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13 **UNITED STATES BANKRUPTCY COURT**
14 **DISTRICT OF NEVADA**

15 In re:

16 SUPERIOR LINEN, LLC,

17 Debtor.

18 Case No.: BK-S-15388-mkn
19 Chapter 11

20 Date: OST PENDING
21 Time: OST PENDING

22 **MOTION FOR AN ORDER: (I) AUTHORIZING SUPERPRIORITY POST-PETITION**
23 **FINANCING; (II) GRANTING LIENS AND PROVIDING SUPERPRIORITY**
24 **ADMINISTRATIVE EXPENSE CLAIMS; (III) APPROVING LOAN DOCUMENTS**
25 **RELATING TO THE FOREGOING; (IV) GRANTING RELIEF FROM THE**
26 **AUTOMATIC STAY; AND (V) GRANTING OTHER RELATED RELIEF**

27 Superior Linen, LLC, a Nevada limited liability company, as debtor and debtor in
28 possession (“Superior Linen” or “Debtor” or “Borrower”), by and through its proposed counsel,
Larson & Zirzow, hereby submits its motion (the “Motion”) requesting that the Court enter an
order approving the proposed financing as set forth herein. This Motion is made and based on the
points and authorities herein, the *Omnibus Declaration of Robert E. Smith in Support of Debtor’s*
Initial Motions and Related Relief (the “Omnibus Declaration”), the papers and pleadings on file
herein, judicial notice of which is respectfully requested, and any arguments of counsel entertained
by the Court at the time of the hearing on this matter.

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I. Jurisdiction and Venue

1
2 1. Debtor is a full service commercial laundry company providing the entire spectrum
3 of laundry services to hotels and food and beverage managed restaurants and clubs. A more
4 detailed history regarding the Debtor, its management and members, its financial and operating
5 performance, and its secured obligations is set forth in the Omnibus Declaration.

6 2. On September 30, 2016 (the "Petition Date"), the Debtor filed its voluntary petition
7 for relief under chapter 11 of title 11 of the United States Code (the "Bankruptcy Code"), thereby
8 commencing its bankruptcy case (the "Chapter 11 Case"). Debtor is authorized to operate its
9 business as debtor in possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code.

10 3. The Court has subject matter jurisdiction to consider and determine this matter
11 pursuant to 28 U.S.C. §§ 157 and 1334, and Local Rule 1001(b)(1). This is a core proceeding
12 pursuant to 28 U.S.C. § 157(b). The statutory basis for relief herein are sections 361, 362, 363,
13 364(c)(1), (d), and (e), and Fed. R. Bankr. P. 2002, 4001, 6004, and 9014, and LR 4001. Pursuant
14 to LR 9014.2, Debtor consents to the entry of final orders and judgments by the bankruptcy judge.
15 Venue is proper before this Court pursuant to 28 U.S.C. §§ 1408 and 1409.

II. Relief Requested

16
17 4. The Debtor seeks entry of an order, on both an interim and later a final basis: (i)
18 authorizing post-petition financing; (ii) granting liens and providing superpriority administrative
19 expense priority pursuant to sections 364(c)(1) and 364(d); (iii) approving the Loan Documents
20 (as defined below); (iv) granting relief from the automatic stay pursuant to section 362 of the
21 Bankruptcy Code; (v) granting other related relief. A proposed form of order is attached hereto as
22 **Exhibit 1** (the "Proposed Order").

23 5. The post-petition financing is a loan in the principal amount of \$860,000 (the "DIP
24 Loan") pursuant to: (i) Secured Loan and Security Agreement (the "DIP Loan Agreement")
25 attached hereto as **Exhibit 2** between the Debtor, as borrower, and RC VII Investments, LLC ("RD
26 VII") as lender; (ii) the Revolving Line of Credit Secured Promissory Note (the "DIP Note") as
27 attached hereto as **Exhibit 3**; (iii) the Proposed Order (collectively, as may be amended, modified
28 or supplemented, the "DIP Loan Documents").

1 **III. Statement Per Fed. R. Bankr. P. 4001 and LR 4001.**

2 6. Pursuant to Bankruptcy Rule 4001(c), below is a summary of the material terms of
3 the proposed DIP Loan (together with reference to applicable sections of the DIP Loan Agreement
4 and/or the Final Order:

5 (a) Total Dollar Commitment. \$860,000.00.

6 (b) Interest Rate. Contractual rate of 13.75% per annum with a default
7 rate of 18% per annum.

8 (c) Maturity. The earliest of: September 30, 2017; the date of
9 termination of Lender’s obligation to make an advance resulting from an “Event of
10 Default”; and the Effective Date of a confirmed Chapter 11 plan with respect to
11 Borrower.

12 (d) Purpose and Use of Proceeds and Cash Collateral. The advances
13 shall be used to fund monthly operational capital requirements of Debtor, including,
14 but not limited to, the restructuring and reorganization costs of Debtor, the payment
15 of administrative expenses and certain other claims and expenses as specifically set
16 forth in the Note and Budget.

17 (e) Grant and Scope of Liens on Property of the Estate. As collateral
18 security for the prompt payment in full when due (whether at stated maturity, upon
19 acceleration, on any optional or mandatory prepayment date or otherwise) and
20 performance of the Secured Obligations, Debtor hereby pledges and grants to the
21 Lender the following rights in the Collateral; (i) a continuing security interest in all
22 of Debtor’s right, title and interest in the Collateral and all other assets previously
23 secured by the Lender as of the date the Debtor commenced its Chapter 11 case, or
24 September 30, 2016, together with all post-petition accruals thereon; and (ii) a super
25 priority claim in the Debtor’s bankruptcy case in the amount of any outstanding
26 principal, interest and fees in respect of the Loan having priority over all
27 administrative expenses of the kind specified in § 105, § 326, § 328, § 330, § 331,
28 § 503(b), § 506(c), § 507(a), § 507(b), § 546(c) and § 726 of the Bankruptcy Code,
subject only to the following carve-out: all allowed unpaid fees and expenses
payable under § 328, § 330 and § 331 of the Bankruptcy Code to professional
persons retained pursuant to orders of the Bankruptcy Court by the Debtor in its
Chapter 11 case, not to exceed \$125,000. **IT IS THE INTENT THAT THE LIENS
GRANTED HEREIN SHALL PRIME RD VII’S EXISTING SENIOR
SECURED CLAIM, AS WELL AS THE JUNIOR SECURED CLAIM OF
MCDF VII/ADVANTAGE CAPITAL PURSUANT TO 364(d) OF THE
BANKRUPTCY CODE.**

(f) Events of Default. The occurrence of any or more of the following
shall constitute a “Default” by Debtor under this Agreement: Debtor’s breach or
failure to comply with any of its obligations under the Note; Debtor’s default on
the payment of any sum of money when due by Debtor, whether or not evidenced

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1 by the Note; Debtor’s failure to comply with the DIP Financing Order(s) or any
 2 final non-appealable order of the Bankruptcy Court; Debtor’s breach or failure to
 3 comply with any of its obligations under this Agreement; the DIP Financing
 4 Order(s) or the Chapter 11 Plan, are not filed in a form reasonably agreed upon by
 Lender, or are disapproved, or are reasonably likely to be disapproved, by the
 Bankruptcy Court; or a Chapter 11 Trustee is appointed in the Debtor’s Chapter 11
 Case, or the case is dismissed or converted to chapter 7.

5 (g) Liens Granted on Claims Arising Under Chapter 5. The DIP
 6 Lender’s liens shall not attach to, and the collateral for the DIP Loan shall not
 7 include avoidance actions under sections 502(d), 544, 547, 548, 550, and 553 of the
 Bankruptcy Code.

8 **IV. Statement of Facts**

9 **A. Business Overview, Management and Members.**

10 7. Debtor is a full service commercial laundry company providing the entire spectrum
 11 of laundry services to hotels and food and beverage managed restaurants and clubs. Founded in
 12 2010, Superior Linen is one of the leading commercial laundry and linen rental companies in Las
 13 Vegas operating in a 105,000 square foot mega plant in North Las Vegas. Superior Linen has
 14 made substantial investments in state of the art equipment, software systems and high quality
 15 inventory that have enabled it to become a very competitive linen rental and laundry company.
 16 Superior Linen’s offices and processing facility are located at 4501 Mitchell Street, North Las
 17 Vegas, Nevada 89081. The company operates by entering into Restaurant/Linen and/or Laundry
 18 Services Agreements with its customers.

19 8. Debtor is a Nevada limited liability company organized in 2010, and its current
 20 officers are D.W. “Doc” Wiener, President and Chief Operating Officer, and myself as Chief
 21 Financial Officer.

22 9. As of the Petition Date, the Debtor’s members are as follows:

<u>Member</u>	<u>Membership %</u>	<u>Principal</u>
BrightLight Holdings, LLC	20.64%	Richard Keister
Little Current, LLC	15.46%	Fred Seto
Fortuna Partners One, LLC	13.41%	Phillippe Pageau-Goyette
Rex Runzheimer Living Trust	13.03%	Rex Runzheimer, Trustee
D.W. “Doc” Wiener	11.44%	
RD VII Investments, LLC	6.74%	Rex Runzheimer
Montresor Corporation	5.90%	Phillippe Pageau-Goyette
Goyette Irrevocable Trust	2.74%	Phillippe Pageau-Goyette

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		Trustee
1	Glen Amador	2.68%
2	SPG Investments, LLC	2.65%
	Florian Nanz	1.74%
3	M-Superior Investor, LLC	1.05%
	Nameriko, LLC	.91%
4	Moritz Kratzer	.78%
	Andy Gasser	.62%
5	ESC Capital, Inc.	.21%
		Eric McLellan

6 Midwest Community Development Fund VII, L.L.C. also holds warrants, but the membership
7 interests that are the subject of those warrants have not been issued.

8 **B. Financial and Operating Performance.**

9 10. As of the end of August 2016, the Debtor's balance sheet reflected total assets of
10 \$13,819,893, which consisted principally of the following: total cash on hand of \$74,922, accounts
11 receivable of \$1,334,258, other current assets consisting of primarily linen inventory of
12 \$5,454,588, fixed assets consisting of primarily equipment (less accumulated depreciation) with a
13 value of \$6,488,433, and other assets with a book value of \$1,876,975.

14 11. As of the end of August 2016, the Debtor's balance sheet reflected total liabilities
15 of \$21,054,564, which consisted principally of the following: total payroll liabilities of \$570,458,
16 accrued expenses of \$2,607,261 (\$1,444,159 of which accrued interest payable), and total long
17 term liabilities of \$14,537,945 (excluding the accrued interest payable). Debtor's long term
18 liabilities include the approximate total sum of \$8,804,786 owing to its senior secured lender, RD
19 VII (as hereinafter defined), plus \$749,361 in accrued interest. In junior priority secured position
20 to RD VII is MCDF VII/Advantage Capital (as hereinafter defined), which is owed the
21 approximate total of \$8,052,908, which consists of \$6,750,000 in principal and \$1,302,998 in
22 accrued interest. Finally, the Debtor also owes the City of North Las Vegas the approximate sum
23 of \$712,873 for sewer hookup and usage expenses.

24 12. For 2015, the Debtor had total income of \$10,677,480, less various sums including
25 principally production expenses of \$8,421,527 and delivery expenses of \$1,814,835, less other
26 expenses, for an EBITDA of (\$1,491,487). Less overhead including principally interest expense
27 of \$1,001,713 and depreciation items of in excess of \$3,000,000, the Debtor had total net ordinary
28

1 income for 2015 of (\$6,198,201).

2 13. Year to date through the end of August 2016, the Debtor had total income of
3 \$8,141,990, less various sums including principally production expenses of \$5,190,798 and
4 delivery expenses of \$1,443,362, less other expenses, for an EBITDA of \$539,005. Less overhead
5 including principally interest expense of \$1,225,958 and depreciation items of in excess of
6 \$4,400,000, the Debtor had total net ordinary income YTD 2016 of (\$3,337,858).

7 **C. The Secured Loans.**

8 **1. First Priority Secured Lender: RD VII.**

9 14. On March 7, 2012, Superior Linen, as borrower, entered into a Loan and Security
10 Agreement (as amended, the "Loan Agreement") with FCC, LLC, d/b/a First Capital, as lender
11 (the "Original Lender"), for a term loan in the original principal amount of \$1,500,000 (the "Term
12 Loan"), and a revolving loan of up to \$3,500,000 in original principal amount (the "Revolving
13 Loan" and together with the Term Loan, as amended, the "Senior Loans"). The Term Loan had
14 an interest rate of 7.0% per annum and the Revolving Loan had an interest rate of 6.5% per annum,
15 with both carrying a default margin of an additional 3.0%. The Loan Agreement was for an
16 original term of three (3) years, and thus terminated was scheduled to terminate on March 7, 2015.

17 15. The Indebtedness and Obligations under the Senior Loans were secured by a
18 blanket, first priority security interest in and to all or substantially all of the Debtor's personal
19 property, including but not limited to all Accounts, Inventory, Equipment, Goods, General
20 Tangibles, Negotiable Collateral, investment property, chattel paper, all cash on deposit, all after
21 acquired property, all commercial tort claims, and all proceeds and products of the foregoing.¹ See
22 Omnibus Decl., **Exhibit 1**. All credit, loan, security and perfection documents associated with the
23 Senior Loans are hereinafter collectively, referred to as the "Loan Documents."

24 16. The Original Lender further secured and/or properly perfected its security interest
25 in and to its collateral through: (a) the filing of a UCC-1 financing statement with the Nevada
26

27 ¹ Unless otherwise indicated, all capitalized terms herein shall have the same meaning as set forth in the referenced
28 loan documents.

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1 Secretary of State on February 8, 2012; (b) a Securities Pledge Agreement pursuant to which each
2 of the then beneficial owners of the equity interests in Superior Linen pledge their interests therein;
3 (c) a Collateral Assignment of Contracts pursuant to which Superior Linen granted an assignment
4 and security interest in all contracts listed therein; (d) a Deposit Account Control Agreement
5 pursuant to which Superior Linen perfected a security interest in and to the company's bank
6 accounts with Bank of Nevada. See Omnibus Decl., Exhibit 2, Exhibit 3, Exhibit 4, and Exhibit
7 5, respectively.

8 17. On November 15, 2012, Superior Linen and the Original Lender entered into a
9 Waiver and First Amendment to Loan and Security Agreement (the "First Amendment"), which
10 indicated that Superior Linen was in default and had failed to comply with the financial covenants
11 in the Loan Agreement for the first three quarters of 2012. Pursuant to the First Amendment,
12 among other changes, the Original Lender waived the existing defaults, modified the definitions
13 of Borrowing Base and Concentration Limit, and modified certain financial covenants and
14 permitted capital expenditures. See Omnibus Decl., Exhibit 6.

15 18. On December 23, 2013, Superior Linen and the Original Lender entered into a
16 Waiver and Second Amendment to Loan and Security Agreement (the "Second Amendment"),
17 which indicated that Superior Linen was in default and had failed to comply with: (a) various
18 financial covenants related to fixed charge coverage ratio and a tangible net worth requirement;
19 (b) the requirement to pledge to the Original Lender all issued and outstanding equity interests; (c)
20 the prohibition on debt in the Loan Agreement other than the Subordinated Debt and debt
21 associated with certain purchase money security interests; (d) the limit in the Loan Agreement on
22 capital expenditures; (e) delivery of 2012 year-end financial statements by no later than the end of
23 the first quarter 2013. Pursuant to the Second Amendment, among other changes, the Original
24 Lender waived the existing defaults, increased the Revolving Loan Limit to \$5,500,000, less the
25 increased Term Loan Limit of \$1,900,000, increased the interest rate on the Term Loan to 7.5%
26 per annum, modified certain financial covenants and permitted capital expenditures, and also
27 extended the term of the loan for an additional year through March 7, 2016. See Omnibus Decl.,
28 Exhibit 7.

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1 19. On March 31, 2014, the beneficial owners of the equity interests in Superior Lien
2 executed an Amended and Restated Securities Pledge Agreement (the “Amended Pledge
3 Agreement”), pursuant to which they each pledged their equity interests in Superior Linen as
4 further security for repayment of the Senior Loans. See Omnibus Decl., **Exhibit 8**.

5 20. On September 9, 2014, Superior Linen and the Original Lender entered into a
6 Waiver and Third Amendment to Loan and Security Agreement (the “Third Amendment”), which
7 indicated that Superior Linen was in default and had failed to: (a) comply with the tangible net
8 worth requirement in the Loan Agreement; and (b) timely deliver its 2013 year-end financial
9 statements. Pursuant to the Third Amendment, among other changes, the Original Lender waived
10 the existing defaults, increased the Maximum Line Amount to \$7,500,000 and the Revolving Loan
11 Limit to \$5,350,000, modified the Term Loan Limit, modified certain financial covenants, and
12 also extended the term of the Senior Loans for an additional year through March 7, 2017. See
13 Omnibus Decl., **Exhibit 9**.

14 21. On December 8, 2014, Superior Linen and the Original Lender entered into a
15 Waiver, which indicated that Superior Linen was in default and had failed to comply with: (a) the
16 covenant prohibiting a junior loan facility and related liens (as a result of the Junior Loan
17 Agreement as hereinafter described in the next subsection); (b) complying with the fixed charge
18 coverage ratio requirement as of September 30, 2014; (b) delivery of a compliance certificate for
19 financial statements for the month ending October 31, 2014; (c) delivery of a detailed report of its
20 Inventory for the month ending October 31, 2014; (d) the prohibition on the amendment of
21 Superior Linen’s operating agreement without the Original Lender’s prior written consent; (e) the
22 requirement to timely provide an amendment to the Amended Pledge Agreement with respect to
23 all equity interests in Superior Linen and including a joinder of any additional equity holders; and
24 (f) Original Lender’s request to be provided with copies of all Linen Agreements. See Omnibus
25 Decl., **Exhibit 10**.

26 22. On April 1, 2015, the Original Lender sent a written termination notice of the Senior
27 Loans, which indicated that in light of Superior Linen’s existing defaults under the Loan
28 Agreement, that it was exercising its rights to terminate the Loan Agreement as of May 31, 2015.

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1 See Omnibus Decl., **Exhibit 11**.

2 23. On April 7, 2015, the beneficial owners of the equity interests in Superior Lien
3 executed a Second Amended and Restated Securities Pledge Agreement, pursuant to which they
4 each pledged their equity interests in Superior Linen as further security for repayment of the Senior
5 Loans. See Omnibus Decl., **Exhibit 12**.

6 24. In May 2015, ACF Finco I LP (“ACF Finco”) acquired the Original Lender, and
7 thus acquired all of the right, title, interest and security in and to the Senior Loans. Upon
8 information and belief, ACF Finco is an investment fund administered by Ares Management, L.P.,
9 which is one of the largest global alternative asset managers. On May 22, 2015, ACF Finco filed
10 an amended financing statement with the Nevada Secretary of State indicating the assignment of
11 the security interests under the Senior Loans from the Original Lender to it. See Omnibus Decl.,
12 **Exhibit 13**.

13 25. On June 17, 2015, ACF Finco sent a letter to Superior Linen indicating that it would
14 agree to extend the accelerated termination date for the Senior Loans to July 31, 2015, whereafter
15 all obligations and indebtedness under the Senior Loans would be due and payable. See Omnibus
16 Decl., **Exhibit 14**.

17 26. On August 3, 2015, RD VII Investments, LLC (“RD VII”), as buyer, entered into a
18 Purchase and Sale Agreement with ACF Finco, as seller, thereby purchasing all of ACF Finco’s
19 right, title, interest and security in and to the Senior Loans. As such, RD VII is the successor in
20 interest to the ACF Finco, who is in turn the successor to the Original Lender. RD VII is an entity
21 that is controlled by Rex Runzheimer and owned by Mr. Runzheimer, Darryl Hermann, Richard
22 Keister and seven other minority partners various of whom each, through their various entities as
23 previously noted, also own a substantial portion of the membership interest in Superior Linen as
24 well. See Omnibus Decl., **Exhibit 15**.

25 27. On August 5, 2015, ACF Finco, as assignor, and RD VII, as assignee, entered into
26 an Assignment of Loan and Loan Documents, whereby ACF Finco assigned all of its right, title
27 and interest in and to the Senior Loan and the associated loan and security documents to RD VII.
28 See Omnibus Decl., **Exhibit 16**.

1 28. Also on August 5, 2015, Superior Linen and RD VII entered into a Waiver and
2 Fourth Amendment to Loan and Security Agreement (the “Fourth Amendment”), which amended
3 the Loan Agreement in various ways, including but not limited to increasing the interest rate to
4 10% per annum, deleting various terms and covenants, and adding that if Superior Linen were
5 unable to refinance the Loan, sell all or substantially all of its assets, or otherwise repay the Loan
6 to within four (4) months (by December 5, 2015), then Superior Linen would cause to be issued to
7 RD VII a 1% equity interest (Series A Preferred Units). See Omnibus Decl., **Exhibit 17**.

8 29. By separate letter agreement also dated August 5, 2015, RD VII also waived various
9 events of default then existing under the Loan Agreement, subject to the terms and conditions in
10 the Loan Agreement as modified through and including the Fourth Amendment. See Omnibus
11 Decl., **Exhibit 18**.

12 30. On August 21, 2015, RD VII filed an amended financing statement with the Nevada
13 Secretary of State indicating its assignment of the Loan from ACF Finco. See Omnibus Decl.,
14 **Exhibit 19**.

15 **D. The Second Priority Secured Lender: Advantage Capital.**

16 31. On December 5, 2014, Superior Linen, as borrower, and Midwest Community
17 Development Fund VII, L.L.C. (“MCDF VII”), as lender, entered into a Credit Agreement (the
18 “Junior Loan Agreement”) pursuant to which Superior Linen executed and delivered a promissory
19 note dated as of the same date in the principal amount of \$6,750,000 (the “Junior Loan”). Upon
20 information and belief, MCDF VII is an investment fund administered by Advantage Capital, an
21 investment adviser registered under the Investment Advisers Act of 1940.

22 32. The Junior Loan had various interest rates depending on Superior Linen’s EBITDA
23 calculated on a trailing twelve (12) month basis, ranging from 9-12% per annum, with default rate
24 of an additional 3% per annum. The Junior Loan Agreement was for an original term of
25 approximately five (5) years, and had a maturity date of December 31, 2019. The indebtedness
26 and obligations under the Junior Loan Agreement were evidenced by a Promissory Note (the
27 “Junior Note”), a security interest was granted pursuant to a separate Security Agreement (the
28 “Junior Security Agreement”) thereby granting a blanket, second priority security interest in and

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1 to all or substantially all of the Debtor's personal property, wherever located, and whether then
2 owned, existing or thereafter acquired or arising, as well as all proceeds and products of the
3 foregoing. See Omnibus Decl., **Exhibit 20**, **Exhibit 21**, and **Exhibit 22**, respectively.

4 33. On December 8, 2014, Superior Linen, MCDF VII and the Original Lender entered
5 into a Subordination Agreement (the "Subordination Agreement") pursuant to which the Junior
6 Lender agreed that its indebtedness was subordinate and junior in right of payment to the prior
7 indefeasible payment in full of all indebtedness owing to the holder of the Senior Loans. See
8 Omnibus Decl., **Exhibit 23**.

9 34. On December 9, 2014, MCDF VII perfected its security interest in and to its
10 collateral by filing a UCC-1 financing statement with the Nevada Secretary of State. See Omnibus
11 Decl., **Exhibit 24**.

12 35. On July 27, 2015, MCDF VII sent a default letter to Superior Linen asserting that
13 certain events of default under the Junior Credit Agreement had occurred and remained uncured.

14 36. On August 5, 2015, Superior Linen, as borrower, and MCDF VII, as lender, entered
15 into a First Modification Agreement and an Amended and Restated Promissory Note, which noted
16 the additional \$1,000,000 being provided by RD VII and thus that MCDF's payments under its
17 Junior Loan would also be amended as set forth in the Amended and Restated Promissory Note,
18 which called for interest only payments commencing May 1, 2016, and then principal payments
19 starting on a monthly basis in January 2017 until the maturity date. See Omnibus Decl., **Exhibit**
20 **25** and **Exhibit 26**, respectively.

21 **E. The Forbearance and Related Agreements.**

22 37. On or about August 25, 2016, Superior Linen entered into the following
23 agreements: (a) a Forbearance Agreement and Fifth Amendment to Loan and Security Agreement
24 with RD VII (the "Fifth Amendment"); (b) a Forbearance Agreement with MCDF VII (the "MCDF
25 Forbearance Agreement"); (c) a First Amendment to the Subordination Agreement with RD VII
26 and MCDF VII (the "Amended Subordination Agreement"). See Omnibus Decl., **Exhibit 27**,
27 **Exhibit 28**, and **Exhibit 29**, respectively.

28 38. Pursuant to the Fifth Amendment, Superior Linen admitted to the existence of

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1 numerous defaults under the Loan Documents with RD VII, including: (a) the amount due on the
2 Revolving Loan exceeds the Borrowing Base, the Revolving Loan Limit and the Maximum Line
3 Amount; (b) failing to make timely payments; (c) the fixed charge coverage ratio and for failing
4 to provide required financial covenant declarations; (d) timely delivery of the annual financial
5 statements for 2015; (e) failure to pay timely rent for the first half of 2016; (f) Superior Linen's
6 default under its Junior Loan Agreement with MCDF VII; (g) the cancellation of certain material
7 customer contracts resulting in a material adverse effect; (h) failing to issue the required Series A
8 Preferred Units.

9 39. Further, in the Fifth Amendment, Superior Linen acknowledged and agreed that, as
10 of the date thereof, the amount owed to RD VII was the principal amount of \$7,804,807.47,
11 consisting of outstanding advances under the Revolving Loans of \$5,690,807.47 and the Term
12 Loan of \$2,150,000.00, plus accrued and unpaid interest, among other items. The Forbearance
13 Agreement also increased the principal Revolving Loan Limit in favor of Superior Linen up to
14 \$8,350,000.

15 40. Per the Fifth Amendment, and subject to the terms and conditions therein, RD VII
16 agreed to forbear from exercising its rights with respect to the existing default and modify the Loan
17 Agreement to, among other things, increase the amount of indebtedness available to Superior
18 Linen thereunder, and provide time for Superior Linen to seek replacement financing. In
19 particular, Superior Linen agreed to forbear through January 1, 2017, or such earlier date if there
20 were a new default under the terms therein and Lender has elected to terminate its agreement to
21 forbear and to instead pursue its remedies to collect payment of the full amount due.

22 41. Finally, in the Fifth Amendment the parties acknowledged that in the event of a
23 default thereunder, Superior Linen intended to file for protection under chapter 11 of the
24 Bankruptcy Code, in which case, RD VII was prepared to consider providing Superior Linen with
25 use of its cash collateral in accordance with the Bankruptcy Code, RD VII's rights under the Loan
26 Documents and the Forbearance Agreement.

27 42. In the MCDF Forbearance Agreement, Superior Linen acknowledged the existing
28 of various defaults, but MCDF VII agreed, subject to the terms and conditions therein, to forbear

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1 from exercising its rights with respect to those existing defaults until January 1, 2017 or such
2 earlier date as may constitute a new event of default thereunder and MCDF VII elected to terminate
3 its agreement therein to forbear. Further, this agreement provided that it created no obligation by
4 MCDF VII to renew, extend or modify the Junior Loan.

5 43. Pursuant to the Amended Subordination Agreement, subject to the terms and
6 conditions therein, both secured lenders and Superior Linen reaffirmed that RD VII pursuant to
7 which the Junior Lender reaffirmed its agreement that its indebtedness was subordinate and junior
8 in right of payment to the prior indefeasible payment in full of all indebtedness owing to the holder
9 of the Senior Loans.

10 44. Superior Linen's corporate resolution authorizing the foregoing agreements further
11 provided that that if it defaulted on its obligations under those agreements, the company was
12 authorized and directed to immediately file for chapter 11 bankruptcy protection.

13 45. On September 9, 2016, RD VII filed a continuation statement with the Nevada
14 Secretary of State, thereby giving notice of its continued perfected senior secured status in and to
15 all or substantially all of the Debtor's personal property. See Omnibus Decl., **Exhibit 30**.

16 46. Superior Linen thereafter defaulted under the terms of the Fifth Amendment, and
17 lacked sufficient available cash on hand or access to credit to fund its employee payroll ending
18 September 2016, and thus was left with no other choice but to file its voluntary petition for relief
19 under chapter 11 of the Bankruptcy Code in order to arrange for additional financing to fund
20 ongoing operations and to allow for an orderly reorganization of its financial affairs and/or a sale
21 of its business. Subject to the Court's approval of the Initial Motions, Superior Linen will remain
22 fully operational and ready and willing both to serve its existing customers as well as to continue
23 its positive growth trajectory.

24 **V. Legal Argument**

25 **A. Debtors' Need for Financing.**

26 47. The Debtor's ability to finance their operations post-petition is essential to the
27 Debtor's ability to maximize the value of its estate. The Debtor does not have sufficient liquid
28 assets in its estate available to finance its operations post-petition. As such, in the absence of the

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1 Debtor obtaining credit pursuant to section 364 of the Bankruptcy Code, the Debtor's estate would
2 suffer immediate and irreparable harm. The preservation, maintenance, and enhancement of the
3 value of the Debtor is of the utmost significance and importance to a successful restructuring or
4 liquidation of the Debtor.

5 48. The Debtor needs approval of and access to the DIP Loan to fund the Chapter 11
6 Case. The Debtor cannot meet its ongoing post-petition obligations unless it has the authorization
7 to execute the Loan Documents and access the proceeds of the DIP Loan. In the absence of such
8 access to funds, immediate and irreparable harm will result to the Debtor, its estate, and its
9 creditors, rendering a reorganization or orderly sale and/or liquidation of Debtor impossible and
10 thus compromising or even precluding any meaningful distribution to the Debtor's creditors. The
11 Debtor believes that the terms and conditions of the DIP Loan Documents, and the proposed Final
12 Order, and the related relief requested herein are fair, reasonable, and in the best interests of the
13 Debtor, its creditors, and its estate.

14 49. Debtor has been able to obtain financing in the aggregate maximum amount of
15 \$860,000 in the form of secured credit, allowable under section 364(b) as an administrative
16 expense, and section 364(c)(1) and (d) as a secured expense. The source of the funding is the DIP
17 Lender, whose owners are also significant members of the Debtor.

18 **B. The Debtor Does Not Have an Alternative to the DIP Loan.**

19 50. While the value of the Debtor's assets and business exceed the DIP Loan amount,
20 as set forth above, such assets are illiquid. Without the DIP Loan, the Debtor's ability to continue
21 operating during its Chapter 11 Case will be jeopardized.

22 51. The Debtor believes, based on its discussions with institutional and noninstitutional
23 lenders, that they could not obtain financing from any other lender on terms equally or more
24 favorable than the DIP Loan offered by the DIP Lender, and certainly not before all of the Debtor's
25 limited cash resources were depleted by the search. The Debtor exercised its best business
26 judgment in negotiating the Loan Documents and the Final Order that is presently before the Court.

27 52. The DIP Lender's offer to provide the DIP Loan as an administrative claim pursuant
28 to section 364(b) and a superpriority priming lien loan pursuant to Section 364(d), in an amount

1 necessary to meet the Debtor's working capital needs on the terms, and within the time frame
2 provided, simply cannot, in the judgment of Debtor, be matched by any third-party lender. The
3 DIP Lender has already performed all the due diligence necessary in connection with the DIP Loan
4 and, thus, is well positioned to provide post-petition financing to the Debtor.

5 **C. Application of the Business Judgment Standard.**

6 53. As described above, the Debtor has concluded that the DIP Loan provides the only
7 reasonable alternative available under the circumstances. Bankruptcy courts routinely defer to a
8 debtor's business judgment on business decisions, including the decision to borrow money. See
9 Group of Inst'l Investors v. Chicago Mil. St. P. & Pac. Ry., 318 U.S. 523, 550 (1943); Ames, 115
10 B.R. at 38 (in examining requests for interim financing, courts apply the same business judgment
11 standard applicable to other business decisions); see also In re Yellowstone Mountain Club, LLC,
12 2008 WL 5869859 (Bankr. D. Mont. Nov. 26, 2008) (acknowledging the use of the business
13 judgment standard with respect to approval of section 364 financing).

14 54. Courts generally will not second-guess a debtor-in-possession's business decisions
15 when those decisions involve "a business judgment made in good faith, upon a reasonable basis,
16 and within the scope of [its] authority under the Code." Id. at 513-14 (footnotes omitted); see also
17 In re Simasko Prod. Co., 47 B.R. 444, 449 (D. Colo. 1985) ("Business judgments should be left to
18 the board room and not to this Court."); In re Lifeguard Indus., Inc., 37 B.R. 3, 17 (Bankr. S.D.
19 Ohio 1983) (same). In general, a bankruptcy court should defer to a debtor-in-possession's
20 business judgment regarding the need for and the proposed use of funds, unless such decision is
21 arbitrary and capricious. See In re Curlew Valley Assoc., 14 B.R. 506, 511-13 (Bankr. D. Utah
22 1981). Provided that a debtor's business judgment does not run afoul of the provisions of, and
23 policies underlying, the Bankruptcy Code, courts generally grant a debtor considerable deference
24 in acting in accordance therewith. See, e.g., In re Ames Dep't Stores, Inc., 115 B.R. 34, 40 (Bankr.
25 S.D.N.Y. 1990) ("[T]he court's discretion under section 364 is to be utilized on grounds that permit
26 reasonable business judgment to be exercised so long as the financing agreement does not contain
27 terms that leverage the bankruptcy process and powers or its purpose is not so much to benefit the
28 estates as it is to benefit a party-in-interest.").

1 55. Approval of the DIP Loan will provide the Debtor with immediate and ongoing
2 access to funds so that the Debtor can avoid harm to its estates and likely erosion of the value of
3 their assets. Absent access to the DIP Loan, the Debtor will not have sufficient available sources
4 of working capital and financing to successfully liquidate its assets, and tender a distribution to the
5 Debtor's creditors through a plan of reorganization. The funds provided under the DIP Loan will
6 enable the Debtor to prosecute its Chapter 11 Case in an orderly and reasonable manner that
7 preserves and enhances the value of the estate.

8 56. The Debtor has exercised sound business judgment in determining that the
9 proposed DIP facility is appropriate and have satisfied the legal prerequisites to borrow under the
10 DIP Documents. Accordingly, the Debtor should be granted authority to borrow funds from the
11 DIP Lender pursuant to section 364 of the Bankruptcy Code, and take the other actions
12 contemplated herein.

13 **D. Good Faith.**

14 57. Section 364(e) was designed to "encourage the extension of credit to debtors" by
15 allowing lenders to "rely on a bankruptcy court's authorization of the transaction." In re EDC
16 Holding Co., 676 F.2d 945, 947 (7th Cir. 1982) (the purpose of Section 364(e) is "to overcome
17 people's natural reluctance to deal with a bankrupt firm whether as purchaser or lender by assuring
18 them that so long as they are relying in good faith on a bankruptcy judge's approval of the
19 transaction they need not worry about their priority merely because some creditor is objecting to
20 the transaction and is trying to get the district court or the court of appeals to reverse the bankruptcy
21 judge"); see also In re North Atlantic Millwork Corp., 155 B.R. 271, 279 (Bankr. D. Mass. 1993)
22 ("The purpose of section 364(e) is to allow good faith lenders to rely upon conditions at the time
23 they extend credit and to encourage lenders to lend to bankrupt entities.").

24 58. The proposed DIP Loan is the result of good faith and arm's-length negotiations,
25 with all parties represented by counsel. Although the DIP Lender is affiliated with the members
26 of the Debtor, the Debtor negotiated the DIP Facility solely in pursuit of the best interests of the
27 Debtor and its estate. The Debtor believes that the terms of the DIP Loan are fair and reasonable
28

1 under the circumstances, and that the DIP Lender is entitled to the benefits of section 364(e) of the
2 Bankruptcy Code.

3 **VI. Modification of the Automatic Stay.**

4 59. The relief requested herein contemplates a modification of the automatic stay (to
5 the extent applicable) to permit the Debtor to: (i) grant the liens as set forth herein and in the DIP
6 Loan Agreement to the DIP Lenders and to perform such acts as may be requested to assure the
7 perfection and priority of such liens; (ii) permit the DIP Lender to exercise, in compliance with
8 the terms of the DIP Loan Agreement, all rights and remedies under such DIP Loan Agreement;
9 and (iii) implement the terms of the Final Order.

10 60. Stay modifications of this kind are ordinary and standard features of post-petition
11 debtor financing facilities and, in the Debtor's business judgment, are reasonable and fair under
12 the present circumstances.

13 **VII. Conclusion**

14 WHEREFORE, Debtor respectfully requests that the Court enter the Order thereby
15 authorizing and approving Debtor's use of Cash Collateral, subject to the terms and conditions of
16 the Stipulation. The Debtor also requests such other and further relief as is just and proper.

17 DATED: October 3, 2016.

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