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

In re: THE FALLS AT MCMINNVILLE, LLC, Debtor.	Bankr. Case No. 18-25492 Chapter 11 The Honorable R. Kimball Mosier
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TRUSTEE'S OPPOSITION TO MOTION TO DISMISS CHAPTER 11 CASE

**Objection Deadline: January 29, 2019
Hearing Date: February 12, 2019 at 11:00 a.m. (Mountain)**

Michael F. Thomson, the duly appointed Chapter 11 trustee of the bankruptcy estate of The Falls Event Center LLC, Case No. 18-25116 (the "Trustee"), which is the sole member of The Falls at McMinnville, LLC, the debtor herein (the "Debtor"), hereby files his opposition (the "Opposition") to the *Motion to Dismiss Chapter 11 Case* [Docket No. 26] filed by The Evergreen Aviation and Space Museum and The Captain Michael King Smith Educational Institute (the "Motion"). In support of this Opposition, the Trustee represents as follows:

JURISDICTION AND VENUE

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

BACKGROUND

2. On July 11, 2018, The Falls Event Center LLC (“TFEC”) filed a voluntary petition in this Court under Chapter 11 of the Bankruptcy Code, Case Number 18-25116 (the “TFEC Case”).

3. On July 27, 2018, the Debtor filed a voluntary petition [Case 18-25492, Dkt. 1].

4. On October 24, 2018, The Evergreen Aviation and Space Museum and The Captain Michael King Smith Educational Institute (“Creditors”) filed the Motion.

5. On November 1, 2018, the UST, Debtor TFEC, and the Official Committee of Unsecured Creditors (the “Committee”) filed its stipulation for the appointment of a Chapter 11 trustee [TFEC Case, Docket No. 183] (the “Stipulation”).

6. On November 1, 2018, the UST filed his motion to appoint a Chapter 11 Trustee and approve the Stipulation [TFEC Case, Docket No. 184].

7. On November 14, 2018, the Court entered the order granting the Stipulation and directing the UST to appoint a qualified person to serve as Chapter 11 trustee for the TFEC estate. [TFEC Case, Docket No. 204].

8. On November 26, 2018, the UST appointed the Trustee as Chapter 11 trustee in the TFEC Case.

9. On November 27, 2018, the Court entered an order approving the appointment of the Trustee as the Chapter 11 trustee of the TFEC estate. [TFEC Case, Docket No. 214].

10. On January 18, 2019, Creditors filed an Amended Notice of Hearing, scheduling the Motion for hearing on February 12, 2019. [Case 18-25492, Dkt. 52].

ARGUMENT

I. The Trustee's Motion to Substantively Consolidate Will Cure Creditors' Objection to the Chapter 11 Case

The Creditors' grounds for filing the Motion can be summarized as follows: The Creditors are concerned that both TFEC and the Debtor did not have proper corporate authority to file bankruptcy. [Case 18-25492, Dkt. 26, ¶ 17–20]. Helpfully, the Creditors also state what they believe is the solution to these problems, that the appointment of a Chapter 11 Trustee for both TFEC and the Debtor can cure this concern. [Case 18-25492, Dkt. 26, ¶ 21]. In response to the Motion, the Trustee does not admit that the Creditors' position is valid or correct. However, actions that have been and will be taken subsequent to the filing of the Motion resolve both of the Creditors' concerns and provide the solution that the Creditors request, thus the Motion must be denied.

First, the Court appointed the Trustee as chapter 11 trustee for TFEC, so the Creditors' concern that TFEC did not have authority to continue in a chapter 11 bankruptcy absent the appointment of a chapter 11 trustee is resolved. There is a chapter 11 trustee in place for TFEC.

Second, with respect to the need for the appointment of a trustee for the Debtor, the Trustee is filing a Motion for Substantive Consolidation of TFEC with the Debtor and various of the other Falls entities (the "Substantive Consolidation Motion"). Substantive consolidation is appropriate in these cases where assets have been commingled, TFEC has acted as the decision

maker for all of the estates, there has been one bank account for all of the entities, the same employees have worked and been paid for all of the entities, the books and records are significantly entangled, and the cost of unwinding the entities is not appropriate given the assets at issue. Substantive consolidation will give the Trustee proper control to administer the Debtor's estate as is requested by the Creditors in their Motion. Therefore, assuming the Substantive Consolidation Motion is granted, the Creditors' second concern will also be resolved.

CONCLUSION

For all of these reasons, including additional reasons made at oral argument or supplemental briefing, the Trustee respectfully requests that the Court deny the Motion, and not dismiss the Debtor's case. In the alternative, the Trustee requests that the Court continue the hearing on the Motion until after the Trustee's Substantive Consolidation Motion can be heard and ruled upon.

DATED this 29th day of January, 2019.

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