

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

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

**JD HOLDINGS L.L.C.'S OBJECTION TO CLAIM
OF HEARTLAND FINANCIAL SERVICES, INC.**

JD Holdings, L.L.C. ("JD Holdings"), pursuant to 11 U.S.C. § 502(a) and (b) and Rule 3007(a) of the Fed. R. Bankr. P., submits this objection (the "Objection") to the proof of claim numbered 277 (the "Claim"),¹ filed by Heartland Financial Services, Inc. ("Heartland") in the above-captioned, jointly-administered Chapter 11 cases. In support of the Objection, JD Holdings respectfully states as follows:

BACKGROUND

The Claim seeks \$450,000, purportedly based on October 1, 2009 Advisor Agreement between, on the one hand, non-Debtors John Q. Hammons, John Q. Hammons Hotel, LLC,² and its affiliates, and on the other hand, Heartland (the "Purported October 2009 Agreement"). A copy of the Purported October 2009 Agreement is not attached to the Claim, though based on the Claim amount JD Holdings believes it to be the purported advisor agreement attached hereto as Exhibit B, which was purportedly signed by the parties on October 2, 2009 (Hammons) and October 5, 2009 (Heartland). The Purported October 2009 Agreement calls for Heartland to receive \$150,000 per year for three years—a total of \$450,000—in exchange for Heartland "identify[ing] and

¹ A copy of the Claim is attached hereto as Exhibit A.

² JD Holdings is not aware of any entity existing under this name.

introduc[ing] financial consulting of new and existing hotel and convention center Projects to Hammons. [sic]" See Ex. B. ¶¶ 1-2. A copy of the Purported October 2009 Agreement was attached as an exhibit to a complaint filed by Heartland in Missouri state court relating to the same subject matter as the Claim, *Heartland Financial Services, LLC v. John Q. Hammons, et al.*, No. 1131-cv-07667.

In addition to the Purported October 2009 Agreement, JD Holdings is aware of at least two subsequent and superseding purported agreements between Heartland and a Hammons entity covering the same subject matter. The first, called an "Engagement Letter/Fee Agreement" dated March 13, 2010, is between John Q. Hammons Hotels & Resort, LLC and Heartland, and attached hereto as Exhibit C (the "March 2010 Agreement"). It states that Heartland "for a fee [has] agreed to assist [John Q. Hammons Hotels & Resort, LLC] in obtaining financing" and contemplates that \$533 million in financing will be received for use on seven separate hotel projects. See Ex. C. at 1. It further provides that Heartland will be paid a fee equal to a percentage of the loans placed (*id.* ¶ 4) and specified that the agreement "shall supersede any other Financial Placement fee agreements [John Q. Hammons Hotels & Resort, LLC] may have signed with [Heartland]." *Id.* ¶ 5. On information and belief, the financing referenced in the March 2010 Agreement never materialized.

The second subsequent agreement has the same form as, and identical parties to, the Purported October 2009 agreement, but with signatures dated July, 14 2010 (the "July 2010 Agreement"), and is attached hereto as Exhibit D. Both the Purported October 2009 Agreement and the July 2010 Agreement are dated as of October 1, 2009 (although neither was actually signed on that date). Notably, the Purported October 2009 Agreement's payment provision calling for \$450,000 to be paid to Heartland was crossed out and replaced with a handwritten notation specifying that Heartland would be paid a percentage of up to \$800 million in loans. See Ex. D.

at 1. The July 2010 Agreement further states that it “constitutes the entire agreement and understanding between the parties . . . and *integrates all prior discussion between them related to the subject matter hereof.*” *Id.* ¶ 5 (emphasis added). On information and belief, prior to the signing of the July 2010 Agreement, Heartland was under the impression that Hammons or Hammons-related entities were close to receiving \$800 million in financing, though ultimately that financing never materialized.

ARGUMENT

I. The Claim should be disallowed because it does not provide adequate information to put the Debtors or creditors on notice of the purported claim.

a. The Claim does not identify the Debtor or Debtors against which the Claim is asserted.

The Claim should be disallowed because it does not sufficiently identify the Debtor or Debtors against which it is asserted. The Claim itself lists “Heartland Financial Services, LLC” as the debtor, and not any entity that is actually a Debtor in these cases. *See* Ex. A at 1. Moreover, the Purported October 2009 Agreement on which the claim is presumably based is not between or signed by any Debtors.

b. The Claim is not entitled to a presumption of validity because Heartland failed to attach necessary supporting documentation and the Court should prohibit Heartland from introducing such documentation in support of its claim.

The Claim should not be granted a presumption of validity because Heartland failed to attach supporting documentation and failed to explain the lack of such documentation as required by the Federal Rules of Bankruptcy Procedure. *See* Fed. R. Bankr. P. 3001(c)(1) (“when a claim . . . is based on a writing, a copy of the writing shall be filed with the proof of claim. If the writing has been lost or destroyed, a statement of the circumstances of the loss or destruction shall be filed with the claim”). The failure to attach such documentation (or explain its absence) strips a claim of the *prima facie* validity it would otherwise be afforded pursuant to Fed. R. Bankr. P. 3001(f).

See In re Reynolds, No. 11-30984 HRT, 2012 WL 3133489, at *3 (Bankr. D. Colo. July 31, 2012). Moreover, pursuant to Fed. R. Bankr. P. 3001(c)(2)(D)(i), the Court may now “preclude the holder from presenting the omitted information, in any form, as evidence in any contested matter or adversary proceeding in the case, unless the court determines that the failure was substantially justified or is harmless.” Here, Heartland’s failure to attach the Purported October 2009 Agreement cannot be justified because its use in the pending state litigation shows the Purported October 2009 Agreement was readily available to Heartland. Nor can Heartland’s failure be considered harmless. First, there two substantially different purported agreements dated October 1, 2009 (neither of which was actually signed on that date), meaning JD Holdings has been forced to speculate on which purported agreement is being referenced. Second, the core of this dispute is centered on the existence of multiple versions of that agreement and the failure to attach it is little more than a transparent attempt to invite confusion and mistake in the hope Heartland could prevail in error. Accordingly, Heartland should be prohibited from presenting the any purported agreement as evidence in support of the Claim.³

II. The Claim should be disallowed because the Purported October 2009 Agreement was superseded by two subsequent contracts under which no payment is required.

The Claim should be denied because the Purported October 2009 Agreement, which appears to be the basis for the claim based on the \$450,000 Claim amount, has been superseded by two subsequent contracts, neither of which require payment to Heartland. The Code provides that a claim may not be allowed when “such claim is unenforceable against the debtor and the property of the debtor, under any agreement” *See* 11 U.S.C. § 502(b)(1). Here, if there ever was an obligation for Hammons or an entity controlled by Hammons to pay Heartland under the

³ Should it seek it, Heartland should also be denied permission to amend its deficient Claim. *See In re DePugh*, 409 B.R. 84, 104 (Bankr. S.D. Tex. 2009) (refusing to allow claimant “to amend its deficient claims a[f]ter the bar date with documents that it either had, or could have easily obtained, in a timely manner.”)

Purported October 2009 Agreement it was rendered unenforceable by both the March 2010 Agreement and the July 2010 Agreement.

First, the March 2010 Agreement, which covered the same subject matter as the Purported 2009 Agreement, states that it “shall supersede any other Financial Placement fee agreements [John Q. Hammons Hotels & Resort, LLC] may have signed with [Heartland].” Ex. C ¶ 5. That provision means the Purported October 2009 Agreement (and its associated \$450,000 fee) was almost immediately superseded, and, since the March 2010 Agreement calls for a percentage-based payment scheme on financing that never materialized, no payment is due to Heartland.

Second, and similarly, the July 2010 Agreement—which is identical to the Purported October 2009 Agreement in everything except payment terms—also contains a provision integrating all prior discussion between the parties. *See* Ex. D ¶ 5. And, as with the March 2010 Agreement, the July 2010 Agreement calls for a percentage-based payment scheme relating to financing that never materialized, so again, no payment is due to Heartland.

As a result of being superseded on two separate occasions, the Purported October 2009 Agreement is “unenforceable against the debtor and property of the debtor” and as such must be disallowed pursuant to 11 U.S.C. § 502(b)(1).

CONCLUSION

For the foregoing reasons, the Claim should be disallowed.

Dated: May 7, 2018
Kansas City, Missouri

OF COUNSEL:

Scott A. Edelman (admitted *pro hac vice*)
Jed M. Schwartz (admitted *pro hac vice*)
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MCDOWELL RICE SMITH & BUCHANAN

/s/ Jonathan Margolies
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605 West 47th Street
Kansas City, Missouri 64112
Tel: (816) 753-5400
Fax: (816) 753-9996
jmargolies@mcdowellrice.com

Counsel for JD Holdings, L.L.C.

EXHIBIT A

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 _____	Name _____
<u>1901-C S. Ventura Ave</u>	
Number _____ Street _____	Number _____ Street _____
<u>Springfield, Missouri 65804</u>	
City _____ State _____ ZIP Code _____	City _____ State _____ ZIP Code _____
Contact phone <u>417.887.0133</u>	Contact phone _____
Contact email <u>broubal@blmlawyers.com</u>	Contact email _____
<u>pbaid@blmlawyers.com</u>	

Uniform claim identifier for electronic payments in chapter 13 (if you use one):

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 Q. 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:

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). Amount entitled to priority \$ _____

☐ 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).

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.

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.

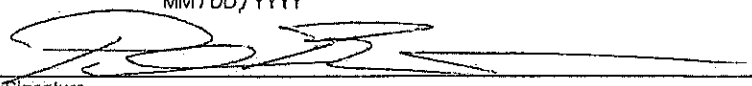
☐ I am a guarantor, surety, endorser, or other codebtor. Bankruptcy Rule 3005.

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 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		

EXHIBIT B

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.

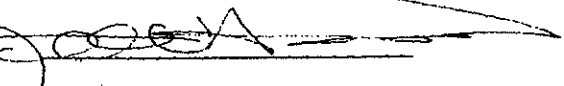
Please acknowledge your acceptance of the terms and conditions of this Advisor Agreement by signing in the space designated below.

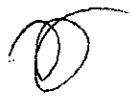
HEARTLAND FINANCIAL SERVICES, LLC

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

APPROVED AND ACCEPTED

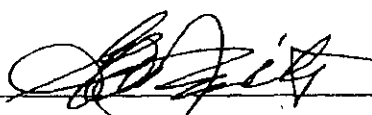
JOHN Q. HAMMONS

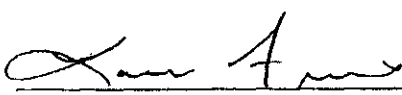
Signature: 
Name: John Q Hammons
Title: Individual
Date: 10/2/09



WITNESSED

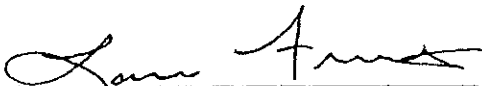
IN WITNESS WHEREOF, the parties hereto have witnessed John Q. Hammons who is personally known to me, is of sound mind, and has executed this Agreement of his own free will on the day and year first above written.

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

Signature: 
Name: LAUREN FRUITS
Address: 185 NE CHINQUAPIN 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 CHINGWAPIN CT LEES SUMMIT, MO 64064
Date: 10/5/09

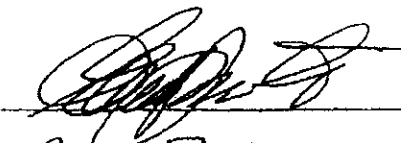
Signature: 
Name: GARY FRUITS
Address: 185 NE CHINGWAPIN CT. Lees Summit, MO 64064
Date: 10/5/09

EXHIBIT C



1948 East Santa Fe, Olathe, Kansas 66062

Office: 913.782.9000 Fax: 913.768.6171

ENGAGEMENT LETTER/FEE AGREEMENT

March 13, 2010

John Q. Hammons Hotels & Resort, LLC
Mr. John Q. Hammons
Managing Member
300 John Q. Hammons Parkway, Suite 900
Springfield, MO 65806

This will confirm the fee agreement entered into by and between John Q. Hammons Hotels & Resort, LLC hereinafter referred to as "Borrower" and Heartland Financial Services, LLC hereinafter referred to as "Advisor", wherein Advisor, for a fee have agreed to assist Borrower in obtaining financing on a best-effort basis.

1. Type of Loan. The structure of the financing will be determined by agreement between Borrower and Advisor. In general terms Borrower is seeking project debt financing for construction and permanent fixed rate long-term commercial mortgage loan on these projects.
2. Amount of Loan. Borrower and Owner are seeking financing in an amount of approximately Five Hundred Thirty Three Million and no/100 Dollars (\$533,000,000 USD or maximum amount the project will support). Specific projects are as follows:

Renaissance Marriott Hotel & Conference Center \$75,000,000 Colorado Springs, Colorado	Embassy Suites Hotel & Conference Center \$74,000,000 Pleasant Grove, Utah
Embassy Suites Hotel, Spa and Conference Center \$90,000,000 Osage Beach, Missouri	Embassy Suites Hotel & Conference Center \$75,000,000 Boise, Idaho
Embassy Suites Hotel & Conference Center \$75,000,000 Lake Norman, North Carolina	Embassy Suites Hotel & Conference Center \$75,000,000 Denton, Texas
Embassy Suites Hotel \$69,000,000 Wilmington, North Carolina	

3. Advisor's Services. Advisor will assist Borrower and Owner and act as financial Advisor to Borrower with respect to the Loan. Advisor agree to provide general advice and consultation in all areas where Advisor have capabilities and experience, including but not limited to financial structuring of the Loan, negotiation of acceptable terms and conditions with potential funding sources.
4. Compensation to Advisor. In consideration of services rendered, Borrower ~~agrees~~ to pay Advisor a placement fee equal to an one and one half of one (1.50) percent of the gross amount of the loans. The Advisor shall be entitled to compensation as placement fee for the loans if loan funding is a result of their introduction of the project to the lender. *Fee will be lowered to 0.75% after Colorado Springs Co.* 3
The Placement Fee is considered due, earned and payable by Borrower and Owner to Advisor upon (a) execution and delivery by the Lender of a Commitment Letter (the "Commitment") evidencing Lender's or Lenders' approval of the Loan(s) and (b) acceptance of the Commitment Letter by the Borrower and/or Owner. The Placement Fee is to be paid at the time of closing and funding of the Loans. All placement fees due Advisor shall be paid by the Title Company or Escrow Agent at the time of closing.
5. No Other Broker Fees Allowed. This agreement shall supersede any other Financial Placement fee agreements borrower may have signed with Advisor. The fees outlined in this agreement are the only financial placement fees that will be allowed by the borrower on this transaction. No Advisor will be permitted to have the Borrower sign an additional fee agreement for the funding of this project.
6. Indemnification of Advisor. Borrower and Owner 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 of Advisor of its duties under this Engagement Letter, except for any damages, claims, expenses or causes of action arising as a result of Advisor' gross negligence or willful misconduct.
7. Protection of Lenders. Borrower and Owner agree that Lenders presented by Advisor will be reserved to introducing member of the Advisor team on the same fee basis for a period of sixty (60) months from the execution of this Engagement Letter. Borrower and other Advisor Team members agree to not circumvent introducing Advisor and go directly to Lenders introduced with other transactions during the sixty (60) month period discussed in this paragraph.
8. Protection of Advisor documents. Borrower and Owner agree that Advisor shall retain all rights to any and all documents prepared by them as a part of loan package on the subject projects. Borrower and Owner understand and agree that they shall not provide such documents to any other lending source or broker. In the event such information is shared with other lending sources or brokers, and funding is subsequently obtained from that source, Advisor shall be entitled to the full Placement Fee as outlined in this agreement.
9. Successors. This Policy shall be binding on the parties hereto, their heirs, administrators, executors and assigns. In the event of a merger, consolidation, reorganization involving a Party, or sale of all or substantially all of the assets of a Party, this Agreement shall continue in force and become an obligation of a Party's successor or assigns. The Party's successors and assigns may enforce the provisions of this agreement.

10. Advertising. Borrower and Owner agree, that upon closing of the Loan, Advisor may issue to the public press releases, advertisements, and other promotional materials describing in general terms the Loan. The provisions of this paragraph shall survive the Closing of any of the Loans.

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

ADVISOR:

HEARTLAND FINANCIAL SERVICES, LLC- Lead Advisor

By: Jerry Bengtson
By: Jerry Bengtson, Managing Member

Date: 3/13/10

APPROVED AND ACCEPTED BY BORROWER

JOHN Q. HAMMONS HOTELS & RESORTS, LLC

Signature: [Signature]

Name: _____

Title: _____

Date: _____

ACKNOWLEDGEMENT

STATE OF MISSOURI)
) SS.
COUNTY OF GREENE)

BE IT REMEMBERED, that on this ____ day of _____, 2010, before me the undersigned, a Notary Public in the and for the county and state aforesaid, came John Q. Hammons who is (are) personally known to me to be the same persons who executed the within instrument, and such persons duly acknowledged the execution of the same.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year last above written.

Notary Public

My Commission Expires: _____.

ACKNOWLEDGEMENT

STATE OF MISSOURI)
) SS.
COUNTY OF GREENE)

BE IT REMEMBERED, that on this ____ day of _____, 2009, before me the undersigned, a Notary Public in the and for the county and state aforesaid, came Jerry Bengtson who is (are) personally known to me to be the same persons who executed the within instrument, and such persons duly acknowledged the execution of the same.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year last above written.

Notary Public

My Commission Expires: _____.

EXHIBIT D

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:~~

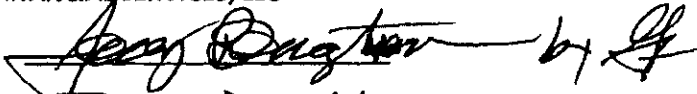
◆ April 1, 2010	\$75,000.00
◆ October 1, 2010	\$75,000.00
◆ April 1, 2011	\$75,000.00
◆ October 1, 2011	\$75,000.00
◆ April 1, 2012	\$75,000.00

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.

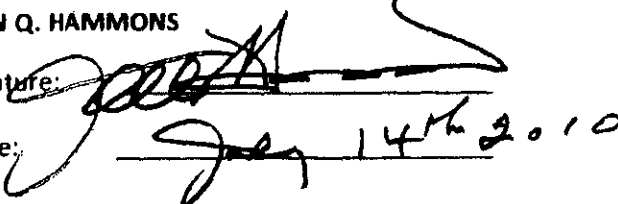
Please acknowledge your acceptance of the terms and conditions of this Advisor Agreement by signing in the space designated below.

HEARTLAND FINANCIAL SERVICES, LLC

Signature: 
Name: Terry Donahoe
Title: Managing Member
Date: 7/19/10

APPROVED AND ACCEPTED

JOHN Q. HAMMONS

Signature: 
Name: John Q. Hammons
Title: _____
Date: _____