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

In re: **THE FALLS AT LITTLETON, LLC**, a Colorado limited liability company, Address: 9067 S 1300 W, #301 West Jordan, UT 84088, Tax I.D. No. 45-2474566, Debtor.	Bankruptcy Case No. 18-27111 Chapter 11 Honorable R. Kimball Mosier [Filed Electronically]

DEBTOR'S OPPOSITION TO RLS CAPITAL, INC.'S MOTION FOR RELIEF FROM THE AUTOMATIC STAY OR IN THE ALTERNATIVE TO PROHIBIT USE OF CASH COLLATERAL

Debtor and Debtor-in-Possession The Falls at Littleton, LLC (the "**Debtor**"), by and through its counsel of record, hereby files its Opposition (the "**Opposition**") to the *Motion for Relief From the Automatic Stay or in the Alternative to Prohibit Use of Cash Collateral* (the

"**Motion**"), which was filed by Lender RLS Capital, Inc. (the "**Lender**" or "**RLS**") on October 4, 2018 as Docket No. 5 in Case No. 18-27111 (the "**Littleton Case**"). This Opposition is also supported by the *Declaration of Gil A. Miller in Opposition to RLS Capital, Inc.'s Motion for Relief From the Automatic Stay or in the Alternative to Prohibit Use of Cash Collateral* (the "**Miller Decl.**") that is being filed contemporaneously with this Opposition.

Debtor's Response to Lender's Factual Allegations

Pursuant to Local Rule 4001-1, the Debtor hereby responds to the factual allegations set forth in the Lender's Motion:

1. Lender Allegation: *"On June 10, 2015, The Falls at Littleton, LLC ("Falls") executed a Promissory Note dated May 23, 2016, in favor of RLS Capital, Inc., an Arizona corporation, in the principal amount of $2,500,000.00 (the "Note"). A copy of the Note is attached hereto and incorporated herein by reference as Exhibit A."* The Debtor admits Paragraph 1 of the Motion's factual allegations.

2. Lender Allegation: "*The Note was secured by a Deed of Trust dated May 23, 2016, ("Trust Deed"), wherein Debtor agreed to pledge real property and the rents generated from that property to secure the Note located at 8199 Southpark Court, Littleton, CO 80120 and more particularly described in the Deed of Trust, a copy of which is attached hereto and incorporated herein by reference as Exhibit B."* The Debtor admits that the document attached to the Motion as Exhibit B, which is a *Deed of Trust* dated May 23, 2016, listing the Lender as Beneficiary, and describing the Debtor's real property located at 8199 Southpark Court, Littleton, CO 80120-5637 (the "**Littleton Trust Deed**"), appears to have been executed by the Debtor as Trustor, although the notary acknowledgment on Page 5 of the Littleton Trust Deed

(which does not have filled in the name of the person whose signature is being acknowledged) is defective. The Debtor admits that Paragraph 20 of the Littleton Trust Deed states that "[a]s additional security hereunder, Borrower hereby assigns to Lender the rents of the Property . . . ." The Debtor admits that Paragraph 2.1 of the Littleton Trust Deed states that it secures "the repayment of the indebtedness evidenced by Borrower's note (Note) dated May 23, 2016 in the principal sum of Two Million Five Hundred Thousand and 00/00 Dollars (U.S. $2,500,000.00)," however, if the defective notary for the Littleton Trust Deed renders the Littleton Trust Deed void, then the Littleton Trust Deed does not secure the Note.

3. Lender Allegation: "*The Note was given as temporary construction financing designed to be repaid in eighteen months after completion of the construction.*" The Debtor denies Paragraph 3 of the Motion's factual allegations. The Note is dated May 23, 2016, and its maturity date of June 1, 2017 is not eighteen months after the date of the Note.

4. Lender Allegation: *"In addition to pledging real property as security for the Note, the Debtor also pledged to RLS all income and rents generated from the property pursuant to an assignment of rents clause."* The Debtor asserts that if the defective notary acknowledgment for the Littleton Trust Deed renders the Littleton Trust Deed void, then the Littleton Trust Deed would not secure the Note. See, Paragraph 2 above. The Debtor admits that Paragraph 20 of the Littleton Trust Deed states that "[a]s additional security hereunder, Borrower hereby assigns to Lender the rents of the Property . . . ." The Debtor denies that the Littleton Trust Deed created a pledge to RLS of all income generated from the property.

5. Lender Allegation: *"Pursuant to the Loan Documents, the Borrower borrowed $2,500,000.00 from RLS with an original maturity date of June 1, 2017."* The Debtor admits

that pursuant to the Note, the Debtor borrowed $2,500,000.00 from Lender with an original maturity date of June 1, 2017.

6. Lender Allegation: *"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 12% per annum, or $25,000 per month."* The Debtor admits that the Note states that the interest under the Note shall be payable "commencing on 7/1/2016, and continuing on the same day of each and every successive calendar month (the "Payment Due Date")," and the interest rate stated in the Note is 12% per annum.

7. Lender Allegation: *"The Note also requires the Debtor to pay a late fee of 10% of any unpaid payment, or the sum of $2,500 per month."* The Debtor admits that the Note describes a late charge for each monthly payment that is not actually received by the Lender, and states that "[s]uch late charge shall be equal to ten percent (10%) of the delinquent monthly payment . . . ."

8. Lender Allegation: *"The Note also provides for a default interest rate of 29% per annum from the date on which the payment was due and payable until the delinquent payment is received."* The Debtor admits Paragraph 8 of the Motion's factual allegations.

9. Lender Allegation: *"On June 1, 2017, the Note matured, requiring the Debtor to pay the unpaid principal balance, which the Debtor failed to do."* The Debtor admits Paragraph 9 of the Motion's factual allegations.

10. Lender Allegation: *"Debtor has completed construction of a business building on the collateral pledged to RLS which is now operating and generating rents which were also pledged to RLS."* The Debtor admits that the Debtor has completed construction of a business

building on the real property described in the Littleton Trust Deed, and the Debtor admits that the business building is now operating. The Debtor asserts that if the defective notary acknowledgment for the Littleton Trust Deed renders the Littleton Trust Deed void (including the assignment of rents provision of the Littleton Trust Deed), then the Littleton Trust Deed would not secure the Note, and no rents from the property would have been pledged to RLS. See, Paragraph 2 above.

11. Lender Allegation: *"RLS has not consented to the debtor's use of its rents."* The Debtor admits that RLS has not consented to the Debtor using any rents from the real property described in the Littleton Trust Deed; however, the Debtor denies that any such rents exist or are being generated by such real property. The Debtor also asserts that if the defective notary acknowledgment for the Littleton Trust Deed renders the Littleton Trust Deed void (including the assignment of rents provision of the Littleton Trust Deed), then the Littleton Trust Deed would not secure the Note, and no rents from the property would have been pledged to RLS. See, Paragraph 2 above.

12. Lender Allegation: *"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 at maturity. The last payment received by the Debtor was February 2018. Interest accrues from February 2018 until the present at 29% per annum."* The Debtor admits that the Debtor defaulted under the Note by failing to pay the principal balance of the Note at maturity. The Debtor admits that certain payments were made by the Debtor to the Lender after the maturity date of the Note. The Debtor admits that interest accrues at the default rate of 29% per annum from the last payment made by the Debtor to the present. The Lender's

allegation that "*[t]he last payment received by **the Debtor** was February 2018"* is ambiguous, and the Debtor can neither admit nor deny this allegation.

13. Lender Allegation: *"As of February 9, 2018, the total payoff amount due under the Loan Documents was not less than $3,253,880.33."* In response to the allegations of Paragraph 13 of the Motion, the Debtor notes that the Lender has not introduced into evidence or provided any payoff schedule or other loan statement or any other information supporting the Lender's allegation of the outstanding balance of the Note. The Debtor also notes that it is the Lender's burden to prove the amount owing to the Lender. Accordingly, the Debtor lacks sufficient information to either admit or deny the Lender's factual allegations in Paragraph 13 of the Motion.

14. Lender Allegation: *"Based upon the Debtor's significant default with the entire unpaid balance of the loan due and owing, RLS commenced a foreclosure action in the state of Colorado. Under Colorado law, the matter was scheduled to be sold at auction on July 15, 2018."* The Debtor admits that the Lender commenced a foreclosure action in the State of Colorado to foreclose on the real property described in the Littleton Trust Deed, and scheduled a foreclosure auction. The Debtor denies that the foreclosure auction was scheduled for July 15, 2018, and asserts that the foreclosure auction was scheduled for September 26, 2018. The Debtor asserts that if the defective notary acknowledgment for the Littleton Trust Deed renders the Littleton Trust Deed void (including the assignment of rents provision of the Littleton Trust Deed), then RLS would not be entitled to foreclose the Littleton Trust Deed. See, Paragraph 2 above.

15. Lender Allegation: *"To stop the foreclosure sale, the Debtor sought chapter 11 protection."* The Debtor admits that the Lender was stayed from proceeding with the foreclosure action by the filing of the Debtor's Chapter 11 bankruptcy petition on September 24, 2018. Notwithstanding the scheduling by the Lender of its foreclosure auction, the Debtor asserts that if the defective notary acknowledgment for the Littleton Trust Deed renders the Littleton Trust Deed void (including the assignment of rents provision of the Littleton Trust Deed), then RLS would not be entitled to foreclose the Littleton Trust Deed. See, Paragraph 2 above. The Debtor also asserts that the Debtor had a legitimate reorganization purpose for filing its voluntary Chapter 11 bankruptcy petition.

16. Lender Allegation: *"The Debtor filed a voluntary chapter 11 bankruptcy petition in Utah Bankruptcy Court on September 24, 2018 (the "Petition Date")."* The Debtor admits the factual allegations of Paragraph 16 of the Motion.

17. Lender Allegation: "*Upon information and belief, the Debtor had transferred, assigned or sold all of its revenues and rents generated from the real property which secures the Note."* The Debtor denies that the revenues generated from the real property described in the Littleton Trust Deed secure the Note. The Debtor also asserts that if the defective notary acknowledgment for the Littleton Trust Deed renders the Littleton Trust Deed void (including the assignment of rents provision of the Littleton Trust Deed), then the rents (if any) from the real property described in the Littleton Trust Deed would not secure the Note. The Debtor denies that there are any rents being generated from the real property described in the Littleton Trust Deed, and even if such rents were being generated, the Debtor denies that such rents secure the Note. See, Paragraphs 10 and 11 above.

18. Lender Allegation: *"Upon information and belief, the value of the property may be no more than $2,800,000."* The Debtor denies the factual allegations of Paragraph 18 of the Motion.

Additional Facts in Opposition to Lender's Motion for Relief From Stay

19. In June of 2018, Brooks Pickering ("**Pickering**") was appointed as the Chief Restructuring Officer ("**CRO**") for the Debtor's parent company, Debtor TFEC, as part of the restructuring for Debtor TFEC and its subsidiaries, including the Debtor. See, Miller Decl. at ¶ 7.

20. Pickering determined that a comprehensive approach was needed for the restructuring and reorganization of TFEC and its subsidiaries. Accordingly, Pickering directed that the Chapter 11 case for TFEC be filed with the United States Bankruptcy Court for the District of Utah on July 11, 2018, captioned as In re The Falls Event Center LLC, Case No. 18-25116 (the "**TFEC Case**"). See, Miller Decl. at ¶ 8.

21. On September 14, 2018, Pickering resigned as the CRO of TFEC, and Gil A. Miller ("**Miller**") was appointed as the CRO of TFEC. See, Miller Decl. at ¶ 9.

22. The real property described in the Littleton Trust Deed (the "**Littleton Event Center**") is improved with a special purpose event center building that is available for use to the general public to host wedding receptions and other events. The Littleton Event Center is one of eight event centers that are currently being operated (collectively the "**Event Centers**"). The real property at each of the eight locations is owned by separate entities owned by TFEC. These related entities, including the Debtor, are referred to herein as the "**Subsidiaries**." See, Miller Decl. at ¶ 10.

23. As part of the operations and management of all of the Subsidiaries, including the Debtor, TFEC handles the bookings for all of the Event Centers, collects the deposits and use fees, employs the staff for each of the Event Centers, and owns the tables, chairs, linens, audio/visual equipment and other personal property associated with each of the Event Centers. TFEC is also responsible for insuring and maintaining each of the Event Centers, which has historically included servicing the debt obligations and operational expenses associated with each of the Event Centers, including the Littleton Event Center. Accordingly, TFEC has always handled all of the finances associated with each of the Subsidiaries, including the Debtor. See, Miller Decl. at ¶ 11.

24. In recognition of how the operations and management of the Subsidiaries and the Event Centers have been handled in the past, and as part of the still developing restructuring and reorganization plans for TFEC and the Subsidiaries, TFEC (through Miller) has determined that it would be best to substantively consolidate some of the Subsidiaries into the TFEC Case. In addition, TFEC (through Miller) is working to sell certain undeveloped real property owned by some of the Subsidiaries as well as some of the Event Centers that Miller has determined cannot be operated profitably in the near future. TFEC has already made progress in implementing its plan. TFEC has been successful in selling the Peoria property owned by TFEC's Peoria subsidiary, the Fairfield property owned by TFEC's Fairfield subsidiary, and the Centennial property owned by TFEC's Centennial subsidiary. The sale of the Cedar Park property owned by TFEC's Cedar Park subsidiary is pending. These sales are significant steps toward a successful reorganization. However, the Littleton Event Center is vital to the success of the

overall plan, and TFEC and its Subsidiaries, including the Debtor, will not be able to effectively reorganize without the Littleton Event Center. See, Miller Decl. at ¶ 12.

A. ARGUMENT

1. Relief From Stay Statutory Requirements

11 U.S.C. § 362(d)(1) provides that relief from the automatic stay can be granted for "cause," while 11 U.S.C. § 362(d)(2) provides a two-pronged standard for relief from the automatic stay, as follows:

> (d) On request of a party in interest and after notice and 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;
>
> (2) with respect to a stay of an act against property under subsection (a) of this section, if –
>
> (A) the debtor does not have an **equity** in such property; and
>
> (B) such property is **not necessary to an effective reorganization.**

11 U.S.C. § 362(d) (emphasis added).

Lender, the secured creditor, as the moving party, has the burden of proof on the debtor's equity in the debtor's property that is at issue. 11 U.S.C. § 362(g)(1). The Debtor has the burden of proof on all other issues. 11 U.S.C. § 362(g)(2).

2. The Lender has Failed to Meet its Burden of Proof to Show that Debtor has No Equity in the Littleton Event Center

A debtor has no equity in property when the debts secured by liens on the property exceed the value of the property. The Tenth Circuit has stated: "In the context of stay relief, 'equity' exists if the value of the property exceeds all claims secured by such property, whether those claims belong to the moving creditor or others." *In re Gindi*, 642 F.3d 865, 875 (10th Cir. 2011), *quoting Jordan v. Kroneberger (In re Jordan),* 392 B.R. 428, 447 (Bankr. D. Idaho 2009) (*Gindi* overruled in part on other grounds by *TW Telecom Holding Inc. v. Carolina Internet Ltd.*, 661 F.3d 495 (10th Cir. 2011)).

Lender has failed to meet its burden of proof that the Debtor does not have any equity in the Littleton Event Center. Lender has not filed a Declaration or other evidence to support its allegations as to the amount of the Lender's debt. The Lender has only alleged that "[a]s of February 9, 2018, the total payoff amount due under the Loan Documents was not less than $3,253,880.33", without any supporting evidence such as a payoff schedule or a loan summary. See, Lender's factual allegations in Paragraph 13 of the Motion.

Furthermore, Lender has not provided any appraisal of the Littleton Event Center. All that Lender has alleged is "[u]pon information and belief, the value of the property may be no more than $2,800,000." See, Lender's factual allegations in Paragraph 18 of the Motion. "Information and belief" does not come anywhere close to meeting the Lender's burden of proof on the Debtor's equity in the Littleton Event Center.

Although it is not the Debtor's burden to disprove the Lender's allegation that there is no equity in the Littleton Event Center, the Debtor believes that it has equity in the Littleton Event Center at this time. The Debtor also believes that through the Chapter 11 reorganization process,

the Debtor's operations at the Littleton Event Center can be restructured to make those operations profitable.

3. There is a Factual Dispute on Whether the Lender's Claim Against the Debtor is Secured.

As more fully outlined in the Debtor's response to the factual allegations of Paragraph 2 of the Motion, the Debtor asserts that there are factual disputes as to whether or not the Littleton Trust Deed secures the Lender's Note. Although the Littleton Trust Deed appears to have been executed by the Debtor as Trustor, the notary acknowledgment on Page 5 of the Littleton Trust Deed (which does not have filled in the name of the person whose signature is being acknowledged) is defective, which then puts into question the validity of the Littleton Trust Deed as a lien on the Littleton Event Center. If this defect in the notary acknowledgement of the Littleton Trust Deed render the Littleton Trust Deed void, then the Lender would be only an unsecured creditor of the Debtor, and would not be entitled to relief from the stay.

4. The Littleton Event Center is Essential to the Effective Reorganization of Debtor TFEC and its Subsidiaries (Including the Debtor).

If there is no equity in a debtor's property under § 362(d)(2), then the debtor has the burden of "not merely showing that if there is conceivably to be an effective reorganization, this property will be needed for it; but that the property is essential for an effective reorganization *that is in prospect*. This means . . . that there must be a reasonable possibility of a successful reorganization within a reasonable time." *In re Gindi*, 642 F.3d 865 (10th Cir. 2011), *quoting United Sav. Assoc. of Texas v. Timbers of Inwood Forest Assocs., Ltd.*, 484 U.S. 365, 375-76, 108 S. Ct. 626 (1988) (*Gindi* overruled in part on other grounds by *TW Telecom Holding Inc. v. Carolina Internet Ltd.*, 661 F.3d 495 (10th Cir. 2011)). The Supreme Court recognized in the

Timbers case that a less detailed showing that the debtor has a reasonable possibility of a successful reorganization within a reasonable time is required during the initial four months that a debtor is given the exclusive right to put together a plan of reorganization. *United Sav. Assoc. of Texas v. Timbers of Inwood Forest Assocs., Ltd.*, 484 U.S. 365, 376, 108 S. Ct. 626, 633 (1988).

As stated above, the Lender has failed to meet its burden of proof to demonstrate that the Debtor has no equity in the Littleton Event Center, so the burden has not been shifted to the Debtor to demonstrate the merits of its reorganization plan for the Littleton Event Center in the context of the larger picture of the reorganization of TFEC and all of its Subsidiaries, including the Debtor. Nevertheless, even if the Court rules that there is no equity in the Littleton Event Center, the Debtor contends that at this very early stage of this Chapter 11 case, the Littleton Event Center is essential for an effective reorganization that is in progress.

Lender's Motion was filed on October 4, 2018, only 10 days after this Chapter 11 Case was filed. Even in that short period of time, significant progress was made towards a successful reorganization. The Debtor notes that new management for the Debtor's parent, Debtor TFEC, headed by Brooks Pickering as CRO, came on board in June of 2018, just prior to the filing of the TFEC Case. At that time, the prior management of Debtor TFEC and its Subsidiaries (including the Debtor), headed by Steve Down, agreed to withdraw from any further involvement with Debtor TFEC and its Subsidiaries. Obviously there were significant pre-petition problems with the management of Debtor TFEC. But the relevant issue *now* that this Court must assess is how effective Pickering as CRO of TFEC and now Miller as the successor CRO of TFEC have been to pick up the pieces and streamline the operations of TFEC and its

Subsidiaries (including the Debtor) in such a way as to maximize the benefit to creditors of the bankruptcy estate of Debtor TFEC and the creditors of its Subsidiaries (including the Debtor) going forward.

Pickering and Miller, as the CROs of Debtor TFEC, have invested substantial time and resources in understanding the operations and business dealings of Debtor TFEC and its Subsidiaries (including the Debtor), protecting their assets, improving their processes, creating a plan for their joint reorganization in bankruptcy, and maximizing the eventual recovery for all creditors of these related entities. While the eventual plan is still in its infancy, due to the short period of time since the filing of the Littleton Case and the filing of the TFEC Case and the need to focus first on the initial administrative requirements of both of the Chapter 11 Cases (i.e., preparing and filing Statements and Schedules and other initial stage requirements for Chapter 11 filings), Debtor TFEC (through Miller) has concluded that the reorganized Debtor needs to mirror how Debtor TFEC and its Subsidiaries were operated from the very beginning; i.e., as a consolidated business operation. There were undoubtedly various legal reasons for vesting title to the various Event Centers in separate Subsidiaries that held no other assets, but the reality is that Debtor TFEC ran all of the business operations on a consolidated basis from the very beginning.

Accordingly, the plan is to file a motion for substantive consolidation of Debtor TFEC and some of its Subsidiaries, while at the same time selling off the properties that are no longer operating, streamlining the postpetition operations of the remaining operating Event Centers that can be operated profitably, and proposing and then implementing a reorganization plan for Debtor TFEC and its consolidated Subsidiaries. Debtor TFEC has already made progress in

implementing its plan. Debtor TFEC has been successful in selling the Peoria property owned by Debtor TFEC's Peoria subsidiary, the Fairfield property owned by Debtor TFEC's Fairfield subsidiary, and the Centennial property owned by Debtor TFEC's Centennial Subsidiary. The sale of the Cedar Park property owned by Debtor TFEC's Cedar Park Subsidiary is pending. These sales are significant steps toward a successful reorganization. However, the Littleton Event Center is vital to the success of the overall plan, and Debtor TFEC and its Subsidiaries, including the Debtor, will not be able to effectively reorganize without the Littleton Event Center.

5. Lender is not Entitled to Relief from the Stay for "Cause" Pursuant to Section 362(d)(1).

As outlined above, Section 362(d)(1) provides that relief from stay should be granted for cause, including the lack of adequate protection of an interest in property of such party in interest. 11 U.S.C. § 362(d)(1). The Supreme Court has stated "that the 'interest in property' referred to by § 362(d)(1) includes the right of a secured creditor to have the security applied in payment of the debt upon completion of the reorganization; and that that interest is not adequately protected if the security is depreciating during the term of the [automatic] stay." *United Sav. Assoc. of Texas v. Timbers of Inwood Forest Assocs., Ltd.*, 484 U.S. 365, 370, 108 S. Ct. 626, 630 (1988). Therefore, if the Littleton Event Center were depreciating in value, then the Debtor would be obligated to provide adequate protection for depreciating collateral (such as a motor vehicle). However, there is no showing that the Littleton Event Center is currently depreciating in value. The Supreme Court also ruled in the *Timbers* case that a secured creditor's right (suspended by the automatic stay) to take immediate possession of its collateral

and apply it in payment of its debtor is not a property interest that had to be adequately protected. *Id.*

Lender alleges that "cause" exists for relief from the automatic stay for the following reasons: "First, modifying the stay will not interfere with the Debtor's bankruptcy because the Debtor's junior lien against the property is wholly unsecured. The property has a value that may be as little as $2,800,000 while the total payoff owed to RLS is the sum of $3,253,880.33. There is evidence in this case that the Debtor may have acted in bad faith. The revenue generated from this property is not being utilized by the Debtor, but is apparently automatically transferred to the Debtor's parent, also in bankruptcy. Although the Debtor pledged all income proceeds to RLS, the Debtor is diverting those proceeds to its parent corporation without the permission of RLS and perhaps without written documentary evidence." See, Motion at p. 6.

There is no evidentiary support from the Lender for any of these allegations. The Lender states that "the Debtor's junior lien against the property is wholly unsecured." The relevant standard is whether the Debtor has any "equity" (not a lien) in the Debtor's property. As demonstrated above, the Lender has failed to meet its burden of proof to show that there is no equity in the Debtor's property. The Lender's claim that the property "has a value that may be as little as $2,800,000" has no evidentiary support from the Lender. Likewise, there is no evidence supporting the Lender's assertion that "the total payoff owed to RLS is the sum of $3,253,880.33." There is absolutely no evidence to support the Lender's assertion that "[t]here is evidence in this case that the Debtor may have acted in bad faith." Not only is there an evidentiary dispute as to whether or not the Lender is secured at all (as outlined above), but the Lender's assertion that "the Debtor pledged all income proceeds to RLS" is not correct. At best,

the Debtor pledged any rents from any leasing of the Littleton Event Center under the Littleton Trust Deed (assuming the validity of the Littleton Trust Deed), but the Littleton Event Center is not being leased at this time. The business operations at the Littleton Event Center are being conducted by Debtor TFEC, and any revenues being generated by those business operations are the personal property of Debtor TFEC, and not a real property interest covered by the real property pledges in the Littleton Trust Deed. The Lender has not alleged or proven that it has a security interest in the personal property of either Debtor TFEC or the Debtor. Accordingly, the assertion by the Lender that "the Debtor is diverting" to Debtor TFEC the proceeds from business operations that belong to the Lender is simply not true.

As to the assertion that "the Debtor may have acted in bad faith", it is not bad faith for the Debtor to act to protect the business operations at the Littleton Event Center that will support the reorganization of Debtor TFEC and its Subsidiaries. This is not a case of a deeply underwater borrower that is just postponing the inevitable by filing a series of futile bankruptcy petitions to hold up an undersecured creditor from realizing on its collateral. Debtor TFEC and its Subsidiaries, including the Debtor, have viable business operations and a promising business model that just need some breathing space and expert restructuring assistance to get back on their feet. In the meantime, the Debtor has a vital interest in protecting the valuable operating business being conducted at the Littleton Event Center that will enhance the recovery to the creditors of Debtor TFEC and its Subsidiaries.

While it may be understandable for Lender to aggressively pursue relief from the stay at this time, this Court should also recognize that by filing its Motion, Lender is seeking to complete its foreclosure and appropriate the excess equity over the current balance of the amount

owed to Lender (whatever that amount may be) as a windfall to Lender, without regard to the legitimate interests and concerns of the creditors of Debtor TFEC and its Subsidiaries to maximize the value of all of the assets of Debtor TFEC and its Subsidiaries (including the Debtor). While it is understandable that Lender is looking out for its own interests and wants to immediately complete its foreclosure sale, fortunately the Court is in a position to weigh the best interests of all of the creditors.

6. There was no Scheme to Delay, Hinder or Defraud Creditors for Stay Relief Under Section 362(d)(4), and Lender is Not Entitled to Any Kind of Cash Collateral Order.

Lender also asserts that it is entitled to relief from the automatic stay under Section 362(d)(4) of the Bankruptcy Code because there was a scheme to delay, hinder or defraud creditors that involved either the transfer of real property without the consent of the secured creditor or court approval, or multiple bankruptcy filings affecting such real property. However, there is no evidence of any such scheme to delay, hinder or defraud Lender. There have not been any multiple bankruptcy filings for the Debtor. Moreover, the Lender has not alleged or proven that it has any perfected security interest in the personal property generated from Debtor TFEC's operations conducted at the Littleton Event Center, and there is no basis for the entry of any Order with respect to cash collateral, since there are no rents from the Littleton Event Center and therefore no cash collateral exists. While it is true that there will be some delay before Lender's lien is satisfied (assuming the validity of the Littleton Trust Deed), that delay is inherent in the legitimate bankruptcy process, and actions taken to protect the valuable business operations at the Littleton Event Center for the benefit of other creditors can hardly be classified as an action

to defraud Lender. Accordingly, the Debtor respectfully requests that Lender's request for relief from the automatic stay be denied.

7. There is No Basis for Waiving the Requirements of Bankruptcy Rule 4001(a)(3).

Lender asserts that not only is it entitled to relief from the automatic stay under Section 362(d), but the 14 day stay period under Bankruptcy Rule 4001(a)(3) should also be waived because the Lender is being delayed from foreclosing. However, while it is true that there will be some delay before Lender's lien is satisfied (assuming the validity of the Littleton Trust Deed), that delay is inherent in the legitimate bankruptcy process. There is no basis for any waiver of any of the requirements of Bankruptcy Rule 4001(a)(3).

B. CONCLUSION

For the reasons set forth above, the Debtor respectfully submits that Lender's Motion for Relief from the Automatic Stay should be denied.

DATED this 22nd day of October, 2018.

RAY QUINNEY & NEBEKER P.C.

/s/ Michael R. Johnson
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CERTIFICATE OF SERVICE

I hereby certify that on October 22, 2018, a true and correct copy of the foregoing document was electronically filed and therefore served via ECF on all parties that have entered an electronic appearance in this case:

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/s/ Dianne Burton