proceeds in whatever form, recoveries and settlements thereof; (iv) any and all claims or causes of action held by the Debtors or the Debtors’ estates against their current or former directors and/or officers or any insurance company providing coverage for such individuals, and any and all proceeds in whatever form, including recoveries and settlements thereof; and (v) the right to seek refunds from taxing authorities and to

file amended returns or refund applications to applicable taxing authorities. The proceeds of the Estate Claims shall be for the benefit of the Debtors' estates. Under no circumstance shall the Estate Claims include the Committee's right to commence a Challenge Proceeding, which, pursuant to Paragraph 65 of this Final Order, shall not be initiated or commenced. Nothing herein shall impair or act to release any liens, including DIP Liens, against Estate Claims.

67. The Committee is hereby granted authority pursuant to Bankruptcy Rule 2004 to investigate the Estate Claims, including authority to compel the production of documents and issue subpoenas for oral examination (nothing contained herein being deemed a waiver of any objection that any party may have with respect thereto). The Debtors' counsel and financial advisor will provide to the Committee (or such professionals designated by the Committee) documents and other information gathered, and relevant work product developed, related to the Estate Claims, provided that the provision of any such documents and information will be without waiver of any evidentiary privileges, which shall be jointly held between the Debtors and the Committee, including without limitation the attorney-client privilege, work-product privilege or other privilege or immunity attaching to any such documents or information (whether written or oral). The rights granted to the Committee hereunder may be assigned or transferred as necessary, in consultation with the DIP Agent and the FILO Agent, to effectuate the purposes of the grant.

S. Headings.

68. The headings in this Final Order are for purposes of reference only and shall not limit or otherwise affect the meaning of this Final Order.

T. Retention of Jurisdiction.

69. This Court shall retain jurisdiction to hear and determine all matters arising from or related to the implementation, interpretation, and enforcement of this Final Order.

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Exhibit "1"

Approved Budget

Exhibit "2"

Waiver and Amendment

**WAIVER AND FIRST AMENDMENT TO
DEBTOR-IN-POSSESSION LOAN AND SECURITY AGREEMENT**

This WAIVER AND FIRST AMENDMENT TO DEBTOR-IN-POSSESSION LOAN AND SECURITY AGREEMENT dated as of May [___], 2017 (this “**First Amendment**”), by and among (i) GREGG APPLIANCES, INC., an Indiana corporation, as debtor and debtor-in-possession (the “**Borrower**”), (ii) HHG DISTRIBUTING, LLC, a Delaware limited liability company, and HHGREGG, INC., an Indiana corporation, each as debtor and debtor-in-possession (collectively, the “**Guarantors**”, and together with the Borrower, the “**Loan Parties**”), (iii) the Lenders party hereto, (iv) WELLS FARGO BANK, NATIONAL ASSOCIATION, as Agent, and (v) GACP FINANCE CO., LLC, as FILO Agent.

W I T N E S S E T H:

WHEREAS, the parties hereto have entered into that certain Debtor-In-Possession Loan and Security Agreement dated as of March 6, 2017 (as amended, restated, supplemented or otherwise modified from time to time in accordance with the terms thereof, the “**Loan and Security Agreement**”);

WHEREAS, the Loan Parties have notified the Agent, the FILO Agent and the Lenders that the Loan Parties are in breach of their obligations set forth in (i) Section 9.28 of the Loan and Security Agreement insofar as the Loan Parties’ actual cash receipts for the test periods ended March 10, March 17, March 24, March 31, April 7, April 14, April 21 and April 28, 2017, were less than 90% of the projected amounts set forth in the Approved Budget (as in effect on such test dates), and (ii) Sections 9.29(f)(i) through (f)(vii) of the Loan and Security Agreement, which breaches constitute Events of Default under Section 10.1(a)(iv) and/or 10.1(m)(vi) of the Loan and Security Agreement (the “**Specified Events of Default**”);

WHEREAS, the Loan Parties have requested that the Agent, the FILO Agent and the Lenders waive the Specified Events of Default and effect certain amendments to the Loan and Security Agreement as more specifically set forth herein, and the Agent, the FILO Agent and the Lenders are willing to grant such waiver and effect such amendments on the terms and conditions hereinafter set forth; and

WHEREAS, the Loan Parties, the Agent and the FILO Agent have agreed to a revised Approved Budget, a copy of which (as in effect on the date hereof) is attached hereto as Exhibit A;

NOW, THEREFORE, in consideration of the foregoing and the mutual covenants herein contained, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties signatory hereto agree as follows:

1. Defined Terms. Except as otherwise defined in this First Amendment, terms defined in the Loan and Security Agreement are used herein as defined therein.
2. Limited Waiver. Subject to the satisfaction of the conditions precedent specified in Section 5 below, the Agent, the FILO Agent and the Lenders hereby waive the Specified Events of Default (the “**Limited Waiver**”). This Limited Waiver shall be effective only in this specific instance and for the specific purpose for which it is given, and shall not entitle the Loan Parties to any other or further waiver in any similar or other circumstances.
3. Amendments to Loan and Security Agreement. Subject to the satisfaction of the conditions precedent specified in Section 5 below, the Loan and Security Agreement is hereby amended as follows:

- (a) The definition of “Maturity Date” in Section 1.128 of the Loan and Security Agreement is hereby amended and restated in its entirety as follows:

““Maturity Date” shall mean the earliest to occur of (a) the Scheduled Maturity Date, (b) the effective date of substantial consummation of a plan of reorganization in the Chapter 11 Case, (c) the date of acceleration of the Obligations and the termination of the Aggregate Commitments upon the occurrence of an Event of Default, or (d) the filing of a motion by a Debtor seeking dismissal of the Chapter 11 Case, the actual dismissal of the Chapter 11 Case, the filing of a motion by a Debtor seeking to convert the Chapter 11 Case to a case under Chapter 7 of the Bankruptcy Code, the conversion of the Chapter 11 Case to a case under Chapter 7 of the Bankruptcy Code, or the appointment of a trustee or examiner with expanded powers in the Chapter 11 Case.”

- (b) The aggregate Revolving Loan Commitments are hereby reduced from \$50,000,000 to \$2,000,000. Accordingly, (i) Schedule 1.A to the Loan and Security Agreement is hereby amended and restated in its entirety as set forth on Schedule 1.A attached hereto and (ii) the last sentence of the definition of “Revolving Loan Commitments” in Section 1.179 of the Loan and Security Agreement is hereby amended and restated in its entirety as follows:

“On the First Amendment Effective Date, the Revolving Loan Commitments are in the aggregate amount of \$2,000,000.”

- (c) The following two new definitions are hereby added to the Loan and Security Agreement as new Sections 1.206 and 1.207, respectively:

““First Amendment” means the Waiver and First Amendment to Debtor-in-Possession Loan and Security Agreement dated as of May [___], 2017, by and among the Borrower, the Guarantors, Agent, FILO Agent and the Lenders.”

““First Amendment Effective Date” means the “Effective Date” (as defined in the First Amendment).”

- (d) Section 9.29(b) of the Loan and Security Agreement is hereby amended and restated in its entirety as follows:

“(b) [Reserved]”

- (e) Section 9.29(e) of the Loan and Security Agreement is hereby amended and restated in its entirety as follows:

“(e) [Reserved]”

- (f) Section 9.29(f) of the Loan and Security Agreement is hereby amended and restated in its entirety as follows:

“(f) [Reserved]”

- (g) Section 10.1(m)(vi) of the Loan and Security Agreement is hereby amended and restated in its entirety as follows:

“(vi) [Reserved]”

- (h) Section 10.2(b) of the Loan and Security Agreement is hereby amended and restated in its entirety as follows:

“(b) Without limiting the generality of the foregoing, at any time an Event of Default exists or has occurred and is continuing, Agent may, at its option and shall upon the direction of either the Required Revolving Lenders or the Required FILO Lenders, or the FILO Agent may if the Agent fails timely to act, (i) upon notice to Borrower, accelerate the payment of all Obligations and Pre-Petition Obligations and demand immediate payment thereof, and (ii) terminate the Revolving Loan Commitments and FILO Commitments and this Agreement.”

- (i) Notwithstanding anything to the contrary in Sections 6.3 or 6.4 of the Loan and Security Agreement or any other provision of the Financing Agreements, the parties hereby agree as follows:

- (i) On or promptly following the Effective Date, Agent will transfer the following amounts of cash on deposit in the Debtors’ accounts at Wells Fargo to separate cash collateral accounts: (a) \$2,000,000, to be held by Agent as cash collateral for future Revolving Loans (the “Revolver Cash Collateral Reserve”) and (b) \$250,000 (which shall be funded from the Prepetition Indemnity Account (as defined in the Interim Financing Order)), to be held by Agent as cash collateral for future litigation expenses of Agent, FILO Agent and the Lenders (the “Litigation Cash Collateral Reserve”, and together with the Revolver Cash Collateral Reserve, collectively, the “Cash Collateral Reserves”);
- (ii) from and after the Effective Date, all payments received or collected by Agent from Borrower or any Guarantor (including, without limitation, the monetary proceeds of collections or of realization upon any Collateral) shall be applied in the following order: first, to the payment of Revolving Loans and other Obligations owing to Agent and the Revolving Lenders; second, to replenish (or increase) the Revolver Cash Collateral Reserve, to the extent that the balance of the Revolver Cash Collateral Reserve is less than \$2,000,000 (or such higher amount as FILO Agent may request Agent to hold therein); third, on Friday of each week, commencing with the week ending May 13, 2017, to increase the Litigation Cash Collateral Reserve in an amount equal to \$250,000 on May 13, 2017, and \$500,000 installments thereafter in accordance with the Approved Budget until the aggregate amount funded into the Litigation Cash Collateral Reserve equals \$2,500,000; and fourth, on Friday of each week, to the payment of FILO Loans and other Obligations owing to FILO Agent and the FILO Lenders in accordance with the Approved Budget (it being acknowledged and agreed that, after giving effect to this clause fourth in any week, the Borrowers shall have sufficient funds to be able to make the disbursements set forth in the Approved Budget);
- (iii) Agent may from time to time, in its discretion, (x) disburse the balances of the Cash Collateral Reserves (or any portion thereof) to the Borrower in lieu of making any borrowing of Revolving Loans, (y) disburse the

balances of the Cash Collateral Reserves to repay the Revolving Loans and to pay interest and fees accruing on or in respect of the Revolving Loans and Revolving Loan Commitments or (z) solely after the repayment of the Revolving Loan and the termination of the Revolving Commitments, apply the balances of the Cash Collateral Reserves (or any portion thereof) in accordance the waterfall set forth in Section 6.4(a) or 6.4(d), as applicable, of the Loan and Security Agreement;

- (iv) Prior to the Effective Date, Agent has transferred \$[_____] of cash on deposit in the Debtors' accounts at Wells Fargo to a segregated account in respect of the proceeds of Frigidaire Consignment Collateral (the "Electrolux Reserve"). From and after the Effective Date, Agent shall, solely as provided in the Final Financing Order, continue to transfer cash on deposit in the Debtors' accounts to the Electrolux Reserve, and shall make or permit disbursements from the Electrolux Reserve, from time to time as and when required by the Bankruptcy Court;
- (v) without limiting Section 2.1 or 4.2 of the Loan and Security Agreement or any other provision of the Financing Agreements, the Revolving Lenders shall not be required to (and shall not, without FILO Agent consent) make Revolving Loans to the Borrower unless and until the Cash Collateral Reserves are fully funded in accordance with paragraph (i) or (ii) above, and notwithstanding Section 12.8 of the Loan and Security Agreement, shall not, without FILO Agent consent, make any other Loans (other than Revolving Loans) under the Loan and Security Agreement or increase its Revolving Loan Commitments;
- (vi) from and after the Effective Date, the availability of Revolving Loans shall no longer be determined by reference to the Borrowing Base; provided that (x) Borrower shall continue delivering Borrowing Base certificates setting forth calculations of the Borrowing Base and the FILO Borrowing Base (provided that no such Borrowing Base certificate shall be deemed to limit the availability of Revolving Loans to the amount of the Borrowing Base), (y) without further limiting Section 2.1 or 4.2 of the Loan and Security Agreement or any other provision of the Financing Agreements, each borrowing of Revolving Loans shall be solely for purposes and in amounts consistent with the Approved Budget (subject to the Permitted Variance), and (z) in no event shall the outstanding amount of Revolving Loans exceed the amount of cash collateral held by the Agent in the Revolver Cash Collateral Reserve at any time;
- (vii) from and after the Effective Date, without the consent of the FILO Agent, the Agent and Revolving Lenders shall not maintain any reserve under the Loan and Security Agreement other than the Cash Collateral Reserves, the Electrolux Reserve and the LC Cash Collateral (each as defined below), and the WF Indemnity Reserve and any other reserves contemplated by the Approved Budget;
- (viii) as of the Effective Date, the Agent is holding cash collateral to secure and fund Borrower's reimbursement obligations in connection with

outstanding Letter of Credit Accommodations (the “LC Cash Collateral”) in an amount equal to one hundred five percent (105%) of the face amount thereof. The Agent may disburse LC Cash Collateral (x) to fund such reimbursement obligations as and when any drawing is made under such Letter of Credit Accommodations and (y) from time to time to pay any fees owing by Borrower in respect of Letter of Credit Accommodations and any drawings thereunder. Within 30 days after the expiration or termination of any Letter of Credit Accommodation, the Agent shall disburse any unused portion of the LC Cash Collateral applicable to such Letter of Credit Accommodation in accordance with the waterfall set forth in Section 6.4(a) or 6.4(d), as applicable, of the Loan and Security Agreement;

- (ix) from and after the Effective Date, neither Agent nor any Lender shall have any obligation to (and shall not, without FILO Agent consent) provide or arrange for any additional Letter of Credit Accommodations or to renew or increase any Letter of Credit Accommodations outstanding as of the Effective Date, and Agent may, in its discretion, send notices of nonrenewal with respect to any such outstanding Letter of Credit Accommodations. For the avoidance of doubt, and notwithstanding the reduction of the Revolving Loan Commitments, the “Letter of Credit Sublimit” as used in the Loan and Security Agreement shall be deemed to be, and shall be limited to, the outstanding and cash collateralized Letter of Credit Accommodations as of the Effective Date;
- (x) from and after the Effective Date, if any payment that is contemplated to be made to Agent, FILO Agent or any of the Lenders in the Approved Budget is not made in at least the amount and by the date set forth in the Approved Budget, such payment failure shall constitute an Event of Default; and
- (xi) from and after the Effective Date, unless otherwise approved in writing and in advance by Agent and FILO Agent or otherwise a Permitted Variance (as that term is defined in Section 9.28 of the Credit Agreement), any disbursements by the Debtors in excess of the amounts contemplated in the Approved Budget shall constitute an Event of Default. Notwithstanding the foregoing, customer refund checks can be issued and honored as and when required to meet in-store customer demands.

4. Representations and Warranties. Each Loan Party hereby represents and warrants that:

- (a) other than the Specified Events of Default, no Default or Event of Default has occurred and is continuing;
- (b) the execution, delivery and performance of this First Amendment by each Loan Party (i) are all within such Loan Party’s corporate or limited liability company powers, as applicable, (ii) have been duly authorized, (iii) are not in contravention of law or the terms of such Loan Party’s organizational documentation, or any indenture, agreement or undertaking to which such Loan Party is a party or by which such Loan Party or its

property are bound and (iv) will not result in the creation or imposition of, or require or give rise to any obligation to grant, any Lien upon any property of such Loan Party;

- (c) this First Amendment has been duly authorized, executed and delivered by each Loan Party, and the agreements and obligations of each Loan Party contained herein constitute the legal, valid and binding obligations of such Loan Party, enforceable against such Loan Party in accordance with its terms; and
 - (d) after giving effect to this First Amendment (including the Limited Waiver), all representations and warranties contained in the Loan and Security Agreement and each other Financing Agreement are true and correct in all material respects on and as of the date hereof, except (i) to the extent that such representations and warranties refer to an earlier date, in which case they shall be true and correct as of such earlier date, and (ii) in the case of any representation and warranty qualified by materiality, in which case they shall be true and correct in all respects.
5. Conditions to Effectiveness. This First Amendment shall not be effective until each of the following conditions precedent have been fulfilled to the satisfaction of the Agent and the FILO Agent (such date referred to herein as, the “Effective Date”):
- (a) the Agent shall have received this First Amendment, duly executed by each of the parties hereto;
 - (b) the representations and warranties set forth in Section 4 above shall be true and correct on and as of the Effective Date; and
 - (c) the Bankruptcy Court shall have entered the Final Financing Order.
6. Effect on Financing Agreements. The Loan and Security Agreement and the other Financing Agreements, after giving effect to the First Amendment, shall be and remain in full force and effect in accordance with their terms and hereby are ratified and confirmed in all respects. Except as expressly set forth herein with respect to the Limited Waiver, the execution, delivery, and performance of this First Amendment shall not operate as a waiver of any right, power, or remedy of the Agent, the FILO Agent or any Lender under the Loan and Security Agreement or any other Financing Agreement, as in effect prior to the date hereof. Each Loan Party hereby ratifies and confirms in all respects all of its obligations under the Financing Agreements to which it is a party and each Loan Party hereby ratifies and confirms in all respects any prior grant of a security interest under the Financing Agreements to which it is party.
7. Further Assurances. Each Loan Party shall execute and deliver all agreements, documents and instruments, each in form and substance satisfactory to the Agent and the FILO Agent, and take all actions as the Agent or the FILO Agent may reasonably request from time to time, to perfect and maintain the perfection and priority of the security interest in the Collateral held by the Agent and to fully consummate the transactions contemplated under this First Amendment and the Loan and Security Agreement, as modified hereby.
8. No Novation; Entire Agreement. This First Amendment evidences solely the amendment of certain specified terms and obligations of the Loan Parties under the Loan and Security Agreement and is not a novation or discharge of any of the other obligations of the Loan Parties under the Loan

and Security Agreement. There are no other understandings, express or implied, among the Loan Parties, the Agent, the FILO Agent and the Lenders regarding the subject matter hereof or thereof.

9. CHOICE OF LAW. THE VALIDITY, INTERPRETATION AND ENFORCEMENT OF THIS FIRST AMENDMENT AND ANY DISPUTE ARISING OUT OF THE RELATIONSHIP BETWEEN THE PARTIES HERETO, WHETHER IN CONTRACT, TORT, EQUITY OR OTHERWISE, SHALL BE GOVERNED BY THE INTERNAL LAWS OF THE STATE OF NEW YORK, BUT EXCLUDING ANY PRINCIPLES OF CONFLICTS OF LAW OR OTHER RULE OF LAW THAT WOULD CAUSE THE APPLICATION OF THE LAW OF ANY JURISDICTION OTHER THAN THE LAWS OF THE STATE OF NEW YORK, AND TO THE EXTENT APPLICABLE, THE BANKRUPTCY CODE.
10. Counterparts; Facsimile Execution. This First Amendment may be executed in any number of counterparts and by different parties and separate counterparts, each of which when so executed and delivered shall be deemed an original, and all of which, when taken together, shall constitute one and the same instrument. Delivery of an executed counterpart of a signature page to this First Amendment by facsimile (or other electronic transmission) shall be as effective as delivery of a manually executed counterpart of this First Amendment. Any party delivering an executed counterpart of this First Amendment by facsimile (or other electronic transmission) also shall deliver a manually executed counterpart of this First Amendment but the failure to deliver a manually executed counterpart shall not affect the validity, enforceability, and binding effect of this First Amendment.
11. Construction. This First Amendment is a Financing Agreement. This First Amendment and the Loan and Security Agreement shall be construed collectively and in the event that any term, provision or condition of any of such documents is inconsistent with or contradictory to any term, provision or condition of any other such document, the terms, provisions and conditions of this First Amendment shall supersede and control the terms, provisions and conditions of the Loan and Security Agreement.
12. Miscellaneous. The terms and provisions hereof shall be binding upon and inure to the benefit of the parties hereto and their successors and assigns.

[Signature Pages Follow]

IN WITNESS WHEREOF, this First Amendment has been duly executed and delivered by each of the parties hereto as a sealed instrument as of the date first above written.

GREGG APPLIANCES, INC.,
as the Borrower

By: _____
Name:
Title:

HHG DISTRIBUTING, LLC,
as a Guarantor

By: GREGG APPLIANCES, INC.,
its sole member

By: _____
Name:
Title:

HHGREGG, INC.,
as a Guarantor

By: _____
Name:
Title:

**WELLS FARGO BANK, NATIONAL
ASSOCIATION**, as Agent and a Lender

By: _____
Name:
Title:

GACP FINANCE CO., LLC, as FILO Agent

By: _____
Name:
Title:

GACPI, L.P., as a Lender

By: _____
Name:
Title:

Exhibit A

Approved Budget

(See Attached)

Schedule 1.A**Commitments**

Lender	Revolving Loan Commitment as of the original Closing Date	Revolving Loan Commitment as of the First Amendment Effective Date	FILO Commitment as of the original Closing Date
Wells Fargo Bank, National Association	\$50,000,000.00	\$2,000,000.00	\$0.00
GACP I, L.P.	\$0.0	\$0.0	\$30,000,000.00
Total:	\$50,000,000.00	\$2,000,000.00	\$30,000,000.00