The relief described hereinbelow is SO ORDERED.

SIGNED this 1st day of May, 2020.

Robert D. Berger
United States Bankruptcy Judge

UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF KANSAS
KANSAS CITY DIVISION

In re:	)	
	)	
JOHN Q. HAMMONS FALL 2006, LLC, *et al.*,	)	**Case No. 16-21142-11**
	)	
Debtors.	)	**(Jointly Administered)**

AGREED PROTECTIVE ORDER

JD Holdings, L.L.C. ("JDH") and UBS Securities LLC ("UBS," and together with JDH, the "Parties") anticipate that discovery in this case is likely to involve the exchange of certain information that is proprietary and confidential to the Parties. Therefore, to expedite the flow of discovery material, facilitate the prompt resolution of disputes over claims of confidentiality, and provide adequate protection, on the agreed motion of the Parties and for good cause shown,

IT IS HEREBY ORDERED THAT:

1. Scope. All documents, materials and other information produced in the course of discovery of this case, including responses to discovery requests, all deposition and witness testimony, and exhibits, and any information derived directly therefrom, whether in tangible or

intangible form (hereinafter collectively, "Litigation Material"), are subject to this Order concerning Confidential Information as set forth below.

2. Definition of Confidential Information. As used in this Order, "Confidential Information" is defined as Litigation Material that the producing party designates in good faith as having been previously maintained in a confidential manner and should be protected from disclosure and use outside the litigation because its disclosure and use is restricted by statute or could potentially cause harm to the interests of the disclosing party or nonparties. Litigation Material that is available to the public may not be designated as Confidential Information.

3. Form and Timing of Designation. To the extent Litigation Material is in tangible form, the producing party may designate Litigation Material as containing Confidential Information and therefore subject to protection under this Order by marking or placing the words "CONFIDENTIAL" (hereinafter "the marking") on the Litigation Material and on all copies in a manner that will not interfere with the legibility of the Litigation Material. As used in this Order, "copies" includes electronic images, duplicates, extracts, summaries or descriptions that contain the Confidential Information. The marking will be applied prior to or at the time the Litigation Material is produced or disclosed. Applying the marking to Litigation Material does not mean that the Litigation Material has any status or protection by statute or otherwise except to the extent and for the purposes of this Order. Copies that are made of any designated Litigation Material must also bear the marking, except that indices, electronic databases, or lists of Litigation Material that do not contain substantial portions or images of the text of marked Litigation Material and do not otherwise disclose the substance of the Confidential Information are not required to be marked. By marking a designated Litigation Material as confidential, the designating attorney thereby

certifies his/her good faith belief that the Litigation Material contains Confidential Information as defined in this Order.

4. Testimony. To the extent Litigation Material is in intangible form, including deposition or witness testimony, a party may designate Litigation Material as containing Confidential Information and therefore subject to protection under this Order by: (i) by a statement on the record, by counsel, at the time of such disclosure; (ii) by written notice to all Parties within 10 days after receipt of the deposition or hearing transcript; or (iii) by directing the court reporter that the appropriate confidentiality legend be affixed to the first page and all portions of the original and all copies of the transcript containing any Confidential Information. Such designations must be specific as to the portions of the transcript and/or any exhibits to be protected.

5. Inadvertent Failure to Designate. Inadvertent failure to designate any Litigation Material as containing Confidential Information will not constitute a waiver of an otherwise valid claim of confidentiality pursuant to this Order, so long as a claim of confidentiality is asserted within 7 days after discovery of the inadvertent failure provided that any disclosure prior to the late designation shall not be a violation of this Protective Order.

6. Protection of Confidential Information.

(a) **General Protections**. Confidential Information must be used or disclosed solely for purposes of prosecuting or defending this lawsuit, including any appeals.

(b) **Who May View Designated Confidential Information**. Except with the prior written consent of the designating party or prior order of the court, Confidential Information may only be disclosed to the following persons:

(1) The parties to this litigation, including any employees, agents, and representatives of the parties;

(2) Counsel for the parties and employees and agents of counsel;

(3) The court and court personnel, including any special master appointed by the court, and members of the jury;

(4) Court reporters, recorders, and videographers engaged for depositions;

(5) Any mediator appointed by the court or jointly selected by the parties;

(6) Any expert witness, outside consultant, or investigator retained specifically in connection with this litigation, but only after such persons have completed the certification contained in Attachment A, Acknowledgment and Agreement to be Bound;

(7) Any potential, anticipated, or actual fact witness and his or her counsel, but only to the extent such Confidential Information will assist the witness in recalling, relating, or explaining facts or in testifying, and only after such persons have completed the certification contained in Attachment A;

(8) The author or recipient of the Litigation Material (not including a person who received the Litigation Material in the course of the litigation);

(9) Independent providers of Litigation Material reproduction, electronic discovery, or other litigation services retained or employed specifically in connection with this litigation; and

(10) Other persons only upon consent of the producing party and on such conditions as the parties may agree.

(c) **Control of Litigation Material**. The parties must take reasonable efforts to prevent unauthorized or inadvertent disclosure of Litigation Material designated as containing Confidential Information pursuant to the terms of this Order. Counsel for the parties must maintain a record of those persons, other than those falling within categories 6(b)(1)-(4) above, who have reviewed or been given access to the Litigation Material along with the originals of any forms signed by those persons acknowledging their obligations under this Order.

7. Filing of Confidential Information. In the event a party seeks to file any Litigation Material containing information subject to protection under this Order with the court, that party must take appropriate action to insure that the Litigation Material receives proper protection from public disclosure including: (a) filing redacted Litigation Material with the consent of the party who designated the Litigation Material as Confidential Information; or (b) seeking

permission to file Litigation Material under seal by filing a motion for leave to file under seal in accordance with D. Kan. Rule 5.4.6. Nothing in this Order will be construed as a prior directive to allow any Litigation Material to be filed under seal. The mere designation of Litigation Material as Confidential Information pursuant to this Order is insufficient to satisfy the court's requirements for filing under seal in light of the public's qualified right of access to court dockets. The Parties understand that the requested Litigation Material may be filed under seal only with the permission of the court after proper motion. If the motion is granted and the requesting party permitted to file the requested Litigation Material under seal, only counsel of record and unrepresented parties will have access to the sealed documents.

8. Challenges to a Designation. The designation of any Litigation Material as Confidential Information is subject to challenge by any party. Before filing any motion or objection to a designation, the objecting party must meet and confer in good faith to resolve the objection informally without judicial intervention. A party that elects to challenge a designation may file and serve a motion that identifies the challenged material and sets forth in detail the basis for the challenge. The burden of proving the necessity of a designation remains with the party asserting confidentiality. Until the court rules on the challenge, all parties must continue to treat the Litigation Material as Confidential Information under the terms of this Order.

9. Use of Confidential Litigation Material at Trial or Hearing. Nothing in this Order will be construed to affect the use of any Litigation Material at any trial or hearing. A party that intends to present or that anticipates that another party may present Confidential Information at a hearing or trial must bring that issue to the attention of the court and the other parties without disclosing the Confidential Information. The court may thereafter make such orders as are necessary to govern the use of such Litigation Material at the hearing or trial.

10. Obligations on Conclusion of Litigation.

(a) **Order Remains in Effect**. Unless otherwise agreed or ordered, all provisions of this Order will remain in effect and continue to be binding after conclusion of the litigation.

(b) **Return of Confidential Information**. Within 60 days after this litigation concludes by settlement, final judgment, or final order, including all appeals, all Litigation Material designated as Confidential Information, including copies as defined above, must be returned to the party who previously produced the Litigation Material unless: (1) the Litigation Material has been offered into evidence or filed without restriction as to disclosure; (2) the parties agree to destruction of the Litigation Material to the extent practicable in lieu of return; or (3) as to Litigation Material bearing the notations, summations, or other mental impressions of the receiving party, that party elects to destroy the Litigation Material and certifies to the producing party that it has done so.

(c) **Retention of Work Product**. Notwithstanding the above requirements to return or destroy Litigation Material, counsel may retain attorney work product, including an index which refers or relates to designated Confidential Information. This work product will continue to be Confidential Information under this Order. An attorney may use his or her own work product in subsequent litigation provided that its use does not disclose Confidential Information.

11. Order Subject to Modification. This Order is subject to modification by the court on its own motion or on motion of any party or any other person with standing concerning the subject matter. The Order must not, however, be modified until the parties have been given notice and an opportunity to be heard on the proposed modification.

12. No Prior Judicial Determination. This Order is entered based on the representations and agreements of the Parties and for the purpose of facilitating discovery.

Nothing in this Order will be construed or presented as a judicial determination that any Litigation Material designated as Confidential Information by counsel or the parties is entitled to protection under Fed. R. Civ. P. 26(c) or otherwise until such time as the court may rule on a specific issue.

13. Jurisdiction. Each person to whom disclosure of all or part of the aforesaid Confidential Information is made agrees to subject himself/herself to the jurisdiction of this Court for the purpose of proceedings relating to the performance under, compliance with, or violation of this Protective Order. The court's jurisdiction to enforce the provisions of this Order will terminate on the final disposition of this case. But a party may file a motion to seek leave to reopen the case to enforce the provisions of this Order.

14. Persons Bound by Protective Order. This Order will take effect when entered and is binding upon all counsel of record and their law firms, the Parties, employees of the Parties, and persons made subject to this Order by its terms.

15. Protections Extended to Third-Party's Confidential Information. The Parties agree to extend the provisions of this Protective Order to Confidential Information produced in this case by third parties, if timely and properly requested by the third party or by a party to this action.

16. Confidential Information Subpoenaed or Ordered Produced in Other Litigation. If a receiving party is served with a subpoena or an order issued in other litigation that would compel disclosure of any Litigation Material designated as Confidential Information, the receiving party must so notify the designating party, in writing, immediately and in no event more than five business days after receiving the subpoena or order. Such notification must include a copy of the subpoena or court order.

The receiving party also must immediately inform in writing the party who caused the subpoena or order to issue in the other litigation that some or all of the material covered by the subpoena or order is the subject of this Order. In addition, the receiving party must deliver a copy of this Order promptly to the party in the other action that caused the subpoena to issue.

The purpose of imposing these duties is to alert the interested persons to the existence of this Order and to afford the designating party in this case an opportunity to try to protect its Confidential Information in the court from which the subpoena or order issued. The designating party bears the burden and the expense of seeking protection in that court of the Litigation Material, and nothing in these provisions should be construed as authorizing or encouraging a receiving party in this action to disobey a lawful directive from another court. The obligations set forth in this paragraph remain in effect while the party has in its possession, custody, or control Confidential Information designated by the other party to this case.

17. Inadvertent Disclosure of Information Covered by Attorney-Client Privilege or Work Product. The inadvertent disclosure or production of any Litigation Material that is subject to an objection on the basis of attorney-client privilege or work product protection, including, but not limited, to Litigation Material that may be considered Confidential Information under the Protective Order, will not be deemed to waive a party's claim to its privileged or protected nature or estop that party or the privilege holder from designating the Litigation Material as attorney client privileged or subject to the work product doctrine at a later date. Any party receiving any such Litigation Material must return it upon request to the producing party. Upon receiving such a request, the receiving party must return the Litigation Material to the producing party within 7 days, regardless of whether the receiving party agrees with the claim of privilege and/or work product protection. Disclosure of the Litigation Material by the other party prior to

such later designation will not be deemed a violation of the provisions of this Order. Although the provisions of this section constitute an order pursuant to Rule 502(d) and (e) of the Federal Rules of Evidence, and will be construed in a manner consistent with the maximum protection provided by said rule, nothing in this Order is intended or will be construed to limit a party's right to conduct a review of Litigation Material, including electronically-stored information, for relevance, responsiveness, or segregation of privileged or protected information before production.

18. No Admission. Nothing in this Order shall be construed as an admission or finding as to the merits of the Parties' claims or the relevance, authenticity, foundation or admissibility of any Litigation Material.

IT IS SO ORDERED.

STIPULATED AND AGREED TO BY:

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ATTACHMENT A

ACKNOWLEDGMENT AND AGREEMENT TO BE BOUND

The undersigned hereby acknowledges that he/she has read the Protective Order dated _____ in the case captioned *In Re: John Q. Hammons Fall 2006, Inc., et al.,* Case No. 16-21142, and attached hereto, understands the terms thereof, and agrees to be bound by its terms. The undersigned submits to the jurisdiction of the United States Bankruptcy Court for the District of Kansas, in matters relating to this Protective Order and understands that the terms of the Protective Order obligate him/her to use materials designated as Confidential Information in accordance with the order solely for the purposes of the above-captioned action, and not to disclose any such Confidential Information to any other person, firm, or concern, except in accordance with the provisions of the Protective Order.

The undersigned acknowledges that violation of the Protective Order may result in penalties for contempt of court.

Name: _____

Job Title: _____

Employer: _____

Business Address: _____

_____

Date: _____

_____
Signature