



The relief described hereinbelow is SO ORDERED.

SIGNED this 27th day of January, 2017.

Robert D. Berger
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**
)
Debtors.) **(Jointly Administered)**
)

**AMENDED ORDER APPROVING DEBTORS' MOTION TO USE CASH
COLLATERAL AND GRANT OF ADEQUATE PROTECTION**

Upon the motion (the "Motion")¹ of the above-captioned debtors (collectively, the "Debtors") for entry of an order approving each of the Debtors to use cash collateral and granting adequate protection; 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 relief sought in the Motion was good and sufficient under the particular circumstances and that no

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

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 Court has previously approved the Debtors' continuous use of cash collateral in orders entered at ECF Docs. 48, 225, 361, 500, 526, 553 and 578, which approval will expire January 31, 2017 (the "Prior Orders"). The Motion seeks permission to continue to use cash collateral under the same terms and conditions as the Prior Orders pursuant to the budgets attached to the Motion (the "Budgets").

2. The relief sought in the Motion is GRANTED.

3. Cash Collateral² the Debtors receive in their normal and ordinary business operations both before and after the Commencement Date and from all sources constitutes cash in which the Lenders (as set forth on Exhibit A hereto, which shall also be deemed to include Hawthorn Bank's interest in the cash collateral generated from the operation of the Jordan Valley Car Park located in Springfield, Missouri) may have an interest pursuant to § 363 of the Bankruptcy Code and therefore, the Debtors must obtain the Lenders' consent or an order of the Court to use the Cash Collateral.³

4. The Debtors' operations are such that they have sufficient cash flow to continue to pay the Lenders the regularly scheduled monthly payment due to the Lenders under the terms of the loan documents in existence on the Commencement Date with such payments based on the non-default rate of interest provided for in such loan documents (the "Adequate Protection Payments").⁴

² Capitalized terms shall have the same meaning as set forth in the motions granted pursuant to the Prior Orders unless otherwise defined herein.

³ Not all the cash received by the Debtors is subject to security interests as set forth in the Motion.

⁴ To the extent that a Lender's loan has matured, the Debtors will make what would have been the regularly scheduled payments under the loan documents to the Lender calculated as if such loan had not yet matured.

5. The Debtors contend that the Lenders' collateral is not diminishing in value and no Lender has asserted that their collateral is diminishing in value. As a result, the Debtors submit that the payment to the Lenders of the Adequate Protection Payments and the provision of the other forms of adequate protection set forth herein more than protects the Lenders under §§ 361 and 363(c), (e) of the Bankruptcy Code.

6. Subject to the terms of this Order set forth hereafter, the Debtors are authorized to use cash collateral for a period through and including December 31, 2017, pursuant to the budgets attached as Exhibit C to the Motion, as amended by the amended cash collateral budgets for Springfield University Plaza Hotel and East Peoria Embassy Suites filed at ECF Doc. 813 (collectively the "Budgets"), and under the following terms and conditions:

7. **Deposit of Post Petition Funds and Bank Account Structure.** All cash in Debtors' possession, under their control, or received by them hereafter, including the Cash Collateral, shall be deposited pursuant to the cash management attachments to the Debtors' motion to continue to use existing bank accounts, check stock, existing business forms and their cash management systems as they existed on the Commencement Date (ECF Doc. 17) (the "Cash Management Motion" and such bank accounts are collectively referred to as the "Cash Collateral Accounts"). The Debtors shall maintain no other bank accounts except the Cash Collateral Accounts without the written consent of the Lenders or an order of the Court obtained upon notice to the Lenders and an opportunity for a hearing. In particular the structure of the Cash Collateral Accounts set forth in the Cash Management Motion shall continue to be used by the Debtors pending further order of the Court.

8. **Adequate Protection Payments.** The Debtors shall, and shall continue to, make the Adequate Protection Payments.

9. **Expenditure of Cash.** In conjunction with the delivery of the Adequate Protection Payments, the Debtor should be permitted to spend Cash Collateral for the purposes and in the amounts set forth in the Budgets. The Budgets includes expenditures for the operation of the hotel properties, the non-hotel properties owned by the Trust, as well as capital expenditures necessary to maintain the condition of the hotels and non-hotel properties and additionally remain in compliance with the various hotel franchisors. The Debtors should not, during any particular month, exceed the budgeted amount for any particular line item of operating expenses by more than fifteen percent (15%), or the aggregate budgeted amount of operating expenses for any particular month by more than fifteen percent (15%), without prior approval of the Lenders, or as otherwise authorized pursuant to a separate order of the Court; *provided however*, that expenses budgeted for prior months but not paid during the month budgeted may be paid in a subsequent month. All cash not spent on the line items set forth in the Budget should remain in the Cash Collateral Accounts subject to the terms of this Order and any further orders granting the use of cash collateral and adequate protection.

10. **Franchisor Provisions.**

(a) Notwithstanding the provisions set forth in paragraph 9 hereof, The Debtors shall continue to pay all franchise fees and reimbursable expenses (the "Franchisor Fees and Expenses") due to Marriott International Inc. ("Marriott"), Holiday Hospitality Franchising LLC ("HHF"), HLT Existing Franchise LLC ("Hilton"), and The Sheraton, LLC ("Starwood" and along with Marriott, Holiday Inn, Hilton and Starwood, collectively the "Franchisors") arising under any franchise agreements and/or related documents associated therewith (collectively the "Franchise Agreements"). Without limiting the foregoing, notwithstanding anything set forth elsewhere in this Order, the

Budgets (and the variances set forth therein) shall not operate as a cap, limit, or restriction on the payment of fees, royalties and expenses owed and to be paid to the Franchisors, which fees, royalties, and expenses shall be fully and timely paid in accordance with the terms of the Franchise Agreements.

(b) Unless the Debtors and a Franchisor agrees otherwise in writing, the Debtors shall confirm to the Franchisors in writing that sufficient funds have been reserved or escrowed and shall continue to be reserved or escrowed to perform any renovations as may be required by the Franchise Agreements.

11. **Adequate Protection – Insurance and Taxes.** The Debtors shall continue to carry all necessary and required insurance in the types and amounts as they did pre-petition to insure their properties and shall make and continue to pay applicable real, personal, hospitality, franchise, business, and related taxes as they come due.

12. **Adequate Protection - Replacement Liens for the Lenders.** As adequate protection for the post-petition use of Cash Collateral as set forth herein, the Court hereby grants, ratifies and confirms the grant to each Lender of a valid and duly perfected continuing security interest in and lien on and against its Collateral and any proceeds therefrom, whether presently owned or hereafter acquired, and wherever located with the same priority as existed prior to the Commencement Date, which liens shall be deemed automatically perfected without any further action by the Lender; *provided however*, that such grant of such security interests and liens shall secure the diminution in the value, if any, of the Collateral in which each Lender had valid and perfected liens and security interests as of the Commencement Date, that may occur during this case, and the use of Cash Collateral to the extent required, and *further provided however*, that (a) the extent of such replacement liens and adequate protection should be subject to the provisions

of § 552(b) of the Bankruptcy Code; and (b) nothing in this paragraph 11 limits the rights of any Lender under § 552(b) of the Bankruptcy Code.

13. **Reports.** On the 25th day of each month, for each Franchisor and secured lender who so requests, the Debtors should deliver to such Franchisor and Lender a report showing a monthly reconciliation of budgeted to actual expenses for the previous calendar month, as well as the monthly STR report and a trailing twelve month financial statement.

14. **Information and Access.** The Debtors shall provide the Lenders, including the CMBS Lenders (defined below)⁵ access to all non-privileged books, records, information and documents pertaining to the collateral that secures the debts owing to each of the Lenders as the Lenders shall reasonably request upon reasonable notice. In addition, the Debtors shall grant access to the Lenders and their professionals to their respective Collateral for the purpose of independent appraisals, audits and financial collateral reviews, property condition assessments and inspections. Such inspections and Collateral review shall take place upon reasonable notice and shall be conducted in such manner as to not interfere with the operations of the Collateral. Such on-site inspections shall be scheduled by contacting Micca Looney of the Debtors

⁵ "CMBS Lender" means each of (i) Wilmington Trust, National Association, as Trustee for the registered holders of Wells Fargo Commercial Mortgage Trust 2015-C26, Commercial Mortgage Pass-Through Certificates, Series 2015-C26, (ii) Deutsche Bank Trust Company Americas, as Trustee, on behalf of the Registered Holders of Citigroup Commercial Mortgage Securities, Inc., Commercial Mortgage Pass-Through Certificates, Series 2015-GC33, by and through LNR Partners, LLC, solely in its capacity as Special Servicer, (iii) U.S. Bank National Association, as Trustee for the Registered Holders of J.P. Morgan Chase Commercial Mortgage Securities Corp., Commercial Mortgage Pass-Through Certificates, Series 2006-LDP7, by and through LNR Partners, LLC, solely in its capacity as Special Servicer, (iv) U.S. Bank National Association, as Trustee for the Registered Holders of Banc of America Commercial Mortgage, Inc., Commercial Mortgage Pass-Through Certificates, Series 2007-3, by and through C-III Asset Management LLC, solely in its capacity as Special Servicer, and (v) Wells Fargo Bank, N.A., as successor to LaSalle Bank National Association, as Trustee for the registered holders of COMM 2006-C8 Commercial Mortgage Pass-Through Certificates by and through LNR Partners, LLC, solely in its capacity as Special Servicer.

(micca.looney@jqh.com). Information and document requests shall be made through counsel.

15. **Term and Termination of this Order.** The Debtors are permitted to use cash collateral through and including December 31, 2017 unless terminated earlier by order of the Court.

16. **Reservation of Rights.** Nothing contained in the order granting this Motion should be construed as a waiver of any rights or remedies that any party hereto has under any documents, the Bankruptcy Code, or applicable law.

17. **Effective Immediately.** This Order shall be effective and enforceable immediately upon entry hereof.

18. **SFI Order.** The Court has previously entered an order agreed to by the Debtors and SFI Belmont, LLC ("SFI") with respect to cash collateral issues particular to SFI at ECF Doc. 500 (the "SFI Order"). The SFI Order shall remain in full force and effect and shall not be deemed to be modified by the terms of this Order other than the approval of the Budgets hereunder.

19. **City of La Vista Order.** The Court has previously entered an order agreed to by the Debtors and the City of La Vista, Nebraska ("City La Vista") with respect to cash collateral issues particular to City La Vista at ECF Doc. 361 (the "City of La Vista Order"). The City of La Vista Order shall remain in full force and effect and shall not be deemed to be modified by the terms of this Order other than the approval of the Budgets hereunder.

20. **Commerce Bank, Trustee.** Commerce Bank, N.A. ("Commerce") serves as trustee with respect to financing related to the Springfield Center City Development Corp., and in that capacity holds \$293,145.50 as collateral for obligations guaranteed by the Trust (the "Collateral Account"). The parties agree that the Collateral Account shall continue to be held by

Commerce and will not be used by the Debtors under this Order, all pending any further order of this Court. Commerce and the Debtors retain all rights, remedies and arguments related thereto.

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SUBMITTED:

STINSON LEONARD STREET LLP

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COUNSEL FOR THE DEBTORS

EXHIBIT A – LIST OF LENDERS

Debtor Entity:	Parties With Interest in Cash Collateral:	Estimated Amount of Debt⁶:
Chateau Lake, LLC	Wilmington Trust, National Association, as Trustee for the registered holders of Wells Fargo Commercial Mortgage Trust 2015-C26, Commercial Mortgage Pass-Through Certificates, Series 2015-C26 2100 Ross Avenue, Suite 2500 Dallas, TX 75201	\$45.1 million
Hammons of Huntsville, LLC JQH – Allen Development, LLC JQH – Concord Development, LLC JQH – Glendale, AZ Development, LLC JQH – Kansas City Development, LLC JQH – Murfreesboro Development, LLC JQH – Norman Development, LLC	Deutsche Bank Trust Company Americas, as Trustee, on behalf of the Registered Holders of Citigroup Commercial Mortgage Securities, Inc., Commercial Mortgage Pass-Through Certificates, Series 2015-GC33, and the holder of the related Serviced Companion Loan 1761 East St. Andrew Place Santa Ana, CA 92705	\$248 million
Hammons of Lincoln, LLC Hammons of New Mexico, LLC Hammons of Oklahoma City, LLC Hammons of Sioux Falls, LLC Hammons of South Carolina, LLC Hammons of Tulsa, LLC	U.S. Bank National Association, as Trustee for the Registered Holders of J.P. Morgan Chase Commercial Mortgage Securities Corp., Commercial Mortgage Pass-Through Certificates, Series 2006-LDP7 209 South LaSalle Street, Suite 300 Chicago, IL 60604	\$136 million
John Q. Hammons Fall 2006, LLC	Wells Fargo, N.A., as successor to LaSalle Bank National Association, as Trustee for the registered holders of COMM 2006-C8 Commercial Mortgage Pass-Through Certificates, by and through LNR Partners, LLC, solely in its capacity as Special Servicer.	\$110 million
JQH – East Peoria Development, LLC	Morton Community Bank 2400 E. Washington Street East Peoria, IL 61611	\$31 million

⁶ Nothing contained in the estimation of debt column shall in any way serve to constitute a determination of, or prejudice the Debtors or such lenders in any way as to, the amounts owing to such lenders, whether as set forth in their respective filed proofs of claim, the Debtors' schedules and statements of affairs as amended from time to time, or otherwise.

JQH – La Vista CY Development, LLC	First National Bank of Omaha 1620 Dodge Street Omaha, NE 68102	\$18.3 million
JQH – La Vista III Development, LLC	First National Bank of Omaha 1620 Dodge Street Omaha, NE 68102	\$30.5 million
JQH – Normal Development, LLC	Simmons First National Bank 425 West Capitol Avenue Little Rock, AR 72201	\$28 million
JQH – Oklahoma City Bricktown Development, LLC	Hawthorn Bank 321 W. Battlefield Springfield, MO 65807	\$18.5 million
JQH – Rogers Convention Center Development, LLC	Rogers Funding LLC 6900 East Camelback Road, Suite 607 Scottsdale, AZ 85251	\$71.2 million
JQH – San Marcos Development, LLC	Simmons First National Bank 425 West Capitol Avenue Little Rock, AR 72201	\$31 million
Revocable Trust of John Q. Hammons Dated December 28, 1989, as Amended and Restated	UMB Bank, N.A., as Trustee 2 South Broadway, Suite 413 St. Louis, MO 63102-1713	\$2.1 million
	Hawthorn Bank 132 E. High St Jefferson City, MO 65101	\$11.5 million
	Bank of Blue Valley 11935 Riley Overland Park, KS 66213	\$15 million
	First National Bank of Omaha 1620 Dodge Street Omaha, NE 68102	\$36.5 million
	Great Southern Bank 1451 E Battlefield Springfield, MO 65804	\$4.4 million
Richardson Hammons, LP	U.S. Bank National Association, as Trustee for the Registered Holders of Banc of America Commercial Mortgage, Inc., Commercial Mortgage Pass-Through Certificates, Series 2007-3 209 South LaSalle Street, Suite 300	\$150 million

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