

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, 14th 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

Proposed Counsel for the Debtor in Possession

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

In re:

THE FALLS EVENT CENTER LLC, a
Utah limited liability company,

Address: 9067 S 1300 W, #301
West Jordan, UT 84088,

Tax I.D. No. 90-1023989,

Debtor in Possession.

Bankruptcy Case No. 18-25116

Chapter 11

Honorable Kimball Mosier

[Filed Electronically]

**DEBTOR'S APPLICATION FOR ENTRY OF AN ORDER AUTHORIZING THE
EMPLOYMENT OF ROCKY MOUNTAIN ADVISORY, LLC, ACTING
THROUGH ITS PRINCIPAL GIL A. MILLER, TO SERVE
AS ITS CHIEF RESTRUCTURING ADVISOR**

The Falls Event Center, LLC, the debtor-in-possession (“**Debtor**”) in the above-entitled case (the “**Case**”), through counsel, hereby files its *Debtor’s Application for Entry of an Order*

Authorizing the Employment of Rocky Mountain Advisory, LLC, Acting Through its Principal Gil A. Miller, to Serve as its Chief Restructuring Advisor (the “Application”). This Application is filed in accordance with 11 U.S.C. § 327, and Fed. R. Bankr. P. 2014.

Pursuant to the Application, the Debtor seeks to retain and employ Rocky Mountain Advisory, LLC (“**RMA**”), acting through its principal Gil A. Miller (“**Miller**”), to serve as its Chief Restructuring Advisor effective as of August 27, 2018. Attached hereto as Exhibit A is a true and correct copy of the Agreement for Chief Restructuring Advisor Services that was executed by the Debtor and RMA. This Application is also supported by the Declaration of Gil A. Miller (the “**Miller Declaration**”), which Miller Declaration is attached hereto as Exhibit B and incorporated herein by this reference. This Application is further supported by the following:

JURISDICTION AND VENUE

1. This Court has jurisdiction to consider the 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 Debtor is a debtor-in-possession with authority to manage its affairs and operate its business pursuant to sections 1107 and 1108 of the Bankruptcy Code.
3. The statutory bases for the relief requested herein are sections 327 and 330 of the Bankruptcy Code, and Rules 2014(a) and 2016 of the Federal Rules of Bankruptcy Procedure.
4. No prior application has been filed for the relief requested herein.

BACKGROUND

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

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

7. The meeting of creditors for the Debtor was held on August 20, 2018.

8. On July 27, 2018, shortly after this Case was filed, the Office of the United States Trustee filed its motion to appoint a Chapter 11 Trustee (the “**Trustee Motion**”). [Dkt. 29] The Trustee Motion remains pending.

9. In order to address (and hopefully moot) some of the concerns raised in the Trustee Motion, the Debtor has selected RMA, subject to Court approval, to serve as its Chief Restructuring Advisor, with RMA primarily acting by and through its principal Mr. Miller.

**RETENTION OF RMA, THROUGH ITS PRINCIPAL MILLER,
AS CHIEF RESTRUCRING ADVISOR**

10. By this Application, the Debtor seeks to employ and retain RMA, through its principal Miller, pursuant to sections 327(a) and 328 of the Bankruptcy Code and Rule 2014 of the Federal Rules of Bankruptcy Procedure, as the Chief Restructuring Advisor to the Debtor and the estate effective as of August 27, 2018.

11. The Debtor has selected RMA, through its principal Miller, to serve as its Chief Restructuring Advisor because RMA and its principal Miller are accountants and professionals who have extensive experience and knowledge in restructuring, accounting and financial advisory services, particularly in bankruptcy matters.

12. RMA and Mr. Miller also have extensive knowledge and experience concerning the fiduciary and other duties imposed upon a debtor-in-possession, as well as extensive knowledge and experience in actually serving as fiduciaries. Mr. Miller, for example, has served as a Chapter 11 trustee in cases before this Court on numerous occasions, and RMA also has regularly served as financial advisors to both Chapter 7 and Chapter 11 trustees and Chapter 11 debtors-in-possession.

13. In short, RMA, through its principal Miller, is both well-qualified and uniquely able to represent the Debtor and the estate in an efficient, effective, and timely manner. RMA's retention, through its principal Miller, is necessary and in the best interests of the estate, and should therefore be approved.

14. RMA, through its principal Miller, has indicated its willingness to assist the Debtor and the estate as requested by the Debtor, and to render the services and to be compensated as set forth below.

15. Because the Debtor currently lacks a Board of Managers and lacked a Board of Managers as of the date of its bankruptcy filing, Miller and RMA will initially report to and take overall direction from Brooks Pickering (“**Pickering**”), the current manager of the Debtor.

16. The Debtor intends by October 31, 2018 to install a Board of Managers for the Debtor, and to transition overall reporting and oversight responsibilities for Miller and RMA from Pickering to the new Board of Managers.

17. The Debtor and RMA agree that RMA shall render services to the Debtor and the estate as an independent contractor, and nothing herein shall be construed to be inconsistent with this relationship or status.

RMA'S QUALIFICATIONS

18. The Debtor has selected RMA, through its principal Miller, to serve as its Chief Restructuring Advisor based upon the extensive knowledge and experience of RMA's professionals, including its principal Miller, offering a wide array of restructuring, forensic accounting, and business consulting services. All of the RMA professionals, and especially its principal Miller, have substantial experience in serving a broad range of clients, including bankruptcy trustees and other court-appointed fiduciaries.

19. Furthermore, Miller and the other accountants with RMA who will perform services for the Debtor and the estate have been involved in numerous matters providing forensic accounting analysis and investigations. Mr. Miller will be the Debtor's primary contact on this matter. Mr. Miller has extensive background and training in bankruptcy matters, and has served numerous times as both a bankruptcy trustee and as an accountant and financial advisor for various bankruptcy debtors and trustees.

20. In addition to Mr. Miller, it is anticipated that the following RMA professionals will or may perform services for the Debtor: John H. Curtis, David Bateman, Matt H. Connors, Daniel L. Johnson, K. Luke Houston, Elizabeth D. Williams, and/or Heather C. Young. Biographical information for each of these individuals can be found on the Rocky Mountain

Advisory website at www.rockymountainadvisory.com. Other accountants and assistants at RMA may be used, if and when necessary.

21. The Debtor believes that RMA, through its principal Miller, is well-qualified to serve as the Chief Restructuring Advisor to the Debtor and the estate in an efficient and timely manner, and that RMA's retention would be in the best interest of creditors and the estate.

DISINTERESTEDNESS

22. To the best of the Debtor's knowledge, none of the principals or staff members of RMA have any financial interest or business connection with it or any officer, director, employee or member of the Debtor.

23. As set forth in the Miller Declaration, RMA 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, neither RMA nor any of its principals has any undisclosed connection with the Debtor, 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, neither RMA nor any of its principals has any direct or indirect relationship to, connection with, or interest in the Debtor, any of the Debtor'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 set forth in the Johnson Declaration, and (c) to the best of RMA's knowledge, RMA and its principals 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 or its estate.

24. Based on the foregoing, to the best of the Debtor's knowledge, RMA and its professionals, including Miller, 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.

**SCOPE OF RMA'S REPRESENTATION THROUGH
ITS PRINCIPAL MILLER**

25. The services of a Chief Restructuring Advisor are necessary to enable the Debtor to successfully reorganize and to fulfill its fiduciary obligations. RMA, through its principal Mr. Miller, shall be responsible for all tasks and duties that are typically performed by a Chief Restructuring Advisor, with the standard of care and performance by RMA, through its principal Miller, being that which is normal, usual and customary for CRAs in the industry. Without limiting the foregoing, RMA's powers and duties shall specifically include the right and/or obligation, as the case may be to do the following:

- Acting through the Debtor and in its capacity as CRA of the Debtor to take exclusive control of all of the Debtor's bank accounts and all other financial accounts of Debtor, and to provide or oversee all necessary or prudent accounting and financial advisory services as Debtor may require;
- To perform investigation on historical cash flow (receipts, disposition, etc.), including any appropriate forensic accounting as requested by the Debtor or as ordered by the Court, the U.S. Trustee, or other governmental agencies;
- To negotiate, where necessary, or appropriate, contractual agreements, engagements or other transactions the Debtor may desire to enter into;
- To control and direct all communications and correspondence with any unsecured creditors of Debtor;
- To oversee payment of any appropriate amounts necessary to continue the restructured business of Debtor;

- To oversee any budgets and forecasts that may be prepared by Debtor;
- To negotiate where necessary or appropriate with creditors of Debtor;
- To address or handle, through counsel, any lawsuits, motions, adversary proceedings, contested matters or other legal proceedings that may be commenced either by Debtor or by creditors of Debtor;
- To provide advisory services for the purpose of maximizing recoveries by creditors of Debtor;
- To investigate and cause the Debtor to file such motions for substantive consolidation or related matters as the CRA deems necessary or prudent;
- To assist the Debtor with respect to all necessary motions, applications, answers, orders, reports and papers as required by applicable bankruptcy or non-bankruptcy law, dictated by the demands of the Case, or required by the Court, and to represent the Debtor in proceedings or hearings related thereto;
- Assisting the Debtor's principals or Board of Managers in analyzing and pursuing possible business reorganization strategies;
- Assisting and representing the Debtor in analyzing and pursuing any proposed dispositions of assets of the Debtor's estate;
- Reviewing, analyzing and advising the Debtor regarding claims or causes of action to be pursued on behalf of the Debtor's estate;
- Assisting and representing the Debtor in providing information to creditors and other parties-in-interest in the Case;
- Assisting and representing the Debtor regarding any Chapter 11 plan filed by the Debtor, either alone or as a joint plan with the Debtor's wholly-owned subsidiaries;
- Assisting and representing the Debtor in negotiations with various creditor constituencies regarding treatment, resolution and payment of the claims;
- Reviewing and analyzing all claims filed against the Debtor, and advising and representing the Debtor as to the filing of objections to claims, if necessary;

- Providing all necessary support and assistance to the bankruptcy estate with respect to litigation, avoidance actions and other legal matters; and
- Providing all other necessary financial, accounting and advisory services as the Debtor may require given the particular needs of the Case.

COMPENSATION

26. The Debtor has agreed to advance to RMA an initial retainer in the amount of \$50,000 (the "**Initial Retainer**"), and RMA will retain the right to require additional retainer funds if it appears that the Initial Retainer will be exhausted.

27. The Debtor shall compensate RMA at its customary hourly rates, plus actual and necessary expenses for which RMA typically seeks reimbursement, including, among other things, expenses related to contracted professional services, telephone and telecopier toll charges, express mail and mass mail postage charges, expenses for computerized research, transcription costs, courier services, travel costs where necessary.

28. Mr. Miller's current standard hourly rate is \$395 per hour. RMA's current standard hourly rates for other professionals and staff members range from \$140 to \$280 per hour.

29. RMA will keep detailed and contemporaneous records of time spent and any expenses incurred in the context of the accounting services provided to the Debtor and the estate, and RMA will use the most economical and practicable methods when incurring fees and expenses.

30. RMA will abide by the Bankruptcy Code and its provisions and any Order this Court may enter in relation to fee application procedures. RMA will also apply to the Court for allowance of any compensation and reimbursement in the Case and understands that its

compensation is subject to the prior approval of this Court, after notice and a hearing, in accordance with 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.

CONCLUSION

The Debtor believes it is in the best interest of creditors and the estate that RMA, through its principal Miller, be retained as the Chief Restructuring Advisor to the Debtor and the estate. The Debtor is satisfied from the Miller Declaration that RMA does not hold or represent any entity having an adverse interest to the Debtor or the estate, and that RMA and its personnel are otherwise disinterested.

WHEREFORE, the Debtor respectfully requests the entry of an Order authorizing the Debtor to employ and retain RMA, through its principal Miller, as its Chief Restructuring Advisor effective as of August 27, 2018.

DATED this 30th day of August, 2018.

/s/ Elaine A. Monson
Elaine A. Monson
Proposed Counsel to the Debtor

CERTIFICATE OF SERVICE

I hereby certify that on August 30, 2018 I electronically filed the foregoing **DEBTOR'S APPLICATION FOR ENTRY OF AN ORDER AUTHORIZING THE EMPLOYMENT OF ROCKY MOUNTAIN ADVISORY, LLC, ACTING THROUGH ITS PRINCIPAL GIL A. MILLER, TO SERVE AS ITS CHIEF RESTRUCTURING ADVISOR** 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, including the United States Trustee, 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
- **Michael R. Johnson** mjohnson@rqn.com, docket@rqn.com;dburton@rqn.com
- **United States Trustee** USTPRegion19.SK.ECF@usdoj.gov
- **Brent D. Wride** bwride@rqn.com, docket@rqn.com;pbrown@rqn.com

/s/ Dianne Burton

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