

Oren Haker (OSB #130162) (*admitted pro hac vice*)

oren.haker@stoel.com

Mark E. Hindley (UTB #7222)

mark.hindley@stoel.com

STOEL RIVES LLP

Suite 1100, One Utah Center

201 South Main Street

Salt Lake City, Utah 84111

Telephone: (801) 328-3131

Facsimile: (801) 578-6999

Attorneys for Evergreen Aviation and Space Museum and
The Captain Michael King Smith Educational Institute

UNITED STATES BANKRUPTCY COURT

FOR THE DISTRICT OF UTAH, CENTRAL DIVISION

In re:	Bankr. No. 18-25492
The Falls at McMinnville LLC,	Chapter 11
Debtor.	Honorable Chief Judge R. Kimball Mosier

**DECLARATION OF JOHN RASMUSSEN IN SUPPORT OF
MOTION FOR RELIEF FROM STAY**

I, John Rasmussen, do hereby swear under penalty of perjury that the following information is true to the best of my information and belief:

1. I am the Interim Executive Director of the Evergreen Aviation and Space Museum and The Captain Michael King Smith Educational Institute (collectively, the “*Museum*”). The Museum is an aviation and space museum that displays military and civilian aircraft, most notably the Hughes H-4 Hercules, which is commonly known as the Spruce Goose. Established in 1991, the Museum is located approximately an hour’s drive south of Portland, Oregon, in McMinnville. The Museum offers educational programs to students between the ages

of 8 and 18 and has partnerships with a number of educational entities to promote STEM (Science, Technology, Engineering & Mathematics) programs in the Willamette Valley. The Museum's mission is, "To Inspire and Educate, to Promote and Preserve Aviation and Space History, and To Honor the Patriotic Service of Our Veterans." I have served as Interim Executive Director since April 1, 2018.

2. Prior to my service as Interim Executive Director, I was a Director on the Museum's Board of Directors for fifteen years and the President of the Board for three years. At all times discussed herein, I was either a Director, Director Emeritus, and/or Interim Executive Director for the Museum. The Museum Board's fiduciary duties include a duty of care to make well-informed decisions that are in the best interests of the Museum and promote the Museum's charitable, scientific, and educational missions. The Museum's artifacts are held in the public trust and the Oregon Department of Justice Charitable Activities Section oversees the Museum's activities. The Museum Board's duties are a matter of public interest, and the Museum has certain reporting obligations, including a deadline of April 1, 2019 to apply for a property tax exemption in connection with its obligations its Lease of the Space Building.

3. My general responsibilities as Interim Executive Director include: the management of daily business operations, classes, and programs at the Museum; the direct supervision of Museum employees, directors and senior management; the hiring, training, disciplining and termination of Museum employees; acting as a direct liaison to the Museum's Board of Directors, which includes making recommendations to and advising the Museum's Board of Directors; the development and implementation of Museum policies; and acting as the Museum's primary external contact and spokesperson.

4. Through my position as Interim Executive Director I have become familiar with the Museum's attendance statistics. These statics show that the Museum has brought considerable traffic to McMinnville for each of the last four years, consistent with the chart below:

Year	Museum	Education	Total
2015	87,273	10,748	98,021
2016	84,869	8,492	93,361
2017	80,114	7,625	87,739
2018	79,283	9,121	88,404

5. My responsibilities also include overseeing the Museum's operations and partnerships with The Falls Event Center, LLC ("*TFEC*") and The Falls at McMinnville, LLC ("*TFM*") regarding events held on the Museum's campus, including events that are hosted and supervised by TFEC.

6. My responsibilities also include the oversight of all contract obligations that the Museum has to ensure that they are fulfilled. I also monitor the contract obligations that other entities, including TFEC and TFM, have to the Museum to ensure that those obligations are fulfilled.

7. My oversight of the contract obligations that TFEC and TFM have with the Museum, including TFEC's use of the Museum's campus for hosting special events, is achieved in part by participating in weekly operations meetings that are held every Thursday. These operations meetings are attended by me, key Museum staff, and at least one TFEC representative.

8. At these operations meetings, the attendees discuss upcoming TFEC and Museum events on the Museum campus and the logistics of scheduling such events, including addressing

any scheduling conflicts, any need for the Museum to move airplane exhibits and Museum-owned artifacts for an event, and whether an event will require Museum services such as a projectionist or catering. Additionally, concerns are brought up during these meetings regarding the failure of TFEC to properly supervise, monitor, and cleanup after, which has caused interference with the Museum's operations, in violation of TFEC's contractual obligations.

9. My oversight of TFEC and TFM contractual obligations is also achieved by my presence at the Museum during normal business work hours Monday through Friday and sometimes on the weekend. I am able to oversee TFEC and TFM operations on the Museum campus through first-hand observations, as well as through meetings, discussions and communications with Museum senior employees, staff and volunteers, and TFEC representatives who are working at the Museum campus on a regular basis.

10. My role also requires me to address TFEC's and TFM's failures to meet their contractual obligations. Along those lines, this declaration addresses TFM's failure to make monthly payments of \$70,000 for July 2018 to present as required by the Gift Donation and Security Agreement ("*Donation Agreement*"), which has put TFM in arrears by \$420,000 as of December 1, 2018. TFM's failure to make its January 2019 donation payment of \$25,000 has put TFM in arrears by \$445,000.

11. The Donation Agreement has a history going back to a prior bankruptcy involving Evergreen Vintage Aircraft ("*Vintage*"), which was a for-profit company owned by Delford Smith.

12. Vintage filed for bankruptcy in Oregon on December 11, 2014, in *In re Evergreen Vintage Aircraft, Inc.*, Case No. 14-36770.

13. Among the issues in the Vintage bankruptcy were the sales of two buildings owned by Vintage: the Theater Building and the Aviation Building. Both buildings were occupied by the Museum pursuant to a lease. Both buildings were sold to Affordable Mid-Coast Homes as part of a mediated bankruptcy resolution. (A third building – the Space Building – is occupied by the Museum pursuant to a lease with TFM.)

14. The mediator in the Vintage bankruptcy was the Honorable Elizabeth Perris who was a former bankruptcy judge in Oregon. According to reports from the Museum’s legal counsel, Judge Perris was actively involved in the mediated resolution involving the Museum.

15. Prior to the mediated resolution, the Museum was occupying the Aviation Building rent free. As a part of the resolution, the Museum was required to pay \$25,000 per month to occupy the Aviation Building and \$25,000 per month to occupy the Theater Building. These new rent payments represented a significant financial obligation to the Museum.

16. The parties recognized that this added burden, over a twenty-year period (the length of the lease) would not be reasonable under the circumstances in which the leases were presented to the Museum and the Museum should not be required to enter into such terms unless the Museum had a guaranteed source of revenue from its operation of the Wings & Waves Waterpark (the “*Waterpark*”). The revenue from the Waterpark was the only way that the Museum could make the Theater Building and Aviation Building lease payments while still meeting all of its other obligations. At the time, the Museum was leasing the Waterpark from the Michael King Smith Foundation (“*MKSF*”) and used the proceeds from Waterpark operations to help fund the Museum’s operation and pay its debts, including the Theater and Aviation Building lease obligations.

17. As a result, the mediated settlement included a term that gave the Museum the right to operate the Waterpark for five additional years after completion of the current lease (*i.e.*, from 2016 through 2020) and that term was made part of the Court's final order in the Vintage bankruptcy.

18. In January of 2016, MKSF filed for bankruptcy in Oregon in *In Re The Michael King Smith Foundation*, Case No. 16-30233.

19. MKSF was established by Delford Smith as an irrevocable trust, for the purpose of acquiring, maintaining, preserving, and facilitating the display of historical aircraft and to provide facilities to the Museum to support that purpose. MKSF operated as a non-profit, tax-exempt organization. MKSF owned a number of assets including the Waterpark and the Space Building. The Museum at that time also occupied the Space Building pursuant to a lease, which was at \$0 rent to the Museum.

20. Two entities were interested in and competing for acquisition of the MKSF assets: TFEC as one bidder and Affordable Mid-Coast Housing (which I believe was partnering with an east coast based non-profit organization named, "The Collings Foundation") as the other bidder.

21. Until the initial MKSF trustees were replaced, MKSF appeared to be [was?] proposing and supporting a sale of the MKSF assets to Affordable Mid-Coast Housing.

22. For TFEC to become the winning bidder, it was critical that it have the Museum's support in the MKSF bankruptcy. The Museum eventually provided that support after doing its due diligence on the terms of each offer and based on a number of negotiated contracts, including but not limited to, the contracts discussed in this declaration. In those contracts, the Museum gave up certain rights and financial opportunities in exchange for the monthly

installment payments of \$70,000 through 2018 and \$25,000 monthly installment payments thereafter.

23. When the initial trustees were replaced, Museum representatives, including myself, met several times with representatives of TFEC. One such meeting took place over two days with Steve Down, John Neubauer, and Susan Knight. The purpose of this two-day meeting was to discuss TFEC's acquisition of the MKSF assets, each party's needs regarding the acquisition, and whether the Museum would support the acquisition.

24. The conversations involved information exchanges and negotiations on access and use of the assets that TFEC would acquire.

25. Steve Down and John Neubauer stated several times that TFEC's acquisition required that it – TFEC – operate the Waterpark and take the revenue from that operation. Operation of the Waterpark was, as Steve Down and John Neubauer stated, the only way that TFEC could afford to acquire the MKSF assets.

26. The Vintage Bankruptcy Order was brought up and discussed at length, including the history that led to the Order and the reason why the Museum's operation of the Waterpark was so important to the Museum. We were advised at the time that the Waterpark was earning approximately \$1.25 million to \$1.4 million dollars net each year. The Museum's records support these figures for 2015 and 2016.

27. Steve Down also discussed generally his plan for hosting special events at the Museum and the need to generate revenue from those events to supplement the Waterpark revenue. He stated that the special events revenue was also critical to being able to finance the acquisition. This meant, according to Mr. Down, that TFEC would have to take over events that

the Museum had been hosting in the past, thus reducing the Museum's revenue on those events going forward.

28. On the second day of the two-day meeting, the Museum presented its demands.

29. Steve Down agreed to the arrangement that is stated in the Donation Agreement: TFEC would pay \$840,000 per year to the Museum in 2017 and 2018 and then pay \$300,000 to the Museum each year thereafter for a period of time assuming certain conditions were met. In exchange, the Museum would not enforce its rights to operate the Waterpark through 2020 under the Vintage Order.

30. Steve Down and the Museum also agreed in principle that the Museum would select certain events that it would continue to host – those that had a clear charitable and/or educational component – but that the Museum would forward inquiries on purely for-profit activities, such as weddings and other social events, to TFEC for it to host.

31. These agreements are stated in the Donation Agreement and the Campus Use Agreement. The Campus Use Agreement allows TFEC to have access to the Theater Building and Aviation Building to host special events, thereby allowing TFEC the opportunity to maximize revenues from these events and leverage the Museum's vast array of exhibits and artifacts, including the iconic and one-of-a-kind Spruce Goose, in advertisements and to attract events hosted by TFEC. The parties have a similar arrangement regarding hosting events in the Space Building in the evening hours, which is memorialized in the Museum-TFM lease of the Space Building.

32. In other words, the Museum agreed to give up revenue-generating events that it would otherwise have held at the Museum campus so that TFEC could engage in such operations going forward.

33. The Museum's records reflect and suggest that TFEC has earned approximately \$200,000 in revenue for hosting special events from 2017 to the present. This estimate is based on figures prepared by TFEC for 2018 events and extrapolations from revenue generated for the same and similar events in 2017. The Museum records indicate that since January of 2017, TFEC has hosted over 275 events at the Museum Campus, many of which are held in the Aviation Building, the Space Building, and the Theater Building.

34. Since becoming the Interim Executive Director, I have been made aware, on a number of occasions, that customers that had contracted with TFEC for events on the Museum Campus in the past no longer wish to work with TFEC. Such customers are willing to hold their events in the Aviation, Space, or Theater Building, but only if the Museum hosts the events. Otherwise, these customers will take their business elsewhere.

35. As part of the transition of the Waterpark, the Museum agreed and gave to TFEC and TFM approximately \$50,000 worth of Waterpark pool supplies and other assets that were necessary to operate the Waterpark. Additionally, the Museum also gave TFEC and TFM a Boeing 747 airplane worth approximately \$100,000 located on top of the Waterpark. According to the Museum's understanding, TFM has been operating the Waterpark since January 1, 2017.

36. TFEC acquired both the Space Building and the Waterpark as part of the resolution of the MKSF bankruptcy. The Museum supported this acquisition on the record and made the Museum's support clear to the Vintage Bankruptcy Replacement. The Museum's support was based on the agreements that the Museum had reached with TFEC and TFM and, in my view, was critical to TFM's success in buying the MKSF assets to resolve the MKSF bankruptcy.

37. The Museum, TFEC, and TFM entered into the Gift Donation and Security Agreement in August of 2016, previously and hereinafter referred to as the “*Donation Agreement*.” As stated above, the Donation Agreement calls for TFM to make monthly payments to the Museum in the amount of Seventy Thousand Dollars (\$70,000) for 2017 and 2018 and, thereafter, monthly payments to the Museum in the amount of Twenty Five Thousand (\$25,000). The first of these payments was due on January 1, 2017.

38. Since the beginning of this Donation Agreement, TFM has had a history of defaulting; it did so no less than six times in the first year. TFM and TFEC’s representatives provided a myriad of excuses for their failures.

39. Finally, at the end of 2017, the Museum had to threaten to (and was about to) sue TFM for being \$210,000 in arrears in its monthly installments as of January 1, 2018 and for misusing the cash collateral that should be going toward the installment payments.

40. The Museum filed a lawsuit against TFM and TFEC in April of 2018 for failure to pay the April monthly installment as required by the Agreement and for misusing the collateral for that payment obligation. TFM claimed in response that they were unable to cover operation overhead or payroll without using the Waterpark revenue that was supposed to be paid to the Museum. Thus, TFM diverted at least \$125,000 in the Museum’s cash collateral in violation of the parties’ agreements to meet these obligations.

41. Even after the April lawsuit was filed, TFM and TFEC continued to breach their obligations under the Amendment and improperly diverted the Museum’s cash collateral through transfers totaling approximately \$160,000 from the Deposit Account in violation of the Forbearance Agreement and Amendment. The Museum sent a cease and desist letter to TFM and TFEC on July 11, 2018 regarding misuse of the collateral.

42. The Museum filed a separate lawsuit against TFM in July of 2018 for TFM's failure to pay the July installment (and future payments) and for misusing the collateral for those payments obligations.

43. To date, TFM has failed to make monthly installments for the months of July 2018 to the present, and as of January 1, 2019, TFM is in arrears by \$445,000. Specifically, TFM has defaulted on:

- July 1, 2018, in the amount of \$70,000;
- August 1, 2018, in the amount of \$70,000;
- September 1, 2018, in the amount of \$70,000;
- October 1, 2018, in the amount of \$70,000;
- November 1, 2018, in the amount of \$70,000;
- December 1, 2018, in the amount of \$70,000; and
- January 1, 2019, in the amount of \$25,000.

44. The Museum's 2018 budget is based on TFM's timely monthly payments pursuant to the Donation Agreement. The Museum relied on these payments to meet its budgeted expenses in 2018 and 2019.

45. If the Museum does not acquire any relief for TFM's non-payment of the monthly obligations, the Museum will be unable to meet all of its financial obligations in 2019 under the current budget which, as a non-profit, it has a fiduciary obligation to do. In other words, drastic changes will be required if the Museum is not paid the donations or some other resolution satisfactory to the Museum is reached.

46. TFM's failure to make the monthly payments is publicly known, and this public knowledge significantly damages the Museum's reputation including, but not limited to, the public's perception of the Museum's ongoing viability. Articles are being written about TFM and TFEC's failure in major newspapers in the State of Oregon.

47. All of this negatively affects the Museum’s fundraising – which is another critical component to the Museum’s ongoing viability and success – as well as current and potential educational partnership opportunities, and potential sponsorship opportunities. I am aware that in one instance earlier this year, a family that had established a scholarship through the Museum rescinded the scholarship because of what was happening with TFM at the time.

48. In short, TFM’s failures have cast doubt on the Museum’s ongoing viability, which is one of the single biggest deterrents when fundraising, and its reputation.

49. As an example, the Air Force Space Museum refuses to loan any more aircraft to the Museum in light of the TFM and TFEC bankruptcies. The Air Force Space Museum has three aircraft ready for delivery to the Museum to enhance its collection and keeps things fresh (an important feature for any Museum that displays artifacts), but for this moratorium.

50. If the Museum does not obtain Stay Relief, the Museum will be required to undergo an operational restructuring that includes, as one of its options, a reduction in its geographic footprint on the campus. In fact, as part of its exercise of fiduciary duties, I, along with the Museum’s Board, and the Museum’s Acting Finance Director are carefully monitoring the TFM and TFEC bankruptcies, have met to discuss the Museum’s options, and will undertake an analysis prior to April 1, 2019 of the Museum’s current operations to determine if it can more effectively operate without continued use of the Space Building.

51. The Museum never received notice from TFM that it would be using the Space Building and other areas leased to the Museum “as security for a debt, financial obligation or commitment” owed by TFM or TFEC to a third party. Such notice is required under the Lease


////

////

between TFM and the Museum for the Space Building. I came to understand in April of 2018 that the Space Building and related property have been encumbered without notice to the Museum, in violation of the parties' lease agreement. I became aware of these encumbrances when notices were posted on the Museum Campus of a Foreclosure Sale on the Space Building and related property.

I declare under penalty of perjury that the foregoing is true and correct.

DATED: January 15, 2019


John Rasmussen, Interim Executive Director
Evergreen Aviation Museum and the
Captain Michael King Smith Educational Institute

CERTIFICATE OF SERVICE

I hereby certify that on this 15th day of January, 2019 I filed a true and correct copy of the foregoing Declaration Of John Rasmussen In Support Of Motion For Relief From Stay with the United States Bankruptcy Court for the District of Utah by using the CM/ECF system. I further certify that the parties of record in this case, as identified below, are registered CM/ECF Users.

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

I further certify the below parties who are not on the list to receive email notice/service for this case were served by U.S. First Class mail the 15th day of January, 2019.

Richard N. Bauer
1789 Bella Lago Drive
Clermont, FL 34711-4634

Albert B Clark
696 East 1220 North
Orem, UT 84097

Richard W. Johnston
6855 S. Havana St. #275
Centennial, CO 80112-3813

Meilin Liu
2601 Blanding Avenue, C307
Alameda, CA 94501-1579

State of Oregon
Department of Revenue
955 Center St NE
Salem, OR 97301-2555

The Claro Group, LLC
711 Louisiana Street, Suite 2100
Houston, TX 77002

DATED: January 15, 2019



René A. Alvin