

**IN THE UNITED STATES BANKRUPTCY COURT
DISTRICT OF KANSAS AT KANSAS CITY**

In Re:)	
JOHN Q. HAMMONS FALL 2006, LLC,)	Chapter 11
et al.,)	
)	Case No. 16-21142 (RDB)
Debtors,)	<i>Jointly Administered</i>

**HEARTLAND FINANCIAL SERVICES, LLC’S MOTION FOR LEAVE
TO FILE AN AMENDED PROOF OF CLAIM AND
RESPONSE TO JD HOLDING L.L.C.’S OBJECTION TO CLAIM**

Heartland Financial Services, LLC (“HFS”), pursuant to 11 U.S.C. § 501, Federal Rule 15(a) and Fed.Bank.R.Civ. P 3001 respectfully moves this Court for its Order allowing HFS to amend its claim numbered 277 (the “Claim”). HFS states the following in support thereof its Motion to Amend the Claim as well as the following response to JD Holding L.L.C.’s Objection to Claim of Heartland Financial Services, Inc. (Doc. 2162):

1. The Court should allow an amendment to the Claim because amendments should be freely permitted if the Claim and the proposed amendment are virtually identical.

HFS should be allowed to amend its Claim because the Claim provided Debtor with adequate notice of the existence, nature and amount of the claim against Debtor. “In a bankruptcy proceeding, amendment of a proof of claim is freely permitted so long as the claim initially provided adequate notice of the existence, nature and amount of the claim as well as the creditor’s intent to hold the estate liable.” *In re Tanaka Bros. Farms, Inc.*, 36 F.3d 996, 998 (10th Cir. 1994). “In other words, if the substance of the original proof of claim remains unchanged by an amended proof of claim, the amendment should be permitted.” *In re Richter*, 478 B.R. 30, 39 (2012). In the instant case, the Claim and the proposed amended claim are identical with respect to the existence, nature and amount of the claim. The proposed amended claim is attached as Exhibit 1, which adds

the attachment of the October 2009 Agreement that is the basis of the Claim. Therefore, the Court should allow HFS to file its amended Claim.

2. The Court should allow an amendment to the Claim because there is no prejudice in allowing the amendment.

Allowing HFS to amend the Claim will not unduly prejudice Debtors or the estate. *In re Montagne* is directly on point. 421 B.R. 65 (D. Vt. 2009). In *Montagne*, a creditor sought to amend its claim because it failed to attach the supporting promissory note to its original claim. *Id.* at 79. The creditor in *Montagne*, sought to amend its claim, “the only difference was the documents supporting the proof of claim were attached to the amended proof of claim . . .” *Id.* at 81. The Court held that there was no prejudice because there were ten months of litigation, the proof of claim was timely filed, and the Debtor and trustee clearly had adequate notice of the existence and nature of the claim. *Id.* Here, there is no dispute that HFS timely filed the Claim. The Claim was filed on November 29, 2016. The last date to file claims was December 23, 2016. Moreover, HFS and Debtors litigated this matter in the Circuit Court of Greene County, Missouri for five (5) years prior to Debtors seeking protection under Chapter 11 of the Bankruptcy Code. The specific case number was referenced in the Claim. Additionally, the Debtor and Trustee had adequate notice of the Claim as the case number was referenced, the debtor was involved in lengthy litigation and the debtor was able to identify the agreement (as well as other purported agreements) in its objection to the Claim. Clearly, as shown by its objection, the Debtor has full knowledge of the basis and extent of the Claim. Finally, HFS has moved to amend shortly after the claim was challenged. *In the Matter of Best Refrigerated Express, Inc.*, 192 B.R. 503, 507 (D. Neb 1996). Therefore, there is no prejudice in allowing the amendment.

3. The Court should allow the amendment to the Claim because the non-attachment of the agreement was the result was inadvertent and was done in good faith.

The Court should allow the amendment because Creditor was unaware of its failure to attach the agreement until the objection was filed. HFS did not omit the agreement in an attempt to hide or confuse Debtors or the estate. Indeed, HFS specifically referenced the case number that was the basis of the Claim. Undersigned counsel believed that the filing including the attachment. However, when the Claim was actually filed, the attachment was inadvertently omitted from the filing with the Court. Therefore, because the omission of the supporting documents was a good faith mistake and inadvertently done, the Court should allow the Claim to be amended.

4. The Court should allow the amendment because the amendment is not futile in that the 2009 Agreement was not superseded.

The October 1, 2009 Agreement (Doc. 2162 Exhibit “B”) has not been superseded by either the March 13, 2010 agreement (Doc. 2162 Exhibit “C”) (“March Agreement”) or the July 14, 2010 Agreement (Doc. 2162 Exhibit “D”) (“July Agreement”) because the March Agreement and the July Agreement are both distinct and different agreements unrelated to the October 1, 2009 Agreement, and, alternatively, because the July Agreement was never signed by any party with authority to bind HFS.

The March Agreement contains no provision that states it supersedes or amends the October 1, 2009 agreement. Instead, it is merely a different agreement reached between HFS and John Q. Hammons Hotels & Resort, LLC. There is nothing in the March Agreement that would indicate in any way that it was intended to supersede or amend the October 1, 2009 agreement.

The July Agreement also was not intended to and did not supersede the October 1, 2009 Agreement, despite its language. On July 14, 2010, Gary Fruits, not associated with HFS, met with Mr. Hammons because HFS principal Jerry Bengston was unavailable. There, and during

communications leading up to this meeting, it was made clear that HFS was to be paid the flat fee stated in the October 1, 2009 Agreement, and was to be paid a success fee as shown in the July 14, 2010 Agreement.

HFS had previously spent countless man-hours and made extraordinary efforts to provide financing for various Hammons entities, only to be thwarted in its efforts by various Hammons employees along the way. As a result, HFS informed Mr. Hammons that it intended to cease its efforts to provide financing. Mr. Hammons refused, ultimately offering and agreeing to pay the flat fee reflected in the October 1, 2009 Agreement. But this was never meant to replace any sort of percentage-based success fee for financing, which are standard for this type of work. This is what led to the meeting between Gary Fruit and Mr. Hammons on July 14, 2010 where Mr. Fruits and Mr. Hammons signed the July 14, 2010 Agreement.

The July 14, 2010 Agreement was clearly put together “on the fly.” It was based verbatim on the October 1, 2009 Agreement and Mr. Hammons and Mr. Fruit made some handwritten changes. Nothing, however, was ever intended to supersede or terminate the October 1, 2009 Agreement; rather, the July 14, 2010 Agreement was complimentary to the October 1, 2009 Agreement. Further, the July 14, 2010 Agreement was never accepted by HFS. Jerry Bengston is the managing member of HFS and the one who had authority to bind HFS. Mr. Bengston’s signature appears on the October 1, 2009 Agreement. The July Agreement shows that it was signed on behalf of Mr. Bengston by “GF.” (Doc. 2162 Page 24 of 24). “GF” stands for Gary Fruits. Mr. Fruits informed Mr. Hammons on July 14, 2010 that while he would sign on behalf of Mr. Bengston, Mr. Bengston would have to ratify the July Agreement. Mr. Bengston did not ratify the July Agreement and did not authorize Mr. Fruits to bind HFS to the July Agreement. Therefore,

and for that additional reason, the July Agreement does not supersede the October 1, 2009 Agreement.

WHEREFORE, Heartland Financial Services, LLC respectfully moves this Court for its Order granting leave to amend the Claim and for such other and further relief as this Court deems proper and just.

BAIRD LIGHTNER MILLSAP, P.C.

/s/ Patrick R. Baird

Patrick R. Baird KS Fed # 23036

1901-C S. Ventura Ave.

Springfield, MO 65804

pbaird@blmlawyers.com

Telephone: 417-887-0133

Facsimile: 417 887-0133

Attorneys for Heartland Financial Services, LLC

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the foregoing pleading was filed electronically on the 4th day of June 2018, and served via CM/ECF email on the Court's ECF notice list.

/s/ Patrick R. Baird

UNITED STATES BANKRUPTCY COURT		District of Kansas		PROOF OF CLAIM
Name of Debtor: John Q. Hammons Fall 2006, LLC, et al. specifically John Q. Hammons Hotels Management, LLC John Q. Hammons Hotels, Inc.		Case Number: 16-21142 (RDB) Jointly Administered		<div style="text-align: center; font-weight: bold; margin-bottom: 10px;">COURT USE ONLY</div> <input checked="" type="checkbox"/> Check this box if this claim amends a previously filed claim. Court Claim Number: <u>277</u> <i>(If known)</i> Filed on: <u>11/29/2016</u>
NOTE: Do not use this form to make a claim for an administrative expense that arises after the bankruptcy filing. You may file a request for payment of an administrative expense according to 11 U.S.C. § 503.				
Name of Creditor (the person or other entity to whom the debtor owes money or property): Heartland Financial Services				
Name and address where notices should be sent: Patrick R. Baird, Esq. Baird Lightner Millsap, P.C. 1901 S. Ventura Ave., Suite C Springfield MO 65804 Telephone number: (417) 887-0133 email: pbaird@blmlawyers.com				
Name and address where payment should be sent (if different from above): Telephone number: email:				<input type="checkbox"/> Check this box if you are aware that anyone else has filed a proof of claim relating to this claim. Attach copy of statement giving particulars.
1. Amount of Claim as of Date Case Filed: \$ <u>450,000.00</u> If all or part of the claim is secured, complete item 4. If all or part of the claim is entitled to priority, complete item 5. <input type="checkbox"/> Check this box if the claim includes interest or other charges in addition to the principal amount of the claim. Attach a statement that itemizes interest or charges.				
2. Basis for Claim: <u>Financial Agreement Dated October 1, 2009 See Ex. A</u> (See instruction #2)				
3. Last four digits of any number by which creditor identifies debtor: _____	3a. Debtor may have scheduled account as: _____ (See instruction #3a)	3b. Uniform Claim Identifier (optional): _____ (See instruction #3b)		
4. Secured Claim (See instruction #4) Check the appropriate box if the claim is secured by a lien on property or a right of setoff, attach required redacted documents, and provide the requested information.				
Nature of property or right of setoff: <input type="checkbox"/> Real Estate <input type="checkbox"/> Motor Vehicle <input type="checkbox"/> Other Describe: _____		Amount of arrearage and other charges, as of the time case was filed, included in secured claim, if any: \$ _____		
Value of Property: \$ _____		Basis for perfection: _____		
Annual Interest Rate _____ % <input type="checkbox"/> Fixed or <input type="checkbox"/> Variable (when case was filed)		Amount of Secured Claim: \$ _____ Amount Unsecured: \$ _____		
5. Amount of Claim Entitled to Priority under 11 U.S.C. § 507 (a). If any part of the claim falls into one of the following categories, check the box specifying the priority and state the amount.				
<input type="checkbox"/> Domestic support obligations under 11 U.S.C. § 507 (a)(1)(A) or (a)(1)(B).	<input type="checkbox"/> Wages, salaries, or commissions (up to \$12,475*) earned within 180 days before the case was filed or the debtor's business ceased, whichever is earlier – 11 U.S.C. § 507 (a)(4).	<input type="checkbox"/> Contributions to an employee benefit plan – 11 U.S.C. § 507 (a)(5).		
<input type="checkbox"/> Up to \$2,775* of deposits toward purchase, lease, or rental of property or services for personal, family, or household use – 11 U.S.C. § 507 (a)(7).	<input type="checkbox"/> Taxes or penalties owed to governmental units – 11 U.S.C. § 507 (a)(8).	<input type="checkbox"/> Other – Specify applicable paragraph of 11 U.S.C. § 507 (a)(____).		
Amount entitled to priority: \$ _____				
<i>*Amounts are subject to adjustment on 4/01/16 and every 3 years thereafter with respect to cases commenced on or after the date of adjustment.</i>				
6. Credits. The amount of all payments on this claim has been credited for the purpose of making this proof of claim. (See instruction #6)				

7. Documents: Attached are redacted copies of any documents that support the claim, such as promissory notes, purchase orders, invoices, itemized statements of running accounts, contracts, judgments, mortgages, security agreements, or, in the case of a claim based on an open-end or revolving consumer credit agreement, a statement providing the information required by FRBP 3001(c)(3)(A). If the claim is secured, box 4 has been completed, and redacted copies of documents providing evidence of perfection of a security interest are attached. If the claim is secured by the debtor's principal residence, the Mortgage Proof of Claim Attachment is being filed with this claim. (See instruction #7, and the definition of "redacted".)

DO NOT SEND ORIGINAL DOCUMENTS. ATTACHED DOCUMENTS MAY BE DESTROYED AFTER SCANNING.

If the documents are not available, please explain:

8. Signature: (See instruction #8)

Check the appropriate box.

- ☐ I am the creditor. ☒ I am the creditor's authorized agent. ☐ I am the trustee, or the debtor, or their authorized agent. ☐ I am a guarantor, surety, indorser, or other codebtor. (See Bankruptcy Rule 3005.)
(See Bankruptcy Rule 3004.)


I declare under penalty of perjury that the information provided in this claim is true and correct to the best of my knowledge, information, and reasonable belief.

Print Name: Patrick R. Baird

Title: Attorney

Company: Baird Lightner Millsap, PC

Address and telephone number (if different from notice address above):


(Signature) 6/1/18
(Date)

Telephone number: _____ email: _____

Penalty for presenting fraudulent claim: Fine of up to \$500,000 or imprisonment for up to 5 years, or both. 18 U.S.C. §§ 152 and 3571.

INSTRUCTIONS FOR PROOF OF CLAIM FORM

The instructions and definitions below are general explanations of the law. In certain circumstances, such as bankruptcy cases not filed voluntarily by the debtor, exceptions to these general rules may apply.

Items to be completed in Proof of Claim form

Court, Name of Debtor, and Case Number:

Fill in the federal judicial district in which the bankruptcy case was filed (for example, Central District of California), the debtor's full name, and the case number. If the creditor received a notice of the case from the bankruptcy court, all of this information is at the top of the notice.

Creditor's Name and Address:

Fill in the name of the person or entity asserting a claim and the name and address of the person who should receive notices issued during the bankruptcy case. A separate space is provided for the payment address if it differs from the notice address. The creditor has a continuing obligation to keep the court informed of its current address. See Federal Rule of Bankruptcy Procedure (FRBP) 2002(g).

1. Amount of Claim as of Date Case Filed:

State the total amount owed to the creditor on the date of the bankruptcy filing. Follow the instructions concerning whether to complete items 4 and 5. Check the box if interest or other charges are included in the claim.

2. Basis for Claim:

State the type of debt or how it was incurred. Examples include goods sold, money loaned, services performed, personal injury/wrongful death, car loan, mortgage note, and credit card. If the claim is based on delivering health care goods or services, limit the disclosure of the goods or services so as to avoid embarrassment or the disclosure of confidential health care information. You may be required to provide additional disclosure if an interested party objects to the claim.

3. Last Four Digits of Any Number by Which Creditor Identifies Debtor:

State only the last four digits of the debtor's account or other number used by the creditor to identify the debtor.

3a. Debtor May Have Scheduled Account As:

Report a change in the creditor's name, a transferred claim, or any other information that clarifies a difference between this proof of claim and the claim as scheduled by the debtor.

3b. Uniform Claim Identifier:

If you use a uniform claim identifier, you may report it here. A uniform claim identifier is an optional 24-character identifier that certain large creditors use to facilitate electronic payment in chapter 13 cases.

4. Secured Claim:

Check whether the claim is fully or partially secured. Skip this section if the

claim is entirely unsecured. (See Definitions.) If the claim is secured, check the box for the nature and value of property that secures the claim, attach copies of lien documentation, and state, as of the date of the bankruptcy filing, the annual interest rate (and whether it is fixed or variable), and the amount past due on the claim.

5. Amount of Claim Entitled to Priority Under 11 U.S.C. § 507 (a).

If any portion of the claim falls into any category shown, check the appropriate box(es) and state the amount entitled to priority. (See Definitions.) A claim may be partly priority and partly non-priority. For example, in some of the categories, the law limits the amount entitled to priority.

6. Credits:

An authorized signature on this proof of claim serves as an acknowledgment that when calculating the amount of the claim, the creditor gave the debtor credit for any payments received toward the debt.

7. Documents:

Attach redacted copies of any documents that show the debt exists and a lien secures the debt. You must also attach copies of documents that evidence perfection of any security interest and documents required by FRBP 3001(c) for claims based on an open-end or revolving consumer credit agreement or secured by a security interest in the debtor's principal residence. You may also attach a summary in addition to the documents themselves. FRBP 3001(c) and (d). If the claim is based on delivering health care goods or services, limit disclosing confidential health care information. Do not send original documents, as attachments may be destroyed after scanning.

8. Date and Signature:

The individual completing this proof of claim must sign and date it. FRBP 9011. If the claim is filed electronically, FRBP 5005(a)(2) authorizes courts to establish local rules specifying what constitutes a signature. If you sign this form, you declare under penalty of perjury that the information provided is true and correct to the best of your knowledge, information, and reasonable belief. Your signature is also a certification that the claim meets the requirements of FRBP 9011(b). Whether the claim is filed electronically or in person, if your name is on the signature line, you are responsible for the declaration. Print the name and title, if any, of the creditor or other person authorized to file this claim. State the filer's address and telephone number if it differs from the address given on the top of the form for purposes of receiving notices. If the claim is filed by an authorized agent, provide both the name of the individual filing the claim and the name of the agent. If the authorized agent is a servicer, identify the corporate servicer as the company. Criminal penalties apply for making a false statement on a proof of claim.

DEFINITIONS**Debtor**

A debtor is the person, corporation, or other entity that has filed a bankruptcy case.

Creditor

A creditor is a person, corporation, or other entity to whom debtor owes a debt that was incurred before the date of the bankruptcy filing. See 11 U.S.C. §101 (10).

Claim

A claim is the creditor's right to receive payment for a debt owed by the debtor on the date of the bankruptcy filing. See 11 U.S.C. §101 (5). A claim may be secured or unsecured.

Proof of Claim

A proof of claim is a form used by the creditor to indicate the amount of the debt owed by the debtor on the date of the bankruptcy filing. The creditor must file the form with the clerk of the same bankruptcy court in which the bankruptcy case was filed.

Secured Claim Under 11 U.S.C. § 506 (a)

A secured claim is one backed by a lien on property of the debtor. The claim is secured so long as the creditor has the right to be paid from the property prior to other creditors. The amount of the secured claim cannot exceed the value of the property. Any amount owed to the creditor in excess of the value of the property is an unsecured claim. Examples of liens on property include a mortgage on real estate or a security interest in a car. A lien may be voluntarily granted by a debtor or may be obtained through a court proceeding. In some states, a court judgment is a lien.

A claim also may be secured if the creditor owes the debtor money (has a right to setoff).

Unsecured Claim

An unsecured claim is one that does not meet the requirements of a secured claim. A claim may be partly unsecured if the amount of the claim exceeds the value of the property on which the creditor has a lien.

Claim Entitled to Priority Under 11 U.S.C. § 507 (a)

Priority claims are certain categories of unsecured claims that are paid from the available money or property in a bankruptcy case before other unsecured claims.

Redacted

A document has been redacted when the person filing it has masked, edited out, or otherwise deleted, certain information. A creditor must show only the last four digits of any social-security, individual's tax-identification, or financial-account number, only the initials of a minor's name, and only the year of any person's date of birth. If the claim is based on the delivery of health care goods or services, limit the disclosure of the goods or services so as to avoid embarrassment or the disclosure of confidential health care information.

Evidence of Perfection

Evidence of perfection may include a mortgage, lien, certificate of title, financing statement, or other document showing that the lien has been filed or recorded.

INFORMATION**Acknowledgment of Filing of Claim**

To receive acknowledgment of your filing, you may either enclose a stamped self-addressed envelope and a copy of this proof of claim or you may access the court's PACER system (www.pacer.psc.uscourts.gov) for a small fee to view your filed proof of claim.

Offers to Purchase a Claim

Certain entities are in the business of purchasing claims for an amount less than the face value of the claims. One or more of these entities may contact the creditor and offer to purchase the claim. Some of the written communications from these entities may easily be confused with official court documentation or communications from the debtor. These entities do not represent the bankruptcy court or the debtor. The creditor has no obligation to sell its claim. However, if the creditor decides to sell its claim, any transfer of such claim is subject to FRBP 3001(e), any applicable provisions of the Bankruptcy Code (11 U.S.C. § 101 *et seq.*), and any applicable orders of the bankruptcy court.

FILED

IN THE CIRCUIT COURT OF GREENE COUNTY, MISSOURI

2011 JUL 19 P 3:44

CIRCUIT CLERK
GREENE COUNTY, MO

HEARTLAND FINANCIAL SERVICES, LLC,)

Plaintiff,)

vs.)

Case No. 1131-CV07667

JOHN Q. HAMMONS, JOHN Q. HAMMONS)

HOTELS MANAGEMENT, LLC, and)

JOHN Q. HAMMONS HOTELS, INC.)

Defendants.)

JURY TRIAL DEMANDED

FIRST AMENDED PETITION FOR DAMAGES

COMES NOW the Plaintiff, Heartland Financial Services, LLC, by and through its attorneys of record, Baird, Lightner, Millsap & Harpool, P.C., and states the following to the Court for its Petition for Damages:

Parties, Venue and Jurisdiction

1. Plaintiff Heartland Financial Services, LLC ("Plaintiff") is a limited liability company duly organized and existing under the laws of the state of Kansas and authorized to conduct business in Missouri, with its principal place of business at 14605 S. Hagan, Olathe, Kansas 66062.

2. Defendant John Q. Hammons is a resident of the state of Missouri and may be served at 1707 W. Elfindale Street, Springfield, Missouri 65807.

3. Defendant John Q. Hammons Hotels, Inc. is a corporation duly organized and existing under the laws of the state of Missouri, and may be served at its principal place of business at 300 John. Q. Hammons Parkway, Suite 900, Springfield, Missouri 65806.

4. Defendant John Q. Hammons Hotels Management, LLC is a corporation duly organized and existing under the laws of the state of Missouri, and may be served at its principal place of business at 300 John. Q. Hammons Parkway, Suite 900, Springfield, Missouri 65806.

5. Venue is proper in this Court pursuant to § 508.010.2, RSMo.

General Allegations

6. On or about October 1, 2009, Plaintiff and Defendant John Q. Hammons, individually and on behalf of his affiliated companies, including John Q. Hammons Hotels Management, LLC and John Q. Hammons Hotels, Inc., entered into an “Advisor Agreement” (hereinafter the “Agreement”), with a three-year term, regarding financial consulting in new and existing hotel projects. A true and correct copy of the Agreement is attached hereto as **Exhibit A**, and incorporated by this reference as though fully set forth herein.

7. Pursuant to the Agreement, Plaintiff agreed and promised to identify and introduce new and existing hotel and convention center projects, and to provide general advice and consultation to Defendants in all related areas wherein Plaintiff had capabilities or expertise including, but not limited to, financing of such projects.

8. In consideration of the services rendered by Plaintiff, Defendants agreed and promised to pay Plaintiff a fee (the “Consulting Fee”) of one hundred and fifty thousand dollars (\$150,000.00) per year, plus any travel expenses incurred by Plaintiff. The Agreement provided that Defendants would pay \$75,000 upon execution of the Agreement, and that the Consulting Fee would be paid thereafter in bi-annual installments of \$75,000, as follows:

April 1, 2010	\$75,000.00
October 1, 2010	\$75,000.00
April 1, 2011	\$75,000.00
October 1, 2011	\$75,000.00
April 1, 2012	\$75,000.00

9. Until October 2010, Plaintiff fully performed its obligations under the Agreement.

10. In October 2010, Defendants instructed Plaintiff to have no further contact with Defendants, thereby anticipatorily repudiating the Agreement.

11. Defendants have failed and refused to pay the Consulting Fee, and have further failed and refused to pay Plaintiff's travel expenses.

COUNT I – BREACH OF CONTRACT
Against All Defendants

12. Plaintiff restates and incorporates by this reference the allegations set forth in the foregoing paragraphs 1 through 11.

13. The Agreement is a valid and binding contract between Plaintiff and Defendants, pursuant to which Defendants were to pay Plaintiff the Consulting Fee and cover Plaintiff's travel expenses in exchange for Plaintiff's financial consulting services and advice.

14. Said contract is supported by valuable consideration.

15. All conditions precedent to Defendants' liability have been performed by Plaintiff, or have otherwise occurred.

16. Defendants, by failing to pay Plaintiff's consulting fee and reimburse Plaintiff's travel expenses, are in breach of the Agreement.

17. Further, by instructing Plaintiff to have no further contact with Defendants, Defendants have anticipatorily repudiated the Agreement.

18. As a result of Defendants' breach, Plaintiff has been damaged in an amount exceeding \$450,000.

WHEREFORE Plaintiff respectfully requests this Court enter judgment in its favor and against Defendants in the amount of \$450,000 plus an amount to be determined for Plaintiff's

travel expenses, plus interest on both sums, for Plaintiff's costs herein incurred, and for such other and further relief to which Plaintiff may show itself justly entitled.

Respectfully submitted,

BAIRD, LIGHTNER, MILLSAP & HARPOOL, P.C.

By 

BRETT W. ROUBAL

Missouri Bar No. 51329

MATTHEW D. WILSON

Missouri Bar No. 59966

1901-C S. Ventura Ave.

Springfield, MO 65804

Telephone: (417) 887-0133

Fax: (417) 887-8740

Attorneys for Plaintiff


CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing instrument, having been filed this same date, was mailed via U.S. Postal Service, to counsel for Defendant on this 19th day of July, 2011 to:

Michael K. Cully
Lowther Johnson Attorneys at Law
901 St. Louis Street, 20th Floor
Springfield, MO 65806

Fax No: 417-866-1752

Attorneys for Defendants


Matthew D. Wilson

ADVISOR AGREEMENT

October 1, 2009

John Q. Hammons Hotel, LLC
John Q. Hammons, Chairman
300 John Q. Hammons Parkway, Suite 900
Springfield, Missouri 65806

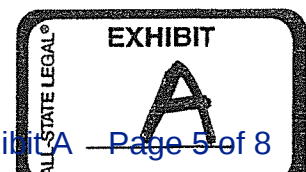
Dear Mr. Hammons:

This will confirm the fee agreement entered into by and between John Q. Hammons, John Q. Hammons Hotel, LLC and its affiliates (hereinafter collectively referred to as "Hammons") and Heartland Financial Services, LLC. (hereinafter referred to as "Advisor"), regarding financial consulting in new and existing hotel and convention project(s) that are introduced to Hammons by Advisor ("Project(s)").

1. Advisor's Services. Advisor will identify and introduce financial consulting of new and existing hotel and convention center Projects to Hammons. Hammons will consider the Projects for financing by Hammons. All Projects will be submitted in writing by Advisor to Hammons. Advisor will assist Hammons and act as Advisor to Hammons on the Projects. Advisor agrees to provide general advice and consultation in all areas where Advisor has capabilities and expertise, including but not limited to, the financial terms of these Projects, negotiation of acceptable terms and conditions for the financing of the Project, advice regarding funding entities or lenders for the Project.
2. Compensation to Advisor. Advisor will be entitled to a consulting fee of one hundred fifty thousand and no/100 dollars (\$150,000.00) per year plus any out of pocket travel expenses incurred by the Advisor. The term of this Advisor Agreement will be for a three (3) year term. Hammons will pay the Advisor the first semi annual payment of \$75,000.00 upon the execution of this Advisor Agreement and then each six (6) months thereafter until paid in full as follows:

✦ April 1, 2010	\$75,000.00
✦ October 1, 2010	\$75,000.00
✦ April 1, 2011	\$75,000.00
✦ October 1, 2011	\$75,000.00
✦ April 1, 2012	\$75,000.00

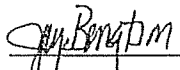
3. Indemnification. Hammons shall indemnify and hold Advisor harmless from and against any and all losses, claims, causes of action, demands, liabilities, and expenses which may arise out of the performance by Hammons of its duties under this agreement, except for any damages, claims, expenses or causes of action arising as a result of Advisor's activities or material omissions. Advisor shall indemnify and hold Hammons harmless from and against any and all losses, claims, causes of action, demands, liabilities, and expenses which may arise out of the performance by Advisor of its duties under this agreement, except for any damages, claims, expenses or causes of action arising as a result of Hammon's actions or material omissions.



4. Advertising. Hammons agrees, that upon the execution of this Advisor Agreement that Advisor may issue to the public press releases, advertisements, testimonials and other promotional materials describing in general terms of the financing that the Advisor provided to Hammons. It is also understood that Hammons will provide the Advisor a written letter of recommendation and or testimonial that Advisor can utilize on the Advisor's website.
5. Miscellaneous Provisions. This agreement constitutes the entire agreement and understanding between the parties on this subject matter and integrates all prior discussions between them related to the subject matter hereof. No amendment to this agreement shall be valid unless it is in writing and signed by both parties. This agreement shall be governed under the laws of the State of Kansas. In the event that any provision of this agreement is held invalid or unenforceable for any reason, such invalidity or unenforceability shall attach only to such provision and shall not affect or render invalid any other provision of this agreement. All parties signing below have the authority to bind any entities on whose behalf they are signing.

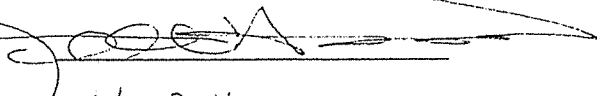
Please acknowledge your acceptance of the terms and conditions of this Advisor Agreement by signing in the space designated below.

HEARTLAND FINANCIAL SERVICES, LLC

Signature: 
Name: Jerry Bengtson
Title: Managing Member
Date: 10/5/09


APPROVED AND ACCEPTED

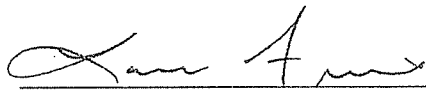
JOHN Q. HAMMONS

Signature: 
Name: John Q Hammons
Title: Individual
Date: 10/2/09

WITNESSED

IN WITNESS WHEREOF, the parties hereto have witnessed John Q. Hammons who is personally known to me, is of sound mind, and has executed this Agreement of his own free will on the day and year first above written.

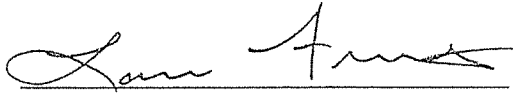
Signature: 
Name: GARY FRUITS
Address: 185 N.E. Chingvapiin Ct. Lees Summit, MO. 64064
Date: 10/2/09

Signature: 
Name: LAUREN FRUITS
Address: 185 NE CHINGVAPIIN CT LEES SUMMIT, MO 64064
Date: 10/2/09

WITNESSED

IN WITNESS WHEREOF, the parties hereto have witnessed Jerry Bengtson who is personally known to me, is of sound mind, and has executed this Agreement of his own free will on the day and year first above written.

Signature:



Name:

LAUREN FRUITS


Address:

185 NE CHINGKAPIN CT LEGS SUMMIT, MO 64064

Date:

10/5/09

Signature:



Name:

GARY FRUITS

Address:

185 NE CHINGKAPIN CT. LEGS SUMMIT, MO 64064

Date:

10/5/09

District of Kansas Claims Register

16-21142 John Q. Hammons Fall 2006, LLC

Judge: Robert D. Berger

Chapter: 11

Office: Kansas City

Last Date to file claims:

Trustee:

Last Date to file (Govt):

Creditor: (8615721)
Heartland Financial Services,
LLC
c/o Baird Lightner Millsap, P.C.
1901-C S. Ventura Avenue
Springfield, Missouri
65804

Claim No: 277
Original Filed
Date: 11/29/2016
Original Entered
Date: 11/29/2016
Last Amendment
Filed: 06/04/2018
Last Amendment
Entered: 06/04/2018

Status:

Filed by: CR

Entered by: Patrick R Baird

Modified:

Amount claimed: \$450000.00

History:

[Details](#) [277-1](#) 11/29/2016 Claim #277 filed by Heartland Financial Services, LLC, Amount claimed: \$450000.00 (Marshall, Terri)

[2162](#) 05/07/2018 Objection to Claim Number 277 filed by Heartland Financial Services, Inc. and Notice of Objection Deadline. Proposed Hearing to be held at. Certificate of Service on. Filed by Creditor JD Holdings, L.L.C. (Margolies, Jonathan)

[Details](#) [277-2](#) 06/04/2018 Amended Claim #277 filed by Heartland Financial Services, LLC, Amount claimed: \$450000.00 (Baird, Patrick)

Description: (277-1) Services Performed

Remarks:

Claims Register Summary

Case Name: John Q. Hammons Fall 2006, LLC

Case Number: 16-21142

Chapter: 11

Date Filed: 06/26/2016

Total Number Of Claims: 1

Total Amount Claimed*	\$450000.00
Total Amount Allowed*	

*Includes general unsecured claims

The values are reflective of the data entered. Always refer to claim documents for actual amounts.

	Claimed	Allowed
Secured		
Priority		
Administrative		

Fill in this information to identify the case:

Debtor name: Heartland Financial Services, LLC

United States Bankruptcy Court for the District of Kansas at Kansas City

Case number (If known): 16-21142-11

See Appendix A to bar date notice for list of debtors and case numbers.

ID: 399
HEARTLAND FINANCIAL SVCS LLC
14605 S HAGAN ST
OLATHE, KS 66062-9003

RECEIVED

NOV 23 2016

BMC GROUP

If you have already filed a proof of claim with the
Bankruptcy Court or BMC, you do not need to file again.
THIS SPACE IS FOR COURT USE ONLY

04/16

Official Form 410

Proof of Claim

Read the instructions before filling out this form. This form is for making a claim for payment in a bankruptcy case. Do not use this form to make a request for payment of an administrative expense, except for administrative expenses under 11 U.S.C. § 503(b)(9).

Filers must leave out or redact information that is entitled to privacy on this form or on any attached documents. Attach redacted copies of any documents that support the claim, such as promissory notes, purchase orders, invoices, itemized statements of running accounts, contracts, judgments, mortgages, and security agreements. Do not send original documents; they may be destroyed after scanning. If the documents are not available, explain in an attachment.

A person who files a fraudulent claim could be fined up to \$500,000, imprisoned for up to 5 years, or both. 18 U.S.C. §§ 152, 157, and 3571.

Fill in all the information about the claim as of the date the case was filed. That date is on the notice of bankruptcy (Form 309) that you received.

The original of this completed form (faxes not accepted), together with accompanying documentation, must be either (a) delivered to the Claims and Noticing Agent at the address set forth on the Bar Date Notice, or (b) filed using the online Document Filing System (CM/ECF) of the United States Bankruptcy Court for the District of Kansas, in either event so as to be received no later than 5:00 p.m. CST on the December 23, 2016.

Part 1: Identify the Claim

1. Who is the current creditor? Heartland Financial Services, LLC
Name of the current creditor (the person or entity to paid for this claim)
Other name the creditor used with the debtor Jerry Bengtson

2. Has this claim been acquired from someone else?
☒ No
☐ Yes. From whom? _____

3. Where should notices and payments to the creditor be sent? Federal Rule of Bankruptcy Procedure (FRBP) 2002(g)	Where should notices to the creditor be sent?	Where should payments to the creditor be sent? (if different)
	<u>Heartland Financial Services, LLC</u> <u>c/o Baird Lightner Millsap, P.C.</u> Name _____ <u>1901-C S. Ventura Ave</u> Number Street _____ <u>Springfield, Missouri 65804</u> City State ZIP Code _____ Contact phone <u>417.887.0133</u> Contact email <u>broubal@blmlawyers.com</u> <u>pbaid@blmlawyers.com</u> Uniform claim identifier for electronic payments in chapter 13 (if you use one): _____	_____ Name _____ _____ Number Street _____ _____ City State ZIP Code _____ Contact phone _____ Contact email _____

4. Does this claim amend one already filed?
☒ No
☐ Yes. Claim number on court claims registry (if known) _____ Filed on _____ MM / DD / YYYY

5. Do you know if anyone else has filed a proof of claim for this claim?
☒ No
☐ Yes. Who made the earlier filing? _____



Part 2: Give information about the Claim as of the Date the Case Was Filed

6. Do you have any number you use to identify the debtor? ☒ No
☐ Yes. Last 4 digits of the debtor's account or any number you use to identify the debtor: _____

7. How much is the claim? \$ 450,000.00. Does this amount include interest or other charges?
☒ No
☐ Yes. Attach statement itemizing interest, fees, expenses, or other charges required by Bankruptcy Rule 3001(c)(2)(A).

8. What is the basis of the claim? Examples: Goods sold, money loaned, lease, services performed, personal injury or wrongful death, or credit card.
Attach redacted copies of any documents supporting the claim required by Bankruptcy Rule 3001(c).
Limit disclosing information that is entitled to privacy, such as health care information.
Financial consulting and strategic planning to John Q. Hammons, John Q. Hammons Management, LLC, and to John Q. Hammons Hotels, Inc., on financing new and existing hotels and convention projects.

9. Is all or part of the claim secured? ☒ No
☐ Yes. The claim is secured by a lien on property.
Nature of property:
☐ Real estate. If the claim is secured by the debtor's principal residence, file a *Mortgage Proof of Claim Attachment* (Official Form 410-A) with this *Proof of Claim*.
☐ Motor vehicle
☒ Other. Describe: Advisor Agreement dated October 1, 2009
Heartland Financial Services, LLC v
Basis for perfection: John O. Hammons, et al. Case #1131-CV07667
Attach redacted copies of documents, if any, that show evidence of perfection of a security interest (for example, a mortgage, lien, certificate of title, financing statement, or other document that shows the lien has been filed or recorded.)
Value of property: \$ _____
Amount of the claim that is secured: \$ _____
Amount of the claim that is unsecured: \$450,000.00 (The sum of the secured and unsecured amounts should match the amount in line 7.)
Amount necessary to cure any default as of the date of the petition: \$450,000.00.
Annual Interest Rate (when case was filed) 9%
☒ Fixed
☐ Variable

10. Is this claim based on a lease? ☒ No
☐ Yes. Amount necessary to cure any default as of the date of the petition. \$ _____

11. Is this claim subject to a right of setoff? ☒ No
☐ Yes. Identify the property: _____

12. Is all or part of the claim entitled to priority under 11 U.S.C. § 507(a)?

☒ No

☐ Yes. Check all that apply:

Amount entitled to priority

A claim may be partly priority and partly nonpriority. For example, in some categories, the law limits the amount entitled to priority.

☐ Domestic support obligations (including alimony and child support) under 11 U.S.C. § 507(a)(1)(A) or (a)(1)(B).

\$ _____

☐ Up to \$2,850* of deposits toward purchase, lease, or rental of property or services for personal, family, or household use. 11 U.S.C. § 507(a)(7).

\$ _____

☐ Wages, salaries, or commissions (up to \$12,850*) earned within 180 days before the bankruptcy petition is filed or the debtor's business ends, whichever is earlier. 11 U.S.C. § 507(a)(4).

\$ _____

☐ Taxes or penalties owed to governmental units. 11 U.S.C. § 507(a)(8).

\$ _____

☐ Contributions to an employee benefit plan. 11 U.S.C. § 507(a)(5).

\$ _____

☐ Other. Specify subsection of 11 U.S.C. § 507(a)() that applies.

\$ _____

* Amounts are subject to adjustment on 4/01/19 and every 3 years after that for cases begun on or after the date of adjustment.

13. Is all or part of the claim entitled to administrative priority pursuant to 11 U.S.C. § 503(b)(9)?

☒ No

☐ Yes. Indicate the amount of your claim arising from the value of any goods received by the Debtor within 20 days before the date of commencement of the above case, in which the goods have been sold to the Debtor in the ordinary course of such Debtor's business. Attach documentation supporting such claim.

\$ _____

Part 3: Sign Below

The person completing this proof of claim must sign and date it. FRBP 9011(b).

Check the appropriate box:

☐ I am the creditor.

☒ I am the creditor's attorney or authorized agent.

☐ I am the trustee, or the debtor, or their authorized agent. Bankruptcy Rule 3004.

☐ I am a guarantor, surety, endorser, or other codebtor. Bankruptcy Rule 3005.

If you file this claim electronically, FRBP 5005(a)(2) authorizes courts to establish local rules specifying what a signature is.

A person who files a fraudulent claim could be fined up to \$500,000, imprisoned for up to 5 years, or both. 18 U.S.C. §§ 152, 157, and 3571.

I understand that an authorized signature on this *Proof of Claim* serves as an acknowledgment that when calculating the amount of the claim, the creditor gave the debtor credit for any payments received toward the debt.

I have examined the information in this *Proof of Claim* and have a reasonable belief that the information is true and correct.

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

Executed on date 10/24/2016
MM/DD/YYYY

Signature

Print the name of the person who is completing and signing this claim:

Name Brett Patrick W. Roubal
First name Middle name Last name

Title _____

Company Baird Lightner Millsap, P.C.
Identify the corporate servicer as the company if the authorized agent is a servicer.

Address 1901-C S. Ventura Ave
Number Street
Springfield MO 65804
City State ZIP Code

Contact phone 417.887.0133

Email broubal@blmlawyers.com
pbaird@blmlawyers.com

District of Kansas Claims Register

[16-21142 John Q. Hammons Fall 2006, LLC](#)

Judge: Robert D. Berger

Chapter: 11

Office: Kansas City

Last Date to file claims: 12/23/2016

Trustee:

Last Date to file (Govt):

Creditor: (8615721)
Heartland Financial Services,
LLC
c/o Baird Lightner Millsap, P.C.
1901-C S. Ventura Avenue
Springfield, Missouri
65804

Claim No: 277
Original Filed
Date: 11/29/2016
Original Entered
Date: 11/29/2016

Status:
Filed by: CR
Entered by: Terri Marshall
Modified:

Amount claimed: \$450000.00

History:

[Details](#) [277-](#) 11/29/2016 Claim #277 filed by Heartland Financial Services, LLC, Amount claimed: \$450000.00
[1](#) (Marshall, Terri)

Description: (277-1) Services Performed

Remarks:

Claims Register Summary

Case Name: John Q. Hammons Fall 2006, LLC

Case Number: 16-21142

Chapter: 11

Date Filed: 06/26/2016

Total Number Of Claims: 1

Total Amount Claimed*	\$450000.00
Total Amount Allowed*	

*Includes general unsecured claims

The values are reflective of the data entered. Always refer to claim documents for actual amounts.

	Claimed	Allowed
Secured		
Priority		
Administrative		