The relief described hereinbelow is SO ORDERED.

SIGNED this 11th day of August, 2021.

Robert D. Berger
United States Bankruptcy Judge

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF KANSAS

In re:

JOHN Q. HAMMONS FALL 2006, LLC, et al.,	Case No. 16-21142
	Chapter 11
Debtors.	Jointly Administered

ORDER DIRECTING COMPLIANCE WITH DEVELOPMENT AGREEMENT IN ACCORDANCE WITH CONFIRMATION ORDER

The facts of this contested matter are not in dispute. In 2002, the debtor Revocable Trust of John Q. Hammons dated December 28, 1989, as amended and restated (the "**JQH Trust**")[1] entered into a development agreement with the City of

[1] The "**Debtors**" in these jointly-administered cases are the JQH Trust and 75 of its affiliates, all of whom filed for Chapter 11 bankruptcy in 2016.

Springfield, Missouri (the "**City**"). As part of that "**Development Agreement**,"[2] the JQH Trust (and together with the late Juanita and John Q. Hammons, the "**Developers**") agreed to (1) construct Hammons Field, a baseball stadium that now serves as the home field for the Springfield Cardinals[3] and the Missouri State Bears, in Springfield's Jordan Valley Park; and (2) repay certain "Baseball Bonds" issued by the City to develop the stadium. Hammons Field opened in 2004.

Hammons Field sits on two parcels of land, each owned by a different entity and purchased with the proceeds of a different series of bonds. The "**Owned Baseball Land**," which is the larger of the two parcels and includes most of the land on which Hammons Field sits, is owned by the City's Public Building Corporation (the "**PBC**")[4] and was purchased with the proceeds of a series of bonds issued in 2000 by the PBC (the "**Series A 2000 Bonds**").[5] The "**Acquired Baseball Land**," which covers the entrance gates to Hammons Field, a parking

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[2] The "Development Agreement" is the Amended and Restated Baseball Stadium, Exposition Center and Arena Development Agreement and Trade Center Development Agreement dated September 1, 2002, between the JQH Trust, the late Juanita K. and John Q. Hammons, and the City. *See* ECF 3007-1; ECF 3008-1.

[3] The Springfield Cardinals are the AA affiliate of the St. Louis Cardinals.

[4] The PBC is a "[n]ot-for-profit corporation . . . formed to assist in providing alternative means to finance various City projects." *Public Building Corporation*, CITY OF SPRINGFIELD, https://www.springfieldmo.gov/1080/Public-Building-Corporation (last visited July 26, 2021).

[5] The PBC used the proceeds of the Series A 2000 Bonds to buy land in Jordan Valley Park. Two years later, the City refinanced the portion of the Series A 2000 Bonds that had been used to buy the Owned Baseball Land with the proceeds of a series of bonds issued in 2002 by the Springfield Center City Development Corporation (the "**Series 2002C Bonds**"). *See* Dev. Agreement at 4; Trust Indenture at 2-3 (ECF 3007-3).

area, and (in a non-contiguous lot) a portion of right field and most of the right-field seats,[6] is owned by the City and was purchased with the proceeds of a series of bonds issued in 2002 by the Springfield Center City Development Corporation[7] (the "**Series 2002B Bonds**"). The City leases the Owned Baseball Land from the PBC; the JQH Trust leases the Acquired Baseball Land and subleases the Owned Baseball Land from the City. Together, the Owned Baseball Land and the Acquired Baseball Land are the "**Baseball Land**."

A recital in the Development Agreement describes the condition of the Baseball Land before the Developers built a baseball stadium on it:

> **WHEREAS**, the City has determined that the Baseball Land, . . . in [its] present condition, [is] unsanitary and unsafe and constitute[s] a menace to the City and [is] detrimental to the health, safety and welfare of the residents of the City and the development of the City and that the development of the Baseball Land . . . is necessary and in the interest of and will protect and preserve the public health, safety and welfare of the residents of the City and will eliminate the spread of blight by development in accordance with this Amended Agreement . . . .[8]

The next recital describes benefits the City expected to receive from the baseball stadium:

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[6] *See* ECF 3007-9; ECF 3008-2 (aerial maps of baseball stadium).

[7] The Springfield Center City Development Corporation is a "Missouri public benefit nonprofit corporation formed to assist the City by providing for the acquisition, construction, improvement, extension, repair, remodeling, renovation and financing of improvements to the center city." *Center City Development Corporation*, CITY OF SPRINGFIELD, https://www.springfieldmo.gov/1074/Center-City-Development-Corporation (last visited July 27, 2021).

[8] Dev. Agreement at 7.

> **WHEREAS**, it is . . . beneficial and advantageous for the City to assist the Developers by providing assistance to the Developers as specified in this Amended Agreement so that the deleterious conditions of the Baseball Land . . . may be eliminated and the Baseball Land . . . may be developed in accordance with sound planning objectives which will result in increased tax revenues being generated from economic activities at the Baseball Stadium. . . which are expected to reduce the burdens and requirements for public expenditures and provide material contributions to the well being, progress and development of the City as a whole . . . .[9]

Section 12.19 of the Development Agreement gives the Developers an option to purchase Hammons Field and the Acquired Baseball Land from the City for $1.00 after the Baseball Bonds have been paid in full (the "**Purchase Option**"). Earlier this year, the Court interpreted the term "**Baseball Bonds**" to mean the Series 2002B Bonds,[10] which the JQH Trust paid off in 2018. The JQH Trust thus has the current right to exercise the Purchase Option.[11]

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[9] Dev. Agreement at 7.

[10] *See* ECF 2978. In interpreting the term "Baseball Bonds" in that order, the Court was technically construing its own confirmation order, not the Development Agreement. That said, the order used the parties' conduct to interpret the term. "It is well established that in construing an ambiguous or disputed contract the interpretation the parties placed on it by their conduct is of great weight in determining what the agreement actually was." *Landau v. Laughren*, 357 S.W.2d 74, 80 (Mo. 1962). "Where a party by his performance construes the contract in a manner that is against his interest, his actions are generally considered conclusive against him." *Id.* (citing *Leggett v. Mo. State Life Ins. Co.*, 342 S.W.2d 833, 852 (Mo. 1960)). The City argued in 2020 that "Baseball Bonds" included the Series 2002C Bonds, but the amount of "Rent" it had accepted from the JQH Trust since 2002 under the Development Agreement and the Ground Lease (see *infra* page 5) belied that argument.

[11] In May 2020, the JQH Trust assigned its rights under the Development Agreement and other contracts related to Hammons Field to the John Q. Hammons Charitable Trust. *See* ECF 2960 ¶¶ 48-50. This order uses the term "JQH Trust" to

Section 12.19 also states that if the Developers exercise the Purchase Option, the City "shall provide the Developers with a 50 year lease on the Owned Baseball Land." The parties' current dispute is over the meaning and enforceability of this "**Lease Provision**."[12] The JQH Trust argues that the Lease Provision requires the City to provide it with a 50-year lease of the Owned Baseball Land on the same terms as the agreement through which the City leases the Owned Baseball Land from the PBC (the "**PBC Lease**").[13] The City responds that the Lease Provision is an unenforceable "agreement to agree" under Missouri law; in the alternative, the City argues that if the Lease Provision *were* enforceable, the terms of the resulting lease would be more like those in the agreement through which the JQH Trust leases the Acquired Baseball Land and subleases the Owned Baseball Land from the City (the "**Ground Lease**").[14] Thus, there are two issues before the Court: (1) whether the Lease Provision is enforceable under Missouri law, and (2) if so, on which (if any) terms.

A contract must show a "meeting of the minds" as to its essential terms to be enforceable under Missouri law. *See United States v. 518.77 Acres of Land*, 545 F.

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include the JQH Trust's successors-in-interest when describing the parties' rights under the Development Agreement.

[12] *See* ECF 2296 (raising Lease Provision issue); ECF 2353 (directing parties to submit additional briefs on issues including Lease Provision); ECF 3007, 3008 (briefing Lease Provision).

[13] The "**PBC Lease**" is the Baseball Stadium Site Lease Agreement dated December 1, 2002, between the PBC and the City. *See* ECF 3007-2; ECF 3008-3.

[14] The "**Ground Lease**" is the Amended and Restated Phase 1 Baseball Stadium Ground Lease Agreement dated December 1, 2002, between the JQH Trust, the late Juanita K. and John Q. Hammons, and the City. *See* ECF 3007-8; ECF 3008-4.

Supp. 1246, 1247-48 (W.D. Mo. 1982); *Olathe Millwork Co. v. Dulin*, 189 S.W.3d 199, 203 (Mo. Ct. App. 2006). To show a meeting of the minds, "[t]he essential terms of the contract must be certain or capable of certain interpretation." *Bldg. Erection Servs. Co. v. Plastic Sales & Mfg. Co.*, 163 S.W.3d 472, 477 (Mo. Ct. App. 2005) (citing *Ketcherside v. McLane*, 118 S.W.3d 631, 635 (Mo. Ct. App. 2003)). The essential terms of a contract are not certain or capable of certain interpretation if the parties have reserved them for future determination.[15] *See Deichmann v. Boeing Co.*, 38 F. Supp. 2d 783, 786 (E.D. Mo. 1998); *Dulin*, 189 S.W.3d at 204.

The Missouri Court of Appeals held in *Olathe Millwork Co. v. Dulin* that a contract to construct a new home was unenforceable under Missouri law because the parties had reserved its essential terms—scope of the construction project and the contract price—for future determination. *Dulin*, 189 S.W.3d at 203, 205. In doing so, the court observed: "[T]he long-recognized general rule in Missouri is that a contract must include a definite price to be binding." *Id.* at 204 (citing *Juengel Constr. Co. v. Mt. Etna, Inc.*, 622 S.W.2d 510, 514 (Mo. Ct. App. 1981)); *see id.* at 204-05 (holding that the parties had not entered into a binding contract where they "employed the phrase 'apt. $270,000' to serve as a placeholder for the true contract price, which was unknown and to be determined later").

The City argues here, citing *Dulin*, that the Lease Provision is unenforceable

[15] Courts sometimes refer to the parties' reservation of essential terms for future determination as an "**agreement to agree**." *See, e.g.*, *GOAD Co. v. Honeywell Int'l, Inc.*, Civil Action No. 14-00545-CV-W-JTM, 2015 WL 4727424, at *3 (W.D. Mo. July 30, 2015).

because it does not specify a "yearly rent amount (i.e., price)."[16] However, the *Dulin* rule does not mean that a promise to provide a 50-year lease of the Owned Baseball Land would only be enforceable in exchange for rent; after all, an enforceable contract requires not rent, but *consideration*.[17] Rather, in saying that a contract requires a "definite price," *Dulin* is simply reiterating the rule that the essential terms of a contract, including consideration—which may, but need not necessarily, take the form of a monetary "price"—must be certain or capable of certain determination.

Here, the City's argument that the Lease Provision is unenforceable for lack of a definite "rental rate"[18] fails because such rent is not an essential term of the Development Agreement. The City and the JQH Trust made a number of promises in that agreement, each in consideration for the promises made by the other.[19] One of the City's promises is the Lease Provision—the promise to provide a 50-year lease on the Owned Baseball Land if the JQH Trust exercises the Purchase Option. The consideration for that promise is the promises made by the JQH Trust, which do not

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[16] ECF 3008 at 11.

[17] *Cf. Bldg. Erection Servs.*, 163 S.W.3d at 477 (stating that the essential elements of a contract are (1) competency of the parties to contract; (2) subject matter; (3) legal consideration; (4) mutuality of agreement; and (5) mutuality of obligation); *Gillen v. Bayfield*, 46 S.W.2d 571, 574-75 (Mo. 1931).

[18] ECF 3008 at 1.

[19] *Cf.* Restatement (Second) of Contracts § 71 (Am. Law Inst. 1981) ("To constitute consideration, a performance or a return promise must be bargained for. . . . A performance or return promise is bargained for if it is sought by the promisor in exchange for his promise and is given by the promise in exchange for that promise.").

include rent. Because consideration for the Lease Provision neither includes nor requires rent, rent is not an essential term.

The Lease Provision obligates the City to provide a 50-year lease of the Owned Baseball Land if the JQH Trust exercises the Purchase Option. The JQH Trust can exercise the Purchase Option once the Baseball Bonds have been paid in full. Those are the essential terms of the Lease Provision, and they are certain. No more is required under Missouri law. That the City would now prefer that a lessee of the Owned Baseball Land pay rent, or agree to other terms that would limit or condition the lessee's use of the property, does not render the City's promise to provide the lease unenforceable *absent* such terms.

Nor do any of the cases cited by the City support its position that the Lease Provision is unenforceable absent such terms. In each of those cases, missing contract terms were either (1) expressly reserved by the parties for future determination or (2) required to establish consideration in the contract.[20] Here, the parties did not expressly reserve "rent" or anything else, and consideration for the Lease Provision exists independently of any of the terms the City would now prefer

[20] *Cf. Carr Office Park, LLC v. Charles Schwab & Co.*, 291 F. App'x 178 (10th Cir. 2008); *GOAD Co. v. Honeywell Int'l, Inc.*, No. 14-00545-CV-W-JTM, 2015 WL 4727424 (W.D. Mo. July 30, 2015); *Deichmann v. Boeing Co.*, 38 F. Supp. 2d 783 (E.D. Mo. 1998); *United States v. 518.77 Acres of Land*, 545 F. Supp. 1246 (W.D. Mo. 1982); *Edgewater Enters., Inc. v. Holler*, 426 So. 2d 980 (Fla. Dist. Ct. App. 1982); *Ellis v. City of Le Mars*, 817 N.W.2d 495 (Iowa Ct. App. 2012) (unpublished table decision); *Intrepid, Inc. v. Bennett*, 176 So. 3d 775 (Miss. 2015); *Olathe Millwork v. Dulin*, 189 S.W.3d 199 (Mo. Ct. App. 2006); *Rosenberg v. Gas Serv. Co.*, 363 S.W.2d 20 (Mo. Ct. App. 1962); *Rialto Theatre, Inc. v. Commonwealth Theatres, Inc.*, 714 P.2d 328 (Wyo. 1986).

to impose. The Court therefore holds that the Lease Provision is enforceable under Missouri law, and that it requires the City to convey a 50-year leasehold interest[21] in the Owned Baseball Land to the JQH Trust if the JQH Trust exercises the Purchase Option.

The City argues that the parties to the Development Agreement must have intended that a lessee of the Owned Baseball Land pay "market rent" because the City "has not been compensated for the Owned Baseball Land the way it has been compensated for the Acquired Baseball Land."[22] This argument has a certain surface appeal: the JQH Trust has paid off the Series 2002B Bonds that financed the City's purchase of the Acquired Baseball Land, but not the Series 2002C Bonds (see *supra* note 5) that refinanced the PBC's earlier purchase of the Owned Baseball Land. However, the argument contains a number of flaws.

First, the City *is* "being compensated" for the Owned Baseball Land; the Series 2002C Bonds are, and have always been, funded by a city hotel tax.[23] To require the JQH Trust to make payments on the Series 2002C Bonds on top of the

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[21] The word "lease" can mean, among other things, (1) a temporary conveyance of real property or (2) an agreement that incorporates such a conveyance. *See, e.g.*, *lease*, GARNER'S DICTIONARY OF LEGAL USAGE (3d ed. 2011); *lease*, MERRIAM-WEBSTER'S COLLEGIATE DICTIONARY (10th ed. 1996). Here, the Lease Provision obligates only the City, and it is mandatory: "the City shall provide" a lease. Because the City cannot enter into an agreement by itself or without the consent of the other party, the Lease Provision must use the word "lease" in the conveyance-of-property sense—i.e., to mean a leasehold interest. *Cf. Bldg. Erection Servs.*, 163 S.W.3d at 477 (stating that a contract should not be held void for uncertainty unless there is no possibility of giving meaning to the agreement).

[22] ECF 3008 at 6; *see id.* at 13.

[23] *See* Hearing Tr. 45:14-46:17, 59:7-8, June 11, 2018, ECF 2375.

hotel tax would be not compensation; it would be double-dipping—a windfall to the City. Second, Missouri contract law does not require one-to-one correlation between the promises made by the City and those made by the JQH Trust. Rather, it requires that the JQH Trust's promises in the Development Agreement, taken together, serve as consideration for the City's promises taken together and vice versa; the City does not argue that such consideration is absent here. Third, the JQH Trust has never been obligated to pay for the Series 2002C Bonds in order to use the Owned Baseball Land. The rent paid by the JQH Trust under the Ground Lease for use of the Baseball Land was, and only ever was, equal to the payments due on the Series 2002B Bonds alone.[24] Fourth, because the JQH Trust is not, nor has it ever been, obligated to make payments on the Series 2002C Bonds, it is a non sequitur to say that the JQH Trust must pay rent in lieu of such payments. Fifth, the concept of "market rent" assumes that a market exists. But if the JQH Trust will own Hammons Field and all other improvements on the Owned Baseball Land, would a rational third party pay anything to lease the dirt underneath those improvements? Does a lease of the Owned Baseball Land have any value beyond its potential to extract money from the JQH Trust? Sixth, the Owned Baseball Land will revert back to the City at the end of the 50-year lease. There is no reason to believe the parties intended the JQH Trust to compensate the City for the purchase price of land that the JQH Trust will not eventually own. Finally, to say (as the

[24] The Ground Lease adjusts rent to a "nominal amount" once the Series 2002B Bonds have been paid in full. Ground Lease at 5-6.

Court does here) that the Lease Provision does not require the JQH Trust to pay rent does not mean that the City will not benefit from the JQH Trust's use of the Owned Baseball Land. The Owned Baseball Land was "unsanitary and unsafe" (see *supra* p. 3) when the City first leased it to the JQH Trust in 2002; the Trust turned it into a tourist attraction. The City has benefited from Hammons Field in ways both financial (increased tax revenues) and non-financial (beautification of public land) ever since.

The Court agrees with the City, however, that it cannot require the City to provide a 50-year lease of the Owned Baseball Land to the JQH Trust on the same terms as the PBC Lease. Because the City was not allowed to vote on Debtors' Chapter 11 plans, the City's rights under the Development Agreement must remain unaltered. *Cf.* 11 U.S.C. §§ 1124(1), 1126(f) (providing, respectively, that a claimholder's contractual rights must be unaltered for the claim to be unimpaired and that each holder of a claim in an unimpaired class is conclusively presumed to have accepted the plan). Here, the Lease Provision requires the City to convey a 50-year leasehold interest in the Owned Baseball Land to the JQH Trust. The Court cannot direct the City to convey that leasehold interest on terms from the PBC Lease, the Ground Lease, or anywhere else without altering the City's contractual rights. The Court is confident, however, that the parties can memorialize the conveyance to their mutual satisfaction.

The JQH Trust has spent more than $30 million to retire the Series 2002B Bonds and transform the Baseball Land, formerly a public "menace," into a public

asset. The result, Hammons Field, increased City tax revenues and brought professional baseball to Springfield. The City has received those benefits for more than 15 years. The JQH Trust has fulfilled its promises under the Development Agreement; it is time for the City to do the same.

Section 12.19 of the Development Agreement requires the City to convey a 50-year leasehold interest in the Owned Baseball Land to the JQH Trust if the JQH Trust exercises the Purchase Option. The City is hereby ordered to comply with the Development Agreement as interpreted here and as contemplated by the order confirming Debtors' Chapter 11 plans.

IT IS SO ORDERED.

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