

Michael R. Johnson (7070)  
David H. Leigh (9433)  
Elaine A. Monson (5523)  
Brent D. Wride (5163)  
**RAY QUINNEY & NEBEKER P.C.**  
36 South State Street, 14<sup>th</sup> Floor  
Salt Lake City, UT 84111  
(801) 532-1500  
Email: mjohnson@rqn.com  
Email: dleigh@rqn.com  
Email: emonson@rqn.com  
Email: bwride@rqn.com

*Counsel for the Debtors-in-Possession*

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

<p>In re:</p> <p>THE FALLS EVENT CENTER LLC, THE FALLS AT MCMINNVILLE, LLC, THE FALLS AT ST. GEORGE, LLC, THE FALLS AT FRESNO, LLC, THE FALLS AT BRICKTOWN, LLC, THE FALLS AT CLOVIS LLC, fdba eFALLS PROPERTIES CLOVIS CA LLC,</p> <p style="text-align: center;">Debtors-in-Possession.</p>	<p>Bankruptcy Case No. 18-25116 Bankruptcy Case No. 18-25492 Bankruptcy Case No. 18-26653 Bankruptcy Case No. 18-27713 Bankruptcy Case No. 18-27766 Bankruptcy Case No. 18-28140</p> <p style="text-align: center;">Chapter 11</p> <p style="text-align: center;">Chief Judge R. Kimball Mosier</p> <p style="text-align: center;">[Filed via ECF]</p>
---	--

**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**

The Falls Event Center, LLC (“**Debtor TFEC**”), the Debtor-in-Possession in Chapter 11  
Case No. 18-25116 (the “**TFEC Case**”), The Falls at McMinnville, LLC (“**Debtor**

**McMinnville**”), the Debtor-in-Possession in Chapter 11 Case No. 18-25492 (the “**McMinnville Case**”), The Falls at St. George, LLC (“**Debtor St. George**”), the Debtor-in-Possession in Chapter 11 Case No. 18-26653 (the “**St. George Case**”), The Falls at Fresno, LLC (“**Debtor Fresno**”), the Debtor-in-Possession in Chapter 11 Case No. 18-27713 (the “**Fresno Case**”), The Falls at Bricktown, LLC (“**Debtor Bricktown**”), the Debtor-in-Possession in Chapter 11 Case No. 18-27766 (the “**Bricktown Case**”), and The Falls at Clovis LLC (“**Debtor Clovis**”), the Debtor-in-Possession in Chapter 11 Case No. 18-28140 (Debtor TFEC, Debtor McMinnville, Debtor St. George, Debtor Fresno, Debtor Bricktown, and Debtor Clovis are collectively referred to herein as the “**Debtors**”), through their counsel of record, hereby move the Court pursuant to this *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* (the “**Amended Application**”) for entry of this Court’s Orders in the above-captioned Chapter 11 Cases (the “**Cases**”) authorizing the Debtors to retain and employ Jones Lang LaSalle Americas, Inc. (“**JLL**”) as the Debtors’ real estate broker in accordance with 11 U.S.C. § 327 and Fed. R. Bankr. P. 2014. This Amended Application amends the *Application of the Debtors for Entry of Orders Authorizing the Debtors to Retain and Employ Jones Lang LaSalle Americas, Inc. as Real Estate Broker* (the “**Original Application**”) that was filed in the Chapter 11 Cases for Debtor TFEC, Debtor McMinnville, Debtor St. George, Debtor Fresno, and Debtor Bricktown on October 29, 2018. This Amended Application is being filed in order to add Debtor Clovis (which filed its Chapter 11 Case on October 31, 2018) as one of the Debtors, and to delete the Fresno Raw Ground Property as one of the current Sale Properties.

In support of this Amended Application, the Debtors state as follows:

### **JURISDICTION AND VENUE**

1. This Court has jurisdiction to consider this Amended Application 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.

2. The statutory bases for the relief requested herein are sections 327 and 330 of Title 11 of the United States Code, and Rules 2014(a) and 2016 of the Federal Rules of Bankruptcy Procedure.

3. Other than the Original Application, no prior Application has been filed for the relief requested herein.

### **BACKGROUND**

4. On July 11, 2018 (the “**TFEC Petition Date**”), Debtor TFEC filed its voluntary petition under Chapter 11 of Title 11 of the United States Code (the “**Bankruptcy Code**”).

5. The other Debtors, which are all wholly owned subsidiaries of Debtor TFEC, filed their separate voluntary petitions under Chapter 11 of the Bankruptcy Code on the following dates: (a) Debtor McMinnville: July 27, 2018 (Case No. 18-25492); (b) Debtor St. George: September 26, 2018 (Case No. 18-26653); (c) Debtor Fresno: October 15, 2018 (Case No. 18-27713); (d) Debtor Bricktown: October 17, 2018 (Case No. 18-27766); and (e) Debtor Clovis: October 31, 2018 (Case No. 18-28140).

6. Each of the Debtors is operating as a debtor-in-possession pursuant to §§ 1107(a) and 1108 of the Bankruptcy Code.

7. The following wholly owned subsidiaries of Debtor TFEC are not currently the subjects of any separate Chapter 11 bankruptcy filings (collectively the “**Non-Debtor Subsidiaries**”): (a) The Falls at Burr Ridge, LLC (“**Burr Ridge LLC**”); (b) The Falls at

Beaverton, LLC (“**Beaverton LLC**”); (c) The Falls at Stone Oak Parkway, LLC (“**Stone Oak LLC**”); (d) The Falls at Cutten Road, LLC (“**Cutten Road LLC**”); and (e) The Falls at Austin Bluffs, LLC (“**Austin Bluff LLC**”).

8. After a thorough evaluation, the Debtors have determined that the following properties owned by the Debtors and the Non-Debtor Subsidiaries outlined above should be listed for sale: (a) some or all of the real property owned by Debtor McMinnville located in McMinnville, Oregon 97128<sup>1</sup> (the “**McMinnville Property**”); (b) the real property owned by Debtor St. George located at 170 South Mall Drive, St. George, Utah 84790 (the “**St. George Property**”); (c) the real property owned by Debtor Bricktown located at 108 East California Avenue, Oklahoma City, Oklahoma (the “**Bricktown Property**”); (d) the real property owned by Debtor Clovis located at 250 & 270 North Clovis Avenue, Clovis, California 68312 (the “**Clovis Property**”); (e) the real property owned by Burr Ridge LLC located at 120 Harvester Drive, Burr Ridge, Illinois 60527 (the “**Burr Ridge Property**”); (f) the real property owned by Beaverton LLC located at 12655 Southwest Miliken Way, Beaverton, Oregon (the “**Beaverton Property**”); (g) the real property owned by Stone Oak LLC located at the South side of Stone Oak Parkway West of Highway 281, San Antonio, Texas 78258 (the “**Stone Oak Property**”); (h) the real property owned by Cutten Road LLC located at 13455 Cutten Road, Houston, Texas 77069 (the “**Cutten Road Property**”); and (i) the real property owned by Austin Bluffs LLC located at Township 13 South Range 66 West, Colorado Springs, El Paso County, Colorado (the “**Austin**

---

<sup>1</sup> The property owned by Debtor McMinnville in McMinnville, Oregon (encompassing the McMinnville Event Center and the McMinnville Water Park) includes numerous parcels. The records reviewed by Debtor TFEC indicate that the parcels owned by Debtor McMinnville are associated with the following addresses and Tax Lots: 510 North East Captain Michael King Smith Way, 460 North East Captain Michael King Smith Way, 630 North East Captain Michael King Smith Way, 3425 North East Three Mile Lane, 3685 North East Three Mile Lane, and 7300 South East Watts Lane, McMinnville, Oregon 97128, and Tax Lot 600, Tax Lot 800, Tax Lot 1300, Tax Lot 1301, Tax Lot 1400, and Tax Lot 400. Debtor McMinnville does not intend to list for sale any parcel of property that belongs to a party other than Debtor McMinnville, even if such parcel is also associated with any of the addresses or Tax Lots listed above.

**Bluffs Property**”). These nine properties (i.e., the St. George Property, the McMinnville Property, the Bricktown Property, the Clovis Property, the Burr Ridge Property, the Beaverton Property, the Stone Oak Property, the Cutten Road Property, and the Austin Bluffs Property) are referred to collectively herein as the “**Sale Properties.**”

**RETENTION OF JLL AS REAL ESTATE BROKER**

9. By this application, the Debtors seek to employ and retain, pursuant to Sections 327(a) and 328 of the Bankruptcy Code and Rule 2014 of the Federal Rules of Bankruptcy Procedure, JLL as their real estate broker for purposes of listing for sale, marketing, and selling the Sale Properties. JLL is a nationally recognized real estate brokerage firm with offices and operations in many parts of the United States, which will greatly facilitate the efforts to sell the Sale Properties, which are located in six different states (i.e., Utah, Oregon, Oklahoma, Illinois, California, and Texas).

10. The Debtors are intending to retain JLL as the sole and exclusive sales agent for the Sale Properties pursuant to the terms and conditions of the proposed *Leasing and Sale Agreement* with JLL (the “**Agreement**”), a copy of which Agreement is attached as **Exhibit A**. The Debtors propose to enter into the Agreement, subject to Court approval.

11. Under the terms of the Agreement, JLL will be retained for an initial period of twelve (12) months, but subject to termination by the Debtors on the one hand and JLL on the other hand upon sixty (60) days prior written notice to the other party. As stated in the Agreement, the JLL personnel who will perform the marketing and sale services under the Agreement will be Brian Anderson and Wick Udy of JLL (the “**JLL Project Team**”). The Agreement refers to the possibility of JLL leasing the Sale Properties, but the Debtor will instruct JLL to market all of the Sale Properties for sale rather than for lease. The compensation to be

paid to JLL under the Agreement is the “Sale Transaction Fee” as defined in Schedule A to the Agreement, which is: (a) “Without a Cooperating Broker: Five percent (5%) of the Gross Proceeds,” and (b) “With a Cooperating Broker: Six percent (6%) of the Gross Proceeds, to be shared equally between JLL and the cooperating broker.”

12. JLL will abide by the Bankruptcy Code and its provisions and any Order this Court may enter in relation to the approval of this Amended Application. With respect to the St. George Property, the McMinnville Property, the Bricktown Property, the Clovis Property, and any other Sale Property whose owner has filed a bankruptcy case prior to the sale of such Sale Property (individually a “**Bankruptcy Sale Property**,” and collectively the “**Bankruptcy Sale Properties**”), JLL understands and agrees that the Court’s approval of the payment of its compensation under the Agreement for the sale of any Bankruptcy Sale Property will be requested as part of the Motion filed with this Court seeking this Court’s approval of the sale of such Bankruptcy Sale Property, and such Motion shall comply with the notice and an opportunity for a hearing requirements of Sections 328(a) and 331(a) of the Bankruptcy Code, Rule 2016 of the Federal Rules of Bankruptcy Procedure, applicable guidelines issued by the Office of the United States Trustee, any Local Rules of the Court, and any other applicable Order of the Court with respect to the compensation to be paid to JLL.

13. With respect to the other Sale Properties (collectively the “**Non-Bankruptcy Sale Properties**”) as to which there is no pending bankruptcy case for the owners of the Non-Bankruptcy Sale Properties at the time of sale, and therefore no bankruptcy requirement binding on the Non-Debtor Subsidiaries for the approval of compensation to be paid to JLL for the sale of the Non-Bankruptcy Sale Properties, Debtor TFEC (the parent of each of the Non-Debtor Subsidiaries) requests that this Court’s approval of the Amended Application filed by Debtor

TFEC shall also include this Court's advance approval for the payment of compensation to JLL under the terms of the Agreement (to the extent that this Court's approval might be required for the sale of property owned by a wholly-owned non-bankrupt subsidiary of Debtor TFEC) when each of the Non-Bankruptcy Sale Properties are sold.

14. After Debtor Fresno confirmed that the Fresno Raw Ground Property is part of the parking lot for the Fresno Event Center and is not available for sale as excess property, the Fresno Raw Ground Property is being deleted as a current Sale Property at this time. However, Debtor Fresno requests that the Court include in its Order approving this Amended Application a provision that would allow Debtor Fresno **in the future** (to the extent that Debtor Fresno determines such action to appropriate **in the future**) to also list for sale through JLL the event center building and other improvements that are located at 4105 West Figarden Drive, Fresno, California (the "**Fresno Event Center**") without the need for Debtor Fresno to file anything further with this Court. **The Fresno Event Center is not one of the Sale Properties at this time, and Debtor Fresno has no current plans to add the Fresno Event Center as one of the Sale Properties at this time.**

15. Debtor TEFC has another wholly owned subsidiary, The Falls at Roseville, LLC ("**Roseville LLC**") that owns an event center building located at 240 Conference Center Drive, Roseville, California 95678 (the "**Roseville Property**"). **The Roseville Property is not one of the Sale Properties at this time, and Debtor TEFC and Roseville LLC have no current plans to add the Roseville Property as one of the Sale Properties at this time.** However, Debtor TEFC requests that the Court include in its Order approving this Amended Application a provision that would allow Debtor TEFC and Roseville LLC **in the future** (to the extent that Debtor TEFC and Roseville LLC determine such action to be appropriate **in the future**) to

include the Roseville Property as one of the Sale Properties under the Agreement and to list for sale through JLL the Roseville Property without the need for Debtor TEFC or Roseville LLC to file anything further with this Court.

16. The Debtor has selected JLL because of its nationwide expertise and experience with the sale of commercial real properties.

17. This Amended Application is also supported by the *Declaration of Brian Anderson in Support of Debtors' Application for Entry of Orders Authorizing the Debtors to Retain and Employ Jones Lang LaSalle Americas, Inc. as Real Estate Broker* (the “**Anderson Declaration**”) that was filed on October 29, 2018.

#### **DISINTERESTEDNESS**

18. To the best of the Debtors' knowledge, neither JLL nor the JLL Project Team has any financial interest or business connection with the Debtors or any of their officers, directors, employees, managers or members.

19. As set forth in the 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 Brian Anderson's knowledge, neither JLL nor the JLL Project Team has any direct or indirect relationship to, connection with, or interest in the Debtors, or any of their officers, directors, employees, managers, members, attorneys, or accountants, or the United States Trustee, or any person employed by the office of the United States Trustee, and (b) to the best of Brian Anderson'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 Debtors or their bankruptcy estates.

20. Based on the foregoing, to the best of the Debtors' knowledge, JLL and the JLL Project Team (Brian Anderson and Wick Udy) 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 Debtors or their bankruptcy estates.

**CONCLUSION**

The Debtors believe it is in the best interest of their creditors and the Debtors' bankruptcy estates that JLL be retained as the Debtors' real estate broker. The Debtors are satisfied from the Anderson Declaration that JLL and the JLL Project Team (Brian Anderson and Wick Udy) do not hold or represent any entity having an adverse interest to the Debtors or their bankruptcy estates, and that JLL and the JLL Project Team (Brian Anderson and Wick Udy) are otherwise disinterested.

WHEREFORE, the Debtors respectfully request the entry of Orders in each of their Cases authorizing the Debtors to employ and retain JLL as its real estate broker in accordance with the terms set forth above, and for such other relief as the Court deems just and reasonable.

DATED this 7th day of November, 2018.

RAY QUINNEY & NEBEKER P.C.

/s/ Michael R. Johnson \_\_\_\_\_  
Michael R. Johnson  
Counsel to the Debtors-in-Possession

**CERTIFICATE OF SERVICE**

I hereby certify that on November 7, 2018, I electronically filed the foregoing **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** with the United States Bankruptcy Court for the District of Utah in the Debtors' Cases by using the CM/ECF system. I further certify that the parties of record in each the Debtors' Cases are registered CM/ECF users and will be served through the CM/ECF system.

I further certify that on November 7, 2018, I caused the foregoing **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** to be mailed to the parties requesting notice that are not on the list to receive email notice as follows:

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

**Albert B Clark**  
696 East 1220 North  
Orem, UT 84097

**Alan C. Hochheiser**  
Maurice Wutscher LLP  
2000 Auburn Drive, Suite 200  
One Chagrin Highlands  
Beachwood, OH 44122

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

**Gil Miller**

Rocky Mountain Advisory  
215 South State Street Ste 550  
Salt Lake City, UT 84111

**State of Oregon**

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

/s/ Carrie Hurst

1471300.02/dmm/rqn

# **EXHIBIT A**



**LEASING AND SALE AGREEMENT**

This AGREEMENT, dated as of the last date written below (the “Commencement Date”), by and between The Falls Event Center, LLC (“**Debtor TFEC**”), the Debtor-in-Possession in Chapter 11 Case No. 18-25116 (the “**TFEC Case**”), The Falls at McMinnville, LLC (“**Debtor McMinnville**”), the Debtor-in-Possession in Chapter 11 Case No. 18-25492 (the “**McMinnville Case**”), The Falls at St. George, LLC (“**Debtor St. George**”), the Debtor-in-Possession in Chapter 11 Case No. 18-26653 (the “**St. George Case**”), The Falls at Fresno, LLC (“**Debtor Fresno**”), the Debtor-in-Possession in Chapter 11 Case No. 18-27713 (the “**Fresno Case**”), The Falls at Bricktown, LLC (“**Debtor Bricktown**”), the Debtor-in-Possession in Chapter 11 Case No. 18-27766 (the “**Bricktown Case**”), The Falls at Clovis, LLC (“**Debtor Clovis**”), the Debtor-in-Possession in Chapter 11 Case No. 18-28140 (the “**Clovis Case**”), The Falls at Burr Ridge, LLC (“**Burr Ridge LLC**”), The Falls at Beaverton, LLC (“**Beaverton LLC**”), The Falls at Stone Oak Parkway, LLC (“**Stone Oak LLC**”), The Falls at Cutten Road, LLC (“**Cutten Road LLC**”), and The Falls at Austin Bluffs, LLC (“**Austin Bluff LLC**”) (hereinafter collectively the “Owner”) and JONES LANG LASALLE AMERICAS, INC., (hereinafter “JLL”).

**BACKGROUND**

- A. Owner owns multiple properties, the addresses of which can be found on Exhibit A (“Property”).
- B. Owner desires to engage JLL as its sole and exclusive leasing and sales agent for the Property.
- C. JLL desires to accept such employment and is engaged in the business of leasing and 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 **Initial Term.** JLL's duties and responsibilities under this Agreement shall begin on the Commencement Date 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.

1.3 **Pending Matters.** In addition to all amounts payable to JLL during the term of this Agreement, Owner shall pay JLL commissions to be calculated and paid as provided on Schedule A with respect to any new leases, lease expansions, relocations, renewals, extensions, and other transactions executed and delivered by Owner and the applicable party within nine (9) months following the expiration or earlier termination of this Agreement, if (a) prior to such expiration or termination, (i) JLL has engaged in negotiations with the prospective party (or its agent) regarding the possibility of a lease or other transaction, or (ii) the prospective party (or its agent) has toured the Property; and (b) within nine (9) months immediately following the expiration or termination of this Agreement, a lease or other agreement between

Owner (or the then-owner of the Property) and the party is executed. JLL shall deliver a written list of all such prospective parties to Owner no later than ten (10) days after the expiration or termination of this Agreement.

## ARTICLE 2. SERVICES

2.1 Services. Owner hereby engages JLL as its exclusive broker for the purpose of leasing and/or selling the Property and/or any or all space therein (the "Services"). JLL shall perform the Services in accordance with applicable professional standards. Owner shall refer all inquiries to JLL and conduct all negotiations through JLL (under the supervision, direction and control of Owner), but JLL has no authority to obligate Owner until expressly authorized in writing by Owner. 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 leasing space within the Property and/or 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 tenant for space within the Property or a purchaser of the Property, and such party enters into a lease with the Owner or purchases the Property from the Owner, Owner 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 Owner hereunder and will be considered a JLL Non-Team Broker for purposes of the applicable lease or sale transaction, and the remaining Project Team members will continue to represent Owner pursuant to the terms of this Agreement. Such recused Project Team member shall in all events maintain the confidentiality of Owner's confidential information. All final business decisions shall be made solely by Owner. All tenant leases and sale agreements shall be prepared by Owner's counsel with assistance from JLL.

2.2 Advertising. Intentionally deleted.

2.3 Leasing and Sales Expenses. Intentionally deleted.

2.4 Security Deposits. JLL shall not accept security deposits, letters of credit or any other security or financial instruments on behalf of Owner and shall instruct tenants to tender such deposits and instruments directly to Owner or persons designated by Owner.

2.5 Technical Matters. Owner 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 Owner's responsibility. JLL shall, based on its professional expertise, assist Owner in connection with such matters, including giving Owner 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 Owner), indemnify and hold harmless Owner 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. Owner will defend (with counsel reasonably acceptable to JLL), indemnify and hold harmless JLL and its affiliates, and each of their officers, directors, employees, shareholders and agents, from and against all Loss arising out of or in connection with the condition of the Property; any incorrect information, or any direction or consent, given by Owner to JLL; or

any claim by a third party broker arising from a breach by Owner of its obligations to pay commissions hereunder.

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 Owner or JLL at the address set forth below or at such other address as they individually may specify thereafter in writing:

OWNER: Gil A. Miller, CPA CFE CIRA  
Rocky Mountain Advisory, LLC  
215 South State Street, Suite 550  
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: General 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 Owner 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 Owner. Owner agrees that JLL may publicize its role in any transaction Owner enters into, provided JLL does not disclose any financial information regarding such transaction. JLL may use Owner'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 Owner 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 Owner 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 where the Property is located. 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.

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. Sale of the Property. Upon a sale or other conveyance of the Property, all conditions to the payment of any leasing commissions will be deemed satisfied. In the event of such a sale or other conveyance of the Property by Owner, any portion of any leasing commission that has not yet been paid to JLL shall thereupon be due and payable by Owner in full on the closing of the conveyance of the Property.

6.8. Non-Solicitation of Employees. Owner agrees not to, directly or indirectly, attempt to persuade or solicit any employee of JLL to terminate such employment with JLL and agrees not to hire any employee of JLL while such employee is employed with JLL and for a period of one (1) year after termination of employment with JLL, including, without limitation, engaging such employee or former employee as an independent contractor or as an employee of any person other than JLL or any affiliate of JLL. In addition to all other remedies available to JLL, because the parties acknowledge the difficulty of calculating actual damages for a breach of this provision, Owner agrees to pay JLL, as liquidated damages and not as a penalty, the sum of \$100,000.00 for each employee hired directly or indirectly by Owner or any other person in violation of this Agreement.

6.9. 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.

6.10. Authorization. The individual executing this Agreement personally certifies and warrants that he or she is an officer of Owner and is duly authorized to sign this Agreement, and that by his or her execution hereof, this Agreement shall be legally binding and enforceable.

6.11. OFAC. Owner 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.

ARTICLE 7. STATE-SPECIFIC PROVISIONS

This Rider supplements the terms of the Leasing Agreement / Purchase Agreement (the “Agreement”) to which it is attached, and in the event of any conflict between the provisions set forth in this Rider and the Agreement, the terms and provisions of this Rider shall control. Capitalized terms used in this Rider that are not otherwise defined in this Rider shall have the meanings given to them in the Agreement.

Section 7.1 Confirmation of Agency Disclosure. Buyer and Seller acknowledge prior written receipt of agency disclosure provided by their respective agent that has disclosed the agency relationships confirmed below. At the signing of the Agreement:

Seller’s Agent \_\_\_\_\_, represents [ ] Seller OR [ ] both Buyer and Seller as a Limited Agent;  
Seller’s Brokerage \_\_\_\_\_, represents [ ] Seller OR [ ] both Buyer and Seller as a Limited Agent  
Buyer’s Agent \_\_\_\_\_, represents [ ] Buyer OR [ ] both Buyer and Seller as a Limited Agent;  
Buyer’s Brokerage \_\_\_\_\_, represents [ ] Buyer OR [ ] both Buyer and Seller as a Limited Agent.

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

**The Falls Event Center, LLC**, the  
Debtor-in-Possession in Chapter 11 Case No. 18-25116

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_

**The Falls at McMinnville, LLC**, the  
Debtor-in-Possession in Chapter 11 Case No. 18-25492

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: \_\_\_\_\_

**The Falls at Fresno, LLC, the**  
Debtor-in-Possession in Chapter 11 Case No. 18-27713

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_

**The Falls at Bricktown, LLC, the**  
Debtor-in-Possession in Chapter 11 Case No. 18-27766

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_

**The Falls at Clovis, LLC, the**  
Debtor-in-Possession in Chapter 11 Case No. 18-28140

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_

**The Falls at Burr Ridge, LLC**

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_

**The Falls at Beaverton, LLC**

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_

**The Falls at Stone Oak Parkway, LLC**

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_

**The Falls at Cutten Road, LLC**

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_

**The Falls at Austin Bluffs, LLC**

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_

**JONES LANG LASALLE AMERICAS, INC.**

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Utah R.E. License #: \_\_\_\_\_  
Date: \_\_\_\_\_

**SCHEDULE A**

**JLL'S COMPENSATION**

I. JLL's Leasing Commission:

A. New Leases and Expansions

- Transaction Without a Cooperating Broker – One full commission, calculated in accordance with the Standard Market Leasing Commission Rates below, shall be paid by Owner to JLL.
- Transaction With a Cooperating Broker – Override equal to 50% of the commission, calculated in accordance with the Standard Market Leasing Commission Rates below, shall be paid by Owner to JLL, in addition to one full commission paid by Owner to the Cooperating Broker.

B. Renewals and Extensions -- One-half of the amounts listed above for new leases.

C. Time of Payment

For new leases, 50% of the commission shall be due and payable upon execution of the lease by Owner and the prospective tenant; 50% of the commission shall be due and payable 180 days after the first installment is due. For expansions and renewals, 100% of the commission shall be due and payable upon execution of the lease amendment or other definitive document evidencing such transaction by Owner and the tenant. Owner shall pay all amounts payable within thirty (30) days of the date of JLL's invoice to Owner for same.

C. Standard Market Leasing Commission Rates

- Without a Cooperating Broker: Six percent (6%) 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 this Agreement, "Base Rent" shall mean the base rent payable by a tenant. The following shall be excluded from Base Rent:

- a) Any free rent or other abatement of rent allowed by Owner (however, for purposes of calculating the commission payable to JLL, such free rent or abatement shall be amortized over the initial term of the lease and deducted in equal annual installments from the Base Rent otherwise due and payable during such initial term);
- b) Amounts payable, by reason of rent inclusion or otherwise, for electricity, after-hours utilities, utility services, heat and/or air-conditioning or other services;
- c) Payments by tenant of any additional rent escalation charges for operating expenses (including management recovery cost) of the Property; real estate taxes; sales or rental taxes; wage or labor rate escalation payments, cost of living increases or any other similar payments; or any lease cancellation payments; and
- d) Any moving costs of tenant paid by Owner or credited to tenant.

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 Owner 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 Owner upon consummation of a Transaction, whether or not through the efforts of JLL, provided Owner 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.

**EXHIBIT A**

**PROPERTY**

(a) Some or all of the real property owned by Debtor McMinnville located in McMinnville, Oregon 94128 (the “**McMinnville Property**”). The property owned by Debtor McMinnville in McMinnville, Oregon (encompassing the McMinnville Event Center and the McMinnville Water Park) includes numerous parcels. The records reviewed by Debtor TFEC indicate that the parcels owned by Debtor McMinnville are associated with the following addresses and Tax Lots: 510 North East Captain Michael King Smith Way, 460 North East Captain Michael King Smith Way, 630 North East Captain Michael King Smith Way, 3425 North East Three Mile Lane, 3685 North East Three Mile Lane, and 7300 South East Watts Lane, McMinnville, Oregon 97128, and Tax Lot 600, Tax Lot 800, Tax Lot 1300, Tax Lot 1301, Tax Lot 1400, and Tax Lot 400. Debtor McMinnville does not intend to list for sale any parcel of property that belongs to a party other than Debtor McMinnville, even if such parcel is also associated with any of the addresses or Tax Lots listed above. The specific parcels of the McMinnville Property to be listed for sale will be identified by Debtor McMinnville at a later date.

(b) The real property owned by Debtor St. George located at 170 South Mall Drive, St. George, Utah 84790 (the “**St. George Property**”).

(c) Nothing for Debtor Fresno at this time.

(d) The real property owned by Debtor Bricktown located at 108 East California Avenue, Oklahoma City, Oklahoma (the “**Bricktown Property**”).

(e) The real property owned by Debtor Clovis located at 250 & 270 North Clovis Avenue, Clovis, California 68312 (the “**Clovis Property**”).

(f) The real property owned by Burr Ridge LLC located at 120 Harvester Drive, Burr Ridge, Illinois 60527 (the “**Burr Ridge Property**”).

(g) The real property owned by Beaverton LLC located at 12655 Southwest Miliken Way, Beaverton, Oregon (the “**Beaverton Property**”).

(h) The real property owned by Stone Oak LLC located at the South side of Stone Oak Parkway West of Highway 281, San Antonio, Texas 78258 (the “**Stone Oak Property**”).

(i) The real property owned by Cutten Road LLC located at 13455 Cutten Road, Houston, Texas 77069 (the “**Cutten Road Property**”).

(j) The real property owned by Austin Bluffs LLC located at Township 13 South Range 66 West, Colorado Springs, El Paso County, Colorado (the “**Austin Bluffs Property**”).

1470278.03