The relief described hereinbelow is SO ORDERED.

SIGNED this 23rd day of August, 2016.

Robert D. Berger
United States Bankruptcy Judge

UNITED STATES BANKRUPTCY COURT
DISTRICT OF KANSAS AT KANSAS CITY

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

AMENDED ORDER AUTHORIZING, BUT NOT DIRECTING, PAYMENTS OF PREPETITION CLAIMS OF CERTAIN CRITICAL VENDORS

On August 22, 2016, the Court held a hearing (the "Hearing") to consider the Debtors' Motion for Entry of Amended Order Authorizing, but Not Directing, Payments of Prepetition Claims of Certain Critical Vendors (the "Motion")[1] of the above-captioned debtors (collectively, "Debtors"" seeking authorization to make payments, within their sole discretion, on the prepetition claims of certain parties who supply goods or services critical to the continued

[1] Unless otherwise defined herein, capitalized terms used herein shall have the meanings ascribed to them in the Motion.

operation of the Debtors' business, and to condition those payments on certain agreements and acknowledgements by the Critical Vendors; 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 hearing on the Motion was good and sufficient under the particular 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; for the reasons set forth on the record at the Hearing, it is hereby ORDERED THAT:

1. The Motion is GRANTED as set forth herein.

2. The Debtors are authorized, but not directed, in the reasonable exercise of their business judgment, to pay the prepetition claims of the Critical Vendors upon the terms and in the manner provided in this Order.

3. Nothing in this Order shall be construed as requiring the Debtors to make a payment to a particular creditor or claimant.

4. Nothing in this Order shall be deemed to constitute an assumption, adoption or rejection of any executory contract or agreement between the Debtors and any third party or to require the Debtors to make any of the payments authorized herein.

5. Nothing in this Order shall be construed (a) to limit, or in any way affect, the Debtors' ability to dispute any claim of any Critical Vendor or (b) as a waiver by the Debtors of their rights to contest any invoice or other claim of a Critical Vendor under applicable law.

6. The Debtors shall maintain a matrix beginning on the Commencement Date summarizing (a) the name of each Critical Vendor; (b) the amount each Critical Vendor was paid

on account of its prepetition claim and (c) the goods and/or services provided by each Critical Vendor.

7. By accepting any payments authorized hereunder, each Critical Vendor shall be deemed to have agreed to the following:

(i) To provide the Debtors with normalized trade credit and provide other business terms on a post-petition basis consistent with terms acceptable to the Debtors. Such terms shall be in consideration of industry Trade Terms[2] and existing contractual obligations between the parties and shall in no event be less than the most favorable trade terms that were in effect within 180 days prior to the Commencement Date between the Critical Vendors and each of the Debtors for whom the Critical Vendors provide goods or services;

(ii) Not to file or otherwise assert against the Debtors or any of their respective assets or property, whether real or personal, any lien related in any way to any remaining prepetition amounts alleged owed to the Critical Vendors by the Debtors arising from agreements entered into prior to the Commencement Date and that to the extent such a lien was previous obtained, the Critical Vendor agrees to immediately take all necessary actions to remove such lien;

(iii) That if the Critical Vendor's participation in the payment program authorized by this Motion terminates, or if a Critical Vendor refuses to continue to supply goods to the Debtor on the Trade Terms, any payments received by such Critical Vendor will be deemed to have been in payment of then outstanding post-petition obligations, if any, owed to such Critical Vendor and that such Critical Vendor shall immediately repay to the applicable Debtor any payments made to it on account of a prepetition claim to the extent that the aggregate amount of

[2] Capitalized terms shall have the same meaning as set forth in the Motion.

such payments exceeds the post-petition obligations then outstanding, without the right of any setoffs, claims, provisions for payment of reclamation or trust fund claims or otherwise; and

(iv) To consent to the jurisdiction of the Bankruptcy Court for enforcement of any Order issued granting the relief requested herein.

8. In the event that the Debtors cease purchases from a Critical Vendor, (i) such Critical Vendor may cease supplying products or services to the Debtors, and (ii) such Critical Cendor shall not, as a result of such cessation, be required to return to the Debtors, or to any trustee appointed in the Debtors' cases, any of the payments received pursuant to this Order.

9. In the event that a Critical Vendor is required to return any portion of any payment made to such Critical Vendor under this Order, such Critical Vendor shall be permitted to file a claim for any prepetition amounts that will become "unpaid," including a claim for any amounts qualifying for payment under § 503(b)(9) of the Bankruptcy Code. The Debtors do not concede that any goods were shipped in the ordinary course of business between the Debtors and such Critical Vendor, and retain the right to object to any such claims on that basis, but the Debtors agree that they shall not oppose such claim on the grounds that (i) the claim is untimely, or (ii) the claim barred by such Critical Vendor's participation in the critical vendor program set forth herein.

10. The requirements set forth in Fed. R. Bankr. P. 6003(b) are satisfied by the averments in the Motion or are otherwise deemed waived.

11. Notwithstanding any provision of the Bankruptcy Rules, the terms and conditions of this Order shall be immediately effective and enforceable upon its entry.

12. The Court retains jurisdiction with respect to all matters arising from or related to the implementation of this Order.

# # #

SUBMITTED BY:

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