

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

)	Chapter 11
In re:)	
)	Case No. 15-11874 (KG)
HAGGEN HOLDINGS, LLC, <i>et al.</i> , ¹)	
)	(Jointly Administered)
Debtors.)	
)	Ref. Docket Nos. 13, 449 and 1476

**ORDER (I) AUTHORIZING AND APPROVING FURTHER AMENDMENT
TO THE DIP CREDIT AGREEMENT AND (II) AMENDING
THE FINAL DIP ORDER ON ACCOUNT OF SUCH AMENDMENT**

Upon consideration of the certification of counsel (the “**Certification of Counsel**”) of the above-captioned debtors and debtors-in-possession for the entry of an order, pursuant to sections 105, 361, 362, 363, 364(c)(1), 364(c)(2), 364(c)(3), 364(d) and 507(b) of title 11 of the United States Code, 11 U.S.C. §§ 101 *et seq.* (the “**Bankruptcy Code**”), Rules 2002, 4001, 6004 and 9014 of the Federal Rules of Bankruptcy Procedure (the “**Bankruptcy Rules**”), and Paragraph 1.3.3 of that certain *Order (I) Authorizing the Debtor Loan Parties to (A) Obtain Postpetition Financing on a Final Basis and (B) Utilize Cash Collateral of Pre-petition Secured Parties on a Final Basis, (II) Authorizing Debtor Haggen Holdings, LLC to Enter into Certain Related Transactions, (III) Granting Adequate Protection, (IV) Modifying the Automatic Stay, and (V) Granting Related Relief, Pursuant to 11 U.S.C. Sections 105, 361, 362, 363(c), (d) & (e), 364(c), 364(d)(1), 364(e) and 507(b)* [Docket No. 449] (the “**Final DIP Order**”), (i) authorizing and approving the Debtor Loan Parties² to execute and deliver and perform under that certain Seventh Amendment to Debtor-in-Possession Revolving Credit and

¹ The Debtors in these chapter 11 cases, along with the last four digits of each Debtor’s federal tax identification number, are: Haggen Holdings, LLC (7558), Haggen Operations Holdings, LLC (6341), Haggen Opco South, LLC (7257), Haggen Opco North, LLC (5028), Haggen Acquisition, LLC (7687), and Haggen, Inc. (4583). The mailing address for each of the Debtors is 2211 Rimland Drive, Bellingham, WA 98226.

² Capitalized terms used but not otherwise defined herein shall have the meanings ascribed to such terms in the Final DIP Order.



Security Agreement attached hereto as Exhibit 1 (the “**Seventh DIP Credit Agreement Amendment**”), and (ii) amending the Final DIP Order on account of the Seventh DIP Credit Agreement Amendment; and the Court having considered the Certification of Counsel and the record in these Cases; and it appearing that this Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334 and the *Amended Standing Order of Reference* from the United States District Court for the District of Delaware, dated as of February 29, 2012; and it appearing that this matter is a core proceeding pursuant to 28 U.S.C. § 157(b)(2); and it appearing that venue of this matter is proper in this District pursuant to 28 U.S.C. §§ 1408 and 1409; and due and proper notice of the relief provided for in this Order having been given in accordance with Paragraph 1.3.3 of the Final DIP Order; and the Court having determined that the Debtor Loan Parties’ entry into the Seventh DIP Credit Agreement Amendment as set forth herein is an appropriate exercise of their business judgment; and after due deliberation and it appearing that sufficient cause exists for granting the relief provided for herein and that such relief is in the best interest of the Debtor Loan Parties, their estates, and their creditors, **IT IS HEREBY ORDERED THAT:**

1. Pursuant to sections 105, 361, 362, 363, 364(c)(1), 364(c)(2), 364(c)(3), 364(d) and 507(b) of the Bankruptcy Code, Bankruptcy Rules 2002, 4001, 6004 and 9014, and Paragraph 1.3.3 of the Final DIP Order, the Seventh DIP Credit Agreement Amendment is hereby approved, and the Debtor Loan Parties are hereby authorized to enter into the Seventh DIP Credit Agreement Amendment and to perform all acts, and to make, execute and deliver all instruments and documents in connection therewith that may be reasonably required or necessary for the performance of their obligations under the Seventh DIP Credit Agreement Amendment.

2. The Final DIP Order is hereby amended as follows:

a. "DIP Credit Agreement" shall mean the DIP Credit Agreement as amended by all prior amendments and further amended by the Seventh DIP Credit Agreement Amendment; and

b. "Final Order" shall mean the Final Order as amended by this Order.

3. Except as expressly set forth in this Order, the terms, provisions and conditions of, and relief granted by, the Final DIP Order are not altered and shall remain in full force and effect.

4. Notwithstanding any applicable provision of the Bankruptcy Code and the Bankruptcy Rules, the terms, provisions and conditions of, and relief granted by, this Order shall be effective immediately and enforceable upon its entry.

5. This Court shall retain jurisdiction to hear and determine any and all matters arising from or related to the interpretation or implementation of this Order.

Dated: February 24, 2016
Wilmington, Delaware


Kevin Cross
United States Bankruptcy Judge

EXHIBIT 1

Seventh DIP Credit Agreement Amendment

SEVENTH AMENDMENT TO
DEBTOR-IN-POSSESSION REVOLVING CREDIT AND SECURITY AGREEMENT

This **SEVENTH AMENDMENT TO DEBTOR-IN-POSSESSION REVOLVING CREDIT AND SECURITY AGREEMENT** (this "Amendment") is made as of February 24, 2016 among **HAGGEN, INC.**, a Washington corporation ("Haggen"), **HAGGEN OPCO NORTH, LLC**, a Delaware limited liability company ("Haggen Opco North"), **HAGGEN OPCO SOUTH, LLC**, a Delaware limited liability company ("Haggen Opco South" and, together with Haggen Opco North, Haggen, and each Person joined to the Credit Agreement as a borrower from time to time, collectively, the "Borrowers", and each a "Borrower"), Haggen Acquisition, LLC, a Delaware limited liability company ("Haggen Acquisition"), Haggen Operations Holdings, LLC, a Delaware limited liability company ("Operations Holdings", and together with Haggen Acquisition and each Person joined to the Credit Agreement as a debtor guarantor from time to time, collectively, the "Debtor Guarantors", and each a "Debtor Guarantor"), the financial institutions which are now or which hereafter become a party to the Credit Agreement (collectively, the "Lenders" and each individually a "Lender"), and **PNC BANK, NATIONAL ASSOCIATION** ("PNC"), as agent for Lenders (PNC, in such capacity, "Agent").

RECITALS

A. The Borrowers, Lenders and Agent are party to that certain Debtor-in-Possession Revolving Credit and Security Agreement dated as of September 11, 2015 (as the same may hereafter be amended, supplemented or otherwise modified from time to time, the "Credit Agreement"). All capitalized terms used but not defined herein shall have the meanings ascribed thereto in the Credit Agreement.

B. An Event of Default has occurred under the Credit Agreement by reason of Borrowers' failure to conduct the Core Stores Auction on or before February 22, 2016 in accordance with the requirements set forth in Section 10.7(u) of the Credit Agreement (the "Designated Event of Default").

C. The Borrowers have requested that Agent and Lenders waive the Designated Event of Default and agree to modify certain terms of the Credit Agreement, and Agent and Lenders have so agreed, in each case subject to the terms and conditions contained herein.

NOW THEREFORE, in consideration of the premises and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto, intending to be legally bound, hereby agree as follows:

1. Amendments to Credit Agreement.

1.1 Defined Terms (New). As of the Effective Date, the following new defined term is added to Section 1.2 of the Credit Agreement in the proper alphabetical order:

“Line Block” shall mean \$2,500,000, which shall be reduced dollar-for-dollar (to an amount not less than \$0) by cure costs paid by the Loan Parties related to the assumption of any remaining non-residential real property leases for Real Property.

- 1.2 Defined Terms (Amended and Restated). As of the Effective Date, the following defined term in Section 1.2 of the Credit Agreement is hereby amended and restated as follows:

“Maximum Revolving Advance Amount” shall mean an amount not more than \$65,000,000, minus the outstanding amount of all Pre-Petition Obligations, minus the Line Block.”

- 1.3 Bankruptcy Defaults and Events of Default. As of the Effective Date, the reference to February 22, 2016 contained in Section 10.7(u) (as amended in that certain Fifth Amendment to Debtor-In-Possession Revolving Credit and Security Agreement and in that certain Sixth Amendment to Debtor-In-Possession Revolving Credit and Security Agreement) shall be amended to read March 11, 2016.

- 1.4 Bankruptcy Defaults and Events of Default. As of the Effective Date, the reference to February 24, 2016 contained in Section 10.7(v) (as amended in that certain First Amendment to Debtor-In-Possession Revolving Credit and Security Agreement, in that certain Fifth Amendment to Debtor-In-Possession Revolving Credit and Security Agreement, and in that certain Sixth Amendment to Debtor-In-Possession Revolving Credit and Security Agreement) shall be amended to read March 11, 2016.

- 1.5 Bankruptcy Defaults and Events of Default. As of the Effective Date, the reference to February 24, 2016 contained in Section 10.7(w) (as amended in that certain Fifth Amendment to Debtor-In-Possession Revolving Credit and Security Agreement) shall be amended to read March 11, 2016.

- 1.6 Bankruptcy Defaults and Events of Default. As of the Effective Date, a new Section 10.7(gg) shall be added to the Credit Agreement as follows:

(gg) the Loan Parties shall fail to (i) obtain a commitment letter for replacement debtor-in-possession financing or an executed Debtor-in-Possession Credit Agreement to replace the Credit Agreement and (ii) file with the Bankruptcy Court a motion to approve such replacement debtor-in-possession financing in form and substance acceptable to Agent and Required Lenders on or before March 11, 2016.

- 1.7 Term. As of the Effective Date, the reference to February 24, 2016 contained in Section 13.1 (as amended in that certain Fifth Amendment to Debtor-In-Possession Revolving Credit and Security Agreement) shall be amended to read March 11, 2016.

2. Waiver of Event of Default. Agent and the Lenders hereby waive the Designated Event of Default; provided, however, nothing herein shall be deemed a waiver with respect to any other or future failure of Borrowers to comply fully with the Credit Agreement. This waiver shall be effective only for the specific defaults comprising the Designated Event of Default, and in no event shall this waiver be deemed to be a waiver of enforcement of any of Agent’s or any Lender’s rights with respect to any other Defaults or Events of Default now existing or hereafter arising. Nothing contained in this Amendment nor any communications between any Borrower and Agent or any Lender shall be a waiver of any rights or remedies Agent or any Lender has or may have against any Borrower, except as specifically provided herein. Except as specifically provided herein, each of Agent and each

Lender hereby reserves and preserves all of its rights and remedies against Borrower under the Credit Agreement and the Other Documents.

3. **Representations and Warranties.** Loan Parties warrant and represent to Agent and Lenders that:

- 3.1 **Reaffirmation of Representations and Warranties.** By execution of this Amendment, Loan Parties reconfirm all warranties and representations made to Agent and Lenders under the Credit Agreement and the Other Documents and restate such warranties and representations in all material respects as of the date hereof, except to the extent such representations and warranties expressly relate solely to an earlier date (in which case such representations and warranties shall have been true and correct in all material respects on and as of such earlier date).
- 3.2 **Additional Representations and Warranties.** The execution and delivery by Loan Parties of this Amendment and the performance of the obligations of Loan Parties hereunder and the consummation by Loan Parties of the transactions contemplated hereby: (i) are within the powers of Loan Parties; (ii) are duly authorized by each Loan Party; (iii) are not in contravention of the terms of the Organizational Documents of any Loan Party or of any Loan Party's contractual obligations; (iv) do not require the consent, registration or approval of any governmental authority or any other person or entity; (v) do not contravene any statute, law, ordinance regulation, rule, order or other governmental restriction applicable to or binding upon any Loan Party; and (vi) will not, except as contemplated herein for the benefit of Agent and Lenders, result in the imposition of any liens upon any property of Loan Parties under any existing indenture, mortgage, deed of trust, loan or other material agreement or instrument to which any Loan Party is a party or by which it or any of its property may be bound or affected.
- 3.3 **Enforceability.** This Amendment is a legal, valid and binding obligation of Loan Parties and is enforceable against Loan Parties in accordance with its terms, except as enforceability may be limited by bankruptcy, insolvency, reorganization, moratorium or other similar laws affecting creditors' rights generally, by general equitable principles or by principles of good faith and fair dealing.
- 3.4 **Events of Default.** After giving effect to this Amendment, no Default or Event of Default has occurred and is continuing under the Credit Agreement.

4. **Reaffirmation of Covenants.** Loan Parties hereby reaffirm all of the covenants contained in (i) the Credit Agreement as amended or affected hereby and (ii) the Other Documents, and Loan Parties covenant to abide thereby until the satisfaction in full of the Obligations under the Credit Agreement and the termination of the Lenders' commitments to make Advances under the Credit Agreement.

5. **Effectiveness Conditions.** The Agent's and Lenders' undertakings hereunder are subject to the satisfaction of all of the following conditions, and shall become effective on the earliest date (the "Effective Date") when all such conditions have been satisfied:

- 5.1 Agent shall have received a fully executed copy of this Amendment;
- 5.2 If this Amendment shall be signed on behalf of any Loan Party by any person other than a person whose name, title and specimen signature were included on an officer's certificate

previously delivered to Agent, Agent shall have received an incumbency certificate for such Borrower, as the case may be;

5.3 Agent and Lenders executing this Amendment shall have earned a non-refundable accommodation fee in the amount of \$250,000, which shall be shared pro rata among the Lenders party hereto; and

5.4 Agent shall have received such other documents as Agent or counsel to Agent may reasonably request.

6. **Indemnity.** Each Borrower and each Guarantor shall indemnify, defend and hold harmless Agent, each Lender and the directors, officers, agents, employees and advisers of Agent and each Lender from and against any and all losses, claims, damages, liabilities, deficiencies, judgments or expenses (excluding lost profits and indirect, special and consequential damages) incurred by any of them arising out of or by reason of any litigation, investigation, claim or proceeding which arises out of or is in any way related to this Amendment, the Credit Agreement, the Other Documents, the Collateral or the transactions contemplated hereby or thereby, except to the extent that any of the foregoing arises out of the willful misconduct, gross negligence, fraud or bad faith of any of them (as determined by a court of competent jurisdiction in a final and non-appealable judgment).

7. **Miscellaneous.**

7.1 **JURY TRIAL WAIVER.** EACH BORROWER, EACH GUARANTOR, AGENT AND EACH LENDER HEREBY WAIVES ANY RIGHT TO A TRIAL BY JURY IN ANY ACTION OR PROCEEDING ARISING OUT OF THIS AMENDMENT, THE CREDIT AGREEMENT, THE OTHER DOCUMENTS OR ANY OTHER AGREEMENTS OR TRANSACTIONS RELATED HERETO OR THERETO.

7.2 **Governing Law.** This Amendment shall be governed by and construed and interpreted in accordance with the laws of the State of New York.

8. **Further Assurances.** At Agent's or any Lender's written request, each Borrower and each Guarantor shall promptly execute any other document or instrument and/or seek any consent or agreement from any third party that the Agent or any Lender reasonably determines is necessary to evidence or further the intent of the parties as set forth in this Amendment. Agent is hereby authorized to file and/or record in such public records as Agent deems reasonably necessary such financing statements and/or continuations of existing financing statements (or modifications thereto) as Agent deems reasonably necessary and to take such other actions as may be reasonably necessary, in order to continue and maintain the perfection of its liens created under the Credit Agreement and the Other Documents.

9. **Counterparts.** This Amendment may be executed by one or more of the parties to this Amendment by facsimile or "pdf" and in any number of separate counterparts, each of which, when so executed, shall be deemed an original, and all of said counterparts taken together shall be deemed to constitute but one and the same instrument.

10. **Successors and Assigns.** The provisions of this Amendment shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns (including each Releasing Party (defined below)), except that Borrowers and Guarantors may not

assign or transfer any of their rights or obligations under this Amendment, the Credit Agreement, or any Other Documents without the prior written consent of Agent and Lenders.

11. Entire Agreement. This Amendment, together with the Credit Agreement and the Other Documents, embodies the entire agreement and understanding among the parties hereto, and supersedes all prior or contemporaneous agreements and understandings of such persons, verbal or written, relating to the subject matter hereof and thereof. Except as otherwise expressly provided in this Amendment, nothing herein shall be deemed to amend or modify any provision of the Credit Agreement, as previously amended, or any Other Document, each of which shall remain in full force and effect and continue to be binding upon and inure to the benefit of the parties thereto and their respective permitted successors and assigns.

12. No Third Parties Benefited. This Amendment is made and entered into for the sole protection and legal benefit of Borrowers, Agent, Lenders, Guarantors and their permitted successors and assigns, and no other person or entity shall be a direct or indirect legal beneficiary of, or have any direct or indirect cause of action or claim in connection with this Amendment, the Credit Agreement or any Other Documents. Lenders and Agent shall have no obligation to any person or entity not a party to this Amendment, the Credit Agreement or the Other Documents.

13. Severability. If any provision of this Amendment is determined by a court of competent jurisdiction to be unenforceable, such determination shall not affect any other provision hereof.

14. Release.

(a) Each Borrower and each Guarantor, on behalf of itself and its respective bankruptcy estate, as applicable, and each of their respective successors and assigns (each an "Releasing Party") hereby absolutely and unconditionally releases and forever discharges Agent and each Lender, Pre-Petition Agent and each Pre-Petition Lender, and any and all of their respective participants, parent corporations, subsidiary corporations, affiliated corporations, insurers, indemnitors, successors and assigns thereof, together with all of the present and former directors, officers, agents and employees of any of the foregoing (each a "Released Party"), from any and all claims, demands or causes of action of any kind, nature or description, whether arising in law or equity or upon contract or tort or under any state or federal law or otherwise, which any Releasing Party has had, now has, hereafter may have, or has made claim to have against any such person for or by reason of any act, omission, matter, cause or thing whatsoever arising from the beginning of time to and including the date of this Agreement, whether such claims, demands and causes of action are matured or unmatured or known or unknown, relating to the Pre-Petition Credit Agreement, the Credit Agreement, this Agreement or the transactions contemplated hereby or thereby. It is the intention of each Releasing Party in providing this release that the same shall be effective as a bar to each and every claim, demand and cause of action specified, and in furtherance of this intention it waives and relinquishes all rights and benefits under any Applicable Law which may provide that:

"A general release does not extend to claims which the creditor does not know or suspect to exist in his or her favor at the time of executing the release, which if known by him or her might have materially affected his or her settlement with the debtor."

(b) Each Releasing Party acknowledges that it may hereafter discover facts different from or in addition to those now known or believed to be true with respect to such claims, demands, or causes of action and agree that this instrument shall be and remain effective in all respects notwithstanding any such differences or additional facts. Each Releasing Party understands, acknowledges and agrees that the release set forth above may be pleaded as a full and complete defense and may be used as a basis for an injunction against any action, suit or other proceeding which may be instituted, prosecuted or attempted in breach of the provisions of such release.

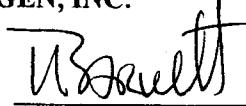
(c) Each Releasing Party, on behalf of itself and its successors, assigns, and other legal representatives, hereby absolutely, unconditionally and irrevocably, covenants and agrees with and in favor of each Released Party above that it will not sue (at law, in equity, in any regulatory proceeding or otherwise) any Released Party on the basis of any claim released, remised and discharged by any Releasing Party pursuant to the above release. If any Releasing Party, or any of its successors, assigns or other legal representatives violates the foregoing covenant, such Releasing Party, for itself and its successors, assigns and legal representatives, agrees to pay, in addition to such other damages as any Released Party may sustain as a result of such violation, all attorneys' fees and costs incurred by such Released Party as a result of such violation.

15. Construction and Interpretation. The parties have participated jointly in the negotiation and drafting of this Amendment. Any rule of construction or interpretation otherwise requiring this Amendment to be construed or interpreted against any party by virtue of the authorship of this Amendment shall not apply to the construction and interpretation hereof.

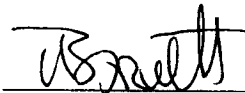
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IN WITNESS WHEREOF, the parties hereto have executed this Amendment as of the day and year first above written.

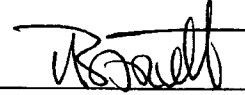
HAGGEN, INC.

By: 
Name: Blake Barnett
Title: Chief Financial Officer

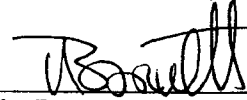
HAGGEN OPCO NORTH, LLC

By: 
Name: Blake Barnett
Title: Chief Financial Officer

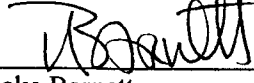
HAGGEN OPCO SOUTH, LLC

By: 
Name: Blake Barnett
Title: Chief Financial Officer

HAGGEN ACQUISITION, LLC

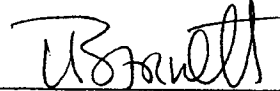
By: 
Name: Blake Barnett
Title: Chief Financial Officer

**HAGGEN OPERATIONS HOLDINGS,
LLC**

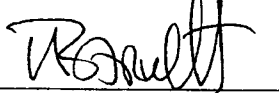
By: 
Name: Blake Barnett
Title: Chief Financial Officer

Agreed to and acknowledged in respect of Paragraph 14 and to confirm that any extension of the Debtor in Possession Revolving Credit and Security Agreement dated September 11, 2015 set forth herein shall not impair or invalidate or otherwise amend or modify the priority of any mortgage or deed of trust (or the liens granted therein) granted in favor of Agent for the benefit of Lenders:


HAGGEN PROPERTY NORTH, LLC

By: 
Name:
Title:

HAGGEN PROPERTY SOUTH, LLC

By: 
Name:
Title:

PNC BANK, NATIONAL ASSOCIATION
as a Lender and as Agent


By: 
Name: SCOTT GOLDSTEIN
Title: SVP

[Signature Page to Seventh Amendment to DIP Revolving Credit and Security Agreement
(Haggen)]

JPMORGAN CHASE BANK, N.A.
as a Lender

By: *James Falladay*
Name: *James Falladay*
Title: *Authorized Officer*

KEYBANK, N.A.
as a Lender

By: 
Name: JOHN P. HECKERL
Title: SENIOR VICE PRESIDENT

[Signature Page to Seventh Amendment to DIP Revolving Credit and Security Agreement
(Haggen)]

U.S. BANK NATIONAL ASSOCIATION
as a Lender

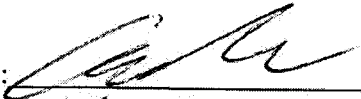
By: 

Name: Andrew Rosenblatt

Title: VP

[Signature Page to Seventh Amendment to DIP Revolving Credit and Security Agreement
(Haggen)]


CIT FINANCE LLC
as a Lender

By: 
Name: Anthony Masci
Title: Vice President

[Signature Page to Seventh Amendment to DIP Revolving Credit and Security Agreement
(Haggen)]

SIGNATURE BANK

as a Lender

By: 
Name: ROBERT WALLACE
Title: VICE PRESIDENT