

Doyle S. Byers, #11440  
Ellen E. Ostrow, #14743  
HOLLAND & HART LLP  
222 S. Main Street, Suite 2200  
Salt Lake City, UT 84101  
Telephone: (801) 799-5800  
Fax: (801) 799-5700  
dsbyers@hollandhart.com  
eeostrow@hollandhart.com  
*Counsel for Official Committee of Unsecured Creditors*

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**IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF UTAH**

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In re:

THE FALLS EVENT CENTER, LLC,

Debtor.

Bankruptcy No. 18-25116

Chapter 11

Honorable R. Kimball Mosier

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**JOINDER AND OBJECTION OF OFFICIAL COMMITTEE OF UNSECURED  
CREDITORS TO MOTION FOR RELIEF FROM STAY**

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The Official Committee of Unsecured Creditors appointed in the case of The Falls Event Center LLC (the “**Committee**”), by and through its counsel, joins in the Chapter 11 Trustee’s Objection (the “**Objection**”) [Docket No. 296] to the Motion for Relief from Stay (the “**Motion**”) [Docket No. 267], filed by the Evergreen Aviation and Space Museum and The Captain Michael King Smith Educational Institute (collectively, the “**Museum**”), and in support of the same, respectfully avers as follows:

1. As a preliminary matter, the Committee adopts the arguments set forth by the Chapter 11 Trustee in the Objection and incorporates the same by reference as if set forth at length herein.

2. In further support of the Objection, the Committee notes that to the extent the Museum had any valid security interest in prepetition revenues, such interest does not extend to post-petition revenues generated.

3. Section 552(a) of the Bankruptcy Code provides that “property acquired by the estate or by the debtor after the commencement of the case is not subject to any lien resulting from any security agreement entered into by the debtor before the commencement of the case.” *See Far East Nat’l Bank v. U.S. Trustee (In re Premier Golf Properties L.P.)*, 477 B.R. 767, 771 (B.A.P. 9th Cir. 2012) (“The purpose of § 552(a) is to allow a debtor to gather into the estate as much money as possible to satisfy the claims of all creditors.”) (internal quotation and citations omitted).

4. Section 552(a) is subject to subsection (b)(1), which provides that a prepetition lien continues post-petition if the security interest extends to “proceeds, products, offspring, or profits of such property.” 11 U.S.C. § 552(b)(1).

5. A creditor’s interest in “proceeds, products, offspring, or profits” pursuant to § 552(b) depends on state law. And, pursuant to the definition of “proceeds” under UCC § 9-102(a)(64) (O.R.S. § 79.0102), “postpetition proceeds, products, offspring, or profits are subject to an after-acquired property clause only if they *derive from* prepetition collateral.” *See In re Premier Golf Properties L.P.*, 477 B.R. at 775 (“[R]evenue generated by the operation of a debtor’s business, post-petition, is not considered proceeds if such revenue represents compensation for goods and services rendered by the debtor in its everyday business performance . . . . Revenue generated post-petition solely as a result of a debtor’s labor is not subject to a creditor’s pre-petition interest.”) (emphasis in original and citation and internal

quotations omitted).

6. It is the creditor's burden to establish that (1) its security agreement extends to post-petition property, and (2) the post-petition property is "proceeds, products, offspring, or profits" of its prepetition collateral. *See id.* at 772.

7. The Museum claims its security interest is in "gross revenue generated by the Debtor's operation of the Wings and Waves Waterpark and Debtor's hosted events on the Evergreen Aviation and Space Museum campus, earned on and after January 1, 2017" and was properly perfected by the filing of UCC-1 statements.<sup>1</sup>

8. Even if true, pursuant to § 552(a), the Museum's claimed security interest in revenues generated by the Debtor's operation of the waterpark and hosting events does not extend to revenues generated post-petition. The revenues generated post-petition are solely as a result of the debtor's labor and are not subject to an exception under § 552(b).

9. Accordingly, to the extent the Museum claims an interest in the post-petition revenues, including that the post-petition revenues are cash collateral, the Museum is mistaken, and the Committee requests the Court deny the Motion.

DATED: January 29, 2019

HOLLAND & HART LLP

/s/ Ellen E. Ostrow

Doyle S. Byers

Ellen E. Ostrow

*Attorneys for Official Committee of Unsecured  
Creditors, The Falls Event Center LLC*

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<sup>1</sup> Notably, the UCC-1 financing statement filed against The Falls Event Center, LLC was filed within 90 days of the petition.

### CERTIFICATE OF SERVICE

The undersigned hereby certifies that on the 29th day of January, 2019 a copy of the foregoing was served as follows:

**By Electronic Service:** I certify that the parties of record in this case as identified below, are registered CM/ECF users:

- James W. Anderson [jwa@clydesnow.com](mailto:jwa@clydesnow.com), [ritchie@clydesnow.com](mailto:ritchie@clydesnow.com); [atrujillo@clydesnow.com](mailto:atrujillo@clydesnow.com)
- David P. Billings [dbillings@fabianvancott.com](mailto:dbillings@fabianvancott.com), [jwinger@fabianvancott.com](mailto:jwinger@fabianvancott.com); [mdewitt@fabianvancott.com](mailto:mdewitt@fabianvancott.com)
- Ryan C. Cadwallader [rcadwallader@kmclaw.com](mailto:rcadwallader@kmclaw.com), [tslaughter@kmclaw.com](mailto:tslaughter@kmclaw.com)
- Laurie A. Cayton [tr.laurie.cayton@usdoj.gov](mailto:tr.laurie.cayton@usdoj.gov), [James.Gee@usdoj.gov](mailto:James.Gee@usdoj.gov); [Lindsey.Huston@usdoj.gov](mailto:Lindsey.Huston@usdoj.gov); [Suzanne.Verhaal@usdoj.gov](mailto:Suzanne.Verhaal@usdoj.gov)
- Thomas E. Goodwin [tgoodwin@parrbrown.com](mailto:tgoodwin@parrbrown.com), [nmckean@parrbrown.com](mailto:nmckean@parrbrown.com)
- Oren Buchanan Haker [oren.haker@stoel.com](mailto:oren.haker@stoel.com), [jennifer.lowes@stoel.com](mailto:jennifer.lowes@stoel.com); [daniel.kubitz@stoel.com](mailto:daniel.kubitz@stoel.com); [docketclerk@stoel.com](mailto:docketclerk@stoel.com); [rene.alvin@stoel.com](mailto:rene.alvin@stoel.com); [kc.harding@stoel.com](mailto:kc.harding@stoel.com)
- Mark E. Hindley [mehindley@stoel.com](mailto:mehindley@stoel.com), [rnoass@stoel.com](mailto:rnoass@stoel.com); [slcdocket@stoel.com](mailto:slcdocket@stoel.com)
- Alan C. Hochheiser [ahochheiser@mauricewutscher.com](mailto:ahochheiser@mauricewutscher.com)
- Mary Margaret Hunt [hunt.peggy@dorsey.com](mailto:hunt.peggy@dorsey.com), [long.candy@dorsey.com](mailto:long.candy@dorsey.com)
- Michael R. Johnson [mjohnson@rqn.com](mailto:mjohnson@rqn.com), [docket@rqn.com](mailto:docket@rqn.com); [dburton@rqn.com](mailto:dburton@rqn.com)
- Peter J. Kuhn [tr.Peter.J.Kuhn@usdoj.gov](mailto:tr.Peter.J.Kuhn@usdoj.gov), [James.Gee@usdoj.gov](mailto:James.Gee@usdoj.gov); [Lindsey.Huston@usdoj.gov](mailto:Lindsey.Huston@usdoj.gov); [Suzanne.Verhaal@usdoj.gov](mailto:Suzanne.Verhaal@usdoj.gov)
- David H. Leigh [dleigh@rqn.com](mailto:dleigh@rqn.com), [dburton@rqn.com](mailto:dburton@rqn.com); [docket@rqn.com](mailto:docket@rqn.com)
- Ralph R. Mabey [rmabey@kmclaw.com](mailto:rmabey@kmclaw.com)
- Jessica G. McKinlay [mckinlay.jessica@dorsey.com](mailto:mckinlay.jessica@dorsey.com), [Segovia.Maria@dorsey.com](mailto:Segovia.Maria@dorsey.com)
- Elaine A. Monson [emonson@rqn.com](mailto:emonson@rqn.com), [docket@rqn.com](mailto:docket@rqn.com); [pbrown@rqn.com](mailto:pbrown@rqn.com)
- John T. Morgan [tr.john.t.morgan@usdoj.gov](mailto:tr.john.t.morgan@usdoj.gov), [james.Gee@usdoj.gov](mailto:james.Gee@usdoj.gov); [Lindsey.Huston@usdoj.gov](mailto:Lindsey.Huston@usdoj.gov); [Suzanne.Verhaal@usdoj.gov](mailto:Suzanne.Verhaal@usdoj.gov)
- Chad Rasmussen [chad@alpinalegal.com](mailto:chad@alpinalegal.com), [contact@alpinalegal.com](mailto:contact@alpinalegal.com)
- Michael S. Steck [michael@clariorlaw.com](mailto:michael@clariorlaw.com)
- Mark S. Swan [mark@swanlaw.net](mailto:mark@swanlaw.net)
- Richard C. Terry [richard@tjblawyers.com](mailto:richard@tjblawyers.com), [cbcecf@yahoo.com](mailto:cbcecf@yahoo.com)
- Michael F. Thomson [thomson.michael@dorsey.com](mailto:thomson.michael@dorsey.com), [montoya.michelle@dorsey.com](mailto:montoya.michelle@dorsey.com); [ventrello.ashley@dorsey.com](mailto:ventrello.ashley@dorsey.com) [UT17@ecfcbis.com](mailto:UT17@ecfcbis.com); [montoya.michelle@dorsey.com](mailto:montoya.michelle@dorsey.com)
- United States Trustee [USTPRegion19.SK.ECF@usdoj.gov](mailto:USTPRegion19.SK.ECF@usdoj.gov)
- Brent D. Wride [bwride@rqn.com](mailto:bwride@rqn.com), [docket@rqn.com](mailto:docket@rqn.com); [pbrown@rqn.com](mailto:pbrown@rqn.com)

/s/ Ellen E. Ostrow