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*Proposed Attorneys for Michael F. Thomson, Chapter 11 Trustee
for The Falls Event Center, LLC*

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

In re:

THE FALLS AT ST. GEORGE, LLC,

Debtor.

Bankr. Case No. 18-26653

Chapter 11

The Honorable R. Kimball Mosier

**APPLICATION OF MICHAEL F. THOMSON, CHAPTER 11 TRUSTEE FOR THE
BANKRUPTCY ESTATE OF THE FALLS EVENT CENTER LLC, FOR
ENTRY OF AN ORDER AUTHORIZING THE EMPLOYMENT OF
JONES LANG LASALLE AMERICAS, INC. AS REAL ESTATE BROKER FOR THE
DEBTOR**

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"), as manager of The Falls at St. George, LLC, the debtor herein (the "St. George Debtor") hereby applies to the Court for an order pursuant to 11 U.S.C. § 327 and Federal Rule of Bankruptcy Procedure 2014, authorizing him to employ and retain Jones Lang LaSalle Americas, Inc. ("JLL") as real estate broker for the Debtor St. George as set forth below. This application is accompanied by the Amended

Declaration of Brian Anderson (the "Amended Anderson Declaration"). In support of this application, 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

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

2. 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").

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

4. 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].

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

6. 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].

PRIOR REQUEST FOR RETENTION OF JLL BY THE DEBTOR

7. On October 29, 2018, Debtor TFEC filed its *Application of Debtors for Entry of Orders Authorizing the Debtors to Retain and Employ Jones Lang LaSalle Americas, Inc. as Real Estate Broker*. [TFEC Case, Docket No. 175] (the "Original Application"), which was also filed in Debtor St. George's case as Docket No. 14.

8. On October 29, 2018, Debtor TFEC filed its *Declaration of Brian Anderson in Support of the Application of the Debtors for entry of Orders Authorizing the Debtors Retain and Employ Jones Lang LaSalle Americas, Inc. as Real Estate Broker* [TFEC Case, Docket No. 176] (the "Anderson Declaration"), which was also filed in Debtor St. George's case as Docket No. 15.

9. On November 7, 2018, Debtor TFEC filed its *Amended Application of the Debtors for Entry of Orders Authorizing the Debtors to Retain and Employ Jones Lang LaSalle Americas Inc. as Real Estate Broker* [TFEC Case, Docket No. 194] (the "Amended Application"), which was also filed in the Debtor St. George's case as Docket No. 21.

10. On December 4, 2018, a hearing was held on the Amended Application, and as a result of that hearing, the Trustee is submitting this revised *Application of Michael F. Thomson, Chapter 11 Trustee for the Bankruptcy Estate of the Falls Event Center, for Entry of an Order Authorizing the Employment of Jones Lang LaSalle Americas, Inc. as Real Estate Broker for the Debtor*, and the revised Listing Agreement attached hereto as Exhibit 1.

RETENTION OF JLL BY THE TRUSTEE

11. The Debtor TFEC has multiple wholly owned subsidiaries, including the Debtor St. George, which each own specific pieces of real property.

12. After discussions with JLL, his accountants, and the committee, the Trustee, acting as manager for the Debtor St. George, deems it prudent to employ JLL as real estate broker for the Debtor St. George, as set forth in the Listing Agreement attached hereto as Exhibit 1, and JLL is willing to provide such services to the Trustee.

13. For the reasons set forth in the Debtor's Application and Amended Application, which are hereby incorporated herein by reference, the Trustee believes that the employment of JLL, which is a nationally recognized real estate brokerage firm with offices and operations in many parts of the United States, is in the best interest of the Debtor St. George's creditors.

DISINTERESTEDNESS

14. To the best of the Trustee's knowledge, neither JLL nor the JLL Project Team has any financial interest or business connection with the Debtor St. George or any of its officers, directors, employees, managers or members.

15. As set forth in the Amended Anderson Declaration, JLL confirms that it is not aware of any conflicts in connection with the Agreement, and further confirms the following: (a) to the best of its knowledge, except as set forth in the Amended Anderson Declaration, neither JLL nor the JLL Project Team has any undisclosed connection with the Debtor St. George, or any of its creditors or any party in interest, or its respective attorneys or accountants, or any other interest adverse to the estate, (b) to the best of its knowledge, except as set forth in the Amended Anderson Declaration, neither JLL nor the JLL Project Team has any direct or indirect

relationship to, connection with, or interest in the Debtor St. George, any of the Debtor St. George's creditors, any other party in interest, any of their respective attorneys and accounts, the United States Trustee, or any person employed by the office of the United States Trustee, and (c) to the best of JLL's knowledge, JLL and the JLL Project Team are disinterested persons as provided in sections 101(14) and 327 of the Bankruptcy Code, and do not represent or hold an undisclosed interest adverse to the interest of the Debtor St. George or its estate.

16. Based on the foregoing, to the best of the Trustee's knowledge, JLL and JLL's Project Team, are disinterested persons as provided in Sections 101, 327, and 328 of the Bankruptcy Code, and do not represent or hold an interest adverse to the interests of the estate.

NOTICE

17. Notice of this Application has been given to the Office of the United States Trustee for this region and all parties who receive service upon electronic filing through the Court's CM/ECF system.

CONCLUSION

18. The Trustee believes it is in the best interests of the Debtor St. George's estate that JLL be employed pursuant to the terms and provisions set forth in this Application and the attached Listing Agreement.

WHEREFORE, the Trustee respectfully requests that the Trustee be authorized, pursuant to 11 U.S.C. § 327(a), and in accordance with Rule 2014(a) of the Federal Rules of Bankruptcy Procedure, to employ JLL as real estate broker for the Debtor St. George.

DATED this 8th day of January, 2019.

/s/ Jessica G. McKinlay
Michael F. Thomson
Peggy Hunt
Jessica G. McKinlay
DORSEY & WHITNEY LLP
Attorneys for Chapter 11 Trustee for The
Falls Event Center, LLC

CERTIFICATE OF SERVICE, BY NOTICE OF ELECTRONIC FILING

I hereby certify that on the 8th day of January, 2019, I electronically filed the foregoing **APPLICATION OF MICHAEL F. THOMSON, CHAPTER 11 TRUSTEE FOR THE BANKRUPTCY ESTATE OF THE FALLS EVENT CENTER, FOR ENTRY OF AN ORDER AUTHORIZING THE EMPLOYMENT OF JONES LANG LASALLE AMERICAS, INC. AS REAL ESTATE BROKER FOR THE DEBTOR** 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.

- Ryan C. Cadwallader readwallader@kmclaw.com, tslaughter@kmclaw.com
- Laurie A. Cayton tr laurie.cayton@usdoj.gov, James.Gee@usdoj.gov;Lindsey.Huston@usdoj.gov;Suzanne.Verhaal@usdoj.gov
- Micah L. Daines micah@dainesjenkins.com
- Michael R. Johnson mjohanson@rqn.com, docket@rqn.com;dburton@rqn.com
- David H. Leigh dleigh@rqn.com, dburton@rqn.com;docket@rqn.com
- Ralph R. Mabey rmabey@kmclaw.com
- Elaine A. Monson emonson@rqn.com, docket@rqn.com;pbrown@rqn.com
- Ellen E Ostrow eeostrow@hollandhart.com, intaketeam@hollandhart.com;lahansen@hollandhart.com
- United States Trustee USTPRegion19.SK.ECF@usdoj.gov
- Brent D. Wride bwride@rqn.com, docket@rqn.com;pbrown@rqn.com

CERTIFICATE OF SERVICE – MAIL, OTHER

I hereby certify that on this 8th day of January, 2019 I caused to be served a true and correct copy of the foregoing **APPLICATION OF MICHAEL F. THOMSON, CHAPTER 11 TRUSTEE FOR THE BANKRUPTCY ESTATE OF THE FALLS EVENT CENTER, FOR ENTRY OF AN ORDER AUTHORIZING THE EMPLOYMENT OF JONES LANG LASALLE AMERICAS, INC. AS REAL ESTATE BROKER FOR THE DEBTOR** as follows:

Mail Service – By regular first class United States Mail, postage fully pre-paid, addressed to:

Jones Lang LaSalle Americas, Inc.
c/o Brian Anderson
111 South Main Street, Suite 300
Salt Lake City, Utah 84111

Jones Lang LaSalle
200 East Randolph Drive
Chicago, IL 60601
Attention: Regional Counsel

/s/ Erin Johnson



LISTING AGREEMENT

This AGREEMENT, dated as of the last date written below, by and between Michael F. Thomson, Chapter 11 Trustee (the “**Trustee**”) for The Falls Event Center, LLC (“**Debtor TFEC**” in Case No. 18-25116 (the “**TFEC Case**”) pending in the United States Bankruptcy Court for the District of Utah (the “**Bankruptcy Court**”), and JONES LANG LASALLE AMERICAS, INC., (hereinafter “**JLL**”). In his capacity as the Chapter 11 Trustee for Debtor TFEC, the Trustee manages The Falls at St. George, LLC (“**Debtor St. George**”), the Debtor-in-Possession in Chapter 11 Case No. 18-18-26653 (the “**St. George Case**”).

BACKGROUND

- A. Debtor St. George owns real property located at 170 South Mall Drive, St. George, Utah 84790 (the “**Property**”).
- B. The Trustee desires to engage JLL as its sole and exclusive sales agent for the Property.
- C. JLL desires to accept such employment and is engaged in the business of marketing properties.

NOW, THEREFORE, in consideration of the mutual covenants and agreements herein contained, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

ARTICLE 1. TERM; TERMINATION

1.1 Bankruptcy Court Approval/Initial Term. This Agreement is subject to approval by the Bankruptcy Court. JLL's duties and responsibilities under this Agreement shall begin upon entry of an order of the Bankruptcy Court authorizing the Trustee to employ JLL, and shall end twelve (12) months thereafter, unless sooner terminated as provided herein.

1.2 Termination. Either party may, at its option and in its sole and absolute discretion, elect to terminate this Agreement upon sixty (60) days' prior written notice to the other party. To the extent not prohibited by law, this Agreement shall automatically be renewed on a month-to-month basis on its existing terms and conditions unless written notice to the contrary is given by either party not less than thirty (30) days prior to the end of a term.

ARTICLE 2. SERVICES

2.1 Services. The Trustee hereby engages, subject to Bankruptcy Court approval, JLL as its exclusive broker for the purpose of selling the Property (the “**Services**”). JLL shall perform the Services in accordance with applicable professional standards. The Trustee shall refer all inquiries to JLL and conduct all negotiations through JLL (under the supervision, direction and control of Trustee), but JLL has no authority to obligate the Trustee, the bankruptcy estate of Debtor St. George, or Debtor St. George until expressly authorized in writing by the Trustee. Brian Anderson and Wick Udy of JLL (the “**Project Team**”) will perform the Services under this Agreement. JLL may cooperate with cooperating brokers, including representatives of JLL or its affiliates other than Project Team members (“**JLL Non-Team Brokers**”), in selling the Property. In such case, the JLL Non-Team Brokers shall be considered cooperating brokers for purposes of this Agreement. In the event that a cooperating broker shall procure a purchaser of the Property, and such party purchases the Property from Debtor St. George through the Trustee, the bankruptcy estate of Debtor St. George shall pay JLL and the cooperating broker the commissions computed in accordance with

the rates set forth on Schedule A to this Agreement. In the event any Project Team member exclusively represents a prospective party, such Project Team member will recuse himself or herself from representation of Trustee hereunder and will be considered a JLL Non-Team Broker for purposes of the applicable sale transaction, and the remaining Project Team members will continue to represent Trustee pursuant to the terms of this Agreement. Such recused Project Team member shall in all events maintain the confidentiality of Debtor St. George and the Trustee's confidential information. All final business decisions shall be made solely by Trustee, and may be subject to approval by the Bankruptcy Court. All sale agreements shall be prepared by Trustee's counsel with assistance from JLL.

2.2 Intentionally deleted.

2.3 Intentionally deleted.

2.4 Intentionally deleted.

2.5 Technical Matters. Trustee acknowledges that JLL is not an expert in and is not responsible for any legal, regulatory, tax, accounting, engineering, environmental or other technical matters, all of which shall be solely Trustee's responsibility. JLL shall, based on its professional expertise, assist Trustee in connection with such matters, including giving the Trustee recommendations as to experts to use for such matters and coordinating the work of such experts with the other parties working on the transaction, but in no event shall JLL have responsibility for the work of such experts.

ARTICLE 3. INDEMNIFICATION

JLL will defend (with counsel reasonably acceptable to Trustee), indemnify and hold harmless Trustee, Debtor St. George and its affiliates, and each and all of their officers, directors, employees, partners and agents, from and against all third party claims, losses, liabilities and expenses, including reasonable attorneys' fees, expert witness fees and court costs ("Loss"), to the extent arising out of JLL's gross negligence or intentional misconduct in connection with this Agreement.

ARTICLE 4. COMPENSATION

JLL shall receive remuneration for its services in accordance with the terms of this Agreement and Schedule A.

ARTICLE 5. NOTICES

All notices, demands, consents and reports provided for in this Agreement shall be in writing and shall be given to Trustee or JLL at the address set forth below or at such other address as they individually may specify thereafter in writing:

TRUSTEE: Michael F. Thomson, Trustee
c/o Peggy Hunt
Dorsey & Whitney LLP
111 S. Main, Suite 2100
Salt Lake City, UT 84111

JLL: Jones Lang LaSalle
111 S. Main St., Suite 300
Salt Lake City, UT 84111
Attention: Brian Anderson

with copies to: Jones Lang LaSalle
200 East Randolph Drive
Chicago, IL 60601
Attention: Regional Counsel

Such notice or other communication shall be delivered by hand or by nationally recognized overnight courier service. For purposes of this Agreement, notices will be deemed to have been given upon receipt or refusal of receipt.

ARTICLE 6. GENERAL PROVISIONS

6.1 Confidentiality; Publicity. JLL shall keep confidential all non-public information obtained from Trustee relating to the Services, except as reasonably required in order to perform Services hereunder, for the term of this Agreement and for two (2) years after the expiration or termination of this Agreement. In addition, any and all data and studies created in connection with the Services shall belong to Trustee. Trustee agrees that JLL may publicize its role in any transaction Trustee enters into, provided JLL does not disclose any financial information regarding such transaction. JLL may use Trustee's name in a list of clients for marketing and promotional purposes.

6.2 Limited Liability. Neither party shall be liable to the other for, and each party hereby waives any and all rights to claim against the other, any special, indirect, incidental, consequential, punitive or exemplary damages in connection with this Agreement, including, but not limited to, lost profits, even if the party has knowledge of the possibility of such damages. In no event shall JLL's liability to Trustee for any transaction exceed the fees paid to JLL in connection with such transaction.

6.3. Miscellaneous. This Agreement, together with the Rider(s), Schedule(s) and Exhibits(s), if any, attached hereto, represents the complete and final understanding between JLL and Trustee with respect to the Services and may not be waived, amended, or modified by either party unless such waiver, amendment or modification is in writing and signed by both parties. If any provision of this Agreement is invalid under applicable law, such invalidity shall not affect the other provisions of this Agreement. This Agreement shall be governed by the laws of the state of Utah. This Agreement is binding upon the parties hereto and their respective successors and assigns; provided, however, this Agreement may not be assigned by either party except to any other entity that acquires all or substantially all of the business and employees of such party, and except that JLL may delegate its duties to a state-licensed affiliate. All disputes related to this Agreement are subject to the jurisdiction of the Bankruptcy Court, and JLL expressly consents to jurisdiction in the Bankruptcy Court.

6.4. Non-Discrimination. The parties hereto acknowledge that it is illegal to refuse to display, lease or sell to or from any person because of one's membership in a protected class, e.g., race, color, religion, national origin, sex, ancestry, age, marital status, physical or mental handicap, familial status, or any other protected class, and agree not to discriminate unlawfully against anyone in a protected class.

6.5 Survival. The provisions of Section 1.3, Articles 3, 4 and Sections 6.1, 6.2, 6.5, 6.6, 6.7, and 6.8 of this Agreement shall survive the expiration or termination of this Agreement.

6.6 Attorney's Fees; JURY WAIVER; Late Payments. If either party shall institute any action or proceeding against the other relating to the provisions of this Agreement, the unsuccessful party in the action or proceeding shall reimburse the prevailing party for all reasonable expenses and attorneys' fees and disbursements. THE PARTIES HEREBY WAIVE TRIAL BY JURY. Delinquent payments hereunder shall earn interest at the rate of one-and-a-half percent (1 ½%) per month from the date due until paid.

6.7 Intentionally omitted.

6.8 Counterparts; Electronic/Facsimile Signature. This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument. The parties agree that an electronic or facsimile signature shall be considered an original signature.

6.9 Authorization. The individual executing this Agreement personally certifies and warrants that he or she is duly authorized to sign this Agreement, and that by his or her execution hereof, this Agreement shall be legally binding and enforceable upon the entry of an order of the Bankruptcy Court authorizing the Trustee to employ JLL.

6.10 OFAC. Trustee represents and warrants that neither it nor any of its employees is a person or entity with whom U.S. entities are restricted from doing business under regulations of the Office of Foreign Asset Control (“OFAC”) of the Department of the Treasury (including those named on OFAC’s Specially Designated and Blocked Persons List) or under any statute, executive order or other governmental action.

6.11 Trustee Liability Limited/Court Approval. The Trustee and his attorneys and agents shall have no personal liability under this Agreement. JLL expressly understands and agrees that any amounts owed under this Agreement shall be paid through the bankruptcy estate of Debtor St. George. JLL acknowledges that sales of the Property may be, in the Trustee’s sole discretion, subject to Bankruptcy Court approval, and in the event that the Bankruptcy Court does not approve a sale of Property, the Trustee, Debtor St. George, and the Debtor St. George’s bankruptcy estate shall have no liability to JLL or any other party.

ARTICLE 7. UTAH STATE-SPECIFIC PROVISIONS

7.1 State-Required Notifications. Utah Law requires that JLL disclose to Trustee the following:

7.1.1. JLL and its affiliated licensees retain an active real estate license in Utah.

7.1.2. The Project Team of JLL is Trustee’s agent in this Agreement.

[Signature page follows]

IN WITNESS WHEREOF, the parties hereto have executed this Agreement on the date and year first written below.

Michael F. Thomson, Chapter 11 Trustee for **The Falls Event Center, LLC**,
Case No. 18-25116

By: _____
Name: _____
Title: _____
Date: _____

The Falls at St. George, LLC, the
Debtor-in-Possession in Chapter 11 Case No. 18-26653

By: _____
Name: _____
Title: _____
Date: _____

JONES LANG LASALLE AMERICAS, INC.

By: _____
Name: _____
Title: _____
Utah R.E. License #: _____
Date: _____

SCHEDULE A

JLL'S COMPENSATION

II. Sale Transaction Fee

- Without a Cooperating Broker: Five percent (5%) of the Gross Proceeds
- With a Cooperating Broker: Six percent (6%) of the Gross Proceeds, to be shared equally between JLL and the cooperating broker.

For purposes of calculating the Sale Transaction Fee payable under this Agreement, the term "Gross Proceeds" shall mean the total fair market value of the gross consideration (including, without limitation, cash, notes, securities, property, obligations or mortgages assumed or taken subject to, and any other form of consideration) to be received by the Debtor St. George and/or its investors in connection with the Transaction (as defined below). Gross Proceeds shall include any portion of the purchase price placed in escrow or subject to a holdback as part of the Transaction, but shall not be adjusted by any fees, prorations or closing expenses. The Sale Transaction Fee will become due and payable by Trustee upon consummation of a Transaction, whether or not through the efforts of JLL, provided Trustee has entered into a letter of intent or definitive agreement for the Transaction during the term of this Agreement.

For purposes of this Agreement, the term "Transaction" shall include a direct or indirect transaction with respect to the Property or of the interests in any entity holding title to the Property, whether accomplished through a sale, merger, consolidation or otherwise; any direct or indirect transaction with respect to a partial ownership interest in the Property; or any capital investment structured as a financing, joint venture or any combination thereof. In no event, however, shall a Transaction be deemed to have occurred if the Transaction does not close for any reason; and in such case, JLL shall not be entitled to any Sale Transaction Fee.