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*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 AT MCMINNVILLE, LLC,

Debtor.

Bankr. Case No. 18-25492

Chapter 11

The Honorable R. Kimball Mosier

**TRUSTEE’S OPPOSITION TO MOTION FOR RELIEF FROM THE AUTOMATIC
STAY OR IN THE ALTERNATIVE TO PROHIBIT THE USE OF CASH
COLLATERAL**

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 FOR RELIEF FROM THE AUTOMATIC STAY OR IN THE ALTERNATIVE TO PROHIBIT USE OF CASH COLLATERAL filed by Meilin Liu, pro se creditor (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 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”).

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

6. 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].

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

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

9. Debtor TFEC is the sole member of the Debtor.

10. On December 11, 2018, Meilin Liu ("Liu") filed the Motion.

11. On December 26, 2018, Liu scheduled the hearing and the objection deadline on the Motion by filing a Notice and Opportunity for Hearing (the "Notice").

12. The Notice was allegedly served via U.S. Mail on various parties, but the Trustee and his counsel were not served with the Notice via U.S. Mail. Instead, the Trustee received the Notice via ECF on December 26, 2018.

RESPONSE TO LIU'S HISTORY/BACKGROUND

13. Liu said in ¶ 1: "On July 8, 2015, The Falls Event Center, LLC, a Utah Limited Liability Company ("Falls") executed a Promissory Note in favor of Meilin Liu, in the principal amount of \$409,900.18 (the "Note"). A copy of the Note is attached hereto and incorporated herein by reference as Exhibit A."

Trustee's Response: Trustee denies the allegations above because on the face of the promissory note attached to the Motion as Exhibit A: (a) The Trustee is not a party to the note and does not know if it is valid; (b) The principal amount is \$354,700, not \$409,900.18, and the amendments only affected the interest due (increasing it to \$26,602.50 in year 2016 and \$28,597.68 in year 2017), not the principal; (c) The holder of the note is IRA Services Trust Company fbo Meilin Liu IRA 503733, and not Liu individually; (d) The note provides that it is subordinated to other notes with a higher

interest rate; (e) The note provides for automatic conversion upon a reorganization, consolidation, or merger which is defined as the Debtor TFEC “convey all or substantially all of its assets to another entity”; and (f) The note does not identify any collateral that secures the note. The Trustee is without sufficient information to admit or deny the remainder of the allegations, and therefore denies them.

14. Liu said in ¶ 2: “On July 15, 2015, The Falls Event Center, LLC, a Utah Limited Liability Company (“Falls”) executed a Promissory Note in favor of Meilin Liu, in the principal amount of \$590,100.00 (the “Note”). A copy of the Note is attached hereto and incorporated herein by reference as Exhibit B.”

Trustee’s Response: Trustee denies the allegations above because on the face of the promissory note attached to the Motion as Exhibit B: (a) The Trustee is not a party to the note and does not know if it is valid; (b) The note is dated July 16, 2015; (c) The note includes an amendment establishing the principal amount as \$590,100.00 but it is unclear from the copy whether the amendment was signed by the holder; (d) The note provides that it is subordinated to other notes with a higher interest rate; (e) The note provides for automatic conversion upon a reorganization, consolidation, or merger which is defined as the Debtor TFEC “convey all or substantially all of its assets to another entity”; and (f) The note does not identify any collateral that secures the note. The Trustee is without sufficient information to admit or deny the remainder of the allegations, and therefore denies them.

15. Liu said in ¶ 3: “On July 28, 2015, The Falls Event Center, LLC, a Utah Limited Liability Company (“Falls”) executed a Promissory Note in favor of Ameri Asian Funding, LLC,

A Wyoming Corporation in the principal amount of \$100,000.00 (the “Note”). A copy of the Note is attached hereto and incorporated herein by reference as Exhibit C.”

Trustee’s Response: The Trustee denies the allegations above because on the face of the promissory note attached to the Motion as Exhibit C: (a) The Trustee is not a party to the note and does not know if it is valid; and (b) The note does not identify any collateral that secures the note and does not claim to be a secured note. The Trustee is without sufficient information to admit or deny the allegations, and therefore denies them.

16. Liu said in ¶ 4: “On July 29, 2015, The Falls Event Center, LLC, a Utah Limited Liability Company (“Falls”) executed a Promissory Note in favor of Ameri Asian Funding, LLC A Wyoming Corporation in the principal amount of \$35,000.00 (the “Note”). A copy of the Note is attached hereto and incorporated herein by reference as Exhibit D.”

Trustee’s Response: The Trustee denies the allegations above because on the face of the promissory note attached to the Motion as Exhibit D: (a) The Trustee is not a party to the note and does not know if it is valid; and (b) The note does not identify any collateral that secures the note and does not claim to be a secured note. The Trustee is without sufficient information to admit or deny the allegations, and therefore denies them.

17. Liu said in ¶ 5: “On October 29, 2015, The Falls Event Center, LLC, a Utah Limited Liability Company (“Falls”) executed a Promissory Note in favor of Ameri Asian Funding, LLC, A Wyoming Corporation in the principal amount of \$85,000.00 (the “Note”). A copy of the Note is attached hereto and incorporated herein by reference as Exhibit E.”

Trustee’s Response: The Trustee denies the allegations above because on the face of the promissory note attached to the Motion as Exhibit E: (a) The Trustee is not a party to the

note and does not know if it is valid; and (b) The note does not identify any collateral that secures the note and does not claim to be a secured note. The Trustee is without sufficient information to admit or deny the allegations, and therefore denies them.

18. Liu said in ¶ 6: “On May 13, 2016, The Falls Event Center, LLC, a Utah Limited Liability Company (“Falls”) executed a Promissory Note in favor of Ameri Asian Funding, LLC, A Wyoming Corporation in the principal amount of \$788,014.93 (the “Note”). A copy of the Note is attached hereto and incorporated herein by reference as Exhibit F.”

Trustee’s Response: The Trustee denies the allegations above because on the face of the promissory note attached to the Motion as Exhibit F: (a) The Trustee is not a party to the note and does not know if it is valid; and (b) The note does not identify any collateral that secures the note and does not claim to be a secured note. The Trustee is without sufficient information to admit or deny the allegations, and therefore denies them.

19. Liu said in ¶ 7: “On January 6, 2017, The Falls Event Center, LLC, a Utah Limited Liability Company (“Falls”) executed a Promissory Note in favor of Meilin Liu in the principal amount of \$192,000.00 (the “Note”). A copy of the Note is attached hereto and incorporated herein by reference as Exhibit G.”

Trustee’s Response: Trustee denies the allegations above because on the face of the promissory note attached to the Motion as Exhibit G: (a) The Trustee is not a party to the note and does not know if it is valid; (b) The text is too faint to read in all places; and (c) The note does not identify any collateral that secures the note and does not claim to be a secured note. The Trustee is without sufficient information to admit or deny the remainder of the allegations, and therefore denies them.

20. Liu said in ¶ 8: “On January 9, 2017, The Falls Event Center, LLC, a Utah Limited Liability Company (“Falls”) executed a Promissory Note in favor of Meilin Liu DBA Sam Son Exchange in the principal amount of \$400,000.00 (the “Note”). A copy of the Note is attached hereto and incorporated herein by reference as Exhibit H.”

Trustee’s Response: Trustee denies the allegations above because on the face of the promissory note attached to the Motion as Exhibit H: (a) The Trustee is not a party to the note and does not know if it is valid; (b) The text is too faint to read in all places; (c) The note is made to Samson Exchange, and not to Meilin Liu; (d) There are extra provisions attached to this exhibit which do not appear to be part of the same note (see pages 43 – 45); and (e) The note does not identify any collateral that secures the note and does not claim to be a secured note. The Trustee is without sufficient information to admit or deny the remainder of the allegations, and therefore denies them.

21. Liu said in ¶ 9: “On March 22, 2017, The Falls Event Center, LLC, a Utah Limited Liability Company (“Falls”) executed a Promissory Note in favor of AmeriAsian Funding, LLC, A Wyoming Corporation, in the principal amount of \$100,000.00 (the “Note”). A copy of the Note is attached hereto and incorporated herein by reference as Exhibit I.”

Trustee’s Response: Trustee denies the allegations above because on the face of the promissory note attached to the Motion as Exhibit I: (a) The Trustee is not a party to the note and does not know if it is valid; (b) The text is too faint to read in all places; (c) The name of the holder appears to be Ameri Asian Funding, LLC; and (d) The note does not identify any collateral that secures the note and does not claim to be a secured note. The

Trustee is without sufficient information to admit or deny the remainder of the allegations, and therefore denies them.

22. Liu said in ¶ 10: “On September 28, 2017, The Falls Event Center, LLC, a Utah Limited Liability Company (“Falls”) executed a Promissory Note in favor of AmeriAsian Funding, LLC, A Wyoming Corporation in the principal amount of \$102,755.00 (the “Note”). A copy of the Note is attached hereto and incorporated herein by reference as Exhibit J.”

Trustee’s Response: Trustee denies the allegations above because on the face of the promissory note attached to the Motion as Exhibit J: (a) The Trustee is not a party to the note and does not know if it is valid; (b) The text is too faint to read in all places; (c) The name of the holder appears to be Ameri Asian Funding, LLC; and (d) The note does not identify any collateral that secures the note and does not claim to be a secured note. The Trustee is without sufficient information to admit or deny the remainder of the allegations, and therefore denies them.

23. Liu said in ¶ 11: “On December 1, 2017, The Falls Event Center, LLC, a Utah Limited Liability Company (“Falls”) executed a Promissory Note in favor of Meilin Liu DBA Sam Son Exchange in the principal amount of \$103,709.68 (the “Note”). A copy of the Note is attached hereto and incorporated herein by Exhibit K.”

Trustee’s Response: Trustee denies the allegations above because on the face of the promissory note attached to the Motion as Exhibit K: (a) The Trustee is not a party to the note and does not know if it is valid; (b) The text is too faint to read in all places; (c) the note is made to Samson Exchange, and not to Meilin Liu; (d) The note does not identify any collateral that secures the note and does not claim to be a secured note; and (e) the

note is not listed as a secured note in the deed of trust. The Trustee is without sufficient information to admit or deny the remainder of the allegations, and therefore denies them.

24. Liu said in ¶ 12: “The Notes, referenced Exhibits A through K, were secured by a Deed of Trust dated December 15, 2017 (“Trust Deed”), in favor of Meilin Liu, an individual (fka Sam Son Exchange) and AmeriAsian Funding, LLC, wherein Debtor agreed to pledge real property to secure the Note located at Yamhill County, Oregon and more particularly described in the Deed of Trust, a copy of which is attached hereto and incorporated herein by reference as Exhibit L.”

Trustee’s Response: Trustee denies the allegations above for the following reasons: (a) Only two of the promissory notes were purported to be secured, Exhibit A and Exhibit B; (b) Exhibit A and Exhibit B were dated in July 2015, and the deed of trust is not dated until December 15, 2017, more than two years later; (c) Exhibit A was with IRA Services Trust Company FBO Meilin Liu IRA 503733, not the beneficiary of the deed of trust Meilin Liu (fka Sam Son Exchange); (d) Exhibit B was with Meilin Liu, not the beneficiary of the deed of trust Meilin Liu (fka Sam Son Exchange); (e) The deed of trust is an avoidable conveyance because it was not made contemporaneously with the secured notes; (f) The deed of trust is an avoidable conveyance because it purports to secure promissory notes which on their face are unsecured, namely Exhibits C through K; (d) The deed of trust identifies AmeriAsian Funding, LLC as a creditor, when the notes appear to be with Ameri Asian Funding, LLC; (e) The deed of trust identifies Meilin Liu, an individual (fka Sam Son Exchange) as a creditor, when the notes appear to be with Samson Exchange only; (f) The deed of trust is inaccurate to the extent the property

descriptions are not correct; (g) Exhibit b to the deed of trust, which purportedly identifies the promissory notes that the deed of trust purports to secure, (i) states that all of the notes except one are with AmeriAsian Funding, LLC, (ii) states that Meilin Liu only holds one note dated January 9, 2017 in the amount of \$400,000, and (iii) Samson Exchange is not identified as a noteholder; (h) The deed of trust does not contain copies of the promissory notes it purports to secure; (i) The deed of trust lists twelve notes on its exhibit b, and Meilin Liu only provides eleven notes, only nine of which match up with the deed of trust (the Motion does not include an alleged note dated October 31, 2015 in the principal amount of \$20,000 to AmeriAsian Funding, LLC, the Motion does not include an alleged note dated July 16, 2015 in the principal amount of \$127,555.00 to AmeriAsian Funding, LLC, and the Motion adds a note, Exhibit K, dated December 1, 2017 in the principal amount of \$103,709.68 to Samson Exchange which is not listed in the deed of trust exhibit b); (j) The deed of trust does not identify any consideration that the Debtor received from TFEC in order to enter into the deed of trust and encumber the Debtor's assets; and (k) The Trustee is not a party to the deed of trust and does not know if it is valid. The Trustee is without sufficient information to admit or deny the remainder of the allegations, and therefore denies them.

25. Liu said in ¶ 13: "Pursuant to the Loan Documents, the Borrower borrowed \$2,906,479.79 from Meilin Liu."

Trustee's Response: Trustee denies the allegations above for the following reasons: (a) The Trustee is not a party to the loan documents, and does not know if they are valid; (b) On the face of the notes, only Exhibits B and G are made to Meilin Liu, and the total

principal amount is \$782,100.00; (c) On the face of the notes, Exhibit A is made to IRA Services Trust Company fbo Meilin Liu IRA 503733 in the principal amount of \$354,700.00; (d) The Motion does not identify any other notes that were made to Meilin Liu; (e) The principal amounts of the notes with Samson Exchange are \$400,000 in Exhibit H, and \$103,709.68 in Exhibit K; (e) The total principal amount of the alleged notes with Meilin Liu, IRA Services Trust Company, and Samson Exchange is only \$1,640,509.68, not \$2,906,479.79; (f) Meilin Liu as a pro se party cannot represent Samson Exchange, and there are no amendments to the notes to show that they were assigned to Meilin Liu individually; (g) The Trustee is unaware of any evidence that Meilin Liu is an alter ego of Ameri Asian Funding, LLC, Meilin Liu as a non-attorney cannot represent Ameri Asian Funding, LLC, and Meilin Liu does not appear to claim that the principal amounts of the notes with Ameri Asian Funding, LLC should be attributed to Meilin Liu; (h) the total principal amount of Exhibits A through K is \$2,851,279.61 and Exhibits A through K do not match the exhibit b to the deed of trust listing what notes are secured; and (i) The deed of trust only identifies that Meilin Liu is allegedly secured for \$400,000 and refers to an unsecured note. The Trustee is without sufficient information to admit or deny the remainder of the allegations, and therefore denies them.

26. Liu said in ¶ 14: “The loan required the payment of all interest on a monthly basis from the execution of the Note until its maturity at the rate of 10% per annum, or \$29,064.80 per month.”

Trustee's Response: Trustee denies the allegations above: (a) The Trustee is not a party to the notes or to the deed of trust and does not know if they are valid; (b) The notes have different interest rates depending on which notes are analyzed, and Exhibits A and B have a lower interest rate than Exhibits C through K; (c) The deed of trust does not identify interest rates; (d) The principal amounts on the face of the notes in Exhibits A through K total \$2,851,279.61 and not \$2,906,480.00; (e) The principal amount of the notes listed in the deed of trust exhibit b totals \$2,949,425.11 and not \$2,906,479.79; (f) The notes provided in the Motion do not match the notes listed in the deed of trust; (g) To the extent the deed of trust purports to secure unsecured notes, it is invalid; and (h) To the extent the deed of trust purports to secure the secured notes, the Motion does not provide copies of secured notes that match the deed of trust exhibit b. The Trustee is without sufficient information to admit or deny the remainder of the allegations, and therefore denies them.

27. Liu said in ¶ 15: "The Note also provides for a default interest rate of 15% per annum from the date on which the payment was due and payable until the delinquent payment is received."

Trustee's Response: Trustee denies the allegations above: (a) The Trustee is not a party to the notes or to the deed of trust and does not know if they are valid; (b) The notes have different interest rates depending on which notes are analyzed, and Exhibits A and B have a lower interest rate than Exhibits C through K; (c) The deed of trust does not identify interest rates; (d) The notes provided at Exhibits A and B provide for a 9% default interest rate; (e) The notes provided at Exhibits C through K were due thirty days

after they were called, and the Trustee has no evidence in the Motion of the notes being called; and (f) Bankruptcy by itself cannot cause a default. The Trustee is without sufficient information to admit or deny the remainder of the allegations, and therefore denies them.

28. Liu said in ¶ 16: “Debtor is now operating and generating rents which were also pledged to Meilin Liu.”

Trustee’s Response: Trustee denies the allegations above: (a) The deed of trust does not secure Meilin Liu for the reasons identified earlier, including (i) Ameri Asian Funding, LLC and not Meilin Liu, is identified as the noteholder of the secured notes provided in Exhibits A and B, (ii) Samson Exchange, and not Meilin Liu, is identified as the noteholder of the unsecured note provided in Exhibit H, (iii) the deed of trust was not executed contemporaneously with the secured notes and is an avoidable transfer, and (iv) there is no evidence that TFEC gave any consideration to the Debtor for the Debtor to sign a deed of trust for notes made with TFEC which also makes the deed of trust an avoidable transfer; (b) It is unclear whether the Debtor has generated any rents that would be payable under the deed of trust if it were valid; (c) The deed of trust does not provide for the assignment of rents; and (d) The Trustee is not a party to the notes and the deed of trust and does not know if they are valid. The Trustee is without sufficient information to admit or deny the remainder of the allegations, and therefore denies them.

29. Liu said in ¶ 17: “Meilin Liu has not consented to the debtor’s use of its rents.”

Trustee’s Response: Trustee denies the allegations above: (a) The deed of trust does not secure Meilin Liu for the reasons identified earlier, including (i) Ameri

Asian Funding, LLC and not Meilin Liu, is identified as the noteholder of the secured notes provided in Exhibits A and B, (ii) Samson Exchange, and not Meilin Liu, is identified as the noteholder of the unsecured note provided in Exhibit H, (iii) the deed of trust was not executed contemporaneously with the secured notes and is an avoidable transfer, and (iv) there is no evidence that TFEC gave any consideration to the Debtor for the Debtor to sign a deed of trust for notes made with TFEC which also makes the deed of trust an avoidable transfer; (b) There is no evidence that the Debtor continued to accrue rents that would be payable under the deed of trust if it were valid; (c) The deed of trust does not provide for the assignment of rents; and (d) The Trustee is not a party to the loan documents and does not know if they are valid. The Trustee is without sufficient information to admit or deny the remainder of the allegations, and therefore denies them.

30. Liu said in ¶ 18: “The Borrower defaulted under the Loan Documents by, among other things, failing to make timely payments when due and by failing to pay its obligations under the Note. The last payment received by the Debtor was August 2017. Interest accrues from August 2017 until the present at 15% per annum.”

Trustee’s Response: Trustee denies the allegations above: (a) The Trustee is not a party to the notes or to the deed of trust and does not know if they are valid; (b) The notes have different interest rates depending on which notes are analyzed, and Exhibits A and B have a lower interest rate than Exhibits C through K; (c) The deed of trust does not identify interest rates; (d) The notes provided at Exhibits A and B provide for a 9%

default interest rate; (e) The notes provided at Exhibits C through K were due thirty days after they were called, and the Trustee has no evidence in the Motion of the notes being called; and (f) Bankruptcy by itself cannot cause a default. The Trustee is without sufficient information to admit or deny the remainder of the allegations, and therefore denies them.

31. Liu said in ¶ 19: “As of November 7, 2018, the total payoff amount due under the Loan Documents was not less than \$3,475,194.75.”

Trustee’s Response: Trustee denies the allegations above: (a) Meilin Liu as a nonattorney cannot represent Ameri Asian Funding, LLC, or Samson Exchange; (b) The total payoff to Meilin Liu is significantly less than \$3,475,194.75; (c) The deed of trust exhibit b provides total payoff for both principal and interest is only \$3,026,744.57, not \$3,475,194.75; and (d) The Trustee is not a party to the loan documents and does not know if they are valid. The Trustee is without sufficient information to admit or deny the remainder of the allegations, and therefore denies them.

32. Liu said in ¶ 20: “Based upon the Debtor’s significant default with the entire unpaid balance of the loan due and owing, Meilin Liu commenced a foreclosure action in the state of Oregon. Under Oregon law, the matter was scheduled to be sold at auction on August 3, 2018.”

Trustee’s Response: Trustee denies the allegations above: (a) The Trustee is not a party to the loan documents and does not know if they are valid; and (b) The Trustee has no personal knowledge concerning whether Meilin Liu commenced a foreclosure action in

the state of Oregon. The Trustee is without sufficient information to admit or deny the remainder of the allegations, and therefore denies them.

33. Liu said in ¶ 21: “To stop the foreclosure sale, the Debtor sought chapter 11 protection.”

Trustee’s Response: Trustee is without sufficient information to admit or deny the allegations, and therefore denies them.

34. Liu said in ¶ 22: “The Debtor filed a voluntary chapter 11 bankruptcy petition in Utah Bankruptcy Court on July 16, 2018 (the “Petition Date”).”

Trustee’s Response: Trustee denies the allegations. The Trustee believes that TFEC filed bankruptcy on July 11, 2018, and the Debtor filed bankruptcy on July 27, 2018. Trustee is without sufficient information to admit or deny the remainder of the allegations, and therefore denies them.

35. Liu said in ¶ 23: “Debtor’s monthly financial statements filed in this bankruptcy shows a monthly loss of \$24,372.00, without consideration of the obligation owing Meilin Liu.”

Trustee’s Response: The Debtor has filed three monthly operating reports since the commencement of its bankruptcy case. Debtor’s monthly operating report for the period ending October 31, 2018 shows a monthly net operating loss of \$23,807.52. [*See* Monthly Operating Report Form 2-D, at Dkt. 32.]. Debtor’s monthly operating report for the period ending September 30, 2018 shows a monthly net operating loss of \$25,584.52. [*See* Monthly Operating Report Form 2-D, at Dkt. 25.]. Debtor’s monthly operating report for the period ending August 31, 2018 shows a monthly net operating loss of \$36,614.64. [*See* Monthly Operating Report Form 2-D, at Dkt. 23.] All of the monthly

operating reports take into account pre-petition liabilities. Trustee is without sufficient information to admit or deny the remainder of the allegations, and therefore denies them.

36. Liu said in ¶ 24: “The Debtor’s current bank account shows \$25.”

Trustee’s Response: The Debtor has filed three monthly operating reports since the commencement of its bankruptcy case. Debtor’s monthly operating report for the period ending October 31, 2018 shows a bank balance of \$340. [See Monthly Operating Report Form 2-B, at Dkt. 32.]. Debtor’s monthly operating report for the period ending September 30, 2018 shows a bank balance of \$25. [See Monthly Operating Report Form 2-B, at Dkt. 25.]. Debtor’s monthly operating report for the period ending August 31, 2018 shows a bank balance of \$25. [See Monthly Operating Report Form 2-B, at Dkt. 23.]. Trustee is without sufficient information to admit or deny the remainder of the allegations, and therefore denies them.

37. Liu said in ¶ 25: “Upon information and belief, the Debtor has transferred, assigned or sold all of its revenues and rents generated from the real property which secures the Note.”

Trustee’s Response: The Trustee is without sufficient information to admit or deny the allegations, and therefore denies them.

38. Liu said in ¶ 26: “Upon information and belief, the value of the property may be no more than \$9,800,000.00.”

Trustee’s Response: The Trustee is without sufficient information to admit or deny the allegations, and therefore denies them.

RESPONSE TO ARGUMENT AND AUTHORITY

I. Cause Does not Exist to Terminate the Automatic Stay

Meilin Liu has not established that cause exists to terminate the automatic stay. Section 362(d) identifies factors that the courts may consider in determining whether to terminate the automatic stay. Factors include whether there is adequate protection in the property and whether the property is necessary to an effective reorganization. *See 11 U.S.C. § 362(d); In re Carbaugh*, 278 B.R. 512, 525 (B.A.P. 10th Cir. 2002). Some of the other factors which the courts have considered include: whether this is the first bankruptcy case filing by the debtor or if other multiple cases have been filed, whether the property is necessary to an effective reorganization, whether relief from stay would interfere with the bankruptcy, whether the debtor acted in bad faith, injury to the debtor and other creditors if the stay is modified, and proportionality of the harms from modifying or continuing the stay. *See generally, J.E. Livestock, Inc. v. Wells Fargo Bank, N.A. (In re J E Livestock)*, 375 B.R. 892, 897 (B.A.P. 10th Cir. 2007).

In this case, the Debtor needs the real property in order to reorganize. The real property is the Debtor's primary asset and is critical for the Debtor's ability to reorganize. The Debtor has not filed multiple bankruptcy cases and has not acted in bad faith in filing this case. Relief from stay would injure the Debtor and make it impossible to pay creditors because the Debtor would lose its primary asset. The proportionality of the harms favor denying the Motion.

In addition, the loan documents attached to the Motion show that Meilin Liu is an unsecured creditor without the legal right to foreclose on the real property, and that the deed of trust is an avoidable transfer. As such, allowing Meilin Liu relief from the automatic stay to

improperly foreclose on the property would result in Meilin Liu being paid ahead of all other unsecured creditors of the Debtor, in violation of the Bankruptcy Code's priority scheme.

Furthermore, Meilin Liu and the other noteholders are creditors of TFEC, not the Debtor, and they do not have any grounds to recover from the Debtor based on the notes alone. If the Motion is granted, all of the Debtor's creditors will be harmed because there will be no assets to pay its creditors, Meilin Liu's claim will be paid ahead of all other unsecured creditors, and any potential equity contained in the real property will be lost.

II. Movant Has Not Proven a Lack of Equity in the Property

11 U.S.C. § 362(d)(1) states, "On request of a party in interest after notice and a hearing, the court shall grant relief from the stay provided under subsection (a) of this section, such as by terminating, annulling, modifying or conditioning such stay—(1) for cause, including the lack of adequate protection of an interest in property of such party in interest."

The deed of trust was not entered into at the same time as the promissory notes, and the promissory notes the deed of trust purports to secure are explicitly "unsecured". Therefore, the deed of trust represents an avoidable transfer of real property and can be avoided. The promissory notes are also problematic in that they are with TFEC, and not the Debtor directly. Meilin Liu provides no evidence that there are any valid debts exceeding the approximately \$3,000,000 in notes that Meilin Liu attaches from Ameri Asian Funding, LLC, Samson Exchange, and Meilin Liu, which are avoidable. Thus, Meilin Liu has not met the burden of proving a lack of equity in the property and therefore is not entitled to relief from the automatic stay.

CONCLUSION

Wherefore, the Trustee prays that the Court deny the Motion, and for such further relief the Court holds equitable and just.

DATED this 7th day of January, 2019.

Michael F. Thomson
Peggy Hunt
Jessica G. McKinlay
Megan K. Baker
DORSEY & WHITNEY LLP
*Attorneys for Chapter 11 Trustee of The
Falls Event Center, LLC*

CERTIFICATE OF SERVICE, BY NOTICE OF ELECTRONIC FILING

I hereby certify that on the 7th day of January 2019, I electronically filed the **TRUSTEE'S OPPOSITION TO MOTION FOR RELIEF FROM THE AUTOMATIC STAY OR IN THE ALTERNATIVE TO PROHIBIT THE USE OF CASH COLLATERAL** 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 and will be served through the CM/ECF system.

- James W. Anderson jwa@clydesnow.com, jritchie@clydesnow.com
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CERTIFICATE OF SERVICE – MAIL, OTHER

I hereby certify that on this 7th day of January 2019, I caused to be served a true and correct copy of the **TRUSTEE’S OPPOSITION TO MOTION FOR RELIEF FROM THE AUTOMATIC STAY OR IN THE ALTERNATIVE TO PROHIBIT THE USE OF CASH COLLATERAL** as follows:

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/ s / Erin Johnson