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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]

DECLARATION OF BROOKS PICKERING

1. My name is Brooks Pickering, and I am the Manager of the Debtor. I have been acting in that capacity since June 28, 2018.
2. I have personal knowledge of the facts testified to in this Declaration.
3. My employment background includes being a strategic growth consultant and specializing in corporate turnarounds and restructuring.

4. Prior to relocating to Las Vegas, Nevada, in 2008, I was a bonded state court receiver in California who served in that capacity in more than two dozen appointments.

5. In May of 2018, I was contacted by Robert Kerrigan, a business consultant with whom I periodically work.

6. Bob had been contacted by Susan Knight (“**Knight**”), an employee of the Debtor who discussed with him the possibility of providing consulting services for the Debtor and meeting the person who ran those companies, Steve Down (“**Down**”).

7. Knight had been introduced to Bob Kerrigan at a networking event in Las Vegas by Joe Amato (with whom both Bob and I have previously worked). Joe Amato recommended Bob as someone who might be able to provide the consulting services needed by the Debtor.

8. Bob subsequently provided me with some initial financial information for The Falls and another business, Even Stevens Sandwiches, and was I asked to join a conference call with Knight.

9. After this initial conversation with Knight, I traveled to Salt Lake City and met with Down and several of his employees to discuss the nature of the Debtor’s business and what Down hoped to accomplish.

10. Down informed me he was looking to develop a new capital formation plan and wanted to know how he could raise new capital.

11. However, the very first day I was in Salt Lake City, during our afternoon discussion, I was informed by John Neubauer, a Down employee, of the pending foreclosure of some property owned by The Falls at Elk Grove, and the focus of our discussion necessarily began shifting to a restructuring.

12. Following some subsequent conversations with Down, Bob returned to Las Vegas and I agreed to stay in Salt Lake City in order to meet some additional management staff and to take a closer look at the situation.

13. After learning more about the real-estate-related challenges at The Falls, I asked another colleague with whom I regularly work, Spencer Viernes, to join me in examining the situation.

14. After reviewing the initial scope, we agreed to provide consulting services to the Debtor, and we formally executed agreements on or about June 8, 2018.

15. Prior to my engagement as a consultant by Down, I had never had any prior involvement with him, I had never had any prior involvement with the Debtor, and I had never had any prior involvement with any person employed by the Debtor or its affiliates, except for the above-referenced conversation with Knight.

16. Prior to executing our initial consulting agreement with Down, Spencer and I began gathering additional information about the Debtor's business from Down and his employees. Mr. Viernes and I also engaged in the process of reviewing pertinent records and documents relating to the Debtor's business and those of some of its affiliates, which included a review of the Debtor's assets and liabilities and its latest financial statements.

17. After engaging in this process, my initial conclusion that the Debtor and some of its affiliates would need to be restructured was confirmed because the Debtor had some serious financial difficulties and because there were valuable assets that were at risk of foreclosure.

18. I also determined that it was highly unlikely that a successful restructuring could take place if Down and his brother, David Down, who was the Debtor's second Manager, continued to be in charge of the business operations of the Debtor.

19. Accordingly, in June of 2018, I began having discussions with Down about having him and his brother David Down step down from their positions as Managers of the Debtor.

20. Down and David Down agreed to do so and on June 28, 2018, EFalls Corporation (“**EFalls**”), which was the sole identified Member of the Debtor, executed a Consent of Sole Member of The Falls Event Center, LLC (the “**Consent**”) that replaced Down as the Manager of the Debtor and withdrew, revoked, terminated, and rescinded all powers of Down to act on behalf of or to represent the Debtor as a manager, officer, or in any other capacity. The Consent also appointed me as the new Manager of the Debtor and granted me, among other powers, the power to sign and file a petition for relief under chapter 11 of title 11 on behalf of the Debtor. A copy of the Consent is attached hereto as Exhibit A.

21. On July 9, 2018, EFalls executed a Consent of the Sole Member of The Falls Event Center, LLC (the “**Second Consent**”), that immediately removed David Down as the other Manager of the Debtor, and that withdrew, revoked, terminated, and rescinded all powers of David Down to act on behalf of or to represent the Debtor as a manager, officer, or in any other capacity. The Second Consent also resolved that following David Downs’s removal, I was the sole Manager of the Debtor. A copy of the Second Consent is attached hereto as Exhibit B.

22. Since the execution of the Consent and the Second Consent, I have operated the Debtor with full independence, and I have taken no directions from Down or David Down, nor in the future will I take any direction from either of them relating to the Debtor, its business operations, or the business operations of its affiliates.

23. On July 11, 2018, the Debtor filed its bankruptcy petition with this Court under Chapter 11 of Title 11 of the United States Code.

24. Since that date I have overseen the management of the Debtor as a debtor-in-possession.

25. On July 27, 2018, the United States Trustee ("UST") filed its Motion for the Appointment of a Chapter 11 Trustee and Memorandum in Support Thereof ("Motion"), which alleges that a Chapter 11 Trustee should be appointed, in part, because I have a conflict of interest in managing the Debtor.

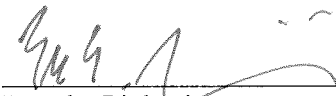
26. In addition, the UST alleged in the Motion that there were some post-petition transfers out of the Debtor's bank account at Bank of the West that should have been prevented. However, my supplemental declaration that will be filed at the same time of the Debtor's substantive response to the UST's Motion will show that several requests were made on Bank of the West to stop any post-petition transfers out of the account, but Bank of the West refused to do so.

27. Although I believe there is no factual or legal basis to support granting the Motion, I have also determined it would be in the best interests of the Debtor for a Chief Restructuring Advisor to be appointed to avoid any appearance of a conflict and also to try to avoid further unnecessary costs and expenses to the estate.

28. As a result, I have been meeting with Gil A. Miller to discuss his engagement as Chief Restructuring Advisor as soon as possible, and we are in the process of finalizing the terms of his employment, which will be presented to the Court for approval.

I declare under penalty of perjury that the foregoing is true and correct.

Dated this 20th day of August, 2018.



Brooks Pickering

“Exhibit A”

CONSENT OF SOLE MEMBER OF
THE FALLS EVENT CENTER, LLC

The undersigned, being the sole member of The Falls Event Center, LLC, a Utah limited liability company (the "Company"), hereby consents to the following resolutions pertaining to actions to be taken by the Company:

RESOLVED, that Steven L. Down be immediately replaced as the sole manager of the Company and Brooks Pickering be, and the same hereby is, appointed instead with effect from this 28th day of June 2018; and

RESOLVED, to withdraw, revoke, terminate and rescind all powers granted to Steven L. Down to act on behalf of, or to represent, the Company as a manager, officer or in any other capacity to exercise actual or apparent authority to act in any manner whatsoever on behalf of the Company; and

RESOLVED, to grant all powers to Brooks Pickering to act on behalf of, or to represent the Company as a manager, officer or in any other capacity to exercise actual or apparent authority to act in any manner whatsoever on behalf of the Company; and

RESOLVED, that Brooks Pickering, as the Manager of the Company, is authorized to engage and pay a retainer of \$26,000.00 to Ray Quinney & Nebeker as legal counsel to assist the Company and its affiliates in evaluating the restructuring options of the Company and its affiliates, to assist in preparing the Company and its affiliates for a possible bankruptcy filing, and to serve as the Company's and its affiliates' general restructuring consultant and general bankruptcy counsel, respectively, in the event of a Chapter 11 filing; and

RESOLVED, that Brooks Pickering, as the Manager of the Company, is authorized to engage such other estate professionals as he deems appropriate in his sole discretion to further assist the Company and/or its affiliates in evaluating the restructuring options of the Company and/or its affiliates and to assist with the restructuring of the Company's and/or its affiliates' obligations in the event of a Chapter 11 filing; and

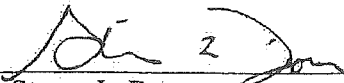
RESOLVED, that Brooks Pickering, as the Manager of the Company, is authorized, in the event the Manager deems it appropriate in the Manager's sole discretion, to sign and file on behalf of the Company a petition for relief under Chapter 11 of Title 11 of the United States Code with the United States Bankruptcy Court for the District of Utah, as well as all related papers that are necessary or appropriate in connection with the bankruptcy petition.

The undersigned hereby represents and warrants that it is the sole Member of the Company. The foregoing resolutions are hereby adopted by the undersigned as the sole Member of the Company in accordance with the Operating Agreement of the Company.

DATED to be effective as of June 28th, 2018.

SOLE MEMBER:

EFALLS CORPORATION, a Utah corporation

By: 
Steven L. Down
Its: President and Chief Executive Officer

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“Exhibit B”

CONSENT OF THE SOLE MEMBER OF
THE FALLS EVENT CENTER, LLC

The undersigned, being the sole member of The Falls Event Center, LLC, a Utah limited liability company (the "Company"), hereby consents to the following resolutions pertaining to actions to be taken by the Company:

RESOLVED, that David W. Down be immediately removed as a manager of the Company;

RESOLVED FURTHER, to withdraw, revoke, terminate and rescind all powers granted to David W. Down to act on behalf of, or to represent, the Company as a manager, officer or in any other capacity to exercise actual or apparent authority to act in any manner whatsoever on behalf of the Company; and

RESOLVED FURTHER, that following the removal of David W. Down as a manager of the Company, Brooks Pickering shall be the sole manager of the Company.

The undersigned hereby represents and warrants that it is the sole Member of the Company. The foregoing resolutions are hereby adopted by the undersigned as the sole Member of the Company in accordance with the Operating Agreement of the Company.

DATED to be effective as of July 9, 2018.

SOLE MEMBER:

EFALLS CORPORATION, a Utah corporation

By: 
Steven L. Down

Its: President and Chief Executive Officer