

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

In re:)	
)	
JOHN Q. HAMMONS FALL 2006, LLC, <i>et al.</i>,¹)	Case No. 16-21142
)	
Debtors.)	
)	

**MOTION FOR AUTHORIZATION TO CONTINUE TO USE EXISTING BANK
ACCOUNTS, CHECK STOCK, EXISTING BUSINESS FORMS AND CASH
MANAGEMENT SYSTEMS AS OF THE COMMENCEMENT DATE**

COME NOW the above-captioned debtors (collectively, the “Debtors”) and hereby request that the Court enter an order authorizing them to continue to use existing bank accounts, check stock, existing business forms and their cash management systems as they existed on the Commencement Date. In support thereof, the Debtors state the following:

INTRODUCTION

1. On June 26, 2016 (the “Commencement Date”), the Debtors commenced chapter

¹ The Debtors in this case are: ACLOST, LLC, Bricktown Residence Catering Co., Inc., Chateau Catering Co., Inc., Chateau Lake, LLC, Civic Center Redevelopment Corp., Concord Golf Catering Co., Inc., Concord Hotel Catering Co., Inc., East Peoria Catering Co., Inc., Fort Smith Catering Co., Inc., Franklin/Crescent Catering Co., Inc., Glendale Coyotes Catering Co., Inc., Glendale Coyotes Hotel Catering Co., Inc., Hammons, Inc., Hammons of Colorado, LLC, Hammons of Franklin, LLC, Hammons of Huntsville, LLC, Hammons of Lincoln, LLC, Hammons of New Mexico, LLC, Hammons of Oklahoma City, LLC, Hammons of Richardson, LLC, Hammons of Rogers, Inc., Hammons of Sioux Falls, LLC, Hammons of South Carolina, LLC, Hammons of Tulsa, LLC, Hampton Catering Co., Inc., Hot Springs Catering Co., Inc., Huntsville Catering, LLC, International Catering Co., Inc., John Q. Hammons 2015 Loan Holdings, LLC, John Q. Hammons Fall 2006, LLC, John Q. Hammons Hotels Development, LLC, John Q. Hammons Hotels Management I Corporation, John Q. Hammons Hotels Management II, LP, John Q. Hammons Hotels Management, LLC, Joplin Residence Catering Co., Inc., JQH – Allen Development, LLC, JQH – Concord Development, LLC, JQH – East Peoria Development, LLC, JQH - Ft. Smith Development, LLC, JQH – Glendale AZ Development, LLC, JQH - Kansas City Development, LLC, JQH - La Vista Conference Center Development, LLC, JQH - La Vista CY Development, LLC, JQH - La Vista III Development, LLC, JQH - Lake of the Ozarks Development, LLC, JQH – Murfreesboro Development, LLC, JQH – Normal Development, LLC, JQH – Norman Development, LLC, JQH – Oklahoma City Bricktown Development, LLC, JQH – Olathe Development, LLC, JQH – Pleasant Grove Development, LLC, JQH – Rogers Convention Center Development, LLC, JQH – San Marcos Development, LLC, Junction City Catering Co., Inc., KC Residence Catering Co., Inc., La Vista CY Catering Co., Inc., La Vista ES Catering Co., Inc., Lincoln P Street Catering Co., Inc., Loveland Catering Co., Inc., Manzano Catering Co., Inc., Murfreesboro Catering Co., Inc., Normal Catering Co., Inc., OKC Courtyard Catering Co., Inc., R-2 Operating Co., Inc., Revocable Trust of John Q. Hammons Dated December 28, 1989 as Amended and Restated, Richardson Hammons, LP, Rogers ES Catering Co., Inc., SGF – Courtyard Catering Co., Inc., Sioux Falls Convention/Arena Catering Co., Inc., St Charles Catering Co., Inc., Tulsa/169 Catering Co., Inc., and U.P. Catering Co., Inc.

11 bankruptcy cases by filing their bankruptcy petitions.

2. Since the Commencement Date, the Debtors have continued in possession of their property and control of their operations pursuant to §§ 1107 and 1108 of the Bankruptcy Code.

3. The Court has jurisdiction of this motion pursuant to 28 U.S.C. § 1334(a). This is a core proceeding pursuant to 28 U.S.C. §§ 157(b)(A), (M), in that this motion seeks authority relating to the management and use of the Debtors' cash and other property and affects the administration of these bankruptcy cases.

BACKGROUND

5. The Debtors in these chapter 11 cases consist of the Revocable Trust of John Q. Hammons, Dated December 28, 1989 as Amended and Restated (the "Trust"), and 71 of its directly or indirectly wholly owned subsidiaries and affiliates. The Debtors collectively operate as an enterprise known as John Q. Hammons Hotels & Resorts ("JQH").

6. The Trust's wholly owned subsidiary and the manager of all of JQH's hotels, John Q. Hammons Hotels Management, LLC, employs more than 4,000 people throughout the United States. Moreover, the Trust and certain of its affiliates own nearly three dozen hotels, as well as numerous and varied other assets, such as: (a) approximately 35 parcels of undeveloped real estate in 12 states (Kansas, Arkansas, Colorado, Iowa, Missouri, Nevada, New Mexico, North Carolina, Oklahoma, Texas, Utah and Wisconsin); and (b) the Joplin Convention & Trade Center in Joplin, Missouri. The Trust is also one of the largest owners of real estate in Springfield, Missouri where its buildings include: (i) the Enterprise Building, (ii) a Mini Storage facility, (iii) the JQH Office Building, (iv) Hammons Field (the home of the Springfield Cardinals, the Double-A Texas League affiliate of the St. Louis Cardinals), (v) Kinser House, (vi) the John Q. Hammons Missouri Sports Hall of Fame, (vii) the Jordan Valley Car Park (a parking garage with 970 spaces), and (viii) a residence in Southern Hills.

7. In the 1950s, John Q. Hammons recognized a growing need for quality hotels throughout the country. As a successful real estate investor and developer, Mr. Hammons had the experience and knowledge required to achieve his ambitions. In 1958, he partnered with Roy Winegardner, and the two purchased ten Holiday Inn Hotel franchises. These properties were immediately successful and served as an early indicator of Mr. Hammons' future success in the industry.

8. The partners went on to found Winegardner and Hammons, Inc. and developed a total of 67 Holiday Inn Hotels. In 1969, Mr. Hammons formed an additional company, John Q. Hammons Hotels, Inc., and relied on his own strategies and acumen for site selection. The company's portfolio quickly grew to include Embassy Suites, Marriott, Sheraton and Radisson Hotels as well as several independently branded hotels and resorts.

9. In 1994, Mr. Hammons took his company public and launched a new era of hotel development. Today, the company is once again privately owned, currently operating 35 hotels in 16 states.

10. Mr. Hammons died on May 26, 2013 at the age of 94. Over the course of his impressive 52-year career in the lodging industry, Mr. Hammons developed 210 hotel properties in 40 states and was honored with numerous lifetime achievement awards, including "Hotelier of the World."

11. Today, the group of affiliated companies operate hotels independently as well as under the flags of Embassy Suite by Hilton, IHG (Holiday Inn Express), Marriott (Courtyard by Marriott, Marriott, and Residence Inn), and Starwood. The hotels are located in Alabama, Arizona, Arkansas, Colorado, Illinois, Kansas, Missouri, Nebraska, New Mexico, North Carolina, Oklahoma, South Carolina, South Dakota, Tennessee, Texas, and Virginia. Several of

the properties serve as convention centers. The affiliated companies comprise an integrated family of hotel companies that, in the aggregate, is one of the largest private independent owner and hotel management companies in the United States, with a portfolio that is comprised of more than approximately 8,400 guest rooms and more than 1 million square feet of banquet space. The Trust also directly or indirectly owns and operates interests in more than 15 other entities that are not Debtors in these chapter 11 cases that own and operate, among other things, vacant land, office buildings, the Federal Courthouse in Springfield, Missouri, golf courses, real estate leased to restaurants, a minority interest in a casino, and the rights to the film: “The Great American West.”

12. Among many duties, members of the John Q. Hammons & Resorts team oversee food and beverage services, identify sales opportunities and manage the operations of each hotel to ensure quality lodging experiences, rewarding employee tenure and the fiscal health of each hotel.

DEBTORS’ CASH MANAGEMENT SYSTEM

13. Debtors maintain and direct an integrated Cash Management System as part of the ordinary course of their businesses that allows them to efficiently collect, transfer, and disburse funds generated by their multifaceted operations. The Cash Management System is vital to Debtors’ ability to conduct business at their hotels, office buildings and other properties across the country. Indeed, the integrated Cash Management System helps control funds, serves as a repository for cash receipts, manages cash disbursements, ensures cash availability for each of Debtors, and reduces administrative expenses by facilitating the movement of funds among multiple entities by centralizing cash operations from a single location. Moreover, the Cash Management System generally is similar to those commonly employed by complex businesses comparable to that of Debtors.

14. Generally, the cash received at the hotel level is deposited into a local bank account and swept ultimately to one or more bank accounts maintained by the John Q. Hammons Hotels Management, LLC (the “Management Company”). The Management Company then utilizes the cash to pay the bills and debts of the income generating entities, while maintaining the necessary accounting records to properly allocate income and expenses to the proper entities. Attached hereto and marked Exhibit B is a chart depicting in detail the cash management system including banks, bank accounts, and sweeps.

15. As described herein, given the economic and operational scale of Debtors’ operations, any disruption to the Cash Management System would have an immediate adverse effect on Debtors’ business and operations to the detriment of their estates, creditors and numerous stakeholders. Accordingly, to minimize the disruption caused by these chapter 11 cases and to maximize the value of Debtors’ estates, Debtors request authority to continue to utilize their existing Cash Management System during the pendency of these chapter 11 cases, subject to the terms described herein.

I. Description Of The Cash Management System

A. The Bank Accounts and the Flow of Funds

16. The Cash Management System consists of a significant number of active operating bank accounts (collectively, the “Bank Accounts”) maintained by Debtors at the institutions set out on Exhibit B hereto (collectively, the “Banks”).

17. Exhibit B depicts how funds flow and represents a detailed diagram setting forth the flow of funds among the Bank Accounts (the “Funds Flow Diagram”). As set forth in the Funds Flow Diagram, the Cash Management System has three main components: (a) receipt of funds, (b) cash concentration, and (c) cash disbursements to fund Debtors’ operations.

II. THE CASH MANAGEMENT SYSTEM'S COMPLIANCE WITH THE U.S. TRUSTEE GUIDELINES AND SECTION 345 OF THE BANKRUPTCY CODE

18. Debtors believe that each of the Banks set forth on Exhibit B hereto are well-capitalized and insured by the Federal Deposit Insurance Corporation, and therefore Debtors can maintain all of the Bank Accounts without jeopardizing any party in interest. Moreover, each of the Banks is a necessary part of the Cash Management System, and any changes in this system could cause significant disruption to the applicable Debtor's or property's operations. For Banks at which Debtors hold Bank Accounts that are not party to a Uniform Depository Agreement with the U.S. Trustee, Debtors shall use their good-faith efforts to cause the Banks to execute a Uniform Depository Agreement in a form prescribed by the U.S. Trustee within 60 days of the date of the Court's entry of an Order granting the Motion.

19. In addition, Debtors' cash is kept in the Bank Accounts and is not invested in any money market or other types of short-term securities. Debtors therefore do not believe that any of the Bank Accounts are "investment accounts" as contemplated by section 345(b) of the Bankruptcy Code.

III. INTERCOMPANY TRANSACTIONS

20. Debtors maintain business relationships with each other and with non-Debtor affiliates resulting in intercompany receivables and payables in the ordinary course of business (collectively, the "Intercompany Claims"). Indeed, intercompany transactions are frequently conducted among Debtors as well as between Debtors and non-Debtor affiliates and other non-Debtors subsidiaries and affiliates. Moreover, in connection with the daily operation of the Cash Management System, as funds are disbursed throughout the Cash Management System and as business is transacted among Debtor entities and among Debtors and their non-Debtor affiliates, at any given time there may be Intercompany Claims owing by one Debtor to another Debtor or

between a Debtor and a non-Debtor affiliate. Certain Intercompany Claims are settled on a daily basis while others are reflected as receivables and payables, as applicable, in the respective Debtor's or non-Debtor affiliate's accounting systems (the "Intercompany Transactions"). Accordingly, Debtors can ascertain, trace, and account for all Intercompany Transactions, and will also be able to do so on a post-petition basis. Debtors' transactions with their non-Debtor affiliates generally fall into the categories described below.

21. The Intercompany Transactions described above as well as other Intercompany Transactions are essential aspects of Debtors' complex operations. The Intercompany Transactions are crucial for Debtors to process payroll, pay vendors for goods and services, continue to receive significant management income and provide working capital support for their non-Debtor operations. Moreover, Debtors would be unduly burdened both financially and logistically if they were required to halt the Intercompany Transactions at this time and to reorganize their business operations without such transactions. Debtors believe that without the Intercompany Transactions, including with their non-Debtor affiliates, Debtors' business and the Cash Management System would be disrupted unnecessarily to the detriment of Debtors, their creditors and other stakeholders.

IV. BANKING TRANSACTIONS, BANK FEES, AND RELATED EXPENSES

22. Debtors conduct transactions by debit, wire, credit card, ACH payments, and other similar methods, as well as by check. Moreover, a certain percentage of Debtors' customer payments are made through wire transfer, credit card, and ACH transactions. Thus, Debtors' ability to conduct transactions by debit, wire, ACH payment, or other similar methods is of vital importance to their ability to manage their businesses; if Debtors were unable to perform such transactions, they may be unable to perform under certain contracts, their business operations may be unnecessarily disrupted, their estates may incur additional costs, and stakeholder value

may be needlessly destroyed.

23. It is therefore important that the Banks continue to maintain, service, and administer the Bank Accounts as accounts of Debtors, as debtors in possession, without interruption and in the ordinary course of business. In this regard, the Banks should be authorized and directed to receive, process, honor, and pay any and all checks, ACH transfers, and other instructions, and drafts payable through, drawn, or directed on such Bank Accounts after the petition date by holders, makers, or other parties entitled to issue instructions with respect thereto.

24. In addition, in the ordinary course of business, the Banks charge, and Debtors pay, honor, or allow the deduction from the appropriate account, certain service charges and other fees, costs, and expenses (collectively, the “Bank Fees”). Debtors believe that as of the Commencement Date, there will exist accrued but unpaid Bank Fees (collectively, the “Prepetition Bank Fees”). The Cash Management System depends on the ability of the Banks to maintain and administer the Bank Accounts and to honor and process Debtors’ banking transactions.

25. Accordingly, to maintain the integrity of the Cash Management System, it is important that the Banks are able to (a) continue to charge Debtors the Bank Fees and (b) charge back returned items to the Bank Accounts, whether such items are dated before, on, or after the Commencement Date in the ordinary course of business and consistent with prior practice. In addition, it is important that Debtors are authorized to honor and pay any and all other Prepetition Bank Fees required by the Cash Management System in the ordinary course of business.

V. BUSINESS FORMS

26. As part of the Cash Management System, Debtors utilize numerous preprinted

business forms in the ordinary course of their businesses. Debtors also maintain books and records to document, among other things, their profits and expenses. Rather than requiring Debtors to incur the expense and delay of ordering entirely new business, Debtors are seeking authority to continue using all currently existing correspondence and business forms (including letterhead, purchase orders, invoices, and preprinted checks) as such forms were in existence immediately before the Commencement Date, without reference to Debtors' status as debtors in possession. This will minimize expenses to Debtors' estates and avoid confusion on the part of employees, customers, vendors, and suppliers during the pendency of these chapter 11 cases.

BASIS FOR RELIEF

VI. THE COURT SHOULD APPROVE DEBTORS' CONTINUED USE OF THE CASH MANAGEMENT SYSTEM BECAUSE IT IS ESSENTIAL TO THEIR OPERATIONS AND RESTRUCTURING EFFORTS

27. Debtors' Cash Management System constitutes an ordinary course, essential business practice providing significant benefits to Debtors including, among other things, the ability to (a) control corporate funds, (b) ensure the availability of funds when necessary, and (c) reduce costs and administrative expenses by facilitating the movement of funds and the development of timely and accurate account balance information.

28. The continuation of the Cash Management System is permitted pursuant to section 363(c)(1) of the Bankruptcy Code, which authorizes the debtor in possession to "use property of the estate in the ordinary course of business without notice or a hearing." 11 U.S.C. § 363(c)(1). Bankruptcy courts routinely treat requests for authority to continue utilizing existing cash management systems as a relatively "simple matter." *In re Baldwin-United Corp.*, 79 B.R. 321, 327 (Bankr. S.D. Ohio 1987). In addition, in granting such relief, courts recognize that an integrated cash management system "allows efficient utilization of cash resources and recognizes the impracticalities of maintaining separate cash accounts for the many different

purposes that require cash.” *In re Columbia Gas Sys., Inc.*, 136 B.R. 930, 934 (Bankr. D. Del. 1992), *aff’d*, 997 F.2d 1039, 1061 (3d Cir. 1993). The requirement to maintain all accounts separately “would be a huge administrative burden and economically inefficient.” *Columbia Gas*, 997 F.2d at 1061; *see also In re Southmark Corp.*, 49 F.3d 1111, 1114 (5th Cir. 1995) (stating that cash management system allows debtor “to administer more efficiently and effectively its financial operations and assets”).

29. Here, requiring Debtors to adopt a new, segmented cash management system at this critical early stage of these chapter 11 cases would be expensive, create unnecessary administrative burdens, and be extraordinarily disruptive to the operation of Debtors’ businesses. Importantly, the Cash Management System provides Debtors with the ability to quickly create status reports on the location and amount of funds, which, in turn, allows management to track and control such funds, ensure cash availability, and reduce administrative costs through a centralized method of coordinating the collection and movement of funds. As a result, any disruption could have a severe and adverse effect on Debtors’ ability to reorganize. Indeed, absent the relief requested herein, Debtors’ operations could grind to a halt, needlessly destroying the value of their business enterprise. By contrast, maintaining the current Cash Management System would greatly facilitate Debtors’ transition into chapter 11 by, among other things, minimizing delays in paying post-petition debts and eliminating administrative inefficiencies. Finally, maintaining the current Cash Management System would allow Debtors’ treasury and accounting employees to focus on their daily responsibilities.

30. Debtors respectfully submit that parties in interest will not be harmed by their maintenance of the Cash Management System, including the Bank Accounts, because Debtors have implemented appropriate mechanisms to ensure that payments will not be made on account

of obligations incurred before the Commencement Date, other than those authorized by the Court. Specifically, with the assistance of their professional advisors, Debtors have implemented internal protocols that prohibit payments on account of prepetition debts, including prepetition intercompany debts, without the prior approval of Debtors' finance department. Debtors will continue to work closely with the Banks to ensure that appropriate procedures are in place to prevent checks that were issued prepetition from being honored without the Court's approval. In light of such protective measures, Debtors submit that maintaining the Cash Management System is in the best interests of their estates and creditors.

31. Accordingly, Debtors respectfully request the Court authorize the continued use of the existing Cash Management System to facilitate Debtors' transition into chapter 11. Specifically, Debtors respectfully request that the Court authorize the Banks to continue to maintain, service, and administer the Bank Accounts as accounts of Debtors as debtors in possession, without interruption and in the ordinary course of business. Debtors further respectfully request that the Court authorize and direct the Banks to receive, process, honor, and pay any and all checks, wire transfer, credit card, ACH payments and other instructions, and drafts payable through, or drawn or directed on, such Bank Accounts after the Commencement Date by holders, makers, or other parties entitled to issue instructions with respect thereto, irrespective of whether such checks, drafts, wires, credit card, or ACH payments are dated prior to or subsequent to the Commencement date.

32. Debtors also request authority for the Banks to honor any check, draft, or other notification that Debtors advised the Banks to have been drawn, issued, or otherwise presented prior to the Commencement date only to the extent authorized by order of the Court.

33. Debtors additionally request that, to the extent a Bank honors a prepetition check

or other item drawn on any account that is the subject of this Motion, either at the direction of Debtors or in a good-faith belief that the Court has authorized such prepetition check or item to be honored, such Bank will not be deemed to be liable to Debtors or to their estates on account of such prepetition check or other item honored post-petition. Such relief is reasonable and appropriate because the Banks are not in a position to independently verify or audit whether Debtors may pay a particular item in accordance with a Court order or otherwise.

34. Finally, Debtors respectfully request that the Court authorize Debtors to continue to pay the Bank Fees, including any Prepetition Bank Fee, and further authorize the Banks to chargeback returned items to the Bank Accounts, whether such items are dated prior to, on, or subsequent to the Commencement Date, in the ordinary course of business.

35. Courts have waived the applicable U.S. Trustee Guidelines on the grounds that they are impractical and potentially detrimental to a debtor's post-petition business operations and restructuring efforts in large chapter 11 cases. *See, e.g., In re Cent. Kan. Crude, L.L.C.*, No. 09-13798 (Bankr. D. Kan. Dec. 3, 2009); *In re Gas-Mart USA, Inc.*, No. 15-41915 (ABF) (Bankr. W.D. Mo. July 9, 2015); *In re Sharper Image Corp.*, Case No. 08-10322 (KG) (Bankr. D. Del. Feb. 20, 2008); *In re Miller Auto. Grp., Inc.*, No. 13-20027 (DRD) (Bankr. W.D. Mo. Jan. 22, 2013); *In re Blue Springs Ford Sales, Inc.*, 12-41176 (DRD) (Bankr. W.D. Mo. Apr. 17, 2012); *In re ITR Concession Co.*, No. 14-34284 (PSH) (Bankr. N.D. Ill. Oct. 28, 2014); *In re Edison Mission Energy*, No. 12-49219 (JPC) (Bankr. N.D. Ill. May 15, 2013); *In re GEI-RP (f/k/a Giordano's Enters., Inc.)*, No. 11-06098 (ERW) (Bankr. N.D. Ill. Feb. 17, 2011).²

VII. MAINTAINING DEBTORS' CASH MANAGEMENT SYSTEM WILL NOT HARM PARTIES IN INTEREST

36. Debtors' continued use of their Cash Management System will greatly facilitate

² Because of the voluminous nature of the orders cited herein, such orders have not been attached to the Motion. Copies of these orders are available upon request to Debtors' proposed counsel.

their transition into chapter 11 by, among other things, avoiding administrative inefficiencies and expenses and minimizing delays in payment of post-petition debts. Debtors respectfully submit that parties in interest will not be harmed by their maintenance of the Cash Management System because Debtors have implemented appropriate mechanisms to ensure that unauthorized payments will not be made on account of obligations incurred prior to the Commencement Date. Specifically, with the assistance of their advisors, Debtors have implemented internal control procedures that prohibit payments on account of prepetition debts without the prior approval of Debtors' finance department. In light of such protective measures, Debtors submit that maintaining the Cash Management System, as modified herein, is in the best interests of their estates and creditors.

37. In addition, the Cash Management System is similar to those commonly employed by corporate entities of comparable size and complexity to Debtors. The Cash Management System provides Debtors with the ability to: (a) efficiently create status reports on the location and amount of funds, which, in turn, allows management to track and control such funds; (b) ensure cash availability; and (c) reduce administrative costs through a centralized method of coordinating the collection and movement of funds.

VIII. THE COURT SHOULD AUTHORIZE DEBTORS TO CONTINUE USING THE BUSINESS FORMS

38. Debtors submit that parties in interest will not be prejudiced if Debtors are authorized to continue to use their business forms substantially in the forms existing immediately before the Commencement Date. Parties doing business with Debtors undoubtedly will be aware of their status as debtors in possession and, thus, changing business forms is unnecessary and would be unduly burdensome. Indeed, courts in this Circuit and others allow debtors to use their prepetition business forms without the "debtor in possession" label. *See, e.g., In re Paul Transp.,*

No. 10-13022-NLJ (Bankr. W.D. Okla. May 21, 2010); *In re Northshore Mainland Servs., Inc.* No. 15-11402 (KJC) (Bankr. D. Del. July 1, 2015); *In re ITR Concession Co.*, No. 14-34284 (PSH) (Bankr. N.D. Ill. Oct. 28, 2014); *In re Edison Mission Energy*, No. 12-49219 (JPC) (Bankr. N.D. Ill. May 15, 2013); *In re Blue Springs Ford Sales, Inc.*, 12-41176 (DRD) (Bankr. W.D. Mo. Apr. 17, 2012); *In re Corus Bankshares, Inc.*, No. 10-26881 (PSH) (Bankr. N.D. Ill. July 9, 2010); *In re Calpine Corp.*, No. 05-60200 (Bankr. S.D.N.Y. Jan. 25, 2006).

IX. THE COURT SHOULD AUTHORIZE DEBTORS TO CONTINUE CONDUCTING INTERCOMPANY TRANSACTIONS IN THE ORDINARY COURSE AND GRANT ADMINISTRATIVE PRIORITY STATUS TO POST-PETITION INTERCOMPANY CLAIMS AMONG DEBTORS AND NON-DEBTOR AFFILIATES

39. Debtors' funds move through the Cash Management System as described above and, at any given time, there may be Intercompany Claims owing by and between Debtor entities, or by and between a Debtor and a non-Debtor affiliate. In addition, and as described above, Intercompany Transactions are regularly made between and among Debtor and non-Debtor affiliates in the ordinary course as part of the Cash Management System.³ Debtors track all fund transfers in their accounting system and can ascertain, trace, and account for all Intercompany Transactions. Debtors, moreover, will continue to maintain records of such Intercompany Transactions, including Intercompany Transactions with non-Debtor affiliates.

40. Since these transactions represent extensions of intercompany credit made in the ordinary course of business that are an essential component of the Cash Management System, Debtors respectfully request the authority to continue conducting the Intercompany Transactions

³ Because Debtors engage in Intercompany Transactions on a regular basis and such transactions are common among large enterprises similar to Debtors, Debtors submit the Intercompany Transactions are ordinary course transactions within the meaning of § 363(c)(1) of the Bankruptcy Code and, thus, do not require this Court's approval. Nonetheless, out of an abundance of caution, Debtors are seeking express authority to engage in such transactions on a post-petition basis. Moreover, the continued performance of the ordinary course Intercompany Transactions is integral to ensure Debtors' ability to operate their businesses as debtors in possession.

in the ordinary course of business without need for further Court order.⁴ If the Intercompany Transactions are discontinued, the Cash Management System and related administrative controls would be disrupted to Debtors' and their estates' detriment. In addition, a number of critical shared services currently provided by the Management Company to Debtors would be disrupted, including payroll and vendor payments, likely resulting in a needless destruction of estate value. Accordingly, Debtors respectfully submit that the continued performance of the Intercompany Transactions is in the best interest of Debtors' estates and their creditors and, therefore, Debtors should be permitted to continue such performance.

41. To ensure each individual Debtor will not, at the expense of its creditors, fund the operations of another entity, Debtors respectfully request, pursuant to § 503(b)(1) of the Bankruptcy Code, that all post-petition payments between or among a Debtor and another Debtor on account of an Intercompany Transaction be accorded administrative expense status. This relief will ensure that each entity receiving payments from a Debtor will continue to bear ultimate repayment responsibility for such ordinary course transactions, thereby reducing the risk that these transactions would jeopardize the recoveries available to each Debtor's respective creditors.

42. Similar relief has been regularly granted by courts in other chapter 11 cases. *See, e.g., In re Gas-Mart USA, Inc.*, No. 15-41915 (ABF) (Bankr. W.D. Mo. July 9, 2015); *In re Northshore Mainland Servs., Inc.* No. 15-11402 (KJC) (Bankr. D. Del. July 1, 2015); *In re Sbarro, LLC*, No. 14-10557 (MG) (Bankr. S.D.N.Y. Apr. 7, 2014); *In re JGP Props., L.L.C.*, 13-40618 (CAN) (Bankr. W.D. Mo. Mar. 13, 2013); *In re Blue Springs Ford Sales, Inc.*, 12-41176 (DRD) (Bankr. W.D. Mo. Apr. 17, 2012); *In re Vertis Holdings, Inc.*, No. 12-12821 (CSS) (Bankr. D. Del. Nov. 1, 2012); *In re Innkeepers USA Trust*, No. 10-13800 (SCC) (Bankr.

⁴ Debtors are not seeking to assume the Intercompany Transactions as executory contracts at this time.

S.D.N.Y. July 20, 2010); *In re Valley Food Servs.*, No. 06-50038 (CAN) (Bankr. W.D. Mo. Feb. 15, 2006); *In re Wire Rope Corp.*, No. 02-50493 (JWV) (Bankr. W.D. Mo. May 17, 2002); *In re Farmland Indus., Inc.*, No. 02-50557 (JWV) (Bankr. W.D. Mo. June 21, 2002).

NOTICE

43. Notice of this Motion has been given to: (a) the United States Trustee; (b) Debtors' secured lenders; (c) Atrium Holding Company; (d) SFI Belmont LLC; (e) JD Holdings, LLC; (f) Debtors' combined 40 largest unsecured creditors; and (g) any party that has appeared and/or requested notice. Debtors submit that, under the circumstances, no further notice of the hearing is necessary and request that any further notice be dispensed with and waived.

WHEREFORE, Debtors respectfully request that this Court enter an order, substantially in the form attached hereto as Exhibit A, granting the relief requested herein and such other relief as the Court deems just and proper.

Respectfully submitted,

STINSON LEONARD STREET LLP

By: /s/ Mark Shaiken _____

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COUNSEL FOR THE DEBTORS

EXHIBIT A – FORM OF ORDER

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

In re:)
)
JOHN Q. HAMMONS FALL 2006, LLC, *et al.*,) Case No. 16-_____
)
Debtors.)
)

**ORDER GRANTING MOTION FOR AUTHORIZATION TO CONTINUE TO USE
EXISTING BANK ACCOUNTS, CHECK STOCK, EXISTING BUSINESS FORMS AND
CASH MANAGEMENT SYSTEMS AS OF THE COMMENCEMENT DATE**

Upon the Motion (the “Motion”)¹ of the above-captioned debtors (collectively, “Debtors”) for entry of an order authorizing Debtors to (a) continue to operate their Cash Management System, (b) honor certain prepetition obligations related thereto, (c) maintain existing business forms, and (d) continue to perform Intercompany Transactions consistent with historical practice, granting related relief, all as more fully set forth in the Motion; the Court having reviewed the Motion; and the Court having determined that the relief requested in the Motion is in the best interests of Debtors, their estates, their creditors and other parties-in-interest; and it appearing that notice of the Motion was good and sufficient under the particular

¹ Capitalized terms used herein and not otherwise defined shall have the meanings ascribed to them in the Motion.

circumstances and that no other or further notice need be given; and upon the record herein; and after due deliberation thereon; and good and sufficient cause appearing therefore, it is hereby ORDERED THAT:

1. The Motion is GRANTED as set forth herein.
2. Debtors are authorized, but not directed, to (a) continue operating the Cash Management System as described in the Motion, (b) honor their prepetition obligations related thereto, (c) maintain existing business forms, and (d) continue conducting ordinary course Intercompany Transactions, including without limitation the Intercompany Transactions described in the Motion.
3. Debtors are further authorized, but not directed, to (a) continue to use, with the same account numbers, the Bank Accounts in existence as of the Commencement Date, (b) use, in their present form, all correspondence and business forms (including, without limitation, letterhead, purchase orders, and invoices), as well as checks and other documents related to the Bank Accounts existing immediately before the Commencement Date, without reference to Debtors' status as debtors in possession, (c) treat the Bank Accounts for all purposes as accounts of Debtors as debtors in possession, (d) deposit funds in and withdraw funds from the Bank Accounts by all usual means, including checks, wire transfers, and other debits, (e) pay the Prepetition Bank Fees, in addition to any other Bank Fees for prepetition transactions that are charged post-petition, (f) reimburse the Banks for any claims arising before or after the Commencement Date in connection with customer checks deposited with the Banks that have been dishonored or returned as a result of insufficient funds in their Bank Accounts, and (g) pay any ordinary course Bank Fees incurred in connection with the Bank Accounts and related cash management and treasury services, and to otherwise perform their obligations under the

documents and agreements governing the Bank Accounts and related cash management and treasury services, including, without limitation, any zero/controlled balance agreements, treasury services or cash management agreements, and balance hold agreements.

4. The Banks are authorized without the need for further order of this Court to: (a) continue to maintain, service, and administer the Bank Accounts as accounts of Debtors as debtors in possession and provide related treasury and cash management services as described in paragraph 3 above, without interruption and in the ordinary course; (b) receive, process, honor, and pay, to the extent of available funds, any and all checks, drafts, wires, ACH transfers, credit card payments, other electronic transfers, or other items presented, issued, or drawn on the Bank Accounts (collectively, the “Disbursements”); and (c) debit or charge back the Bank Accounts for all undisputed prepetition and post-petition Bank Fees, unreimbursed coin and currency orders provided by the Banks from their cash vaults, banking centers, or automated business centers; provided, however, that no Disbursements (excluding any electronic fund transfers that the Banks are obligated to settle) presented, issued, or drawn on the Bank Accounts prior to the Commencement Date shall be honored, unless (i) authorized by order of this Court, (ii) not otherwise prohibited by a “stop payment” request received by the Banks from Debtors, and (iii) supported by sufficient available funds in the Bank Account in question.

5. Debtors’ credit card processors are authorized to process payments in the ordinary course of business, including the netting out of any fees and/or chargebacks whether arising before or after the Commencement Date.

6. In the course of providing cash management services to Debtors, each of the Banks at which the Bank Accounts are maintained is authorized, without further order of this Court, to deduct the applicable fees from the appropriate accounts of Debtors, and further, to

charge back to the appropriate accounts of Debtors any amounts resulting from returned checks or other returned items, including returned items that result from ACH transactions, wire transfers, or other electronic transfers of any kind, regardless of whether such items were deposited or transferred prepetition or post-petition and regardless of whether the returned items relate to prepetition or post-petition items or transfers.

7. Any payment that is authorized by Debtors and paid from a Bank Account by a Bank before the Commencement Date (including any ACH Payment such Bank is or becomes obligated to settle), any instruments issued by such Bank on behalf of any Debtor pursuant to a “midnight deadline” or otherwise, or any reimbursement or charge back for any coin and currency orders provided by the Banks from their cash vaults, banking centers, or automated business centers prior to the Commencement Date, shall be deemed to be paid prepetition, whether or not actually debited from the Bank Account prepetition.

8. Subject to the terms set forth herein, the Banks are authorized to accept, honor and rely upon all representations of Debtors with respect to whether any Disbursement should be honored pursuant to any order of this Court, whether or not such Disbursements are dated prior to, on, or subsequent to the Commencement Date, and whether or not the Banks believe the payment is authorized by an order of this Court. No Bank shall be deemed in violation of this Order or any other order or have any liability to any party for honoring any Disbursement either (a) at the direction of Debtors, (b) in the good faith belief that the Court has authorized such Disbursement to be honored, or (c) as a result of an innocent mistake.

9. Any Banks are further authorized to (a) honor Debtors’ directions with respect to the opening and closing of any Bank Account and (b) accept and hold Debtors’ funds in accordance with Debtors’ instructions; provided, however, that the Banks shall not have any

liability to any party for relying on such representations.

10. For Banks at which Debtors hold Bank Accounts that are not party to a Uniform Depository Agreement with the U.S. Trustee, Debtors shall use their good-faith efforts to cause the Banks to execute a Uniform Depository Agreement in a form prescribed by the U.S. Trustee within 60 days of the date of this Order. The U.S. Trustee's rights to seek further relief from this Court on notice in the event that the aforementioned Banks are unwilling to execute a Uniform Depository Agreement in a form prescribed by the U.S. Trustee are fully reserved.

11. Debtors are authorized to open any new bank accounts or close any existing Bank Accounts as they may deem necessary and appropriate in their sole discretion; provided, however, that Debtors shall give notice within fourteen days to the U.S. Trustee and any statutory committees appointed in these chapter 11 cases; provided, however, that Debtors shall open any such new bank account at a bank that has executed a Uniform Depository Agreement with the U.S. Trustee, or at such bank that is willing to immediately execute such an agreement.

12. Any requirement to establish separate accounts for cash collateral and/or tax payments is hereby waived.

13. Notwithstanding anything to the contrary set forth herein, Debtors are authorized to continue Intercompany Transactions arising from or related to the operation of their business in the ordinary course; provided, however, that Debtors shall not be authorized by this Order to (a) directly or indirectly, make any distribution on account of an equity interest in Debtors held by such non-Debtor affiliate or its beneficial owner or (b) undertake any other Intercompany Transaction that is not on the same terms as, or materially consistent with, Debtors' operation of the business in the ordinary course during the prepetition period. All post-petition payments from a Debtor to another Debtor or to any non-Debtor affiliates under any post-petition

Intercompany Transactions authorized hereunder are hereby accorded administrative expense status under section 503(b) of the Bankruptcy Code. In connection with the Intercompany Transactions, Debtors shall continue to maintain current records with respect to all transfers of cash so that all Intercompany Transactions may be readily ascertained, traced, and properly recorded on intercompany accounts.

14. As soon as practicable after entry of this Order, Debtors shall serve a copy of this Order on the Banks.

15. Notwithstanding the relief granted in this Order and any actions taken pursuant to such relief, nothing in this Order shall be deemed: (a) an admission as to the validity of any prepetition claim against a Debtor entity; (b) a waiver of Debtors' right to dispute any prepetition claim on any grounds; (c) a promise or requirement to pay any prepetition claim; (d) an implication or admission that any particular claim is of a type specified or defined in this Order or the Motion; (e) a request or authorization to assume any prepetition agreement, contract, or lease pursuant to section 365 of the Bankruptcy Code; or (f) a waiver of Debtors' rights under the Bankruptcy Code or any other applicable law.

16. Notwithstanding anything to the contrary contained herein, the relief granted in this Order and any payment to be made hereunder shall be subject to the terms of any orders granting the use of cash collateral approved by this Court in these chapter 11 cases (including with respect to any budgets governing or relating to such use), and to the extent there is any inconsistency between the terms of such cash collateral orders and any action taken or proposed to be taken hereunder, the terms of such cash collateral orders shall control.

17. Notwithstanding Bankruptcy Rule 6004(h), this Order shall be effective and

enforceable immediately upon entry hereof.

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