UNITED STATES BANKRUPTCY COURT
DISTRICT OF KANSAS AT KANSAS CITY

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

DEBTORS' RESPONSE TO CITY OF SPRINGFIELD'S SUPPLEMENTAL BRIEF
REGARDING FUTURE LEASE OF HAMMONS FIELD

The Revocable Trust of John Q. Hammons, dated December 28, 1989, as amended and restated ("JQH Trust" or "Debtors") hereby submits its Response to the Supplemental Brief (the "Brief") Regarding Future Lease of Hammons Field filed by the City of Springfield, Missouri (the "City").

PRELIMINARY STATEMENT

The City's Brief asks the Court to ignore both the plain language of the parties' agreement and its context within their larger transaction. It also does nothing to address or counter the clear evidence of the parties' intent that the JQH Trust has provided the Court on multiple occasions. Nevertheless, the City argues that (1) intent should be inferred from the fact that two parcels of land are treated separately by the Development Agreement [1] (a fact acknowledged by all which is wholly consistent with the JQH's statement of the parties' intent); (2) the agreement is not enforceable because, despite all of the available evidence and the "shall provide" language, it should be treated the same as an agreement where the parties expressly agree to negotiate all essential terms at a later date; (3) intent should be inferred by these "sophisticated parties"

[1] Terms not defined herein shall have the meaning given to them in the Debtor's Brief in Support of Enforcement of Development Agreement.

supposed decision not to be express and exact within a contract clause in which this Court has already described a key term as "not a model of clarity"; (4) the Court should ignore Missouri law and decline to give effect to the parties' intent; or (5) despite it being irrelevant to the legal issues, the Court should credit the City with being willing to negotiate a lease on terms different than those to which the City already agreed.

All of these arguments fail. The parties agreed on the essential terms for the 50-Year Lease in 2002. Those terms are part and parcel with the larger transaction, and the parties agreed that the City would "provide" the lease to the JQH Trust because the City's doing so was and remains essential to the continued operation of Hammons Field by the Developers who paid for, developed, and maintained the stadium and brought minor league baseball to the City. The JQH Trust requests that the Court enter an order directing the City to deliver the 50-Year Lease to the Charitable Trust on the same terms and conditions as existed between the City and the PBC.

ARGUMENT

I. THE PARTIES DID NOT "AGREE TO AGREE"; THEY NEGOTIATED THE ESSENTIAL TERMS OF THE 50-YEAR LEASE IN 2002.

The Development Agreement is not a vague "agreement to agree." It is part of a complex multimillion-dollar transaction for the development of a significant portion of downtown Springfield, Missouri, and the Purchase Option within it outlines in detail exactly what the Developers must do to receive fee simple title to the ballpark and the Acquired Baseball Land and a nominal lease to the Owned Baseball Land, which the City is required to deliver to Developers upon satisfaction of those conditions. There is no dispute that the Develops have satisfied these conditions, primarily by paying more than $30 million to develop Hammons Field and paying off the Baseball Bonds in full. The parties clearly identified the land subject to the lease by its legal description, outlined the term of the lease, and agreed that the essential terms of the 50-Year Lease

would be the same as those the City was receiving from the PBC – the entity in which the City placed ownership of the land for tax purposes.

A. The City Relies Entirely on Inapplicable Cases in Which There is No Dispute That the Parties Expressly Contemplated and Intended Future Negotiations.

In the Brief, the City rehashes its previously-offered argument framing the 2002 transaction as one in which the parties intended for lease terms to be left over for future negotiation. As outlined previously,[2] all of the Missouri cases upon which the City relies involve agreements where the parties expressly intended a future negotiation on essential terms, and none involved transactions where the transaction included a provision of fee simple title to a multimillion-dollar building the agreed lessee would be constructing. *See* Brief at 9-10.[3] In the Brief, the City acknowledges that the Missouri cases it has found do not "expressly address" the issues at hand, but rather than argue based on the existing law, it instead provides a bullet-point list of similarly inapplicable cases from other jurisdictions. *Id*. at 9.

For example, the City claims that *Rialto Theatre, Inc. v. Commonwealth Theatres, Inc.*, 714 P.2d 328 (Wyo. 1986) is "on all fours" with the present facts. However, the language in *Rialto* stated that *if* either party decided to build a movie theater, the parties would "enter into an agreement to construct" it and "will enter into a lease thereof." *Id*. at 330. The court found that the essential terms of the lease were not defined with sufficient certainty because the building in question was purely hypothetical at the time of the lease and there was no lease term nor any other obligations outlined in the language. *Id.* at 334. Unlike *Rialto*, this case involves an agreement for

[2] *See* Debtors' Response to City of Springfield's Motions to Renew Consideration of Pending Motion (ECF No. 2989) at 8-9.

[3] Most of the Missouri cases the city relies on have been previously raised by the City and addressed by the Debtors. The City adds a new Missouri case, *Rosenberg v. Gas Service Co.*, 363 S.W.2d 20 (Mo. Ct. App. 1962), but it suffers from the same deficiency as all the others. In *Rosenberg*, the parties explicitly agreed that the rental rate would be determined at time of renewal, thus outlining their plans for a future negotiation. *Id*. at 2.

one party to deliver an existing lease to the other, the terms of which were known to both parties at the time of the execution of the Development Agreement, and the parties agreed to and outlined all essential terms, either explicitly or via the context and other documents in the larger transaction.

The other cases cited by the City similarly fail because they are wholly distinguishable as cases where parties explicitly planned for future negotiations; the fateful "agreement to agree" that does not exist here. *See Carr Off. Park, LLC v. Charles Schwab & Co.*, 291 F. App'x 178 (10th Cir. 2008) (language in question stated that the parties "shall, in good faith, negotiate and finalize a lease document"); *Intrepid, Inc. v. Bennett*, 176 So. 3d 775 (Miss. 2015) (lease language stated that the rent "shall be re-negotiated and may increase"); *Ellis v. City of Le Mars*, 817 N.W.2d 495 (Iowa Ct. App. 2012) (lease renewal was "subject to mutual agreement of achieving the pre-established performance targets"); *Edgewater Enterprises, Inc. v. Holler*, 426 So. 2d 980 (Fla. Dist. Ct. App. 1982) (lease renewal would be monthly rental to be arbitrated, negotiated and determined among the parties to this lease at said time"). The fact that the City has now provided the Court with inapplicable and immaterial precedent outside this jurisdiction does not cure its failure to provide compelling precedent within it. Unlike all of the cases upon which the City relies, this is a case in which a party agreed to provide a lease, with most essential terms provided explicitly and additional essential terms provided via the context of the transaction and evidence of the parties' intent, which intent is the primary lodestar for the Court in interpreting the contract.

The JQH Trust is not asking the Court to provide or insert an annual rent amount or other never-negotiated term like parties were in all of the cases relied on by the City – cases in which the parties did not agree on this or any other essential terms (such as the property and term covered) at the time of the initial agreement and explicitly contemplated or allowed for future negotiations on those core terms. Instead, the JQH Trust asks this Court to follow the principles of Missouri

law and look to the parties' 2002 intent when they made the agreements. The language in the Development Agreement, the other Hammons Field transaction documents, and a basic understanding of the transaction establish that the Developers agreed to bring a top-class stadium and minor league baseball to the City, and pay off certain debt obligations, and the City agreed that once the Developers had done so, they would own and operate that stadium without paying the City additional funds beyond a nominal amount. The City's 2021 retelling posits a scenario where the parties agreed that after the Developers had fulfilled all obligations they took on in 2002, they would be left with a stadium they could only occupy subject to the City's extortionate whims.[4] The amount of the rent to be paid under the lease must be the amount of rent to be paid to the PBC by the City under the lease: $1.00 per year.

B. The City's Suggested Interpretation of the Parties' Intent Relies on a Wholesale Rewriting of the 2002 Transaction, the Language of the Parties' Agreements and the 20-Year History of Hammons Field.

The City also argues that requiring the parties to negotiate a new lease is somehow giving effect to what they agreed to in 2002. In order to justify this failed argument, the City attempts to rewrite the parties' 2002 transaction, spinning a tale of "sophisticated parties" who could "easily" have specified the nominal rent in the planned lease explicitly, but chose the words "shall provide" to describe a lease it planned for the city to negotiate – a lease without which the Developers would be unable to access the facility they had spent tens of millions of dollars in construction costs, bond payments, and landlord obligations to obtain. Brief at 12-13. First, this Court has already rejected this very argument made by both the City and the Springfield Cardinals, LLC to destroy the

[4] In what appears to be an attempt to avoid the absurdity that would result in the ruling they seek (a scenario where, even after expending tens of millions, the JQH Trust would be forced to pay whatever rent the City seeks or be unable to occupy a multimillion-dollar stadium and land they owe in fee simple), the City frames itself as a reasonable negotiator in the context of a potential new lease. The JQH Trust will not engage in the level of superfluous discussion of settlement negotiations that the City has taken part in, but disagrees with the City's characterization.

Charitable Trust's primary asset. At the hearing on the 2020 Motion to Enforce, both the City and the Springfield Cardinals, LLC argued that these were "sophisticated parties with sophisticated counsel" who "would never make a mistake" in an agreement. It is not for this Court to decide whether the parties are sophisticated; rather, the Court must look at the plain language of all the documents that comprise the entire transaction and determine the intent of the parties. The only conclusion from such an exercise requires a complete rejection of the City's argument.

This argument is also a story in which the City's obligations are supposed to be inferred from the mere fact that it distinguished the land it already owned at the time of the transaction with the land it had acquired for the transaction, but the parties' obligations can and should be inferred by the other terms of the transaction and basic common sense. The Court must see the story for what it is: pure fantasy disguising the City's latest effort to leverage inexact language in the Development Agreement and avoid being held to the deal it negotiated twenty years ago.

1. The City's Evidence of the Parties' Intent is Not Credible and Fails to Counter Obvious Facts.

Despite arguing in multiple instances that the Court should disregard the parties' 2002 intent, the City claims that the facts at hand instead show the parties intended that the Developers would have to negotiate a lease with the City. In the Brief, the City argues that the Court should conclude that the parties "intended to require future discussions regarding the terms of a new lease" because the language the parties included was inexact, the City had kept the finances of the two pieces of land separate, and because there are terms in the PBC Lease that might not apply as clearly to the Developers. Brief at 16.

The first argument is directly contradicted by the "shall provide" language the parties used –the City asks the Court to give more weight to the absence of hypothetical language the parties could have used than to the language the parties actually used. The second is similarly illogical.

The City suggests that the fact that it financed the property separately rather than combining the parcels should be taken to mean that it intended to negotiate the core terms of a new lease on one property. The separation of the parcels reflects the timing of their acquisition and role in the transaction, as outlined in more detail below, rather than some later intent. Moreover, the nature of the parcels is not evidence that counters the JQH Trust's evidence of the parties' intent – it is part of the reason the Developers would receive a 50-Year Lease at a nominal rate for the Owned Baseball Land rather than the fee simple title they will receive for the Acquired Baseball Land.

Finally, the City's series of questions about the PBC Lease terms are a last-ditch attempt to avoid its obligations as the City implicitly acknowledges the reality of the parties' 2002 agreement on the nominal lease rate. The JQH Trust is obviously willing to agree to these terms (as it has requested the Court order the City to provide it with a lease containing the terms of the PBC Lease) and to the extent any of these terms would not or could apply, the parties' 2002 agreement as to all of the essential terms of the lease means that the term in question would not render the agreed-upon lease invalid. *See Doss & Harper Stone Co. v. Hoover Bros. Farms*, 191 S.W.3d 59, 62 (Mo. Ct. App. 2006) (the essential terms for an enforceable contract are "the parties, the subject matter, the price, the consideration and the promises on both sides.")[5]

The City also fails entirely to address the best evidence of the parties' 2002 intent, which is the practical impact of the City's argued-for interpretation. The Developers constructed, developed, and maintained a multimillion-dollar baseball stadium at their cost and paid millions of dollars of bond obligations that would otherwise be owed by the City. All parties agree that the Developers negotiated for and received the right to full ownership of that stadium and a portion of

[5] The City attempts to place significance on differences between the Stadium Lease and the PBC Lease. Brief at 4-5. Such comparisons are meaningless – the former was entered into while the City owned the ballpark and the land upon which it sits, and the latter was a formality necessitated by the PBC's ownership of land which itself was necessitated by the tax structure of bonds issued through the City.

the land on which it sits as part of that transaction. The City concedes that the JQH Trust must have access to that land "[i]n order for the JQH Trust to operate Hammons Field." Brief at 4. Yet, in the City's recitation of the parties' intent, the entire outcome of the transaction, the JQH Trust's ability to operate, or even access the stadium and land it had paid millions of dollars for, rests solely upon its ability to reach a mutually agreeable rental amount and other lease terms with the City of Springfield. As the City notes, these were "sophisticated parties" and it is illogical bordering on nonsensical to suggest that they intended to structure the transaction in this way.

2. The City Has Received the Consideration It Bargained for in 2002.

The City's arguments are based on a misreading of the facts and legal arguments the JQH Trust has made before this Court, and ignore central components of the Hammons Field transaction. The JQH Trust has argued since at least 2018 that it has paid in full for the rights it and the City bargained for in 2002, which includes the right to the 50-Year Lease and its nominal lease rate. The JQH Trust has never argued that it extinguished all of the City's debt associated in any way with the land upon which the ballpark was built – in fact, it made clear (and this Court agreed) that the 2002C Bonds are entirely the City's obligation. But the fact that the City still has obligations on these bonds has nothing to do with the JQH Trust's lease rights nor the terms of the 50-Year Lease that the parties agreed to in 2002.

The City frames the JQH Trust as suggesting that it has paid off all of the City's debt associated with the land upon which Hammons Field was built, and argues that this position is inconsistent with its previous arguments before this Court. But the JQH Trust has made no such claim – instead, the JQH Trust's argument as to the 50-Year Lease is the very same argument it made in support of this Court's enforcement of the Purchase Option generally. As has been outlined numerous times, the JQH Trust and the City agreed in 2002 that the JQH Trust would

construct, develop, and maintain a baseball stadium, and pay the Baseball Bonds in full. In return for this significant expenditure of time and energy, the construction of a major civic asset, and the influx of visitor and event-generated revenue provided by the asset and the professional baseball it would bring to the City, the JQH Trust would receive fee simple title to the stadium and a portion of the land, as well as a nominal 50-Year Lease on the remainder of the land. In fact, both the City and the JQH Trust's arguments as to the 50-Year Lease are wholly consistent with the arguments they have made before this Court for the last three years: the JQH Trust is seeking the benefits the parties agreed to in their 2002 transaction, and the City is yet again attempting to rewrite that agreement in an effort to extort payment from the JQH Trust for the 2002C Bonds.[6]

The arguments the City has made are deficient not only in their assertions, but in their omissions as well. The City has now had three chances to explain how language that states that it "shall provide" the JQH Trust the 50-Year Lease is somehow an agreement to negotiate future terms or to explain how the clause fits within the context of the transaction at issue. The Brief largely ignores the "shall provide" language and brazenly omits a core aspect to the transaction – the Developers' obligation to construct a multimillion-dollar stadium that the City calls a "major civic asset" at no cost to the City. Pretending this obligation does not exist is the only way the City can argue that it has not received anything in return for granting the JQH Trust the 50-Year Lease on the terms it agreed to in 2002.

The *raison d'etre* of the Hammons Field transaction was to bring a top-class ballpark and minor league baseball to the City of Springfield. The Developers agreed to do just that on land

[6] Similarly, it is the City that would be negatively impacted by the "law of the case" doctrine if it is applied here. This Court has already held that the JQH Trust is not required to pay the City's obligations on the 2002C Bonds in order to exercise the Purchase Option, and exercising the Purchase Option grants the JQH Trust the right to the 50-Year Lease. Thus, the City's suggestion that the JQH Trust is not entitled to the 50-Year Lease because the City's obligations on the 2002C Bonds remain unpaid would be inconsistent with the Court's prior ruling.

the City owned and was acquiring for that purpose. The City agreed that once the Developers had fully met their obligations by building and developing the stadium and repaying the City for the land it acquired, the Developers would own that land and the stadium, and would receive a 50-Year Lease to the land on which a portion of the stadium was built (which the City would still own) at the same nominal rate the City was receiving from its own public entity. The Developers delivered on all of their obligations – the City has enjoyed professional baseball and all of the associated tax revenue for fifteen-plus years, has a top-level stadium on previously-undeveloped land that consistently receives awards from minor league baseball as the top stadium in the Texas League, and has its bond obligations fully extinguished on the Baseball Bonds. Despite all this, the City has spent nearly three years trying to dodge its reciprocal obligations based on frivolous arguments and attempt to rewrite history. The City argues it somehow has not received or did not bargain for consideration, but it is the Developers who have been deprived of the consideration to which they are entitled to, for three years and counting. This must stop.

The City claims that the reason the Acquired Baseball Land and Owned Baseball Land were identified as separate parcels was that they were associated with different bonds. This explanation, while matching up neatly with the City's newfound theory, has no basis in fact. The reason for the separation and identification is directly evident in the way the parcels are identified. The Owned Baseball Land was land the City already owned before entering into the 2002 series of transactions described in the Hammons Field Documents, and the Acquired Baseball Land was land that was being acquired for the project via bonds that would be paid by the Developers. The only portion of the transaction the City describes accurately is that the Developers will receive fee simple title to the Acquired Baseball Land because they have fully paid off the bonds used to acquire it.

The remainder of the City's summary is inaccurate and incomplete because it ignores the fact that the Developers agreed to and did spend more than $30 million dollars constructing, managing, and maintaining a baseball stadium on the land, providing Springfield with what the City itself calls a "major civic asset" and paving the way for minor league baseball in the City. The City fails to mention any of the time and money that went into this so that it can falsely claim it "has not been reimbursed" for the Owned Baseball Land.[7] Moreover, the City attempts to equate the two parcels in its argument for additional monetary consideration, but fails to acknowledge that while the 50-Year Lease does not give the City funds it bargained for, it does give the City rights it does not have as to the Acquired Baseball Land – the rights it bargained for in 2002. For example, the lease terms would allow the City to evict the JQH Trust is it does not "maintain the Baseball Stadium in good repair and working order." PBC Lease at §5.09.[8] Part of the City's reasoning in 2002 for negotiating a 50-Year Lease rather than fee simple title was almost certainly the retention of this right as part of its focus on having a ballpark and the teams it could attract as a civic asset. The City's statements on the importance of Hammons Field and minor league baseball to the community when justifying its actions before this Court stands in stark contrast to its silence as to these vast civic assets when recounting the 2002 Hammons Field transactions, both as to the benefits it bargained for and received.

3. Contrary to the City's Assertions, the Parties' Intent Should Remain a Paramount Consideration in Interpreting their Agreements.

Having argued that inapplicable caselaw should invalidate the agreement and that the

[7] Further illustrating this point is the fact that the City has paid and presumably continues to pay its obligations on the 2002C Bonds from its hotel/motel tax, funds it has received and will continue to receive in part from the increase in overnight visitors to the City associated with the college, minor league, and tournament baseball games played at Hammons Field.

[8] The City also fails to offer any explanation for why this requirement would not be relevant to its professed "paramount" concern of "ensuring that Hammons Field is used and cared for properly". Brief at p. 20-21.

parties intended the City's illogical interpretation of the Development Agreement when they made it in 2002, the City calls yet another alternative argument in from the bullpen: the concept that if the parties intended the 50-Year Lease at a nominal rate as the documents show, the Court should simply disregard this intent. The City appears to be advocating for the Court to ignore the cardinal principle of contract interpretation under Missouri law. At multiple points in the Brief, the City argues that its (incorrect) reading of the Development Agreement language means that the parties' intent is immaterial. Brief at 1 ("Regardless of whether the parties intended 19 years ago to create a binding obligation . . . "); Brief at 12 ("[E]ven if the City and the JQH Trust intended in 2002 to create a binding contract . . ."). These assertions are directly contradicted by Missouri law, which requires that "[t]he cardinal rule in the interpretation of a contract is to ascertain the intention of the parties and to give effect to that intention." *Holbert v. Whitaker*, 87 S.W.3d 360, 363 (Mo. Ct. App. 2002). In conducting this analysis, the "entire instrument, subsidiary agreements between the parties and external circumstances which cast light on the intent are considered." *Merz v. First Nat. Bank of Franklin Cty*., 682 S.W.2d 500, 502 (Mo. Ct. App. 1984).

The parties intended for the City to provide the Developers with the nominal-rate 50-Year Lease so that the land could remain owned by the City while the Developers owned and operated the stadium they built for 50 years following redemption of the Baseball Bonds. Their agreements, the law, and common sense all reflect this fact. The City in 2021 wishes the City in 2002 had not agreed to these terms because the 2021 City of Springfield would like more concessions from the Developers. But Missouri law does not allow the City to eschew its obligations, particularly when the Developers have fully performed under the parties' agreements.

III. THE CITY'S ATTEMPTS TO RELY ON LAW OF THE CASE AND ESTOPPEL ARE MISPLACED AT BEST.

The City claims the JQH Trust is "estopped from asserting that the JQH Trust has paid any

consideration for the Owned Baseball Land or was ever required to do so," and that it is "law of the case that the Development Agreement did not require the JQH Trust to compensate the City for the 2002C Bonds issued to pay for the Owned Baseball Land." Brief at fn 1. These arguments fail both factually and legally. The City's convoluted attempt to use this Court's well-reasoned opinion to limit its present analysis and misstates the JQH Trust's previous arguments to manufacture an inconsistency that does not and never has existed, and misapplies both legal concepts to a scenario that is outside of their intended application.

Moreover, the Court need not even engage on that issue here because the arguments in question are wholly different and entirely consistent. It appears the City is asking the court to apply judicial estoppel to disregard the arguments the JQH Trust has made and/or foreclose it from further argument.[9] "The purpose of judicial estoppel is to protect the integrity of the judicial process by prohibiting parties from deliberately changing positions according to the exigencies of the moment…and to prevent improper use of judicial machinery." *Queen v. TA Operating, LLC,* 734 F.3d 1081, 1087 (10th Cir. 2013) (internal quotations and citations omitted). In determining whether judicial estoppel is appropriate, courts look at (1) whether a party's subsequent position must be clearly inconsistent with its former position, (2) whether the party has succeeded in persuading a court to accept that party's former position so that judicial acceptance of an inconsistent position in a later proceeding would create the perception that either the first or the second court was misled, and (3) whether the party seeking to assert an inconsistent position would gain an unfair advantage. *Id*. The Tenth Circuit has established a reluctance to use this doctrine and applies it "both narrowly and cautiously" because "there are often lesser weapons that can keep alleged inconsistent statements in check while preserving a party's option to have its day in

[9] The JQH Trust is forced to make this assumption because the City simply invokes the general concept of estoppel without citing any case or other precedent. Brief at fn 1.

court." *BancInsure, Inc. v. F.D.I.C.*, 796 F.3d 1226, 1240 (10th Cir. 2015) (internal quotations and citations omitted).

Nothing in the present disputes fits within these parameters factually or procedurally. The City is trying to use the concept as an argument to win a spurious claim and the position in question is not at all inconsistent with the position the JQH Trust has taken in its briefing and argument on the lease issue. As this Court made clear in its January 14, 2021 Order Enforcing the Confirmation Order Against the City of Springfield and the Springfield Cardinals, the crux of the dispute that existed between the City and the JQH Trust for close to three years was whether the term "Baseball Bonds" in the Purchase Option referred to the 2002B Bonds or the 2002C Bonds. The JQH Trust emphasized that it was the guarantor for the 2002B Bonds, that the payments on those bonds were required to equal the JQH Trust's rent payments, and other aspects of the contractual agreements to help establish that the term "Baseball Bonds" referred to the 2002B Bonds, and this court agreed. The issue of whether "the JQH Trust has paid any consideration for the Owned Baseball Land or was ever required to do so" was not at issue before the Court then or otherwise – the issue the Court resolved was which bonds must be paid for the Purchase Option to be exercised.

The "law of the case" argument similarly fails on two levels. First, the City misconstrues the Court's ruling in order to make it seem inconsistent with the City's inaccurate framing of the JQH Trust's arguments here. The Court did not hold that the Development Agreement did not require the JQH Trust to compensate the City for its rights to the Owned Baseball Land – it held that the JQH Trust has no obligations to pay off the City's obligations on the 2002C Bonds. Again, the dispute was about the exercise of the Purchase Option and the JQH Trust's obligations to pay off the Baseball Bonds. The JQH Trust has compensated the City for the rights to the 50-Year Lease the parties negotiated and agreed to in 2002. The Court ruled on this issue January 1, 2021,

and the present dispute is part of the City's continuing efforts to avoid the impact of that ruling.

IV. THE CITY'S ATTEMPTS TO PORTRAY ITSELF AS REASONABLE IN PURSUING SETTLEMENT OF ITS MERITLESS CLAIMS ARE OUTSIDE THE ORDERED SCOPE OF BRIEFING AND IMMATERIAL TO THE ISSUES AT HAND.

A. The City's Extended Discussion of the Parties' Settlement Negotiations Fails to Support the Relief the City Seeks.

The City spends a significant portion of the Brief providing a one-sided and self-serving portrayal of its supposed reasonableness in being willing to agree to terms other than those agreed to by the parties in 2002. These discussions are outside the scope of the briefing ordered by this Court and wholly immaterial to the issues at hand. To the extent the Court requests or desires a complete summary of the parties' settlement discussions, the JQH Trust will provide one.[10] Unless and until that point, there is little to say on the issue of import outside of two points of clarification.

First, the City's supposed willingness to negotiate terms different from those it agreed to in 2002 does not counsel finding in its favor, it only underscores that the City has used and is using its flawed legal contentions in an effort to extract concessions from the JQH Trust. For example, the City highlights that it was willing to drop its demand that the JQH Trust pay the City's 2002C Bond obligations – a claim this Court found to be without merit – in return for certain concessions. The fact that the City has brought these spurious claims then suggested it would forego them if the JQH Trust gives up rights it bargained for in 2002 should not be a point in the City's favor.

Second, the City's accurate recitation of the parties' current discussions shows that contrary to the City's assertions, the JQH Trust has engaged and will continue to engage in discussions and review any reasonable proposal the City will put forward. As the City notes, the JQH Trust "timely

[10] As the Court will recall, the parties mediated their disputes before Judge Somers for several months. After completing that mediation, Judge Somers informed this Court that, despite the parties' good-faith negotiations, the mediation concluded without a settlement. There was no mention whatsoever of any lack of good faith on the part of either party and to suggest otherwise is inappropriate.

respond[ed]" to the City's recent entreaty on the 50-Year Lease issue, and is patiently awaiting the proposal that the City "is currently attempting to fashion." Brief at 20. To the extent the parties' good-faith participation in settlement negotiations is in any way relevant, the JQH Trust has fully participated in good faith, devoting considerable time and effort to attempt to resolve these issues, and anticipates continuing to do so even as the City continues to pursue meritless arguments that make selling Hammons Field more difficult to accomplish.

B. The City's Claim that it is Merely Trying to Keep Baseball in Springfield is Belied by the Practical Effect of its Sought-For Relief.

In its effort to "set[s] the record straight," the City mirrors its assertions in its various motions to renew consideration and seek inappropriate status reports on the sale of the Ballpark by highlighting its interest in keeping baseball in Springfield and preserving the Ballpark as a civic asset. While the City's interest in this goal is admirable, the professed goal would be directly threatened by the relief the City seeks. If, as the City suggests, the end result of the Developers' construction, development, and maintenance of the Ballpark and payment of millions in bond obligations is a scenario where the Developers cannot occupy part of the stadium absent agreement on a new lease with the City, then the result the City claims it wants to avoid would potentially become a viable possibility. The current lease between the Springfield Cardinals and the Charitable Trust includes myriad obligations to provide the Cardinals with rights and exclusive rights to use and occupy the Ballpark or portions thereof – obligations the Charitable Trust cannot fulfill if it does not have those rights itself because it could not reach agreement with the City on lease terms. Avoiding this scenario is not just the reason the parties agreed to the terms of the 50-Year Lease in 2002, it also demonstrates the folly of the City's focus on this objective in making its arguments.

CONCLUSION

WHEREFORE, for the reasons set forth herein, the Debtors request that the Court hold that the JQH Trust is entitled to the 50-Year Lease outlined in the Development Agreement, with the same terms as the PBC Lease.

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that on July 9, 2021, the Debtors' Response to the Supplemental Brief Regarding Future Lease of Hammons Field was electronically filed with the Court using the CM/ECF system, which sent notification to all parties of interest participating in the CM/ECF system.

/s/ Nicholas J. Zluticky
Counsel for the Debtors