

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  
mjohnson@rqn.com  
dleigh@rqn.com  
emonson@rqn.com  
bwride@rqn.com

*Proposed Counsel for Debtor-in-Possession The Falls Event Center LLC*

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.

Bankruptcy Case No. 18-25116

Chapter 11

Honorable R. Kimball Mosier

[Filed Electronically]

**DEBTOR TFEC'S OPPOSITION TO iBORROW, L.P.'S MOTION FOR RELIEF FROM  
STAY**

Debtor and Debtor-in-Possession The Falls Event Center, LLC ("**Debtor TFEC**"), by  
and through the proposed counsel of record in this Chapter 11 case, hereby files its Opposition  
(the "**Opposition**") to the *Motion for Relief From Stay* (the "**Motion**"), which was filed by

Lender iBorrow, L.P. (the “**Lender**” or “**iBorrow**”) on August 2, 2018 in this Chapter 11 Bankruptcy Case No. 18-25116 (the “**TFEC Case**”). This Opposition is supported by the *Declaration of Brooks Pickering in Opposition to iBorrow’s Motion for Relief From Stay* (the “**Pickering Decl.**”) filed contemporaneously herewith.

Pursuant to Local Rule 4001-1, Debtor TFEC hereby responds to the factual allegations set forth in the Lender’s Motion:

1. Lender Allegation: *“In July 2014, EFalls Properties Elk Grove CA LLC (“EFalls”) and The Falls at St. George, LLC (“Falls St. George and together with EFalls, the “Borrower”) executed, among other documents, (i) a Promissory Note Secured by Deed of Trust in favor of Eagle Group Finance, L.P., a California limited partnership (“Eagle Finance”), in the principal amount of \$6,175,000.00 (the “Note”); and (ii) a Construction Deed of Trust, Security Agreement, Assignment of Rents and Leases, and Fixture Filing against the real property located at 8280 / 8290 Elk Grove Blvd., Elk Grove, CA 95828 and associated personal property (the “Property”) recorded in Sacramento County on July 7, 2014 (Book 2014, Page 714) (the “iBorrow DOT” and collectively with other related documents, the “Loan Documents”). The Note is attached as Exhibit 1. The iBorrow DOT is attached as Exhibit 2.”* Debtor TFEC admits Paragraph 1 of the Motion’s factual allegations.

2. Lender Allegation: *“Eagle Finance is now known as iBorrow, L.P. pursuant to the certificate filed with the California Secretary of State on January 25, 2016. Therefore, all further references herein and in the Loan Documents to Eagle Finance shall mean iBorrow.”*

The Lender did not attach a copy of any certificate filed with the California Secretary of State; accordingly, Debtor TFEC lacks sufficient information to admit or deny the allegation in

Paragraph 2 of the Motion's factual allegations that Eagle Finance is now known as iBorrow, L.P.

3. Lender Allegation: *"Pursuant to the Loan Documents, the Borrower borrowed \$6.175 million from iBorrow with an original maturity date of July 3, 2016 related to the Property. The Borrower's obligations under the Loan Documents are secured by the iBorrow DOT against the Property."* Debtor TFEC admits that pursuant to the Loan Documents, the Borrower borrowed \$6.175 million from Eagle Finance (the "**Elk Grove Loan**") with an original maturity date of July 3, 2016, in connection with the Property (the Property also being referred to herein as the "**Elk Grove Event Center**").

4. Lender Allegation: *"The Note has matured."* Debtor TFEC admits Paragraph 4 of the Motion's factual allegations.

5. Lender Allegation: *"The Borrower defaulted under the Loan Documents by, among other things, failing to make timely payments when due and by failing to pay its obligations under the Note at maturity."* Debtor TFEC admits that the Borrower defaulted under the Loan Documents by failing to pay all of its obligations under the Note on the extended maturity date of July 3, 2017.

6. Lender Allegation: *"A Notice of Default relating to the Property was recorded in Sacramento County, California on February 2, 2018."* Debtor TFEC admits Paragraph 6 of the Motion's factual allegations.

7. Lender Allegation: *"As of July 16, 2018, the total payoff amount due under the Loan Documents was not less than \$9,108,617. Per diem interest of \$4,116.67 (approximately \$123,500 per month) continues to accrue. A copy of the itemized payoff is attached hereto as*

Exhibit 3.” Debtor TFEC admits that a copy of iBorrow’s itemized payoff statement is attached as Exhibit 3 to the Motion, but Debtor TFEC denies that the total payoff amount due under the Loan Documents was not less than \$9,108,617, and denies that per diem interest of \$4,116.76 (approximately \$123,500 per month) continues to accrue.

8. Lender Allegation: *“A foreclosure sale was scheduled for May 31, 2018.”*  
Debtor TFEC admits Paragraph 8 of the Motion’s factual allegations.

9. Lender Allegation: *“To stop the foreclosure sale, a wholly owned subsidiary of the Debtor, The Falls At Elk Grove, LLC (“Falls Elk Grove”) sought chapter 11 protection in Sacramento, California on May 30, 2018 (chapter 11 case no. 18-23387-D-11) (the “California Chapter 11 Case”).”* Debtor TFEC admits that the California Chapter 11 Case for Debtor TFEC’s subsidiary, The Falls at Elk Grove, LLC (“**Debtor Elk Grove**”) was filed on May 30, 2018, but denies that the California Chapter 11 Case was filed solely to stop the foreclosure sale of the Elk Grove Event Center, asserting that Debtor Elk Grove as a Chapter 11 debtor had a legitimate reorganization intent for filing the California Chapter 11 Case.

10. Lender Allegation: *“Falls Elk Grove acquired its interest in the Property, without iBorrow’s consent, on the petition date of the California Chapter 11 Case. A certified copy of the Grant Deed to the Falls Elk Grove is attached as Exhibit 4.”* Debtor TFEC admits that a certified copy of the Grant Deed formally transferring legal title to the Property to Debtor Elk Grove on May 30, 2018, the petition date of the California Chapter 11 Case, is attached as Exhibit 4 to the Motion. The purpose of the Grant Deed was just to recognize a name change and to correct an error in the vesting of the Property, and it was always intended by all parties, including Eagle Finance, that Debtor Elk Grove would be the owner of the Elk Grove Event

Center. Accordingly, Debtor Elk Grove was the actual owner of the Elk Grove Event Center at all times, and there was not a transfer of the Property without Eagle Finance's consent.

11. Lender Allegation: *"This transfer of the Property was made by EFalls, an affiliate of Falls Elk Grove, in violation of the Loan Documents. See iBorrow DOT Paragraph 13(a) (prohibiting transfer of any interest in the Property)."* Debtor TFEC admits that Paragraph 14(a) of the iBorrow DOT states that the Trustor of the iBorrow DOT, without the prior written consent of Eagle Finance as the Beneficiary of the iBorrow DOT, shall not effect, suffer, or permit any Prohibited Transfer, which is defined as any conveyance, sale, assignment, transfer, lien, pledge, mortgage, security interest or other encumbrance or alienation of the property interests listed in Paragraph 14 of the iBorrow DOT. Debtor TFEC asserts that the purpose of the May 30, 2018 Grant Deed was just to recognize a name change and to correct an error in the vesting of the Elk Grove Event Center, and it was always intended by all parties, including Eagle Finance, that Debtor Elk Grove would be the owner of the Elk Grove Event Center. Accordingly, Debtor Elk Grove was the actual owner of the Elk Grove Event Center at all times, and there was no transfer of the Elk Grove Event Center without Eagle Finance's consent.

12. Lender Allegation: *"The Falls Elk Grove's parent company – The Falls Event Center (the Debtor) – is identified on the Falls Elk Grove's Schedule D in the California Chapter 11 Case as holding a secured interest in the Property pursuant to a Deed of Trust in an unknown amount (the "Falls DOT"). See Schedule D (Schedules attached as Exhibit 5)."* Debtor TFEC admits Paragraph 12 of the Motion's factual allegations, and asserts that Schedule D in the

California Chapter 11 Case states that Debtor TFEC “holds a secured interest in [the P]roperty as agent for convertible secured noteholder investors.”

13. Factual Allegation: “*iBorrow did not consent to the Falls DOT.*” Debtor TFEC admits that Eagle Finance did not consent to the Falls DOT.

14. Factual Allegation: “*The Falls DOT encumbrance constitutes a violation and breach of the iBorrow DOT, which prohibited encumbrance of the Property without iBorrow’s consent. See iBorrow DOT Paragraph 13(a) (prohibiting any encumbrance on the Property other than the liens or encumbrances benefiting iBorrow unless expressly permitted by the Loan Documents).*” Debtor TFEC admits that Paragraph 14(a) of the iBorrow DOT states that the Trustor of the iBorrow DOT, without the prior written consent of Eagle Finance as the Beneficiary of the iBorrow DOT, shall not effect, suffer, or permit any Prohibited Transfer, which is defined as any conveyance, sale, assignment, transfer, lien, pledge, mortgage, security interest or other encumbrance or alienation of the property interests listed in Paragraph 14 of the iBorrow DOT.

15. Lender Allegation: “*The California Chapter 11 Case was dismissed on July 11, 2018. A copy of the California Bankruptcy Court’s minute entry regarding the dismissal order is attached hereto as Exhibit 6.*” Debtor TFEC admits Paragraph 15 of the Motion’s factual allegations.

16. Lender Allegation: “*The Debtor filed a voluntary chapter 11 bankruptcy petition in Utah Bankruptcy Court on July 11, 2018 (the “Petition Date”).*” Debtor TFEC admits Paragraph 16 of the Motion’s factual allegations.

17. Lender Allegation: *“Falls Elk Grove (the Debtor’s wholly owned subsidiary) sought Chapter 11 protection in Utah Bankruptcy Court on July 16, 2018 (Case No. 18-25208).”* Debtor TFEC admits Paragraph 17 of the Motion’s factual allegations.

18. Lender Allegation: *“iBorrow obtained an appraisal of the Property dated July 27, 2018 (the “Appraisal”).* Debtor TFEC admits Paragraph 18 of the Motion’s factual allegations.

19. Lender Allegation: *“The Appraisal reflects an “as is” market value of the Property as of July 18, 2018 of \$6,400,000.”* Debtor TFEC admits that the Appraisal dated July 18, 2018, reflects an “as is” market value for the Elk Grove Event Center of \$6,400,000; however, Debtor TFEC denies that this is the true market value for the Elk Grove Event Center.

20. Lender Allegation: *“The appraiser maintains that the highest and best use of the Property is not as an event center.”* Debtor TFEC admits that the appraiser in the July 18, 2018 Appraisal states that the highest and best use of the Elk Grove Event Center is not as an event center; however, Debtor TFEC denies that this is an accurate statement.

**Additional Facts in Opposition to Lender’s Motion for Relief From Stay**

21. In June of 2018, Brooks Pickering (“**Pickering**”) was appointed as the Chief Restructuring Officer (“**CRO**”) for Debtor TFEC. As part of the restructuring for Debtor TFEC and its Subsidiaries, including Debtor Elk Grove, Pickering was appointed as the new sole Manager of Debtor TFEC. See, Pickering Decl. at ¶ 8.

22. The California Chapter 11 Case for Debtor Elk Grove was filed prior to the time that Pickering was appointed as the CRO for Debtor TFEC. See, Pickering Decl. at ¶ 9.

23. Pickering determined that a comprehensive approach was needed for the restructuring and reorganization of Debtor TFEC and its Subsidiaries. Accordingly, Pickering directed that this Chapter 11 case for TFEC be filed with this Court on July 11, 2018, captioned as In re The Falls Event Center LLC, Case No. 18-25116 (the “**TFEC Case**”). See, Pickering Decl. at ¶ 10.

24. Pickering also directed that the second Chapter 11 case for Debtor Elk Grove be filed with this Court on July 16, 2018, captioned as In re The Falls at Elk Grove, LLC, Case No. 18-25208 (the “**Elk Grove Case**”). See, Pickering Decl. at ¶ 11.

25. The Elk Grove Event Center is improved with two special purpose event center buildings comprising a total of approximately 27,000 square feet, which are both available for rental to the general public to host wedding receptions and other events. The Elk Grove Event Center is one of eight operating event centers (collectively the “**Event Centers**”). The real property at each of the eight locations is owned by separate entities owned by Debtor TFEC. These related entities, including Debtor Elk Grove, are referred to herein as the “**Subsidiaries**.” See, Pickering Decl. at ¶ 12.

26. As part of the operations and management of all of the Subsidiaries, Debtor TFEC handles the bookings for all of the Event Centers, collects the deposits and rental fees, employs the staff for each of the Event Centers, and owns the tables, chairs, linens, audio/visual equipment and other personal property associated with each of the Event Centers. Debtor TFEC is also responsible for insuring and maintaining each of the Event Centers, which has historically included servicing the debt obligations and operational expenses associated with each of the Event Centers, including the Elk Grove Event Center. Accordingly, Debtor TFEC has always



handled all of the finances associated with each of the Subsidiaries, including Debtor Elk Grove. See, Pickering Decl. at ¶ 13.

27. In recognition of how the operations and management of the Subsidiaries and the Event Centers have been handled in the past, and as part of the still developing restructuring and reorganization plans for Debtor TFEC and the Subsidiaries, Pickering has determined that it would be best to substantively consolidate all of the Subsidiaries into the TFEC Case. In addition, Pickering is planning to sell the real property for those Event Centers that are not currently being operated, and to pursue refinancing or a sale and leaseback of some or all of the Event Centers that are still operating and can be operated profitably in the future. Refinancing the debts with an institutional lender will provide lower interest rates and better terms, and it will allow the consolidated enterprise to operate profitably. Debtor TFEC has already made progress in implementing this plan that Debtor TFEC's new management team has been developing for Debtor TFEC and its Subsidiaries. Debtor TFEC has been successful in selling the Peoria property owned by Debtor TFEC's Peoria subsidiary. Debtor TFEC is waiting to close on the Fairfield property owned by Debtor TFEC's Fairfield subsidiary. Debtor TFEC has sold the Centennial property owned by Debtor TFEC's Centennial subsidiary. The sale of the Cedar Park property owned by Debtor TFEC's Cedar Park subsidiary is pending, and Debtor TFEC expects to open escrow within the next 7 days. These sales are significant steps toward a successful reorganization. However, the Elk Grove Event Center is vital to the success of the overall plan, and Debtor TFEC and its Subsidiaries, including Debtor Elk Grove, will not be able to effectively reorganize without the Elk Grove Event Center. See, Pickering Decl. at ¶ 14.

28. An Appraisal Report dated March 26, 2014, for the Elk Grove Event Center located at 8290 and 8280 Elk Grove Boulevard, Elk Grove, California 95828 (the “**2014 Elk Grove Event Center Appraisal**”), was prepared for Eagle Finance by Ronald K. Owens, Jr., who is an MAI appraiser working for Butler Burgher Group, LLC (“**BBG**”). The 2014 Elk Grove Event Center Appraisal gives an “as is” going concern value as of March 17, 2014, of \$13,190,000 for the Elk Grove Event Center, consisting of \$11,300,000 for the real estate, \$750,000 for the furniture, fixtures and equipment (“**FF&E**”), and \$1,140,000 for business value. See, Pickering Decl. at ¶ 15.

29. In July of 2014 and January of 2018, the Lender obtained additional collateral for the Elk Grove Loan from two of the other Subsidiaries, a junior lien granted by EFalls Properties Fresno CA, LLC (“**Fresno**”) against an Event Center located in Fresno, California (the “**Fresno Event Center**”), and a junior lien granted by The Falls at St. George, LLC (“**St. George**”) against an Event Center located in St. George, Utah (the “**St. George Event Center**”). See, Pickering Decl. at ¶ 16.

30. An Appraisal Report dated March 26, 2014, for the St. George Event Center located at 170 South Mall Drive, St. George, Utah 84790 (the “**St. George Event Center Appraisal**”), was prepared for Eagle Finance by Ronald K. Owens, Jr., who is an MAI appraiser working for Butler Burgher Group, LLC (“**BBG**”). The St. George Event Center Appraisal gives an “as is” going concern value as of March 13, 2014, of \$2,430,000 for the St. George Event Center, consisting of \$2,120,000 for the real estate, \$300,000 for the FF&E, and \$10,000 for business value. See, Pickering Decl. at ¶ 17.

31. iBorrow holds the second lien on the St. George Event Center. The holder of the first lien on the St. George Event Center is currently owed approximately \$750,000.

Accordingly, the value of iBorrow's second lien on the St. George Event Center is approximately \$1,680,000 (\$2,430,000 value minus \$750,000 first lien balance = \$1,680,000). See, Pickering Decl. at ¶ 18.

32. An Appraisal Report dated August 11, 2014, for the Fresno Event Center located at 4105, 4125, 4145 and 4165 West Figarden Drive, Fresno, California 93722 (the "**Fresno Event Center Appraisal**"), was prepared for Eagle Finance by Ronald K. Owens, Jr., working for BBG. The Fresno Event Center Appraisal gives an "as completed" value as of June 1, 2015, of \$6,510,000 for the Fresno Event Center, and an "as completed and stabilized" value as of June 1, 2018, of \$11,940,000. See, Pickering Decl. at ¶ 19.

33. iBorrow holds the second lien on the Fresno Event Center. The holder of the first lien on the Fresno Event Center is currently owed approximately \$3,100,000. Accordingly, the value of iBorrow's second lien on the Fresno Event Center would be approximately \$3,410,000 based upon the "as completed" June 1, 2015 value (\$6,510,000 "as completed" June 1, 2015 value minus \$3,100,000 first lien balance = \$3,410,000), or approximately \$8,840,000 based upon the "as completed and stabilized" June 1, 2018 value (\$11,940,000 "as completed and stabilized" June 1, 2018 value minus \$3,100,000 first lien balance = \$8,840,000). See, Pickering Decl. at ¶ 20.

34. iBorrow's latest appraisal of the Elk Grove Event Center (Exhibit 7 to the Motion) was prepared by Scott Beebe, an MAI appraiser working for BBG, Inc., Northern California. Ronald K. Owens, Jr., MAI, the appraiser who prepared the 2014 Elk Grove

Appraisal, the St. George Appraisal, and the Fresno Appraisal, is currently still employed by BBG, Inc., according to the internet search results for Mr. Owens' Appraisal Institute Member Profile. Accordingly, Scott Beebe, the appraiser for iBorrow's latest appraisal, and Ronald K. Owens, Jr., the appraiser for the 2014 Elk Grove Appraisal, the St. George Appraisal, and the Fresno Appraisal, are colleagues who work for the same appraisal firm. See, Pickering Decl. at ¶ 21.

## A. ARGUMENT

### 1. Relief From Stay Statutory Requirements

11 U.S.C. § 362(d)(1) provides that relief from the automatic stay can be granted for "cause," while 11 U.S.C. § 362(d)(2) provides a two-pronged standard for relief from the automatic stay, as follows:

(d) On request of a party in interest and after notice and hearing, the court shall grant relief from the stay provided under subsection (a) of this section, such as by terminating, annulling, modifying, or conditioning such stay –

(1) **for cause**, including the lack of adequate protection of an interest in property of such party in interest;

(2) with respect to a stay of an act against property under subsection (a) of this section, if –

(A) the debtor does not have an **equity** in such property; and

(B) such property is **not necessary to an effective reorganization**.

11 U.S.C. § 362(d) (emphasis added).

iBorrow, the secured creditor, as the moving party, has the burden of proof on the debtor's equity in the debtor's property that is at issue. 11 U.S.C. § 362(g)(1). Debtor TFEC has the burden of proof on all other issues. 11 U.S.C. § 362(g)(2).

**2. Debtor TFEC's Subsidiary, Debtor Elk Grove,  
has Equity in the Elk Grove Event Center**

iBorrow's Motion asserts that iBorrow is entitled to relief from the automatic stay because the requirements of Section 362(d)(2) of the Bankruptcy Code have been satisfied in the Elk Grove Case and therefore also satisfied (derivatively) in this TFEC Case. See, Motion at pp. 9-10. A debtor has no equity in property when the debts secured by liens on the property exceed the value of the property. The Tenth Circuit has stated: "In the context of stay relief, 'equity' exists if the value of the property exceeds all claims secured by such property, whether those claims belong to the moving creditor or others." *In re Gindi*, 642 F.3d 865, 875 (10th Cir. 2011), *quoting Jordan v. Kroneberger (In re Jordan)*, 392 B.R. 428, 447 (Bankr. D. Idaho 2009) (*Gindi* overruled in part on other grounds by *TW Telecom Holding Inc. v. Carolina Internet Ltd.*, 661 F.3d 495 (10th Cir. 2011)).

iBorrow has failed to meet its burden of proof that Debtor TFEC's Subsidiary, Debtor Elk Grove, does not have any equity in the Elk Grove Event Center. iBorrow's latest appraisal is suspect and fatally flawed because it dismisses out of hand any prospect that a successful event center business can be conducted at the Elk Grove Event Center, and instead insists upon a costly (\$1,600,000) renovation of the Elk Grove Event Center into office space.

iBorrow gives no explanation for how the Elk Grove Event Center could have declined in value over a period of four years by \$6,790,000, a shocking collapse in value. iBorrow's current (July 27, 2018) appraisal asserts a value for the Elk Grove Event Center of \$6,400,000, which is

only 48.5% of the Elk Grove Event Center's "as is" going concern value of \$13,190,000 as of March 17, 2014. There has not been any recession or major business disruption in those four years, and there is no evidence that the wedding reception business and the market for the hosting of other similar events in Elk Grove, California, has dramatically declined during that four year period. This decline in value cannot even be explained by a change in appraisal firms, since iBorrow used the same appraisal firm for its most current appraisal.

The valuation of \$13,190,000 under the 2014 Elk Grove Appraisal is more credible than iBorrow's most recent appraisal. Under the valuation stated in the 2014 Elk Grove Appraisal, there is equity in the Elk Grove Event Center for Debtor Elk Grove, even if iBorrow's assertion that it is owed \$9,108,617.31 on the Elk Grove Loan (which is significantly overstated, as outlined below) is accepted by the Court. Under the \$13,190,000 valuation, Debtor Elk Grove has equity of approximately \$3,700,000 in the Elk Grove Event Center (\$13,190,000 value minus iBorrow's claim for \$9,108,617.31 minus unpaid real property taxes of \$333,000 = \$3,748,382.69).

As stated above, iBorrow's new appraisal for the Elk Grove Event Center for \$6,400,000 was done by the same appraisal company (BBG, Inc. f/k/a Butler Burgher Group, LLC) that prepared the 2014 Elk Grove Appraisal in March of 2014, which gave a going concern value of \$13,190,000. BBG's appraiser who worked on the 2014 Elk Grove Appraisal, Ronald K. Owens, Jr. (who is an MAI appraiser and has a California appraisal license), is still employed by BBG. The most recent BBG appraiser, Scott Beebe, who is also an MAI appraiser, asserts that the event center business at the Elk Grove Event Center has not been profitable, and dismisses out of hand any idea that the event center business could make a profit at the Elk Grove Event

Center. Instead, BBG, through Scott Beebe, now concludes that the highest and best use of the Elk Grove Event Center is to convert it into office buildings (with a cost to convert of \$1,600,000, which is deducted from the value of the Elk Grove Event Center).

The two appraisals by the same appraisal firm simply cannot be reconciled. In 2014, BBG, through Ronald K. Owens, Jr., went to great lengths to build a model for a profitable event center business at the Elk Grove Event Center that would support a valuation of \$13,190,000. However, four years later, BBG, through Scott Beebe, made no effort whatsoever to determine if an event center business for this special purpose location could be successful, and if so, what profits that business would generate. The current iBorrow appraisal is improperly driving down the value of the Elk Grove Event Center by assuming that the owner of the Elk Grove Event Center should shift to another use through a costly remodel of these special purpose facilities. The \$13,190,000 valuation from the 2014 Elk Grove Appraisal is the only genuine indicator of the true value for the purposes for which the Elk Grove Event Center was constructed.

While it may be true that the former managers of Debtor TFEC were not successful in operating a profitable business at the Elk Grove Event Center, the same could be said of almost every Chapter 11 business that falls on hard times and seeks a “time out” to regroup and reorganize. The failure of a particular management group to run a profitable business at a particular location does not automatically mean that some other “highest and best use” of the location needs to be investigated when valuing that location. The current iBorrow appraisal’s out of hand rejection that a profitable event center business could be operated at the Elk Grove Event Center, without explanation, means that the current iBorrow appraisal is not credible.

Accordingly, under the \$13,190,000 valuation from the 2014 Elk Grove Appraisal, the Debtor has an equity cushion of approximately \$3,700,000 in the Elk Grove Event Center. That \$3,700,000 equity cushion is 40.62% of the \$9,108,617 balance on the Elk Grove Loan claimed by iBorrow. Moreover, iBorrow wisely arranged for additional protection for its position by obtaining junior liens on the St. George Event Center and the Fresno Event Center. iBorrow's total equity in all three properties ranges from **\$8,790,000** (i.e., the \$3,700,000 equity in the Elk Grove Event Center + \$3,410,000 equity in the Fresno Event Center under the "as completed" June 1, 2015 value + \$1,680,000 equity in the St. George Event Center = \$8,790,000)<sup>1</sup> to **\$14,220,000** (i.e., the \$3,700,000 equity in the Elk Grove Event Center + \$8,840,000 equity in the Fresno Event Center under the "as completed and stabilized" June 1, 2018 value + \$1,680,000 equity in the St. George Event Center = \$14,220,000)<sup>2</sup>. Obviously, iBorrow's position is more than adequately protected at this time, since it prudently protected itself by requesting and receiving additional collateral for the repayment of the Elk Grove Loan.

The Ninth Circuit in *Pistole v. Mellor (In re Mellor)*, 734 F.2d 1396 (9<sup>th</sup> Cir. 1984), affirmed that the existence of an equity cushion "is the classic form of [adequate] protection for a secured debt justifying the restraint of lien enforcement by a bankruptcy court. In fact, it has been held that the existence of an equity cushion, standing alone, can provide adequate protection." *Id.* at 1400. In the *Mellor* case, an equity cushion of approximately 20% of the total value of the property was sufficient to provide adequate protection to defeat the senior creditor's motion for relief from the under Section 362(d)(1). *Id.* at 1401. Under the *Mellor* case, iBorrow's lien on the Elk Grove Event Center is more than adequately protected by the equity

---

<sup>1</sup> The \$8,790,000 equity cushion would be **96.5%** of the \$9,108,617 balance claimed by iBorrow.

<sup>2</sup> The \$14,220,000 equity cushion would be **156%** of the \$9,108,617 balance claimed by iBorrow.



cushion, ranging from 40.62% (based only on the Elk Grove Event Center) to a range of 96.5% to 156% (adding in iBorrow's second liens on the St. George Event Center and the Fresno Event Center), and relief from the automatic stay is not warranted under Section 362(d)(1).

**3. The Amount of iBorrow's Claim is Significantly Overstated.**

It also appears to Debtor TFEC that iBorrow's claim that it is owed \$9,108,617.31 on the Elk Grove Loan is seriously overstated. iBorrow asserts a payoff amount of \$9,108,617.31 as of July 16, 2018, with interest accruing at \$4,116.67 per day (approximately \$123,500 per month). See, Exhibit 3 to the Motion, which itemizes the payoff amount for the Elk Grove Loan as follows: (1) principal due of \$6,175,000, (2) interest due of \$2,070,168.36, (3) default fee on principal (10%) of \$617,500.00 (which is 10% of the unpaid principal balance that was due on the extended maturity date of the Note), (4) default fees on unpaid interest (10%) of \$207,016.84 (which is 10% of the amounts of various unpaid interest payments), (5) Lender's legal fees of \$15,755.01, (6) estimated foreclosure costs of \$15,177.01, and (7) an appraisal fee of \$8,000.

However, there are several issues with the iBorrow payoff calculations. Paragraph 9.6 of the Lender's Note (the "**Note**") (Exhibit 1 to the Motion) specifically provides that "the usury laws applicable to the indebtedness evidenced by this Note, and secured by the Deed of Trust and the other Loan Documents shall be the usury laws of the State of California and it is the intention of the parties to comply strictly with the same." The interest rate under the Note prior to a default is 12.00%, while the default interest rate under the Note is 24.00%. See, Note, Sections 2.1 and 2.1 (Exhibit 1 to the Motion). The California Constitution provisions on Usury are found in Section 1 of Article XV of the California Constitution. Under Section 1, subpart 2, the rate for any loan that is not for a primarily personal, family or household purpose is not to

exceed the higher of ten percent (10%) or five percent (5%) per annum plus the rate prevailing on the 25<sup>th</sup> day of the month preceding the earlier of (i) the date of execution of the contract to make the loan or forbearance, or (ii) the date of making the loan or forbearance established by the Federal Reserve Bank of San Francisco on advances to member banks under Sections 13 and 13a of the Federal Reserve Act (i.e., the Federal Reserve “discount rate”). The Federal Reserve discount rate in July of 2014 was 0.75% for “primary credit” and 1.25% for “secondary credit” to member banks (making the additional 5% for the usury calculation equal to 5.75% to 6.25%), so it was the 10% maximum usury rate that was in effect in July of 2014.

Debtor TFEC recognizes that there are some exceptions to the usury limitations in Section 1 of Article XV of the California Constitution.<sup>3</sup> However, Debtor TFEC does not know enough about Eagle Finance or the making of the original Elk Grove Loan to know if any of those exceptions to the California usury limitations would apply to Eagle Finance, or would apply to iBorrow (if iBorrow is an assignee or successor to Eagle Finance rather than just a name change). In any event, it is iBorrow’s burden to demonstrate that there is an applicable exemption to the California usury limitations that would apply to the Elk Grove Loan transaction and would authorize Eagle Finance and iBorrow to charge 12.00% for pre-default interest and 24.00% for default interest. If iBorrow does not meet that burden, then iBorrow’s claim to interest in the amount of \$2,070,168.36 as well as default fees on unpaid interest of \$207,016.84 would be pared back significantly (assuming that iBorrow would be entitled to any unpaid

---

<sup>3</sup> For example, in Cal.Civ.Code 1916.1, it provides: “The restrictions upon rates of interest contained in Section 1 of Article XV of the California Constitution shall not apply to any loan or forbearance made or arranged by any person licensed as a real estate broker by the State of California, and secured, directly or collaterally, in whole or in part by liens on real property.” There is no allegation in the Motion that this or any other exemption to the California usury limitations apply to the Elk Grove Loan.

interest if it were determined to be in violation of the California Constitution's usury limitations).<sup>4</sup>

iBorrow's claim to \$617,500 as the default fee on the unpaid principal balance of the Note that was due on the extended maturity date of the Note is also unwarranted. Section 4.4 of the Note (Exhibit 1 to the Motion) provides the following:

**"4.4 Late Charge.** If any payment of interest or principal due hereunder is not made within five (5) days after such payment is due in accordance with the terms hereof, then, in addition to the payment of the amount so due, Borrower shall pay to Lender a "late charge" of ten cents for each whole dollar so overdue to defray part of the cost of collection and handling such late payment. Borrower agrees that the damages to be sustained by the holder hereof for the detriment caused by any late payment are extremely difficult and impractical to ascertain, and that the amount of ten cents (\$.10) for each one dollar (\$1.00) due is a reasonable estimate of such damages, does not constitute interest, and is not a penalty."

Section 4.4 of the Note does not specifically state that the 10% late charge applies to the principal balance of the Note if not paid at the maturity date of the Note. Instead, Section 4.4 states that the late charge is applied "to defray part of the cost of collection and handling such late payment," that it is "extremely difficult and impractical to ascertain" what the damages would be to the Lender because of the late payment, and that the 10% late charge is a reasonable estimate of the damages and is not a penalty. This make perfect sense for late installment payments of interest, but it is a real stretch of the imagination to argue that a late charge of \$617,500 will only "defray part of the cost of collection and handling" a late payment of the unpaid principal, or that \$617,500 has to be applied as a reasonable estimate of the damages to

---

<sup>4</sup> Debtor Elk Grove may determine after additional investigation that it has additional offsetting claims that it can assert against iBorrow. However, at the relief from stay stage, the bankruptcy court is required to take into account only those defenses that strike at the heart of the creditor's lien or that deal with the debtor's equity in the property. *In re Utah Aircraft Alliance*, 342 B.R. 327 (10th Cir. BAP 2006).

the Lender from a late payment of the unpaid principal because it is “extremely difficult and impractical to ascertain” what the Lender’s damages would be. The Lender can quite easily ascertain its opportunity costs for not having the unpaid principal amount to redeploy to another loan at the time of the extended maturity of the Elk Grove Loan (after offsetting the accruing default interest under the Note, assuming that such default interest is not usurious). Debtor TFEC contends that the language of Section 4.4 does not match an unpaid principal amount at the maturity of an interest only loan, and therefore iBorrow is overreaching by attempting to collect a late charge of \$617,500 to which it is not entitled by the language of the Note.

Debtor TFEC also asserts that iBorrow’s imposition of the 24.00% default interest rate under the Note was premature. Section 3.1 of the Note (Exhibit 1 to the Motion) provides the Borrower with the option to extend the maturity of the Note to July 3, 2017 upon payment of an extension fee of \$61,750.00. iBorrow’s payoff statement (Exhibit 3 to the Motion) discloses that iBorrow received the extension fee of \$61,750.00 by wire on June 7, 2016; nevertheless, the payoff statement states that the Loan was in default as of July 1, 2016 (which is prior to the original maturity date of July 3, 2016). If iBorrow accepted the extension fee, then it must be deemed to have agreed to extend the maturity date to July 3, 2017, even if iBorrow now contends (apparently after the fact) that there were other defaults at the time of the extension. To rule otherwise would allow iBorrow to enrich itself by accepting the hefty extension fee and then deny the Borrower the benefit of the extension, an inequitable result that should not be permitted by this Court. Accordingly, the 24.00% default interest rate should not have gone into effect until, at the earliest, the extended maturity date of July 3, 2017, which means that iBorrow’s interest due calculation is overstated by no less than \$741,000.00 (\$6,175,000.00 principal

balance x the extra 12.00% added to the non-default rate of 12.00% = \$741,000.00), and iBorrow's 10.0% late charge claim for unpaid interest payments is overstated by no less than \$74,100.00 (10% of the overstated default interest calculation).

Even assuming that the 12.00% non-default interest rate and the 24.00% default interest rate are not usurious under California law, iBorrow has overstated the amount of its claim under the Elk Grove Loan by at least \$1,432,600, as shown below:

	<u>Amount Claimed by iBorrow</u>	<u>Adjusted Amount Calculated by Debtor TFEC</u>
Principal Balance:	\$6,175,000.00	\$6,175,000.00
Interest Due:	\$2,070,168.36	\$1,329,168.36
Default Fee on Principal:	\$617,500.00	\$ 0.00
Default Fees on Unpaid Interest:	\$207,016.84	\$ 132,916.87
Lender's Legal Fees:	\$ 15,755.01	\$ 15,755.01
Estimated Foreclosure Costs:	\$ 15,177.01	\$ 15,177.01
Appraisal Fee:	\$ 8,000.00	\$ 8,000.00
Totals:	\$9,108,617.00	\$7,676,017.00 (reduction of \$1,432,600)

**4. The Elk Grove Event Center is Essential to the Effective Reorganization of TFEC and its Subsidiaries (Including Debtor Elk Grove).**

If there is no equity in a debtor's property under § 362(d)(2), then the debtor has the burden of "not merely showing that if there is conceivably to be an effective reorganization, this property will be needed for it; but that the property is essential for an effective reorganization *that is in prospect*. This means . . . that there must be a reasonable possibility of a successful reorganization within a reasonable time." *In re Gindi*, 642 F.3d 865 (10th Cir. 2011), *quoting United Sav. Assoc. of Texas v. Timbers of Inwood Forest Assocs., Ltd.*, 484 U.S. 365, 375-76, 108 S. Ct. 626 (1988) (*Gindi* overruled in part on other grounds by *TW Telecom Holding Inc. v. Carolina Internet Ltd.*, 661 F.3d 495 (10th Cir. 2011)). The Supreme Court recognized in the *Timbers* case that a less detailed showing that the debtor has a reasonable possibility of a

successful reorganization within a reasonable time is required during the initial four months that a debtor is given the exclusive right to put together a plan of reorganization. *United Sav. Assoc. of Texas v. Timbers of Inwood Forest Assocs., Ltd.*, 484 U.S. 365, 376, 108 S. Ct. 626, 633 (1988).

As stated above, Debtor Elk Grove has equity in the Elk Grove Event Center, so the burden does not shift to Debtor Elk Grove to demonstrate the merits of the reorganization plan for the Elk Grove Event Center in the context of the larger picture of the reorganization of Debtor TFEC and all of its Subsidiaries, including Debtor Elk Grove. Nevertheless, even if the Court rules that there is no equity in the Elk Grove Event Center, and also rules that iBorrow is not adequately protected by the additional equity in its second liens against the St. George Event Center and the Fresno Event Center, Debtor TFEC contends that at these very early stages of the Elk Grove Case and the TFEC Case, the Elk Grove Event Center is essential for an effective reorganization of Debtor TFEC and its Subsidiaries (including Debtor Elk Grove) that is in progress.

iBorrow filed Motions for Relief from Stay in both the Elk Grove Case and the TFEC Case on August 2, 2018, only 17 days after the Elk Grove Case was filed in Utah, and 22 days after the TFEC Case was filed. Even in that short period of time, significant progress was made towards a successful reorganization of Debtor TFEC and its Subsidiaries (including Debtor Elk Grove). The current management of Debtor TFEC, headed by Brooks Pickering as CRO, came on board in June of 2018, just prior to the filing of the TFEC Case. At that time, the prior management of the Events Center and its subsidiaries (including Debtor Elk Grove), headed by Steve Down, agreed to withdraw from any further involvement with the Events Center and its

Subsidiaries. Obviously there were significant pre-petition problems with the management of the Events Center and its Subsidiaries (including Debtor Elk Grove). But the relevant issue *now* that this Court must assess is how effective Pickering as CRO and the current new management have been to pick up the pieces and streamline the operations of TFEC and its Subsidiaries (including Debtor Elk Grove) in such a way as to maximize the benefit to creditors of TFEC's bankruptcy estate and to the creditors of TFEC's Subsidiaries (including Debtor Elk Grove) going forward.

Pickering as CRO and his team have invested substantial time and resources in understanding the operations and business dealings of TFEC and its Subsidiaries (including Debtor Elk Grove), protecting their assets, improving their processes, creating a plan for their joint reorganization in bankruptcy, and maximizing the eventual recovery for all creditors of these related entities. While the eventual plan of reorganization is still in its infancy, due to the short period of time since the filing of this Chapter 11 Case and the need to focus first on the initial administrative requirements of a Chapter 11 Case (i.e., preparing and filing Statements and Schedules and other initial stage requirements for a Chapter 11 filing), Pickering and his team have concluded that the reorganized Debtor needs to mirror how TFEC and its Subsidiaries were operated from the very beginning; i.e., as a consolidated business operation. There were undoubtedly various legal reasons for vesting title to the various Event Centers in separate Subsidiaries that held no other assets, but the reality is that TFEC ran all of the business operations on a consolidated basis from the very beginning. Accordingly, the plan is to file a motion for substantive consolidation of TFEC and its Subsidiaries, while at the same time selling off the properties that are no longer operating, streamlining the postpetition operations of the

remaining operating Event Centers, and investigating the refinancing of the debts encumbering the operating Event Centers or the negotiation of sale and leaseback transactions for some of the operating Event Centers. Refinancing the debts with an institutional lender will provide lower interest rates and better terms, and it will allow the consolidated enterprise to operate profitably. Debtor TFEC has already made progress in implementing its plan. Debtor TFEC has been successful in selling the Peoria property owned by Debtor TFEC's Peoria Subsidiary. Debtor TFEC is waiting to close on the Fairfield property owned by Debtor TFEC's Fairfield Subsidiary. Debtor TFEC has sold the Centennial property owned by Debtor TFEC's Centennial Subsidiary. The sale of the Cedar Park property owned by Debtor TFEC's Cedar Park Subsidiary is pending and Debtor TFEC expects to open escrow within the next 7 days. These sales are significant steps toward a successful reorganization. However, the Elk Grove Event Center is vital to the success of the overall plan, and Debtor TFEC will not be able to effectively reorganize without the Elk Grove Event Center.

**5. iBorrow is not Entitled to Relief from the Stay  
for "Cause" Pursuant to Section 362(d)(1).**

As outlined above, Section 362(d)(1) provides that relief from stay should be granted for cause, including the lack of adequate protection of an interest in property of such party in interest. 11 U.S.C. § 362(d)(1). The Supreme Court has stated "that the 'interest in property' referred to by § 362(d)(1) includes the right of a secured creditor to have the security applied in payment of the debt upon completion of the reorganization; and that that interest is not adequately protected if the security is depreciating during the term of the [automatic] stay." *United Sav. Assoc. of Texas v. Timbers of Inwood Forest Assocs., Ltd.*, 484 U.S. 365, 370, 108 S. Ct. 626, 630 (1988). Therefore, if the Elk Grove Event Center were depreciating in value, then



Debtor Elk Grove would be obligated to provide adequate protection for depreciating collateral (such as a motor vehicle). However, there is no showing that the Elk Grove Event Center is currently depreciating in value, and the equity cushion outlined above is more than adequate to adequately protect iBorrow's position. The iBorrow Motion also asserts that "the Property is deteriorating and is not being maintained." See, Motion at p. 9. There is no evidence at all in the record that the Elk Grove Event Center is deteriorating and not being maintained, so this is no basis for requiring adequate protection or for relief from the automatic stay. Indeed, the sworn testimony of the representative of Debtor Elk Grove at the Rule 341 Meeting for the Elk Grove Case was that while there were times prior to the bankruptcy filing when Debtor TFEC (on behalf of Debtor Elk Grove) was not able to pay the landscape company, the landscape for the Elk Grove Event Center is now being properly maintained.

iBorrow is correct when it notes that the Elk Grove Event Center asset itself is part of Debtor Elk Grove's bankruptcy estate, and not part of Debtor TFEC's bankruptcy estate. However, iBorrow is also correct that the second lien against the Elk Grove Event Center held by Debtor TFEC is part of Debtor TFEC's bankruptcy estate, which bankruptcy estate includes all legal and equitable interests of the debtor in property as of such debtor's petition date (which would also include Debtor TFEC's unexpired lease of the Elk Grove Event Center). 11 U.S.C. § 541(a)(1). iBorrow asserts that the second lien position held by Debtor TFEC is valueless because it will be extinguished when iBorrow forecloses its first lien position. But that is the whole point of the automatic stay in bankruptcy – to preserve value that could be used for the benefit of creditors from evaporating because of creditor collection action. As the Supreme Court ruled in the *Timbers* case, a secured creditor's right (suspended by the automatic stay) to

take immediate possession of its collateral and apply it in payment of its debt is not a property interest that had to be adequately protected under Section 362. *Timbers, supra*, 484 U.S. at 370, 108 S. Ct. at 630.

iBorrow also asserts that the second lien position held by Debtor TFEC is valueless because there is no equity in the Elk Grove Event Center under iBorrow's most current appraisal and under the \$9.1 million claim that iBorrow asserts for the Elk Grove Loan. However, as outlined above, the amount of iBorrow's claim for the payoff of the Elk Grove Loan has been substantially overstated, and iBorrow's most recent appraisal is flawed and does not measure the real value of the special purpose facilities at the Elk Grove Event Center. There is equity in the Elk Grove Event Center to be preserved for the benefit of creditors other than iBorrow, and iBorrow is more than adequately protected by its first lien position on the Elk Grove Event Center and its second lien positions on the St. George Event Center and the Fresno Event Center.

iBorrow's Motion discusses five factors outlined in the *Scripps* case (*Scripps GSB I, LLC v. A Partners, LLC (In re A Partners, LLC)*, 344 B.R. 114, 126-28 (Bankr. E.D. Cal. 2006)) for finding "cause" for relief from the automatic stay when a debtor holds a junior lien interest against commercial property rather than an ownership interest in such property. See, Motion at pp. 7-9. The first *Scripps* factor, "interference with the bankruptcy," is not applicable in this case because, unlike the *Scripps* case, there is equity for the second lien position held by Debtor TFEC that is deserving of bankruptcy protection. In connection with the second *Scripps* factor of "good or bad faith of the debtor," iBorrow asserts that "there is evidence in this case that the Debtor may have acted in bad faith." See, Motion at p. 9. It is not bad faith for Debtor TFEC and Debtor Elk Grove to act to protect the equity in the Elk Grove Event Center that exists for

the benefit of the creditors of Debtor TFEC and its Subsidiaries, especially when iBorrow has such a large equity cushion with a senior lien and two junior liens against three of the Event Centers.

The final three *Scripps* factors involve measuring the relative harms and injuries to the debtor and other creditors as well as to the moving creditor if the automatic stay is modified to allow the moving creditor to complete its foreclosure. In this case, iBorrow is more than adequately protected and will not be harmed by a temporary delay from exercising its collection remedies, while Debtor TFEC and Debtor Elk Grove and their other creditors will all be significantly harmed if this Court allows iBorrow to appropriate the equity in the Elk Grove Event Center that exists above and beyond the value of iBorrow's first lien. This is not a case of a deeply underwater borrower that is just postponing the inevitable by filing a series of futile bankruptcy petitions to hold up an undersecured creditor from realizing on its collateral. Debtor TFEC and its Subsidiaries, including Debtor Elk Grove, have viable business operations and a promising business model that just need some breathing space and expert restructuring assistance to get back on their feet. In the meantime, Debtor TFEC has a vital interest in protecting the equity cushion in the Elk Grove Event Center, which will not only enhance the reorganization prospects for Debtor TFEC and its Subsidiaries, but will also provide either a source of funds or a valuable operating business that will enhance the recovery to the other creditors of Debtor TFEC and its Subsidiaries.

While it may be understandable for iBorrow to aggressively pursue relief from the stay at this time, this Court should also recognize that by filing its Motion, iBorrow is seeking to complete its foreclosure and appropriate the excess equity over the current balance of the amount

owed to iBorrow (whether \$9,108,617 or \$7,676,017 as asserted by Debtor TFEC above or some other amount determined by the Court) as a windfall to iBorrow, without regard to the legitimate interests and concerns of the creditors of Debtor TFEC and its Subsidiaries to maximize the value of all of the assets of Debtor TFEC and its Subsidiaries (including Debtor Elk Grove). As the Ninth Circuit stated in the *Mellor* case, ruling in a similar case against a senior creditor seeking relief from the stay in order to foreclose a senior lien for which there was an equity cushion, “[t]he purpose of adequate protection under § 361 is to insure that the secured creditor receives in value essentially what he bargained for, not a windfall.” *Id.* While it is understandable that iBorrow is looking out for its own interests and wants to immediately complete its foreclosure sale, fortunately the Court is in a position to weigh the best interests of all of the creditors.

**6. There is No Basis for Waiving the Requirements of Bankruptcy Rule 4001(a)(3).**

iBorrow asserts that not only is it entitled to relief from the automatic stay under Section 362(d), but the 14 day stay period under Bankruptcy Rule 4001(a)(3) should also be waived because of the alleged “delay tactics” of Debtor TFEC and Debtor Elk Grove. See, Motion at p. 10. However, as shown above, iBorrow is significantly over-collateralized and is more than adequately protected by a significant equity cushion in the value of three Event Centers. While it is true that there will be some delay before iBorrow’s liens are satisfied, that delay is inherent in the legitimate bankruptcy process, and actions taken to protect Debtor Elk Grove’s genuine and significant equity position in the Elk Grove Event Center for the benefit of other creditors can hardly be classified as unjustified “delay tactics.” There is no basis for any waiver of any of the requirements of Bankruptcy Rule 4001(a)(3).

**B. CONCLUSION**

For the reasons set forth above, Debtor TFEC respectfully submits that iBorrow's Motion for Relief from the Automatic Stay should be denied.

DATED this 22nd day of August, 2018.

RAY QUINNEY & NEBEKER P.C.



\_\_\_\_\_  
Michael R. Johnson  
David H. Leigh  
Elaine A. Monson  
Brent D. Wride  
Proposed Attorneys for Debtor The Falls  
Event Center, LLC, Case No. 18-25116

1463438

**CERTIFICATE OF SERVICE**

I hereby certify that on August 22, 2018, a true and correct copy of the foregoing document was electronically filed and therefore served via ECF on all parties that have entered an electronic appearance in this case.

