

Michael F. Thomson (#9707)
Peggy Hunt (#6060)
Jessica G. McKinlay (#11210)
DORSEY & WHITNEY LLP
111 South Main Street, 21st Floor
Salt Lake City, UT 84111-2176
Telephone: (801) 933-7360
Facsimile: (801) 933-7373
Email: thomson.michael@dorsey.com
hunt.peggy@dorsey.com
mckinlay.jessica@dorsey.com

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

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

In re:

THE FALLS EVENT CENTER, LLC; THE
FALLS AT CLOVIS, LLC; THE FALLS AT
FRESNO, LLC; THE FALLS AT GILBERT,
LLC; THE FALLS AT MCMINNVILLE,
LLC; THE FALLS AT ST. GEORGE, LLC;
and THE FALLS OF LITTLETON, LLC,

Debtors.

Bankr. Case No. 18-25116
Bankr. Case No. 18-28140
Bankr. Case No. 18-27713
Bankr. Case No. 18-25419
Bankr. Case No. 18-25492
Bankr. Case No. 18-26653
Bankr. Case No. 18-27111

Chapter 11

The Honorable R. Kimball Mosier

**DECLARATION OF GIL A. MILLER IN SUPPORT OF CHAPTER 11 TRUSTEE'S
MOTION TO SUBSTANTIVELY CONSOLIDATE THE FALLS EVENT CENTER
LLC WITH DEBTORS THE FALLS AT CLOVIS, LLC, THE FALLS AT FRESNO,
LLC, THE FALLS AT GILBERT, LLC, THE FALLS AT MCMINNVILLE, LLC, THE
FALLS AT ST. GEORGE, LLC, AND THE FALLS OF LITTLETON, LLC; and NON-
DEBTORS THE FALLS AT AUSTIN BLUFFS, LLC, THE FALLS AT CUTTEN
ROAD, LLC, THE FALLS AT STONE OAK PARKWAY, LLC, THE FALLS AT
BEAVERTON, LLC, AND THE FALLS AT ROSEVILLE, LLC**

I, Gil A. Miller, being of lawful age, do hereby declare and state as follows:

1. I am a certified public accountant, experienced in rendering restructuring, accounting and financial advisory services to bankruptcy trustees, and I am currently a principal of the firm of Rocky Mountain Advisory, LLC (“RMA”) with offices at 215 South State Street, Suite 550, Salt Lake City, Utah 84111.

2. On August 30, 2018, The Falls Event Center LLC (“TFEC”), filed an *Application* for an order authorizing the employment of RMA, acting through me as its principal, to serve as the TFEC’s Chief Restructuring Advisor (the “CRA”) [Docket No. 99].

3. On September 4, 2018, the Court entered an *Order* granting the application [Docket No. 109].

4. I acted as CRA for TFEC from approximately August 30, 2018 until the appointment of Michael F. Thomson, as the Chapter 11 Trustee for TFEC (the “Trustee”).

5. On December 13, 2018, the Trustee filed an *Application* seeking an order authorizing the employment of RMA as accountants for the Trustee [Docket No. 231].

6. On January 28, 2019, the Court entered its *Order* granting the Application [Docket No. 294].

7. I submit this Declaration in support of the *Chapter 11 Trustee’s Motion To Substantively Consolidate With The Falls Event Center, LLC the Debtors The Falls at Fresno, LLC, The Falls at Gilbert, LLC, The Falls at McMinnville, LLC, The Falls at St. George, LLC, And The Falls of Littleton, LLC, and Non-Debtors The Falls at Austin Bluffs, LLC, The Falls at Cutten Road, LLC, The Falls at Stone Oak Parkway, LLC, The Falls at Beaverton, LLC, And The*

Falls at Roseville, LLC (the "Motion"). All capitalized terms have the meanings attributed to them in the Motion.

8. In my role as CRA and now as accountant to for the Trustee, RMA at my or the Trustee's direction, and I have reviewed the books and records of TFEC and the Affiliated Companies. I have personal knowledge of the facts set forth herein.

9. Down capitalized TFEC primarily through private investor funding and hard money loans.

10. Based on my review of records to date, I have determined that it appears that the information provided to investors about the profitability of TFEC's enterprise was not accurate, and that the funds obtained from operating the event center and Waterpark businesses were not sufficient to sustain the entire enterprise.

11. None of the Affiliated Companies has ever had a source of income.

12. The debts of each of the Affiliated Companies have been paid by TFEC.

13. Each of the Affiliated Companies acquired title to real property through hard money or traditional loans that were secured by the real property they held. TFEC caused each of the Affiliated Companies to enter into these loans, and any cash down payments or debt service on the loans was made from TFEC funds.

14. All activity for TFEC and the Affiliated Companies has always been filed on consolidated tax returns as the Affiliated Companies are considered to be disregarded entities by the Internal Revenue Service.

15. Prior to the TFEC Petition Date, none of the Affiliated Companies had bank accounts, and creditors of the Affiliated Companies were therefore paid on checks issued by TFEC using its accounts.

16. Prior to the TFEC Petition Date, TFEC maintained two sets of accounting records. The first contained activity for TFEC corporate overhead and all activity for operating and non-operating Affiliated Companies ("TFEC QuickBooks"). The second file contained only the activity for Waterpark operations, even though the Waterpark is a dba of TFEC. Within the TFEC QuickBooks, all real property, debt and operational income and expenses of the Affiliated Companies were consolidated. Each transaction was identified to a particular "Class" representing the Affiliated Company to which the transaction related. There was no attempt made to book intercompany receivables and payables to identify TFEC's payment of any of the Affiliated Companies' obligations, such as debt service or property taxes.

17. My investigation being conducted at the Trustee's direction, while still preliminary and ongoing and therefore subject to change, indicates that TFEC used the funds it obtained from business operations and investors to fund whatever the needs of the entire enterprise were at any given time.

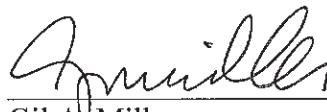
18. The assets and business activities of TFEC and the Affiliated Companies have been treated as a single enterprise.

19. Substantive consolidation would make it unnecessary to quantify and prosecute intercompany claims that may exist between TFEC and the Affiliated Companies, thus conserving considerable resources of the separate estates or entities. For example, at this time, arguably, the Affiliated Companies on whose properties TFEC was conducting business have

claims against TFEC for use of their properties, and TFEC has claims against each of Affiliated Companies for, among other things, costs of managing the Affiliated Companies and monies it used to purchase properties and pay the debts of the Affiliated Companies. The cost of quantifying these claims will likely exceed any benefit that might result. Among other things, (a) to the extent that TFEC may have claims against the Affiliated Companies, those Parties have no source of income to pay TFEC other than from any equity that may exist in their respective properties; and (b) the Affiliated Companies' primary creditors are those claiming to hold claims secured by property, and therefore, any equity in the property will be paid to TFEC.

I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge, information and belief.

DATED this 15th day of February, 2019.



Gil A. Miller
*Accountant for Michael F. Thomson,
Chapter 11 Trustee of The Falls Event
Center, LLC*