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

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

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In re:

THE FALLS AT MCMINNVILLE, LLC,

Debtor.

Bankr. Case No. 18-25492

Chapter 11

The Honorable R. Kimball Mosier

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**TRUSTEE'S OPPOSITION TO MOTION FOR RELIEF FROM STAY**

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Michael F. Thomson, the duly appointed Chapter 11 trustee of the bankruptcy estate of The Falls Event Center LLC, Case No. 18-25116 (the "Trustee"), which is the sole member of The Falls at McMinnville, LLC, the debtor herein ("TFM"), hereby files his opposition (the "Opposition") to the *Motion For Relief From Stay and Memorandum In Support* [Docket No. 44] filed by Evergreen Aviation and Space Museum and The Captain Michael King Smith Educational Institute (the "Motion"). In support of this Opposition, the Trustee represents as follows:

## **JURISDICTION AND VENUE**

1. This Court has jurisdiction to consider this matter pursuant to 28 U.S.C. §§ 157 and 1334. This is a core proceeding under 28 U.S.C. § 157(b). Venue is proper before this Court pursuant to 28 U.S.C. §§ 1408 and 1409.

## **BACKGROUND**

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

3. On July 27, 2018, TFM filed a voluntary petition [Case 18-25492, Dkt. 1].

4. On November 1, 2018, the UST, Debtor TFEC, and the Official Committee of Unsecured Creditors (the “Committee”) filed its stipulation for the appointment of a Chapter 11 trustee [TFEC Case, Docket No. 183] (the “Stipulation”).

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

6. On November 14, 2018, the Court entered the order granting the Stipulation and directing the UST to appoint a qualified person to serve as Chapter 11 trustee for the TFEC estate. [TFEC Case, Docket No. 204].

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

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

9. TFEC is the sole member of TFM.

10. On January 15, 2019, Evergreen Aviation and Space Museum and The Captain Michael King Smith Educational Institute (together, the “Museum”) filed the Motion.

### **RESPONSE TO FACTUAL BACKGROUND**

11. The Trustee objects to the factual allegations as stated in the Motion, as the Museum has made it virtually impossible for the Trustee to effectively and accurately respond to the allegations as drafted in the Motion. For example, in the section of the Motion labeled “Factual Background,” the Museum has failed to number its paragraphs, includes multiple factual allegations in each paragraph (some of which span an entire page in length), and many of the paragraphs also include legal argument and speculation. Additionally, the sections labeled “Introduction” and “Summary of Relief, and Basis For, Relief Requested” are peppered with factual allegations as well. The Trustee has responded to the best of his ability to allegations contained in the “Factual Background” section, as it appears that this is the section the Museum has designated as its factual allegations. However, to the extent the Museum asserts facts in other sections of the Motion that are not otherwise included in the “Factual Background” section, the Trustee reserves his right to respond to such allegations.

12. No response is necessary to the allegations in Unnumbered Paragraph 1 of the Motion to the extent the allegations reference specific documents, as the referenced documents speak for themselves. To the extent a response is deemed necessary, the Trustee denies the allegations in Unnumbered Paragraph 1 of the Motion which refer to specific documents to the extent those allegations conflict with the referenced documents. The Trustee lacks knowledge and information upon which to form a belief as to the truth of the remaining allegations in unnumbered Paragraph 1 of the Motion, and therefore denies such allegations.

13. No response is necessary to the allegations in Unnumbered Paragraph 2 of the Motion to the extent the allegations reference specific documents, as the referenced documents speak for themselves. To the extent a response is deemed necessary, the Trustee denies the allegations in Unnumbered Paragraph 2 of the Motion which refer to specific documents to the extent those allegations conflict with the referenced documents. The Trustee lacks knowledge and information upon which to form a belief as to the truth of remaining allegations in Unnumbered Paragraph 2 of the Motion, and therefore denies such allegations.

14. The Trustee lacks knowledge and information upon which to form a belief as to the truth of the allegations in Unnumbered Paragraph 3 of the Motion, and therefore denies such allegations.

15. No response is necessary to the allegations in Unnumbered Paragraph 4 of the Motion to the extent the allegations reference specific documents, as the referenced documents speak for themselves. To the extent a response is deemed necessary, the Trustee denies the allegations in Unnumbered Paragraph 4 of the Motion which refer to specific documents to the extent those allegations conflict with the referenced documents. The Trustee lacks knowledge and information upon which to form a belief as to the truth of the remaining allegations in Unnumbered Paragraph 4 of the Motion, and therefore denies such allegations.

16. No response is necessary to the allegations in Unnumbered Paragraph 5 of the Motion as the referenced documents speak for themselves. To the extent a response is deemed necessary, the Trustee denies the allegations in Unnumbered Paragraph 5 of the Motion to the extent those allegations conflict with the referenced documents.

17. No response is necessary to the allegations in Unnumbered Paragraph 6 of the Motion as the referenced documents speak for themselves. To the extent a response is deemed necessary, the Trustee denies the allegations in Unnumbered Paragraph 6 of the Motion to the extent those allegations conflict with the referenced documents. Unnumbered Paragraph 6 of the Motion states a legal conclusion to which no response is required. To the extent a response is deemed necessary, the Trustee denies the allegations in Unnumbered Paragraph 6 of the Motion.

18. No response is necessary to the allegations in Unnumbered Paragraph 7 of the Motion as the referenced documents speak for themselves. To the extent a response is deemed necessary, the Trustee denies the allegations in Unnumbered Paragraph 7 of the Motion to the extent those allegations conflict with the referenced documents.

19. The Trustee lacks knowledge and information upon which to form a belief as to the truth of the allegations in Unnumbered Paragraph 8 of the Motion, and therefore denies the same.

20. No response is necessary to the allegations in Unnumbered Paragraph 9 of the Motion as the referenced documents speak for themselves. To the extent a response is deemed necessary, the Trustee denies the allegations in Unnumbered Paragraph 9 of the Motion to the extent those allegations conflict with the referenced documents. Unnumbered Paragraph 9 of the Motion states a legal conclusion to which no response is required. To the extent a response is deemed necessary, the Trustee denies the allegations in Unnumbered Paragraph 9 of the Motion.

21. No response is necessary to the allegations in Unnumbered Paragraph 10 of the Motion to the extent those allegations reference specific documents, as the referenced documents speak for themselves. To the extent a response is deemed necessary, the Trustee

denies the allegations in Unnumbered Paragraph 10 of the Motion to the extent those allegations conflict with the referenced documents. The Trustee denies the remaining allegations in Unnumbered Paragraph 10 of the Motion.

22. No response is necessary to the allegations in Unnumbered Paragraph 11 of the Motion as the referenced documents speak for themselves. To the extent a response is deemed necessary, the Trustee denies the allegations in Unnumbered Paragraph 11 of the Motion to the extent those allegations conflict with the referenced documents.

23. No response is necessary to the allegations in Unnumbered Paragraph 12 of the Motion to the extent those allegations reference specific documents, as the referenced documents speak for themselves. To the extent a response is deemed necessary, the Trustee denies the allegations in Unnumbered Paragraph 12 of the Motion to the extent those allegations conflict with the referenced documents. The Trustee lacks knowledge and information upon which to form a belief as to the truth of the remaining allegations in Unnumbered Paragraph 12 of the Motion, and therefore denies such allegations.

24. No response is necessary to the allegations in Unnumbered Paragraph 13 of the Motion as the referenced documents speak for themselves. To the extent a response is deemed necessary, the Trustee denies the allegations in Unnumbered Paragraph 13 of the Motion to the extent those allegations conflict with the referenced documents.

25. Unnumbered Paragraph 14 of the Motion states a legal conclusion to which no response is required. To the extent a response is deemed necessary, the Trustee denies the allegations in Unnumbered Paragraph 14 of the Motion. The Trustee lacks knowledge and

information upon which to form a belief as to the truth of the remaining allegations in Unnumbered Paragraph 14 of the Motion, and therefore denies such allegations.

26. Unnumbered Paragraph 15 of the Motion states a legal conclusion to which no response is required. To the extent a response is deemed necessary, the Trustee denies the allegations in Unnumbered Paragraph 15 of the Motion. The Trustee lacks knowledge and information upon which to form a belief as to the truth of the remaining allegations of Unnumbered Paragraph 15 of the Motion, and therefore denies such allegations.

27. The Trustee lacks knowledge and information upon which to form a belief as to the truth of the allegations in Unnumbered Paragraph 16 of the Motion, and therefore denies such allegations.

28. No response is necessary to Unnumbered Paragraph 17 of the Motion as the referenced documents speak for themselves. To the extent a response is deemed necessary, the Trustee denies the allegations in Unnumbered Paragraph 17 of the Motion to the extent those allegations conflict with the referenced documents.

29. The Trustee denies the allegations in Unnumbered Paragraph 18 of the Motion to the extent those allegations claim the Museum holds a valid security interest in the revenues of TFM. The Trustee lacks knowledge and information upon which to form a belief as to the truth of the remaining allegations in Unnumbered Paragraph 18 of the Motion, and therefore denies such allegations.

30. Unnumbered Paragraph 19 of the Motion states a legal conclusion to which no response is required. To the extent a response is deemed necessary, the Trustee denies the

allegations in Unnumbered Paragraph 19 of the Motion. The Trustee denies the remaining allegations in Unnumbered Paragraph 19 of the Motion.

31. The Trustee lacks knowledge and information upon which to form a belief as to the truth of the allegations in Unnumbered Paragraph 20 of the Motion, and therefore denies such allegations.

32. Unnumbered Paragraph 21 of the Motion states a legal conclusion to which no response is required. To the extent a response is deemed necessary, the Trustee denies the allegations in Unnumbered Paragraph 21 of the Motion. The Trustee lacks knowledge and information upon which to form a belief as to the truth of the remaining allegations in Unnumbered Paragraph 21 of the Motion, and therefore denies such allegations.

33. The Trustee lacks knowledge and information upon which to form a belief as to the truth of the allegations in Unnumbered Paragraph 22 of the Motion, and therefore denies such allegations.

34. Unnumbered Paragraph 23 of the Motion states a legal conclusion to which no response is required. To the extent a response is deemed necessary, the Trustee denies the allegations in Unnumbered Paragraph 23 of the Motion. The Trustee denies the allegations in Unnumbered Paragraph 23 of the Motion to the extent such allegations claim the Museum held a properly perfected security interest against TFEC or TFM. The Trustee lacks knowledge and information upon which to form a belief as to the truth of the remaining allegations in Unnumbered Paragraph 23 of the Motion, and therefore denies such allegations.



35. The Trustee lacks knowledge and information upon which to form a belief as to the truth of the allegations in Unnumbered Paragraph 24 of the Motion, and therefore denies such allegations.

### TRUSTEE'S STATEMENT OF FACTS

36. The Gift Donation and Security Agreement (the "Gift Agreement") was executed by TFEC, TFM, and the Museum sometime in 2017, and dated "nunc pro tunc" to August 16, 2016.<sup>1</sup>

37. Through the Gift Agreement, TFM purportedly granted the Museum a security interest as follows:

To secure the [Irrevocable Payment Obligation] for the year 2017 in the amount of \$840,000, TFM assigns and grants to the Museum a continuing lien and security interest in gross revenue (cash proceeds) earned from TFM's operation of the Waterpark and TFM-hosted events on the Museum Campus beginning on and after January 1, 2017, and such gross revenue/cash proceeds earned shall act as collateral for the [Irrevocable Payment Obligation] for the year 2017 ("Collateral").<sup>2</sup>

38. Upon information and belief, TFM did not operate the waterpark or host events on the Museum Campus.

39. Upon information and belief, TFM never had a bank account.

40. The Museum did not obtain a valid and enforceable Deposit Account Control Agreement to obtain control over the Waterpark Revenues.

41. The Museum did not properly perfect its security interest against TFM.

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<sup>1</sup> See Ex. 6 to Declaration of Oren B. Haker in Support of Motion For Motion For Relief From Stay and Memorandum in Support of Motion [Docket No. 47] (the "Haker Declaration").

<sup>2</sup> *Id.*, ¶ 12.

42. TFEC did not grant a security interest in any of its property through the Gift Agreement.

43. Upon information and belief, TFEC was responsible for all operations of the waterpark and events hosted at the Museum Campus.

44. Upon information and belief, all revenues from the operation of the waterpark and events hosted on the Museum Campus were property of TFEC.

45. The Museum did not have a valid security interest against TFEC.

46. The Museum did not obtain a valid and enforceable Deposit Account Control Agreement against any of TFEC's bank accounts.

47. TFEC is a Utah limited liability company.

48. Even if TFEC had granted the Museum a security interest in TFEC's property, which it did not, the Museum did not properly perfect any such interest.

### **RESPONSE TO ARGUMENT AND AUTHORITY**

#### **I. The Museum Is Not Entitled to the Relief It Requested.**

The Museum's Motion includes several requests for relief. Specifically, in the section titled "Summary of Relief, and Basis For, Relief Requested", the Museum requests six forms of relief (the "Requests for Relief") as follows.<sup>3</sup>

- (1) "Relief from the automatic stay to foreclose on the revenue stream generated from the Waterpark's operations and the TFM-hosted events pursuant to a Financing Agreement between the Museum as lender and TFM as borrower that enabled TFM to purchase the Waterpark (and the revenue stream that had been assigned to the Museum in the Vintage Bankruptcy) from the chapter 11 trustee of the MKSF Bankruptcy" ("Request No. 1").

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<sup>3</sup> Although this list is not consistent with the relief requested elsewhere in the Motion, this appears to be the most comprehensive listing of what the Museum is requesting. Accordingly, the Trustee is responding to this list.

- (2) “Relief from the automatic stay to foreclose on the revenues generated by TFM’s use of the Museum Campus to host events thereon” (“Request No. 2”).
- (3) “Relief from the automatic stay so that the Museum can properly advise the Yamhill County Tax Assessor by April 1, 2019 (as required by Oregon law) of its intention to seek tax exemption status for the Space Building for the year 2020” (“Request No. 3”).
- (4) “Relief from the automatic stay to mitigate damages caused by TFM and TFEC’s breach of the Prepetition Transaction Documents entered into between the Museum and TFM/TFEC in connection with the Museum Campus and Waterpark” (“Request No. 4”).
- (5) “an accounting by the Trustee, by no later than February 28, 2019, of all receipts and disbursements by TFEC relating to revenues generated by, and costs of operating, the Waterpark, and the same for the revenue-generating events hosted by TFEC/TFM on the Museum’s Campus since the TFEC Petition Date” (“Request No. 5”).
- (6) “segregation by the Trustee of (i) net income generated from the operations of Waterpark in the TFM DIP Account and (ii) revenues generated from TFM’s hosting of events on the Museum Campus in the TFM DIP Account” (“Request No. 6”).<sup>4</sup>

The Trustee is unclear as to the relief sought under Request Nos. 3 and 4. As to Request No. 3, the Trustee cannot effectively respond to this request, as the Museum makes conflicting statements as to what actions it intends to take with the Yamhill County Tax Assessor throughout the Motion.<sup>5</sup> Therefore, the Trustee requests clarification as to what actions the Museum intends to take, and reserves his right to object thereto.

Similarly, the Trustee is unclear as to what actions the Museum intends to take to “mitigate its damages” as stated in Request No. 4, and requests further clarification from the

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<sup>4</sup> Motion, 6.

<sup>5</sup> See Motion, 6 (requesting relief “...so that the Museum can properly advise the Yamhill County Tax Assessor by April 1, 2019 (as required by Oregon law) of its intention to seek tax exemption status for the Space Building for the year 2020”); *but see* Motion, 30 (requesting relief “...to inform Yamhill County that the Museum may need to vacate the Lease and thus will not be applying for a property exemption by April 1, 2019”).

Museum. To the extent the Museum's actions would constitute a violation of 11 U.S.C. § 362, the Trustee objects to such relief.

The remaining Requests for Relief are predicated on the assertion that the Museum holds a validly perfected security interest in gross revenues earned from the operation of the Waterpark and events hosted on the Museum Campus (the "Waterpark Revenues"). As set forth below, the Museum does not have a valid security interest in the Waterpark Revenues and, even if it did, such interest was not properly perfected. Therefore, the Museum is not entitled to the relief requested in Request Nos. 1, 2, 5, and 6.

**II. Cause Does Not Exist to Terminate the Automatic Stay Because The Museum Does Not Have a Validly Perfected Security Interest in the Waterpark Revenues.**

The Museum has not established that cause exists to terminate the automatic stay. Section 362(d) identifies factors that the courts may consider in determining whether to terminate the automatic stay. Factors include whether there is adequate protection in the property and whether the property is necessary to an effective reorganization.<sup>6</sup> Some of the other factors which courts have considered include: whether this is the first bankruptcy case filing by the debtor or if other multiple cases have been filed, whether the property is necessary to an effective reorganization, whether relief from stay would interfere with the bankruptcy, whether the debtor acted in bad faith, injury to the debtor and other creditors if the stay is modified, and proportionality of the harms from modifying or continuing the stay.<sup>7</sup> Here, the Museum does not have a valid security interest in the Waterpark Revenues, and thus has no right to the Waterpark

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<sup>6</sup> See 11 U.S.C. § 362(d); *In re Carbaugh*, 278 B.R. 512, 525 (B.A.P. 10th Cir. 2002)

<sup>7</sup> See generally, *J.E. Livestock, Inc. v. Wells Fargo Bank, N.A. (In re J E Livestock)*, 375 B.R. 892, 897 (B.A.P. 10th Cir. 2007).

Revenues or adequate protection related to the Waterpark Revenues. Therefore, the Museum has not established that cause exists to terminate the automatic stay.

**a. The Museum Does Not Have A Valid Security Interest In the Waterpark Revenues.**

The Museum asserts that it holds a security interest in the Waterpark Revenues. The Museum points to the following language in the Gift Agreement to support its assertion:

To secure the [Irrevocable Payment Obligation] for the year 2017 in the amount of \$840,000, TFM assigns and grants to the Museum a continuing lien and security interest in gross revenue (cash proceeds) earned from TFM's operation of the Waterpark and TFM-hosted events on the Museum Campus beginning on and after January 1, 2017, and such gross revenue/cash proceeds earned shall act as collateral for the [Irrevocable Payment Obligation] for the year 2017 ("Collateral").<sup>8</sup>

Pursuant to the language in the Gift Agreement, TFM (but not TFEC) purportedly granted the Museum a security interest in gross revenue earned from TFM's (but not TFEC's) operation of the Waterpark, and TFM-hosted (but not TFEC-hosted) events on the Museum Campus.<sup>9</sup> TFM did not have any operations, TFM only owned the real property. TFEC, not TFM, was solely responsible for the operation of the Waterpark and the related events. Thus, TFM had no revenue or cash proceeds "earned from TFM's operation of the Waterpark and TFM-hosted events" to which the security interest would apply. Notably, TFEC did *not* grant the Museum a security interest in any of its property or revenues. As the Waterpark Revenues are property of TFEC, not TFM, there is no collateral subject to the Museum's security interest.

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<sup>8</sup> Gift Agreement, ¶ 12.

<sup>9</sup> *See id.*

**b. The Museum Did Not Properly Perfect Its Security Interest in the Waterpark Revenues.**

As noted above, the Museum did not have a security interest in the Waterpark Revenues. However, even if the the grant by TFM was effective to grant a security interest in the Waterpark Revenues, the Museum failed to properly perfect its claimed security interest.

The Museum alleges that it perfected its security interest “by filing UCC-1 statements against each of TFM and TFEC.”<sup>10</sup> However, perfection of a security interest in cash or deposit accounts can only be perfected by control, not by the filing of a financing statement.<sup>11</sup> Moreover, perfection of a security interest in cash or deposit accounts continues only while the secured party retains possession or control of the funds.<sup>12</sup>

The Museum does not allege that it had control over the Waterpark Revenues at any time. Indeed, it alleges that TFEC has, or had, control of the Waterpark Revenues.<sup>13</sup> In order to perfect an interest in a deposit account, the secured party must have control under one of the following scenarios: (1) the secured party is the bank with which the deposit account is maintained; (2) the debtor, secured party, **and bank** have agreed in an authenticated record that

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<sup>10</sup> Motion, 13.

<sup>11</sup> See UCC § 9-312(b) (“a security interest in a deposit account may be perfected only by control under Section 9-314” ... “a security interest in money may be perfected only by the secured party’s taking possession under Section 9-313.”) ; see also UCC § 9-314 (“A security interest in deposit accounts, electronic chattel paper, or letter of credit rights is perfected by control under Section 9-104, 9-105, or 9-107 when the secured party obtains control and remains perfected by control only while the secured party retains control.”)

<sup>12</sup> See U.C.C. §§ 9-313(c) and 9-314(b).

<sup>13</sup> Motion, 21 (“most, if not all, of the Museum’s cash collateral was held in accounts by TFEC”).

the bank will comply with instructions originated by the secured party directing disposition of the funds in the deposit account without further consent by the debtor; or (3) the secured party becomes the bank's customer with respect to the deposit account."<sup>14</sup>

As the Museum was not the bank with which the account was or is maintained, nor is the Museum the bank's customer with respect to the account, the Museum could only perfect its interest in the account if it held a valid Deposit Account Control Agreement executed by the debtor, the secured party, and the bank. The Museum appears to have been aware of such a requirement, as it attached a "Bank Directive Agreement" to the Motion, alleging that it was signed by each of TFEC, TFM, and the Museum.<sup>15</sup> The Museum admits, however—albeit in a footnote—that the bank "refused to sign the agreement."<sup>16</sup> As such, the Bank Directive Agreement was not effective to perfect a security interest in the Waterpark Revenues or the Deposit Account referenced by the Museum.<sup>17</sup> The Museum does not, and did not, have control over the Waterpark Revenues as of the Petition Date. Therefore, the Museum does not have a perfected security interest in the Waterpark Revenues.<sup>18</sup>

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<sup>14</sup> UCC § 9-104(a)(2) (emphasis added).

<sup>15</sup> Motion, 14.

<sup>16</sup> Motion, 14, FN 11 (emphasis added).

<sup>17</sup> It is unclear why the Bank Directive Agreement references an account held at U.S. Bank, while the UCC-1 financing statement references an account held at JP Morgan Chase Bank NA. Regardless, neither document is sufficient to perfect a security interest in the Waterpark Revenues.

<sup>18</sup> The Museum suggests that if the Museum's security interest is avoided, "the the entire transaction that was approved by the Bankruptcy Court in the MKSF Chapter 11 Case (as evidenced by the TFEC APA and the Prepetition Transaction Documents) is subject to avoidance, and the MKSF Chapter 11 Case may need to be reopened because an operating asset and significant real property (i.e., the Waterpark and Space Building) may be returned to the MKSF estate for additional administration in the Bankruptcy Court in Oregon." Motion, 26, FN 23. It is unclear what basis the Museum believes it would have to avoid the transaction to TFM, as the security interest was not referenced in the TFEC APA, the Museum was not a party to the TFEC APA, and the

**c. The UCC-1 Financing Statement Against TFEC Was Unauthorized and Is Ineffective Against TFEC.**

As previously discussed, TFEC did not grant the Museum a security interest in its property. Thus, the Museum was not entitled to file a UCC-1 financing statement against TFEC. However, even if TFEC had granted the Museum a security interest in the Waterpark Revenues, which it did not, and even if the filing of a UCC-1 financing statement was sufficient to perfect such a security interest, which it is not, the Museum improperly filed the UCC-1 financing statement against TFEC in Oregon, not Utah, the state of TFEC's incorporation. Therefore, the UCC-1 financing statement is ineffective as to TFEC.<sup>19</sup>

**III. Conclusion**

The Museum does not have a validly perfected security interest in the Waterpark Revenues, or any other collateral of TFM or TFEC. As such, the Museum has failed to show that there is cause for relief from the automatic stay as to Relief Nos. 1 and 2. Additionally, as the Museum does not have a properly perfected security interest in the Waterpark Revenues, the Museum is not entitled to an accounting of funds or segregation of funds as requested in Request Nos. 5 and 6. The Trustee cannot determine whether the relief requested in Request Nos. 3 and 4 is subject to the automatic stay, based solely on the limited descriptions given by the Museum. However, to the extent such actions are subject to the automatic stay, the Trustee reserves his rights to further object to such actions.

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document purportedly granting the security interest was not executed until sometime in 2017, despite the fact that it is dated "nunc pro tunc" to August 16, 2016.

<sup>19</sup> See UCC § 9-301(1).



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

DATED this 29th day of January, 2019.

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

**CERTIFICATE OF SERVICE, BY NOTICE OF ELECTRONIC FILING**

I hereby certify that on the 29th day of January 2019, I electronically filed the **TRUSTEE'S OPPOSITION TO MOTION FOR RELIEF FROM STAY** 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.

- Laurie A. Cayton tr laurie.cayton@usdoj.gov, James.Gee@usdoj.gov;Lindsey.Huston@usdoj.gov;Suzanne.Verhaal@usdoj.gov
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**CERTIFICATE OF SERVICE – MAIL, OTHER**

I hereby certify that on this 29th day of January 2019, I caused to be served a true and correct copy of the **TRUSTEE'S OPPOSITION TO MOTION FOR RELIEF FROM STAY** as follows:

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*/ s / Candy Long*

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