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Proposed Counsel for Debtor-in-Possession The Falls Event Center LLC

IN THE UNITED STATES BANKRUPTCY COURT FOR THE DISTRICT OF UTAH
CENTRAL DIVISION

<p>In re:</p> <p>THE FALLS EVENT CENTER LLC, a Utah limited liability company,</p> <p>Address: 9067 S 1300 W, #301 West Jordan, UT 84088,</p> <p>Tax I.D. No. 90-1023989,</p> <p>Debtor.</p>	<p>Bankruptcy Case No. 18-25116</p> <p>Chapter 11</p> <p>Honorable R. Kimball Mosier</p> <p>[Filed Electronically]</p>
<p>In re:</p> <p>THE FALLS AT ELK GROVE, LLC, a Utah limited liability company,</p> <p>Address: 9067 S 1300 W, #301 West Jordan, UT 84088,</p> <p>Tax I.D. No. 45-2474566,</p> <p>Debtor.</p>	<p>Bankruptcy Case No. 18-25208</p> <p>Chapter 11</p> <p>Honorable R. Kimball Mosier</p> <p>[Filed Electronically]</p>

<p>In re:</p> <p>THE FALLS AT GILBERT, LLC, a Utah limited liability company,</p> <p>Address: 9067 S 1300 W, #301 West Jordan, UT 84088,</p> <p>Tax I.D. No. 46-46604111,</p> <p>Debtor.</p>	<p>Bankruptcy Case No. 18-25419</p> <p>Chapter 11</p> <p>Judge William T. Thurman</p> <p>[Filed Electronically]</p>
<p>In re:</p> <p>THE FALLS AT MCMINNVILLE, LLC, a Utah limited liability company,</p> <p>Address: 9067 S 1300 W, #301 West Jordan, UT 84088,</p> <p>Tax I.D. No. 81-3268978,</p> <p>Debtor.</p>	<p>Bankruptcy Case No. 18-25492</p> <p>Chapter 11</p> <p>Judge Kevin R. Anderson</p> <p>[Filed Electronically]</p>

MOTION REQUESTING JOINT ADMINISTRATION AND PROCEDURAL (BUT NOT SUBSTANTIVE) CONSOLIDATION OF RELATED CHAPTER 11 CASES

Debtor The Falls Event Center LLC, a Utah limited liability company (the “**Parent Company Debtor**”), which is the Debtor-in-Possession in the Chapter 11 case of In re The Falls Event Center LLC, Case No. 18-25116 (the “**Event Center Case**”), and which is also the parent company of the following additional Debtors-in-Possession in their separate Chapter 11 cases:

(1) Debtor The Falls at Elk Grove, LLC (“**Elk Grove**”), which is the Debtor-in-Possession in the Chapter 11 case of In re The Falls at Elk Grove, LLC, Case No. 18-25208 (the “**Elk Grove**

Case”); (2) Debtor The Falls at Gilbert, LLC (“**Gilbert**”), which is the Debtor-in-Possession in the Chapter 11 case of In re The Falls at Gilbert, LLC, Case No. 18-25419 (the “**Gilbert Case**”); and (3) Debtor The Falls at McMinnville, LLC (“**McMinnville**”), which is the Debtor-in-Possession in the Chapter 11 case of In re The Falls at McMinnville, LLC, Case No. 18-25492 (the “**McMinnville Case**”) (the Elk Grove Case, the Gilbert Case, and the McMinnville Case are referred to collectively herein as the “**Subsidiary Cases**”), by and through proposed counsel in the Event Center Case, respectfully moves this Court for an order authorizing and directing the joint administration and procedural (but not substantive at this time) consolidation of the Event Center Case and the Subsidiary Cases, and for other related relief (the “**Motion**”). In support of the Motion, the Parent Company Debtor states as follows:

JURISDICTION AND VENUE

1. This Court has jurisdiction to consider the Motion pursuant to 28 U.S.C. §§ 157 and 1334. This is a core proceeding under 28 U.S.C. § 157(b)(2). Venue is proper before this Court pursuant to 28 U.S.C. §§ 1408 and 1409.

2. The statutory bases for the relief requested in this Motion are Section 105 of Title 11 of the United States Code, Rule 1015(b) of the Federal Rules of Bankruptcy Procedure, and Local Rule 1015-1.

3. No prior Motion has been filed for the relief requested herein.

GENERAL BACKGROUND

4. On July 11, 2018 (the “**Petition Date**”), the Parent Company Debtor filed the Event Center Case under Chapter 11 of Title 11 of the United States Code (the “**Bankruptcy Code**”). The Parent Company Debtor has been operating as the Debtor-in-Possession in the Event Center Case since the Petition Date, pursuant to §§ 1107(a) and 1108 of the Bankruptcy Code.

5. As of the Petition Date, the Parent Company Debtor was the sole owner of all of the membership interests in Elk Grove, Gilbert, and McMinnville.

6. On July 16, 2018, the Parent Company Debtor caused Elk Grove to file the Elk Grove Case under Chapter 11 of Title 11 of the United States Code. Elk Grove has been operating as the Debtor-in-Possession in the Elk Grove Case since July 16, 2018.

7. On July 25, 2018, the Parent Company Debtor caused Gilbert to file the Gilbert Case under Chapter 11 of Title 11 of the United States Code. Gilbert has been operating as the Debtor-in-Possession in the Gilbert Case since July 25, 2018.

8. On July 27, 2018, the Parent Company Debtor caused McMinnville to file the McMinnville Case under Chapter 11 of Title 11 of the United States Code. McMinnville has been operating as the Debtor-in-Possession in the McMinnville Case since July 27, 2018.

9. As of the date of the filing of this Motion, the Parent Company Debtor, by operation of law, is the sole owner of Elk Grove, Gilbert, and McMinnville (referred to collectively herein as the “**Subsidiaries**”), and in its capacity as the sole owner of the Subsidiaries, the Parent Company Debtor has been directing the Chapter 11 business operations of the Subsidiaries.

10. The Event Center Case (Case No. 18-25116) and the Elk Grove Case (Case No. 18-25208) have been assigned to Chief Judge R. Kimball Mosier. The Gilbert Case (Case No. 18-25419) has been assigned to Judge Thurman. The McMinnville Case (Case No. 18-25492) has been assigned to Judge Anderson.

RELIEF REQUESTED AND BASIS FOR RELIEF

11. By this Motion, and pursuant to Section 105 of the Bankruptcy Code, Federal Rule of Bankruptcy Procedure 1015 and Local Rule 1015-1, the Parent Company Debtor seeks entry of an order directing the joint administration and procedural (but not substantive)

consolidation of the Event Center Case and the Subsidiary Cases before Chief Judge R. Kimball Mosier, and with all filings to take place in the Event Center Case.

12. The Parent Company Debtor further proposes that the Clerk of the Court file and maintain all pleadings, papers, and other filings in the Event Center Case as well as in the Subsidiary Cases (other than proofs of claim) under a single pleading docket—that pleading docket being the docket for the Event Center Case—and that all pleadings, papers, or other filings relating to the Event Center Case and to the Subsidiary Cases bear a single joint caption, in a form substantially similar to the following (with parties in interest specifying on the joint caption of their filing the particular cases to which their filing relates, if the filing relates to fewer than all of the cases on the joint caption):

IN THE UNITED STATES BANKRUPTCY COURT FOR THE DISTRICT OF UTAH
CENTRAL DIVISION

<p>In re:</p> <p>THE FALLS EVENT CENTER LLC; THE FALLS AT ELK GROVE, LLC; THE FALLS AT GILBERT, LLC; and THE FALLS AT MCMINNVILLE, LLC,</p> <p>Debtors.</p>	<p>Bankruptcy Case No. 18-25116 Bankruptcy Case No. 18-25208 Bankruptcy Case No. 18-25419 Bankruptcy Case No. 18-25492</p> <p>Chapter 11</p> <p>Chief Judge R. Kimball Mosier</p> <p>Jointly Administered Under Case No. 18-25116</p> <p>[Filing Relates to Case No(s). _____]</p> <p>[Filed via ECF]</p>
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13. The Parent Company Debtor does not, through this Motion, propose substantive consolidation of the Event Center Case or the Subsidiary Cases at this time. However, the Parent Company Debtor asserts that the Parent Company Debtor and the Subsidiaries were and are the mere instrumentalities and alter egos of one another, that substantial commingling of assets and liabilities exists between the Parent Company Debtor and the Subsidiaries, that corporate formalities generally were not followed between the Parent Company Debtor and the Subsidiaries, that there were significant intercompany transfers between and among the Parent Company Debtor and the Subsidiaries, that the Parent Company Debtor operated all of the business operations that were conducted at the physical locations owned by the Subsidiaries, and that creditors and interested parties generally viewed the Parent Company Debtor and the Subsidiaries as a single economic enterprise. Thus, the Parent Company Debtor anticipates filing a motion to substantively consolidate the Event Center Case and the Subsidiary Cases in the near future.

14. Federal Rule of Bankruptcy Procedure 1015(b) provides, in relevant part, that “[i]f . . . two or more petitions are pending in the same court by or against . . . a debtor and an affiliate, the court may order joint administration of the estates.”

15. Joint administration typically involves the use of a single docket for administrative matters and “the joint handling of other purely administrative matters that may aid in expediting the cases and rendering the process less costly.” Fed. Rule Bank. P. 1015 Adv. Comm. Note (1983).

16. “Joint administration is designed in large part to promote procedural convenience and cost efficiencies which do not affect the substantive rights of claims or the respective debtor estates.” *In re McKenzie Energy Corp.*, 228 B.R. 854, 857 (Bankr. S.D. Tex. 1998). Thus, “joint administration or administrative consolidation is merely a procedural device which enables

a court to efficiently oversee multiple estates.” *In re Babcock & Wilcox Co.*, 250 F.3d 955, 958 n.6 (5th Cir. 2001).

17. The Subsidiaries all are affiliates of the Parent Company Debtor, as the term “affiliate” is defined by Section 101(2) of the Bankruptcy Code, as the Parent Company Debtor owns 100% of the membership interests in each of the Subsidiaries.

18. As noted in Collier’s, “[j]oint administration is common when a consolidated group of corporations files for bankruptcy relief. Particularly in Chapter 11, the success of one affiliate’s reorganization effort may depend on the success of the other affiliates’ efforts.” 9 Collier on Bankruptcy, ¶1015.03, at 1015-5 (16th ed. 2010).

19. The Court should order joint administration of the Event Center Case and the Subsidiary Cases. Joint administration will avoid duplicate notices, applications, motions, and orders, thereby saving the Parent Company Debtor as the operator of the Subsidiaries considerable time and expense. For example, joint administration will permit the Clerk of the Court to utilize a single general docket for these cases and combine notices to creditors of the respective estates of the various debtors and other parties in interest.

20. The official mailing matrixes for all four Chapter 11 cases are substantively identical, and many of the Parent Company Debtor’s filings will relate to all four Debtors (i.e., the Parent Company Debtor and the three Subsidiaries). Requiring the Parent Company Debtor to serve four separate copies of pleadings seeking the same relief as to all four Debtors would be a substantial waste of estate resource resources, and would penalize the very persons—the various creditors of the Parent Company Debtor and the Subsidiaries, and in particular the investors—that the Parent Company Debtor is hoping to benefit.

21. Moreover, the rights of creditors and other parties in interest will not be adversely affected by joint administration of the Event Center Case and the Subsidiary Cases, because the relief sought in this Motion is purely procedural and is in no way intended to affect substantive

rights. Indeed, the rights of creditors and parties in interest will be enhanced by the reduced costs that will result from joint administration. The Court will also be relieved of the burden of hearing duplicative motions, entering duplicative orders and maintaining duplicative files. Supervision of the administrative aspects of these cases by the United States Trustee also will be simplified and streamlined.

WHEREFORE, based upon the foregoing, the Parent Company Debtor respectfully asks this Court to enter an Order, in the form filed contemporaneously herewith, (a) directing the joint administration and procedural (but not substantive) consolidation of the Event Center Case and the Subsidiary Cases, under the caption set forth above, (b) authorizing a combined service list for the jointly administered cases, and combined notices to creditors and parties in interest for all of the cases, (c) authorizing and directing the use of the proposed caption set forth in paragraph 12 above, and (d) granting the Parent Company Debtor such other and further relief as the Court deems just and proper under the circumstances.

DATED this 24th day of August, 2018.

RAY QUINNEY & NEBEKER P.C.

/s/ Brent D. Wride
Michael R. Johnson
David H. Leigh
Elaine A. Monson
Brent D. Wride
Proposed Attorneys for Debtor-in-
Possession The Falls Event Center LLC,
Case No. 18-25116

CERTIFICATE OF SERVICE

I hereby certify that on the 24th day of August, 2018, a true and correct copy of the foregoing was electronically filed in all four cases that are affected by this motion and therefore served via ECF on all parties who have entered an appearance or requested notice in any of the cases. In addition, pursuant to Local Rule 1015-1, notice of the motion and of the hearing on the motion will be sent to all parties in interest as listed in the Court's most recent creditor's matrices for all affected cases. A separate certificate of service will be attached to such notice.

/s/ Patricia Brown

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