

Prepared and submitted by:

Michael F. Thomson (#9707)
Peggy Hunt (#6060)
John J. Wiest (#11210)
DORSEY & WHITNEY LLP
111 South Main Street, 21st Floor
Salt Lake City, UT 84111-2176
Telephone: (801) 933-7360
Facsimile: (801) 933-7373
Email: thomson.michael@dorsey.com
hunt.peggy@dorsey.com
wiest.john@dorsey.com

Attorneys for Michael F. Thomson, Chapter 11 Trustee of The Falls Event Center LLC

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

In re:

THE FALLS EVENT CENTER LLC; THE
FALLS AT GILBERT, LLC; THE FALLS
AT MCMINNVILLE, LLC; THE FALLS AT
ST. GEORGE, LLC; THE FALLS OF
LITTLETON, LLC; THE FALLS AT
FRESNO, LLC; *and*, THE FALLS AT
CLOVIS, LLC;

Debtors.

Bankr. Case No. 18-25116
Bankr. Case No. 18-25419
Bankr. Case No. 18-25492
Bankr. Case No. 18-26653
Bankr. Case No. 18-27111
Bankr. Case No. 18-27713
Bankr. Case No. 18-28140

Chapter 11

The Honorable R. Kimball Mosier

**ORDER GRANTING MOTION TO SUBSTANTIVELY CONSOLIDATE THE FALLS
EVENT CENTER LLC WITH DEBTORS THE FALLS AT GILBERT, LLC, THE
FALLS AT ST. GEORGE, LLC, THE FALLS OF LITTLETON, LLC, THE FALLS AT
FRESNO, LLC, AND THE FALLS AT CLOVIS, LLC; *and* NON-DEBTORS THE
FALLS AT CUTTEN ROAD, LLC, THE FALLS AT STONE OAK PARKWAY, LLC,
THE FALLS AT BEAVERTON, LLC, AND THE FALLS AT ROSEVILLE, LLC**

The matter before the Court is the *Chapter 11 Trustee's Motion To Substantively Consolidate The Falls Event Center, LLC with Debtors The Falls at Fresno, LLC, The Falls at Gilbert, LLC, The Falls at McMinnville, LLC, The Falls at St. George, LLC, and The Falls of Littleton, LLC; and Non-Debtors The Falls at Austin Bluffs, LLC, The Falls at Cutten Road, LLC, The Falls at Stone Oak Parkway, LLC, The Falls at Beaverton, LLC, and The Falls at Roseville, LLC* (the "Motion"), filed by Michael F. Thomson, Chapter 11 Trustee (the "Trustee") for The Falls Event Center, LLC (Case No. 18-25116) ("TFEC"), in each of the above-captioned bankruptcy cases. TFEC Docket No. 327; Gilbert Docket No. 32; McMinnville Docket No. 68; St. George Docket No. 35; Littleton Docket No. 24; Fresno Docket No. 24; Clovis Docket No. 20.

Filed concurrently therewith in support of the Motion were: The *Memorandum of Law* [TFEC Docket No. 331; Gilbert Docket No. 33; McMinnville Docket No. 70; St. George Docket No. 36; Littleton Docket No. 25; Fresno Docket No. 26; Clovis Docket No. 21] (the "Memorandum"); the *Declaration of Michael F. Thomson, Chapter 11 Trustee of The Falls Event Center LLC* [TFEC Docket No. 332; Gilbert Docket No. 34; McMinnville Docket No. 71; St. George Docket No. 37; Littleton Docket No. 26; Fresno Docket No. 27; Clovis Docket No. 22] (the "Trustee Declaration"); The *Declaration of Gil A. Miller* [TFEC Docket No. 333; Gilbert Docket No. 35; McMinnville Docket No. 72; St. George Docket No. 38; Littleton Docket

No. 27; Fresno Docket No. 28; Clovis Docket No. 23] (the “Miller Declaration”); and the *Certificate of Service* [TFEC Docket No. 337; Gilbert Docket No. 36; McMinnville Docket No. 73; St. George Docket No. 39; Littleton Docket No. 28; Fresno Docket No. 29; Clovis Docket No. 24] (the “Certificates of Service of Motion Documents”) of the Motion, Memorandum, Trustee Declaration, and Miller Declaration on all parties who have requested ECF notification in each of the above-captioned bankruptcy cases.

In the Motion, the Trustee seeks to substantively consolidate the following entities with TFEC as of July 11, 2018, the date TFEC filed a petition seeking relief under Chapter 11 of the Bankruptcy Code (the “TFEC Petition Date”): debtor The Falls at Gilbert, LLC (Case No. 18-25419) (“Gilbert”); debtor The Falls at McMinnville, LLC (Case No. 18-25492) (“McMinnville”); debtor The Falls at St. George, LLC (Case No. 18-26653) (“St. George”); debtor The Falls of Littleton, LLC (Case No. 18-27111) (“Littleton”); debtor The Falls at Fresno (Case No. 18-27713) (“Fresno”); debtor The Falls at Clovis (Case No. 18-28140) (“Clovis”); non-debtor The Falls at Austin Bluffs (“Austin Bluffs”); non-debtor The Falls at Cutten Road (“Cutten Road”); non-debtor The Falls at Stone Oak Parkway (“Stone Oak Parkway”); non-debtor The Falls at Beaverton (“Beaverton”); and non-debtor The Falls at Roseville (“Roseville”) (collectively, with TFEC, the “Motion Entities”).

A Notice of Chapter 11 Trustee’s Motion To Substantively Consolidate The Falls Event Center, LLC with Debtors The Falls at Fresno, LLC, The Falls at Gilbert, LLC, The Falls at McMinnville, LLC, The Falls at St. George, LLC, and The Falls of Littleton, LLC; and Non-Debtors The Falls at Austin Bluffs, LLC, The Falls at Cutten Road, LLC, The Falls at Stone Oak Parkway, LLC, The Falls at Beaverton, LLC, and The Falls at Roseville, LLC and Notice of

Hearing (the “Notice”) was filed in each of the above-captioned bankruptcy cases [TFEC Docket No. 335; Gilbert Docket No. 37; McMinnville Docket No. 74; St. George Docket No. 40; Littleton Docket No. 29; Fresno Docket No. 30; Clovis Docket No. 25] and properly served on all creditors, holders of equity interests, and all other parties in interest for each of the Motion Entities, and no further notice is necessary. *See Certificate of Service* [TFEC Docket No. 337; Gilbert Docket No. 45; McMinnville Docket No. 75; St. George Docket No. 41; Littleton Docket No. 34; Fresno Docket No. 31; Clovis Docket No. 26] (the “Certificate of Service of Notice”); *Declaration of Michael F. Thomson Concerning Service of Notice* [TFEC Docket No. 383; Gilbert Docket No. 54; McMinnville Docket No. 91; St. George Docket No. 47; Littleton Docket No. 43; Fresno Docket No. 40; Clovis Docket No. 35] (the “Declaration Concerning Service”).

Two responses to the Motion were filed: an *Objection* [TFEC Docket No. 361] (the “American Objection”), filed by American Savings Life Insurance Co. (“American”), objecting to substantive consolidation of Austin Bluffs with TFEC; and an *Objection* [TFEC Docket No. 362; McMinnville Docket No. 82] and *Second Declaration of John Rasmussen* [TFEC Docket No. 363; McMinnville Docket No. 83] (together, the “Museum Objection”), filed by Evergreen Aviation and Space Museum and the Captain Michael King Smith Educational Institute (the “Museum”), objecting to substantive consolidation of McMinnville with TFEC. No objections were filed as to substantive consolidation of Gilbert, St. George, Littleton, Fresno, Clovis, Cutten Road, Stone Oak Parkway, Beaverton, and Roseville with TFEC, and the Court finds that all parties who were served with the Notice and did not object have consented to the Court exercising jurisdiction over non-debtors Cutten Road, Stone Oak Parkway, Beaverton, and Roseville.

A hearing on the Motion was held on March 18, 2019 (the “Hearing”). Peggy Hunt of Dorsey & Whitney LLP appeared on behalf of the Trustee, who was also present; Ellen E. Ostrow of Holland & Hart appeared on behalf of the Official Committee of Unsecured Creditors of The Falls Event Center LLC; Oren B. Haker and Mark E. Hindley of Stoel Rives LLP appeared on behalf of the Museum; Steven M. Rogers of Rogers & Russell appeared on behalf of American; and Laurie A. Cayton appeared on behalf of the Office of the United States Trustee. At the Hearing, at the request of the Trustee, American, and the Museum, the Court continued consideration of the American Objection, the Museum Objection, and the Motion as it pertains to Austin Bluffs and McMinnville until a later date.

The Court has considered: (a) the Motion; (b) the Memorandum; (c) the Trustee Declaration; (d) the Miller Declaration; (e) the Notice; (f); the Certificate of Service of Motion Documents; (g) the Certificate of Service of Notice; (h) the Declaration Concerning Service; (i) the evidence presented at the Hearing; (h) the representations made on the record at the hearing; and (i) applicable law. Based thereon, and for the reasons set forth on the record and in the *Findings of Fact and Conclusions of Law* filed concurrently with this Order, to be separately entered by the Court pursuant to Federal Rule of Bankruptcy Procedure 7052,

IT IS HEREBY ORDERED THAT:

- (1) The Motion is **GRANTED** as to TFEC, Gilbert, St. George, Littleton, Fresno, Clovis, Cutten Road, Stone Oak Parkway, Beaverton, and Roseville (collectively, the “Consolidated Parties”);
- (2) The Consolidated Parties are **SUBSTANTIVELY CONSOLIDATED** as of the TFEC Petition Date;

- (3) All further filings for the Consolidated Parties shall be filed in TFEC's bankruptcy case, Case No. 18-25116;
- (4) The Hearing on the Motion as it pertains to Austin Bluffs is **CONTINUED** until April 17, 2019; and
- (5) The Hearing on the Motion as it pertains to McMinnville is **CONTINUED** until May 6, 2019.

----- (End of Order) -----