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Honorable Mike K. Nakagawa  
United States Bankruptcy Judge



Entered on Docket  
December 16, 2016

LARSON & ZIRZOW, LLC  
ZACHARIAH LARSON, ESQ.  
Nevada Bar No. 7787  
E-mail: zlarson@lzlawnv.com  
MATTHEW C. ZIRZOW, ESQ.  
Nevada Bar No. 7222  
E-mail: mzirzow@lzlawnv.com  
850 E. Bonneville Ave.  
Las Vegas, Nevada 89101  
Tel: (702) 382-1170  
Fax: (702) 382-1169

Proposed Attorneys for Debtor

**UNITED STATES BANKRUPTCY COURT  
DISTRICT OF NEVADA**

In re:  
  
SUPERIOR LINEN, LLC,  
  
Debtor.

Case No.: 16-15388-mkn  
Chapter 11

Final Hearing:  
Date: November 1, 2016  
Time: 9:30 a.m.

**FINAL ORDER GRANTING MOTION FOR APPROVAL OF  
STIPULATION, AS AMENDED, BY AND BETWEEN THE DEBTOR  
AND RD VII INVESTMENTS, LLC FOR CONSENT TO USE CASH AND  
CASH COLLATERAL PURSUANT TO 11 U.S.C. § 363(c)(2), AND GRANTING  
ADEQUATE PROTECTION PURSUANT TO 11 U.S.C. §§ 362 AND 363(e)**

Superior Linen, LLC, a Nevada limited liability company, as debtor and debtor in possession (the “Debtor”), having filed its *Motion for Approval of Stipulation by and Between the Debtor and RD VII Investments, LLC for Consent to Use of Cash Collateral Pursuant to 11 U.S.C. § 363(c)(2), and Granting Adequate Protection Pursuant to 11 U.S.C. §§ 362 and 363(e)* (the

LARSON & ZIRZOW, LLC  
850 E. Bonneville Ave.  
Las Vegas, Nevada 89101  
Tel: (702) 382-1170 Fax: (702) 382-1169

1 “Motion”) [ECF No. 13],<sup>1</sup> thereby seeking approval of the *Stipulation by and Between the Debtor*  
2 *and RD VII Investments, LLC for Consent to Use of Cash Collateral Pursuant to 11 U.S.C. §*  
3 *363(c)(2), and Granting Adequate Protection Pursuant to 11 U.S.C. §§ 362 and 363(e)* (the  
4 “Stipulation”) [ECF No. 12]; the Court having held various hearings and having ordered various  
5 interim approvals of the Motion and Stipulation; the matters having been further negotiated with  
6 various parties in interest after the Petition Date, including but not limited to with the Official  
7 Committee of Unsecured Creditors (the “Committee”), which negotiations have resulted in various  
8 modifications as set forth in that certain *Supplement* (the “Supplement”) filed on October 31, 2016  
9 [ECF No. 90], which the parties thereto, being the Debtor, the Committee, and RD VII Investments,  
10 LLC (“RD VII”), have approved and which has also resulted in the Committee withdrawing its  
11 objections to the Motion, subject to the amendments in the Supplement; the Court having reviewed  
12 and considered the Motion, and the other papers and pleadings on file, including but not limited  
13 to the Supplement; the Court having stated its findings of fact and conclusions of law on the  
14 record at the various hearings on the Motion, which are incorporated herein by this reference in  
15 accordance with Fed. R. Civ. P. 52, as made applicable by Fed. R. Bankr. P. 7052 and 9014; and  
16 after due deliberation and sufficient cause appearing therefor,

17 **IT IS HEREBY ORDERED:**

- 18 1. The Motion is GRANTED on a final basis as amended.
- 19 2. The Amended Cash Collateral Stipulation (the “Amended Stipulation”) as  
20 attached hereto as **Exhibit 1** is authorized and approved on a final basis, and the terms and  
21 conditions thereof are incorporated herein by reference, and shall be in full force and effect upon  
22 entry of this Order.
- 23 3. The Debtor is entitled to use any and all cash and alleged Cash Collateral in  
24 accordance with the Budget, and subject to the applicable terms and conditions, including that  
25 the Debtor may use any cash and alleged Cash Collateral in excess of any line item in the Budget  
26 so long as the percentage of deviation for each line item shall not exceed fifteen percent (15%)

27 \_\_\_\_\_  
28 <sup>1</sup> Unless otherwise indicated, all capitalized terms herein shall have the same meaning as set forth in the Stipulation.

1 for said expenditures with positive variances carrying forward.

2 4. As and for adequate protection, RD VII is granted the following: (a) pursuant to  
3 section 364(c)(1) of the Bankruptcy Code, a superpriority claim under section 507(b) of the  
4 Bankruptcy Code against the Debtor and its estate; and (b) pursuant to section 361(2) of the  
5 Bankruptcy Code, valid and perfected replacement security interests in and liens upon Debtor's  
6 assets and property to the extent held pre-petition, and proceeds thereof; *provided, however*, that  
7 in all events, only to the extent of any decrease in value of its properly perfected security  
8 interests resulting from the use of Cash Collateral herein.

9 5. As and for adequate protection, Midwest Community Development Fund VII,  
10 L.L.C. is granted, pursuant to section 361(2) of the Bankruptcy Code, valid and perfected junior  
11 replacement security interests in and liens upon Debtor's assets and property to the extent held  
12 pre-petition, and proceeds thereof; *provided, however*, that in all events, only to the extent of any  
13 decrease in value of its properly perfected security interests resulting from the use of Cash  
14 Collateral herein.

15 6. The deadline for responses to any discovery requests from the Committee, subject  
16 to any appropriate objections, with respect to the Review of Transactions contemplated in  
17 Section 16 of the Amended Stipulation shall be within fourteen (14) days of service thereof, or  
18 sooner as practicable.

19 7. The Court shall hold a hearing on December 8, 2016 at 9:30 a.m. with respect to  
20 any request filed by the Committee or other party in interest for a grant of derivative standing  
21 with respect to any alleged claims held by or under the control of the Debtor and the bankruptcy  
22 estate (a "Derivative Standing Motion"). Any Derivative Standing Motion must be filed by  
23 November 10, 2016, any opposition thereto must be filed by November 23, 2016, and any reply  
24 to any oppositions must be filed by December 1, 2016. The Lender Claim Deadline (as defined  
25 in the Amended Stipulation) shall be tolled pending the Court's adjudication of any Derivative  
26 Standing Motion to the date that is fourteen (14) days after entry of an order adjudicating such  
27 matter.

28 8. The Court shall retain jurisdiction with respect to any matters, claims, rights or

1 disputes arising from or related to the terms or implementation of this Order and the Amended  
2 Stipulation.

3 **IT IS SO ORDERED.**

LARSON & ZIRZOW, LLC  
850 E. Bonneville Ave.  
Las Vegas, Nevada 89101  
Tel: (702) 382-1170 Fax: (702) 382-1169

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PREPARED AND SUBMITTED:

APPROVED:

By: /s/ Matthew C. Zirzow  
LARSON & ZIRZOW, LLC  
ZACHARIAH LARSON, ESQ.  
Nevada Bar No. 7787  
MATTHEW C. ZIRZOW, ESQ.  
Nevada Bar No. 7222  
850 E. Bonneville Ave.  
Las Vegas, Nevada 89101

By: /s/ Samuel Schwartz  
SCHWARTZ FLANSBURG PLLC  
SAMUEL A. SCHWARTZ, ESQ.  
Nevada Bar No. 10985  
BRYAN A. LINDSEY, ESQ.  
Nevada Bar No. 10662  
6623 Las Vegas Blvd. Ste. 300  
Las Vegas, Nevada 89119

Proposed Attorneys for Debtor

Attorneys for RD VII Investments, LLC

APPROVED:

APPROVED:

By: /s/ J. Michal Bloom  
OFFICE OF THE U.S. TRUSTEE  
J. MICHAL BLOOM  
300 Las Vegas Blvd S #4300  
Las Vegas, Nevada 89101

By: /s/ Michael Kogan  
KOGAN LAW FIRM APC  
MICHAEL S. KOGAN, ESQ.  
1849 Sawtelle Blvd., Suite 700  
Los Angeles, CA 90025

Attorneys for Baltic Linen

APPROVED:

APPROVED / DISAPPROVED:

By: /s/ Candace Carlyon  
MORRIS POLICH & PURDY, LLP  
3800 Howard Hughes Parkway, Suite 500  
Las Vegas, Nevada 89169

By: /s/ Matthew Okin  
McDONALD CARANO WILSON LLP  
RYAN J. WORKS, ESQ.  
Nevada Bar No. 9224  
2300 W. Sahara Avenue, Suite 1200  
Las Vegas, Nevada 89102

Attorneys for the Official Committee of  
Unsecured Creditors

OKIN ADAMS LLP  
MATTHEW S. OKIN, ESQ.  
(Admitted Pro Hac Vice)  
DAVID CURRY JR.  
(Admitted Pro Hac Vice)  
1113 Vine St., Suite 201  
Houston, Texas 77002

Attorneys for Midwest Community  
Development Fund VII, L.L.C.

**LR 9021 CERTIFICATION**

In accordance with LR 9021, counsel submitting this document certifies that the order accurately reflects the court's ruling and that (check one):

LARSON & ZIRZOW, LLC  
850 E. Bonneville Ave.  
Las Vegas, Nevada 89101  
Tel: (702) 382-1170 Fax: (702) 382-1169

1  The court has waived the requirement set forth in LR 9021(b)(1).

2  No party appeared at the hearing or filed an objection to the motion.

3  I have delivered a copy of this proposed order to all counsel who appeared at the  
4 hearing, and each has approved or disapproved the order, or failed to respond, as indicated  
above.

5  I certify that this is a case under Chapter 7 or 13, that I have served a copy of this  
6 order with the motion pursuant to LR 9014(g), and that no party has objected to the form or  
content of the order.

7 ###

LARSON & ZIRZOW, LLC  
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Las Vegas, Nevada 89101  
Tel: (702) 382-1170 Fax: (702) 382-1169

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# EXHIBIT “1”

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1 Samuel A. Schwartz, Esq.  
Nevada Bar No. 10985  
2 Bryan A. Lindsey, Esq.  
Nevada Bar No. 10662  
3 Schwartz Flansburg PLLC  
6623 Las Vegas Blvd. South, Suite 300  
4 Las Vegas, Nevada 89119  
Telephone: (702) 385-5544  
5 Facsimile: (702) 385-2741  
6 Attorneys for Secured Lender,  
RD VII Investments, LLC  
7

8 **UNITED STATES BANKRUPTCY COURT**  
9 **DISTRICT OF NEVADA**

10 In re: ) Case No. 16-15388 MKN  
11 Superior Linen, LLC, ) Chapter 11  
12 Debtor. )  
13 \_\_\_\_\_ )

14 **STIPULATION BY AND BETWEEN THE DEBTOR AND RD VII**  
15 **INVESTMENTS, LLC FOR CONSENT TO USE CASH COLLATERAL**  
16 **PURSUANT TO 11 U.S.C. § 363(c)(2), AND GRANTING**  
**ADEQUATE PROTECTION PURSUANT TO 11 U.S.C. §§ 362 AND 363(e)**

17 Superior Linen, LLC, d/b/a Superior Linen and Laundry Services, a Nevada limited  
18 liability company, as debtor and debtor in possession (the “**Debtor**”), by and through its  
19 proposed counsel, Larson & Zirzow, and RD VII Investments, LLC (“**RD VII**”), by and  
20 through its undersigned counsel, Schwartz Flansburg PLLC, hereby stipulate and agree (the  
21 “**Stipulation**”) as follows:

22 **BACKGROUND**

23 1. On September 30, 2016 (the “**Petition Date**”), the Debtor filed a voluntary  
24 petition for relief under Chapter 11 of Title 11 of the Unites States Code (the “**Bankruptcy**  
25 **Code**”). The Debtor continues to operate its business as debtor-in-possession pursuant to  
26 Sections 1107(a) and 1108 of the Bankruptcy Code, which business consists of a full service  
27 commercial laundry company providing the entire spectrum of laundry services to hotels and



1 food and beverage managed restaurants and clubs (the “**Business**”).

2 **JURISDICTION**

3 2. This Stipulation presents a core proceeding per 28 U.S.C. § 157. This Court has  
4 jurisdiction over this proceeding and the parties and property affected hereby pursuant to 28  
5 U.S.C. §§ 157 and 1334 and LR 1001(b)(1). Pursuant to LR 9014.2, the Parties consent to  
6 entry of final order(s) or judgment(s) by the bankruptcy judge related to this Stipulation if it is  
7 determined that the bankruptcy judge, absent consent of the parties, cannot enter final orders  
8 for judgment consistent with Article III of the United States Constitution.

9 **THE RD VII INVESTMENTS, LLC LOAN**

10 3. **The Senior Loan.** On March 7, 2012, the Debtor, as borrower, entered into a  
11 Loan and Security Agreement (as amended, the “**Loan Agreement**”) with FCC, LLC, d/b/a  
12 First Capital, as lender (the “**Original Lender**”), for a term loan in the original principal  
13 amount of \$5,000,000 (as amended, the “**Term Loan**”), and a revolving loan of up to  
14 \$3,500,000 in original principal amount (as amended, the “**Revolving Loan**” and together with  
15 the Term Loan, as amended, the “**Senior Loans**”).

16 4. The Senior Loan was amended by that certain Waiver and First Amendment to  
17 Loan and Security Agreement dated November 15, 2012, as further amended by that certain  
18 Waiver and Second Amendment to Loan and Security Agreement, dated as of December 23,  
19 2013, as further amended by that certain Waiver and Third Amendment to Loan and Security  
20 Agreement, dated as of September 10, 2014, and as further amended by that certain Waiver  
21 and Fourth Amendment to Loan and Security Agreement, dated as of August 5, 2015, at which  
22 time the Senior Loan was purchased by RD VII from ACF Finco I LP who, in turn, had  
23 acquired the Original Lender, and thus acquired all of the right, title, interest and security in  
24 and to the Senior Loans.

25 5. **The Payments.** The Senior Loan calls for payments of principal and interest  
26 (each a “**Payment**”) on the first day of each calendar month. The interest rate is calculated  
27 monthly, and payable on the first day of each calendar month, at a rate computed on the basis

1 of the actual number of days elapsed over a year of 360 days, equal to a fixed rate of ten  
2 percent (10%) per annum. If any payment due under the Note is late, RD VII may collect a  
3 late charge, attorneys' fees and costs.

4       6.       **The Collateral.** The indebtedness and obligations under the Senior Loans were  
5 secured by a blanket, first priority security interest in and to all or substantially all of the  
6 Debtor's personal property, including but not limited to all accounts, inventory, equipment,  
7 goods, general intangibles, negotiable collateral, investment property, chattel paper, all cash on  
8 deposit, all after acquired property, all commercial tort claims, and all proceeds and products of  
9 the foregoing (collectively, the "**Collateral**").

10       7.       **Perfection of Security Interest.** The Original Lender further secured and/or  
11 properly perfected its security interest in and to its Collateral through, among other matters:  
12 (a) the filing of a UCC-1 financing statement with the Nevada Secretary of State on February  
13 8, 2012 (the "**Financing Statement**"); (b) a Securities Pledge Agreement pursuant to which  
14 each of the then beneficial owners of the equity interests in the Debtor pledged their interests  
15 therein; (c) a Collateral Assignment of Contracts pursuant to which the Debtor granted an  
16 assignment and security interest in all contracts listed therein; (d) a Deposit Account Control  
17 Agreement (the "**Deposit Control Agreement**") pursuant to which the Debtor perfected a  
18 security interest in and to the company's bank accounts. A continuation statement was filed  
19 with the Nevada Secretary of State on September 9, 2016. The Financing Statement is the  
20 earliest record of a security agreement that appears in the records maintained by the Nevada  
21 Secretary of State and is thus senior to filings by other purported secured creditors, if any,  
22 including Advantage (collectively, the "**Other Secured Creditors**").

23       8.       **Senior Loan Documents.** The Loan Agreement and such other documents that  
24 may exist referring or relating to the Debtor's obligations to RD VII under the Senior Loan are  
25 collectively referred to as the "**Senior Loan Documents.**" For the avoidance of doubt, the  
26 description of the Senior Loan Documents contained in this Stipulation is for illustrative  
27 purposes only, and done without prejudice or limitation of any rights or remedies the Parties

1 may have under those documents or pursuant to applicable law.

2 9. **The Junior Loan.** On December 5, 2014, the Debtor, as borrower, and  
3 Midwest Community Development Fund VII, LLC, a Delaware limited liability company  
4 (“**Advantage**”), as lender, entered into that certain Credit Agreement (as amended, the “**Junior**  
5 **Loan**”), pursuant to which the Debtor was authorized to borrow up to \$6,750,000 as further  
6 evidenced by a Promissory Note. On August 5, 2015, the Debtor and Advantage entered into a  
7 First Modification Agreement and an Amended and Restated Promissory Note.

8 10. **The Subordination Agreement.** On December 8, 2014, the Debtor, RD VII  
9 and Advantage, entered into that certain Subordination Agreement (the “**Subordination**  
10 **Agreement**”), through which Advantage agreed that all of the Debtor’s obligations under the  
11 Senior Loan are secured by the Collateral (as defined herein), and the Junior Loan shall be  
12 subordinate and junior in right of payment to the Senior Loan, until the Senior Loan is paid in  
13 full.

14 11. **The Forbearance and Related Agreements.** On August 25, 2016, the Debtor  
15 and RD VII entered into that certain Forbearance Agreement and Fifth Amendment to Loan  
16 and Security Agreement (the “**Forbearance Agreement**”), the terms of which, as well as each  
17 of the prior amendments to the Loan, are incorporated herein. On this same day, the Debtor  
18 also entered into a Forbearance Agreement with Advantage, and a First Amendment to the  
19 previous Subordination Agreement with RD VII and Advantage pursuant to which both  
20 secured lenders and Superior Linen reaffirmed their agreement that the Junior Loan was  
21 subordinate and junior in right of payment to the prior indefeasible payment in full of all  
22 indebtedness owing under the Senior Loans to RD VII.

23 **STIPULATION AND AGREEMENT**

24 12. **Recitals.** Debtor agrees that the foregoing recitals are true and correct, and are  
25 incorporated herein.

26 13. **Debtor Acknowledgments.** The Debtor admits, agrees and acknowledges that:  
27 (a) the Debtor is liable to RD VII under the Senior Loan Documents; (b) RD VII’s first lien as

1 evidenced by the Senior Loan Documents is valid, perfected, unavoidable and enforceable  
2 against the Collateral; (c) as of the Petition Date, the unpaid principal balance owing to RD VII  
3 is the sum of at least \$7,939,786,<sup>1</sup> exclusive of interest, attorneys' fees, other fees, costs, and  
4 expenses recoverable under the Senior Loan Documents.

5 14. **Release of Claims.** As consideration for the use of Cash Collateral pursuant to  
6 this Stipulation, Debtor, on behalf of itself, its successors and assigns, discharges and acquits  
7 RD VII and its past and present affiliates, joint ventures, successors, assigns, members,  
8 managers, officers, directors, agents and employees (in their individual and representative  
9 capacities) (collectively referred to below as the "**Released Parties**"), of and from any and all  
10 rights, claims, demands, obligations, liabilities, indebtedness, breaches of contract, breaches of  
11 duty of any relationship, acts, omissions, misfeasance, malfeasance, cause or causes of action,  
12 debts, sums of money, accounts, compensations, contracts, controversies, promises, damages,  
13 costs, losses and expenses of every type, kind, nature, description or character, and irrespective  
14 of how, why, or by reason of what facts, whether heretofore or now existing, or that could,  
15 might, or may be claimed to exist, of whatever kind or name, whether known or unknown,  
16 suspected or unsuspected, liquidated or unliquidated, claimed or unclaimed, whether based on  
17 contract, tort, breach of any duty, including lender liability or any other legal or equitable  
18 theory of recovery, including, but not limited to those that in any way arise from or out of, are  
19 connected with, or relate to the Senior Loan.

20 15. **Cash Collateral.** RD VII asserts, and the Debtor acknowledges and admits, that  
21 the cash-on-hand and in Debtor's bank accounts, as well as all cash generated from the  
22 Business, including the proceeds of all accounts receivable both existing on the Petition Date  
23 and generated subsequent to the Petition Date, is "**Cash Collateral**," and as such, RD VII is  
24 entitled, pursuant to Sections 361 and 363(e) of the Bankruptcy Code, to adequate protection of  
25

26 <sup>1</sup> For the avoidance of doubt, RD VII reserves all rights and remedies with respect to the actual amount of its  
27 indebtedness due and owing and asserts that the actual balance with all fees and charges is closer to \$10,000,000.

1 its interest as a condition to Debtor's use of Cash Collateral.

2       16.    **Review of Transactions.** Notwithstanding any other provision of this  
3 agreement, including, without limitations, the provisions of Paragraphs 12, 13, 14, and 15  
4 hereof, no release of any person or entity shall be binding against the bankruptcy estate of the  
5 Debtor (the "Estate"), the Official Unsecured Creditors' Committee (the "Committee"), any  
6 authorized party in interest in this Bankruptcy Case ("Party in Interest"), or any subsequently  
7 appointed trustee ("Trustee"); provided that any claims or defenses with respect to the  
8 Released Parties must be asserted on or December 15, 2016, unless such time is extended upon  
9 written agreement of RD VII or upon order of the Court for good cause shown (the "Lender  
10 Claim Deadline"). Any assertion of such right or defense by the Committee or any Party in  
11 Interest shall also be deemed to be an assertion on behalf of the Estate, including, but not  
12 limited to, derivative rights of the Estate.

13       17.    **Debtor's Initial Reorganization Objectives and Needs.** Debtor seeks to  
14 explore a reorganization, a sale as a going concern, or liquidation of the Business. The Debtor  
15 is required to maintain and preserve the Business and the Collateral in the meantime. In order  
16 to do so, it has developed an operational budget for October through December 2016 (the  
17 "**Budget**"), a copy of which is attached as **Exhibit A**. The Budget may be amended from time  
18 to time subject to the review and consent of RD VII.

19       18.    **Use of Cash Collateral.** The Debtor needs to use the cash generated by the  
20 Business as well as the cash in its bank accounts to continue the operation of the Business. If  
21 the Debtor is unable to continue its business operations and pay its vendors, the Debtor would  
22 be in default under its other obligations and the Business may fail. Shortly after the Petition  
23 Date, Debtor requested authorization from RD VII to use the Cash Collateral in the operation  
24 of the Business. But for Debtor agreeing to the specific terms of this Stipulation and the entry  
25 of an order by the Court authorizing the same, RD VII would not consent, and would object, to  
26 Debtor's use of Cash Collateral.

27       19.    **Adequate Protection Payments.** As and for adequate protection, the Debtor



1 shall either: (i) pay to RD VII on or before the fifteenth day of each month the current Payment  
2 due under the Note; or (ii) if the monthly Payment is not paid, such Payment shall accrue and  
3 be added to the loan balance.

4       20.     **Authorization to Use Cash Collateral.** Debtor is authorized pursuant to  
5 Section 363(c)(2) of the Bankruptcy Code to collect the Cash Collateral and use the Cash  
6 Collateral in its Business in accordance with the Budget. No sums shall be used other than as  
7 set forth in this Stipulation and Budget without RD VII's prior written consent or an order of  
8 the Court following notice to RD VII. In any event, the authorization to use Cash Collateral  
9 shall expire on the earlier of (a) an Event of Default (as defined below), subject to the notice  
10 and cure provisions contained in this Stipulation, or (b) December 31, 2016, unless that date is  
11 extended by written agreement of the Debtor and RD VII. Notwithstanding any other  
12 provision of this Agreement, neither the Debtor nor any Trustee shall be prohibited from  
13 seeking authorization from the Court for the use of Cash Collateral in accordance with §363.

14       21.     **Replacement Lien.** As and for adequate protection of RD VII's interests in the  
15 Cash Collateral used by the Debtor pursuant to this Stipulation, RD VII is granted, pursuant to  
16 Sections 361 and 363(e) of the Bankruptcy Code, a valid, perfected, and enforceable new  
17 priority replacement lien (the "**Replacement Lien**") upon all categories of property of the  
18 Debtor and its estate, whether now existing or hereafter acquired or arising, upon the  
19 Collateral, and all proceeds, rents, products, or profits thereof, including, without limitation,  
20 the Collateral (collectively the "**Post-Petition Collateral**"), to the extent of the Adequate  
21 Protection Obligation (defined below).

22       22.     **Continuation of Deposit Control Agreement.** Following the Petition Date,  
23 Debtor is seeking approval pursuant to a cash management-related motion to have its existing  
24 pre-petition bank accounts designated as debtor-in-possession accounts and without having to  
25 open new post-petition accounts. Debtor's existing pre-petition accounts and/or any post-  
26 petition accounts shall collectively be referred to as the "**DIP Account.**" The Parties  
27 acknowledge and agree that the funds deposited into the DIP Account are, and going forward

1 will be, “proceeds” of “accounts” in which RD VII holds a properly-perfected, first-priority  
2 security interest. As further adequate protection of RD VII’s interest in Cash Collateral and the  
3 Post-Petition Collateral, and to ensure that RD VII remains fully perfected, Debtor will within  
4 five (5) business days following approval by the Court of this Stipulation either confirm that its  
5 existing pre-petition bank accounts have been approved by the Court to be designated as its  
6 post-petition DIP Account, in which case the existing Deposit Control Agreement shall remain  
7 in full force and effect. In the alternative, if the Debtor’s cash management motion is denied  
8 and the Debtor is required to open new post-petition bank accounts as its DIP Account, then  
9 the Debtor shall direct Bank of Nevada to execute and deliver to RD VII a deposit control  
10 agreement (a “**Control Agreement**”) in a form and substance satisfactory to RD VII after  
11 consultation with the bank providing the Debtor’s DIP Account. The Parties will expressly  
12 provide in the Control Agreement, and in any Order approving this Stipulation, that the  
13 security interest granted pursuant to the Control Agreement shall constitute a first-priority lien  
14 with priority over any security interests held by Other Secured Creditors, to the same extent  
15 and validity that such funds would have constituted a first-priority lien if acquired pre-petition,  
16 and subject to the liens and interests of RD VII pursuant to the Debtor’s revolving line of credit  
17 obtained postpetition from RD VII (the “DIP Loan”).

18       23.     **Interim Approval of Stipulation.** The Parties believe that the initial approval  
19 of this Stipulation is an emergency, in that any further interruption of Debtor’s ability to use  
20 Cash Collateral and Post-Petition Collateral will critically impair Debtor’s ability to sustain the  
21 Business and the Property. Debtor is filing herewith a motion to approve this Stipulation  
22 pursuant to Fed. R. Bankr. P. 4001(d) (the “**Motion**”). Because the immediate use of Cash  
23 Collateral in accordance with the Budget is necessary to avoid immediate and irreparable harm  
24 to the estate, the Parties request that the Court grant interim approval of this Stipulation  
25 pursuant to Fed. R. Bankr. P. 4001(b)(2), with such approval to become final after a final  
26 hearing thereon in accordance with Fed. R. Bankr. P. 4001.

27       24.     **Negotiations.** The Parties believe that this Stipulation provides RD VII with the



1 adequate protection required under Sections 361 and 363(e) of the Bankruptcy Code, and  
2 constitutes the provision of adequate protection within the meaning of Section 507(b). The  
3 Parties believe that this Stipulation and the provisions regarding the use of Cash Collateral are  
4 in the best interest of Debtor's estate and its creditors.

5       25.    **Business Judgment.** Debtor asserts that the agreement reflected in this  
6 Stipulation is the product of the Debtor's reasonable business judgment.

7       26.    **Reporting; Inspection Rights.** RD VII shall continue to be entitled to all  
8 reporting and inspection rights provided under the Senior Loan Documents. In addition,  
9 Debtor shall provide to RD VII, no later than the twentieth calendar day of each month for the  
10 prior calendar month, (1) a completed and filed Monthly Operating Report in compliance with  
11 applicable U.S. Trustee Guidelines; and (2) an accounting of each receipt and expenditure, in  
12 categories which correspond to the Budget, which include the total receipts and expenditures  
13 per budget line item and the variance from the Budget.

14       27.    **No Surcharge.** Debtor and any successors, including any trustee appointed in  
15 this Chapter 11 Case, shall be bound by the terms of this Stipulation and not be permitted to  
16 surcharge the Cash Collateral or the Property under Sections 506(c) or 552(a) of the  
17 Bankruptcy Code, or otherwise, without RD VII's written consent, which RD VII may  
18 withhold in its sole and absolute discretion.

19       28.    **Operation in Accordance with Budget.** The use of Cash Collateral as  
20 provided for in this Stipulation is also conditioned upon the Debtor operating the Business in  
21 accordance with the Budget, subject to a ten percent (10%) variance for any line item on a  
22 monthly basis, provided that actual total expenses do not exceed the aggregate budgeted  
23 expenses by more than five percent (5%) in any one month.

24       29.    **No Other Changes.** All terms of the Senior Loan Documents shall remain in  
25 full force and effect and remain binding, except when inconsistent with this Stipulation, or any  
26 orders approving this Stipulation, whether on an interim or final basis.

27       30.    **Post-Petition Liens.** The liens and security interests granted by this Stipulation:

1 (a) are and shall be in addition to all security interests, liens and rights of setoff and  
2 recoupment existing in favor of RD VII on the Petition Date; (b) are and shall be valid,  
3 perfected, enforceable, and effective as of the Petition Date without any further action by  
4 Debtor or RD VII and without the execution, filing, or recordation of any financing statements,  
5 security agreements, mortgages, or other documents; and (c) shall secure payment of the pre-  
6 petition indebtedness in an amount to ensure adequate protection of RD VII's interests and to  
7 protect against the diminution of the Collateral ("**Adequate Protection Obligation**"), which  
8 occurs during the pendency of the Chapter 11 Case, whether such diminution is a consequence  
9 of the Debtor's use of the Collateral (including the Debtor's consumption of Cash Collateral),  
10 the economic depreciation of the Collateral, or otherwise. Notwithstanding the foregoing, RD  
11 VII shall have, regardless of any change in the value of its Collateral, a valid and perfected lien  
12 (or other interest) on any post-petition assets in which RD VII would have had such a lien (or  
13 other interest) in such assets had they been acquired pre-petition (but which shall not, in any  
14 event, be a lien on any recoveries under Chapter V of the Bankruptcy Code).

15 31. **Priority Claim.** To the extent that the value of the Replacement Lien, post-  
16 petition liens, and security interests granted to RD VII pursuant to this Stipulation proves to be  
17 inadequate to assure full payment of the Adequate Protection Obligation, the Adequate  
18 Protection Obligation shall be afforded status as an administrative priority expense claim  
19 equivalent in priority to a claim under Section 507(b) of the Bankruptcy Code.

20 32. **Assurances.** Debtor shall, after the date of this Stipulation: (a) provide notice to  
21 RD VII as soon as practicable of the occurrence of any Event of Default (as defined below) or  
22 any event known to Debtor or its counsel which, with the passage of time or giving of notice,  
23 or both, would constitute an Event of Default; (b) oppose any appeal or other challenge to the  
24 Stipulation, including any action taken to amend, modify, or vacate the Stipulation without RD  
25 VII's written consent; and (c) only incur indebtedness reasonably necessary for the operation  
26 of Debtor's Business.

27 33. **Events of Default.** The following shall constitute an "**Event of Default**" under

1 this Stipulation: (a) from and after the entry of an order approving this Stipulation on an  
2 interim basis, Debtor violates any of the material provisions of the Senior Loan Documents or  
3 any order approving this Stipulation except for those defaults waived in writing by RD VII or  
4 otherwise inconsistent with this Stipulation; (b) the Chapter 11 Case is converted to a case  
5 under Chapter 7 of the Bankruptcy Code; (c) the Court authorizes the appointment of a Chapter  
6 11 trustee in the Chapter 11 Case over the Debtor; (d) any lien, security interest or priority  
7 created by this Stipulation shall, for any reason, cease to be valid and enforceable in  
8 accordance with the original terms of this Stipulation, or an order is entered by the Court  
9 amending, modifying, supplementing, vacating, or staying this Stipulation without the written  
10 consent of RD VII; (e) the Court enters an order: (i) granting relief from the automatic stay per  
11 Section 362 of the Bankruptcy Code to the holder of any security interest or lien senior or pari  
12 passu to RD VII's security interest in or lien upon any of Debtor's assets without the prior  
13 written consent of RD VII; or (ii) allowing any lien or security interest that is senior or pari  
14 passu to any lien held by RD VII to attach to the Collateral or the Post-Petition Collateral  
15 without the prior written consent of RD VII; (f) Debtor files any motion or takes any action  
16 inconsistent with this Stipulation; (g) Debtor defaults in the performance of any of its  
17 obligations in this Stipulation, including the use of any Cash Collateral in a manner not  
18 specifically provided for by this Stipulation; (h) Debtor fails to maintain adequate commercial  
19 general liability and hazard insurance, and all other policies of insurance required by law  
20 and/or the Senior Loan Documents; (i) the dismissal of the Chapter 11 Case; (j) failure to have  
21 a disclosure statement (including a date set for confirmation) to accompany a plan approved by  
22 December 31, 2016, unless that date is extended pursuant to a written agreement between  
23 Debtor and RD VII; and (k) any uncured event of default under any stipulation for adequate  
24 protection between Debtor and any Other Secured Creditors. Notwithstanding anything herein  
25 to the contrary, it shall not be an Event of Default should the Debtor create, incur or suffer to  
26 exist any post-petition liens or security interests with respect to: (a) any lien or right provided  
27 to any depository bank pursuant to any order entered by the Court with respect to cash

1 management; (b) the perfection of any liens after the Petition Date that are excepted from the  
2 stay pursuant to sections 362(b) or 546(b) of the Bankruptcy Code; (c) any tax liens arising in  
3 favor of any applicable authority to secure *ad valorem* taxes assessed or in favor of any  
4 authority to secure water, sewer, inspection, hookup or related fees.

5 34. **Effect of Default.** Upon the occurrence of any Event of Default, RD VII shall  
6 cause to be transmitted to Debtor and Debtor's counsel (which may be made by facsimile  
7 transmission or email) and UCC Counsel (which may be via email transmission) a Notice of  
8 Default. Any cure shall include a payment of \$500.00, in addition to any other sums due, as  
9 partial payment of RD VII's attorneys' fees and costs for preparation and transmission of the  
10 Notice of Default. If the Event of Default is not cured within five (5) business days following  
11 transmission of the Notice of Default (the "**Cure Period**"), or if there is a third Notice of  
12 Default following service of two previous Notices of Default for any reason; and *provided*  
13 *further* that the Court has not entered an order within such Cure Period prohibiting the exercise  
14 of any of the following actions, rights and remedies by RD VII (the date of expiration of the  
15 Cure Period, the "**Termination Date**"), then RD VII shall be entitled to the following relief:

16 (a) Debtor's authority to use Cash Collateral on a consensual basis shall  
17 immediately and automatically terminate;

18 (b) RD VII shall be entitled to seek immediate relief from the automatic stay  
19 imposed by Section 362(a), and Debtor consents to the hearing of such motion on  
20 shortened time.;

21 (c) All amounts due under the Senior Loans shall be immediately due and  
22 payable;

23 (d) If RD VII is granted relief from the automatic stay, the Debtor shall  
24 cooperate fully and in good faith with RD VII in turning over the Collateral in an  
25 orderly and expeditious manner, and until such time, shall preserve, protect and  
26 maintain the Collateral to avoid waste or impairment of the Collateral; and

27 (e) RD VII shall be entitled to file and pursue confirmation of its own

1 Chapter 11 plan and disclosure statement, in accordance with Section 1121 of the  
2 Bankruptcy Code.

3 During the Cure Period, the issues at any hearing on any objection to the occurrence of an  
4 Event of Default shall be limited to whether, in fact, an Event of Default has occurred, is  
5 continuing, and/or remains uncured, and, if such objection is not resolved or adjudicated prior  
6 to expiration of the Cure Period, the Termination Date shall nevertheless occur upon expiration  
7 of the Cure Period.

8 35. **Waiver of Events of Default.** Any Event of Default may be waived by written  
9 waiver executed by RD VII. Upon the receipt by the Debtor of any such written waiver,  
10 Debtor's authority to use Cash Collateral per the terms and conditions of this Stipulation shall  
11 be retroactively reinstated as if no Event of Default had occurred. RD VII consents to the  
12 Debtor seeking a hearing before the Court on order shortening time during the Cure Period.

13 36. **No Other Waivers.** Notwithstanding any provision of this Stipulation to the  
14 contrary, nothing in this Stipulation shall constitute or be deemed to constitute a waiver of any  
15 rights, remedies, claims, or defenses RD VII may have pursuant to all of the Senior Loan  
16 Documents, the Bankruptcy Code, or applicable non-bankruptcy law, including without  
17 limitation, the right of RD VII to move for relief from the automatic stay. The rights and  
18 obligations of the Debtor and the rights and security interests of RD VII arising out of this  
19 Stipulation are in addition to, and are not intended as a waiver or substitution for any right,  
20 remedy, lien, or security interest granted under the Senior Loan Documents. Further, except as  
21 specifically provided herein, nothing in this Stipulation is a waiver of any of the Parties' rights,  
22 remedies, liens, or security interests granted under the Senior Loan Documents or other  
23 applicable law.

24 37. **Effect of Termination.** The rights and obligations of the Debtor and RD VII  
25 with respect to all transactions that occur prior to any termination of the authority of the Debtor  
26 to use Cash Collateral, including, without limitation, the validity, priority, and extent any  
27 administrative priority claims under Section 507(b) of the Bankruptcy Code provided for



1 herein, shall remain unimpaired and unaffected by, and shall survive any such termination.

2 38. **No Invalidity.** Any stay, modification, reversal or vacation of this Stipulation  
3 shall not affect the validity of the Liens granted to RD VII with respect to the Adequate  
4 Protection Obligation or the DIP Loan.

5 39. **Effect of Modification.** Any reversal, modification, or vacation of the  
6 Stipulation shall not affect the validity or priority of the obligations of the Debtor to RD VII  
7 incurred or arising by operation of law or any security interest or lien granted to RD VII with  
8 respect to the Adequate Protection Obligation under this Stipulation or with respect to the DIP  
9 Loan before the effective date of such reversal, modification or vacation.

10 40. **Reservation of Rights.** Notwithstanding any provisions of this Stipulation to  
11 the contrary, nothing herein shall prejudice any rights of RD VII, including the rights of RD  
12 VII to: (a) seek further adequate protection under Sections 361 and 363 of the Bankruptcy  
13 Code; (b) seek relief from the automatic stay under Section 362(d) of the Bankruptcy Code; or  
14 (c) oppose, contest, challenge, or defend any motion, complaint, sale motion, plan of  
15 reorganization, or other pleading for relief filed by the Debtor in the Court or any other court.

16 41. **Binding Effect.** This Stipulation is binding upon Debtor and, unless a Claim is  
17 made prior to the expiration of the Lender Claim Deadline, upon Debtor's successors in  
18 interest and all parties in interest, including any trustee appointed in this Chapter 11 Case,  
19 whether under Chapter 11 or otherwise, or in any other bankruptcy case or similar proceeding  
20 to which Debtor may become a party.

21 42. **Carve-Out.** Notwithstanding the any pre-petition liens and the liens and  
22 security interests granted herein to secure to the Adequate Protection Obligation, the Cash  
23 Collateral may be used by the Debtor to pay the statutory fees of the clerk of the Court and the  
24 United States Trustee pursuant to 28 U.S.C. § 1930(a) and 11 U.S.C. § 726(b) expenses, and to  
25 pay for the following allowed administrative expenses of professionals (collectively, the  
26 "**Carve-Out**"). As to the Debtor's and the Committee's professionals in particular, the Carve-  
27 Out shall cover any and all reasonable fees and expenses of its professionals, including but not

1 necessarily limited to its attorneys, financial advisors, accountants and/or appraisers retained  
2 by the Debtor (the “**Professionals**”), which may be paid in the ordinary course of business as  
3 authorized to be paid under sections 330 and 331 of the Bankruptcy Code or otherwise  
4 pursuant to an order of this Court, as and when due and payable; *provided, however*, that (i)  
5 RD VII shall have no Carve Out obligation for the fees and expenses of the Professionals,  
6 unless such fees and expenses were accrued prior to the Termination Date, have been approved  
7 by final order of this Court, and are consistent with the Budget; (ii) nothing in this Stipulation  
8 shall impair the right of any party (including RD VII) to object to the reasonableness of any  
9 such fees or expenses to be paid by the Debtor’s estates and (iii) the aggregate amount of the  
10 Professional fees and expenses paid from the Carve-Out shall in no event exceed \$125,000 for  
11 fees and expenses incurred prior to the Termination Date by Debtor’s counsel and U.S.  
12 Trustee’s fees, and \$55,000 for Committee’s counsel, unless increased upon written consent of  
13 RD VII.

14 **RESPECTFULLY SUBMITTED:**

15 Dated this 31st day of October, 2016.

Dated this 31st day of October, 2016.

16 /s/ Samuel A. Schwartz  
17 Samuel A. Schwartz, Esq.  
Nevada Bar No. 10985  
18 Bryan A. Lindsey, Esq.  
Nevada Bar No. 10662  
19 Schwartz Flansburg PLLC  
6623 Las Vegas Blvd. South, Suite 300  
20 Las Vegas, Nevada 89119  
Telephone: (702) 385-5544  
21 Facsimile: (702) 385-2741  
22 Attorneys for Secured Lender,  
23 RD VII Investments, LLC

/s/ Matthew C. Zirzow  
Zachariah Larson, Esq.  
Nevada Bar No. 7787  
Matthew C. Zirzow, Esq.  
Nevada Bar No. 7222  
Larson & Zirzow, LLC  
850 E. Bonneville Ave.  
Las Vegas, Nevada 89101  
Telephone: (702) 382-1170  
Facsimile: (702) 381-1169  
Proposed Attorneys for Debtor