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DRAFT MINUTES

THE EXECUTIVE SESSION MEETING OF THE BOARD OF ALDERMEN
CITY OF BRANSON, MISSOURI
July 1, 2022

EXCERPT

PURSUANT TO 610.021.2 RSMo.REAL ESTATE:

Alderman LeBlanc moved to ratify the Real Estate Sales Contract with Universal Entertainment LLC, for the White House Theater (DBA) executed by the Mayor and authorize the Mayor to execute the Counter Offer #One dated June 30, 2022, in the amount of two million five hundred thousand dollars (\$2,500,000), seconded by Alderman Cooper. Voting aye: Denham, Cooper, Howden and LeBlanc. Nays: none. Motion carried.

Note: Alderman Fenton and Alderman Rodriguez were absent.



Lisa Westfall, City Clerk

7/5/2022

Date



Counter Offer # One

Initiated by (check one): Seller Buyer ("Counter Offeror")
This document has legal consequences. If you do not understand it, consult your attorney.

1 This Counter Offer concerns a prior offer to enter into a Contract between the following parties on Property located at:
2 755 Gretna Road Branson MO 65616 Taney
3 Street Address City Zip Code County
4 Seller (print name): White House Theater (DBA)
5 Buyer (print name): City of Branson

6 Any terms agreed to in a previous Counter Offer must be included in this Counter Offer along with any new proposed
7 changes. Only the terms contained in this Counter Offer, together with the remaining unchanged terms of the Contract
8 (including any addenda or riders attached thereto), constitute the new offer.

9 CHANGED TERMS. Acceptance of the Contract is subject to the following modification(s):

- 10 (a) "Purchase Price" shall be \$2,500,000
11 (b) "Seller Concessions" shall be
12 (c) "Earnest Money" shall be
13 (d) "Closing Date" shall be 31 Oct. 2022
14 (e) Other changed terms, agreements or conditions (complete if/as applicable):
15 (1) Section # 3.5 Line # or Rider # is changed as follows: Page-3 Inspection Period to be 60 days
16
17 (2) Section # 11.15 Line # or Rider # is changed as follows: Page-13 Expiration of Offer 4 July 2022
18
19 (3) Section # Line # or Rider # is changed as follows:
20
21 Other/Misc. (please indicate if additional pages are attached):
22
23
24
25

26 TIME FOR ACCEPTANCE. This Counter Offer must be accepted by 5 p. m. on 4 July, 2022
27 (the "Acceptance Deadline"). Except as modified above, the parties accept and agree to all terms and conditions of the above
28 Contract, all of which are hereby fully incorporated herein by this reference. In the event of any inconsistency between the terms
29 hereof and the terms set forth in the Contract, the terms hereof control.

30 X [Signature] 2022.6.30 X
31 Signature of Counter-Offeree Time & Date Signature of Counter-Offeree Time & Date

RESPONSE TO COUNTER OFFER. (sign or initial as applicable)

32 Accept. By signing below, the undersigned (the "Counter-Offeree") agree to the modification(s) contained in this Counter Offer,
33 and hereby accept the Contract, as modified by this Counter Offer, including all attached documents (if any).

34 X [Signature] 3:53 pm 7/1/2022 X
35 Signature of Counter-Offeree Time & Date Signature of Counter-Offeree Time & Date

36 Reject or New Counter Offer. By initialing below, the Counter-Offeree(s) do not agree to the modification(s) contained in this
37 Counter Offer, but either reject the same or make a new Counter Offer (initial one, as applicable).

38 Reject (Initial). Counter-Offeree(s) reject this Counter Offer.
39 New Counter Offer (Initial). Counter-Offeree(s) hereby make a new Counter Offer.
40 Counter Offer # , which amends the terms of the Contract, is attached.

REAL ESTATE SALES CONTRACT

THIS REAL ESTATE SALES CONTRACT (the "*Contract*") is made this 1st day of July, 2022 (the "*Effective Date*") by and between Universal Entertainment LLC, a Missouri limited liability company (the "*Seller*"), and the City of Branson, or its assigns (the "*Buyer*").

ARTICLE I
The Property

Subject to the terms and provisions of this Contract, Seller agrees to sell to Buyer, and Buyer agrees to purchase from Seller, all of the following described property (sometimes referred to herein in the aggregate as the "*Property*"):

(a) The land described on Exhibit A (which legal description shall be the description given by the Title Company if approved by Buyer in Buyer's sole and absolute discretion) consisting of 07-7.0-36-000-000-010.000 Gretna Green LT 8 City Of Branson and 07-7.0-36-000-000-013.000 Gretna Green LT 9 City Of Branson which are a combined total of approximately 11.83 acres and are located at 755 Gretna Road Branson, Missouri 65616, and all rights, privileges, easements, and rights of way appurtenant to said land, including without limitation, all mineral, oil and gas and other subsurface rights, development rights, air rights, and water rights (collectively, the "*Land*");

(b) All buildings, structures, fixtures, improvements on the Land (collectively, the "*Improvements*") and any warranties or guaranties associated with the Improvements;

(c) All site plans, surveys, soil and substrate studies, architectural renderings, plans and specifications, engineering plans and studies, floor plans, landscape plans and other plans, diagrams, or studies of any kind, if any, in Seller's possession which relate to the Land or the Improvements.

ARTICLE II
Purchase Price

2.1 **Purchase Price.** The total purchase price for the Property shall be an amount equal to Two Million Two Hundred Thousand Dollars (\$2,200,000.00) (the "*Purchase Price*"). The Purchase Price shall be paid or evidenced at the Closing in the following manner:

(a) On the Effective Date, Buyer shall deposit the sum of Twenty Thousand Dollars (\$20,000.00) with the Title Company as earnest money (and together with any interest that may accrue thereon, the "*Earnest Money*").

(b) The balance of Two Million One Hundred and Eighty Thousand Dollars (\$2,180,000.00) shall be paid to Seller at the Closing, subject to adjustments, prorations and other credits provided for in this Contract.

2.2 **Earnest Money.** All Earnest Money shall be held in an interest-bearing account for the benefit of Buyer and disbursed in accordance with this Contract. Unless refunded to Buyer pursuant to this Contract, the Earnest Money shall be applied toward the Purchase Price at Closing.

2.3 **Release of Earnest Money.** The Title Company shall also serve as the escrow agent and hold the Earnest Money until either party becomes entitled to the Earnest Money. The Title Company shall release the Earnest Money to the appropriate party pursuant to the terms of this Contract upon written notice from the party entitled to the Earnest Money.

ARTICLE III

Title, Survey and Environmental Audit

3.1 **Title Commitment.** Seller shall, as soon as possible, and not later than ten (10) days after the Effective Date, cause to be ordered a current ALTA commitment for an owner's policy of title insurance (the "*Title Commitment*"), at Seller's sole cost and expense, issued by Great American Title Company located at 714 State Highway 248, Branson, Missouri (the "*Title Company*"), together with copies of all documents identified on the Title Commitment as Schedule B exceptions. The Title Commitment shall describe the Property, name Buyer as the party to be insured thereunder, and commit to insure Buyer with indefeasible, good, and marketable title.

3.2 **Survey.** Seller shall provide to Buyer a copy of any survey for the Property Seller has in its possession within three (3) days after the Effective Date. Buyer may, at its sole cost and expense and within the Inspection Period, as that term is defined in Section 3.5, cause to be prepared a current ALTA survey (the "*Survey*") of the Property certified to Buyer and the Title Company, prepared by a duly-licensed Missouri surveyor acceptable to Buyer in Buyer's sole and absolute discretion. The survey shall be satisfactory to the Title Company so as to permit the Title Company to delete the survey and boundary exceptions in the Owner's Title Policy, to be issued to Buyer as required herein.

3.3 **Environmental Audit.** Seller shall provide to Buyer a copy of its most recent environmental audits including but not limited to any Phase I and Phase II Environmental Audit for the Property within three (3) days after the Effective Date. Buyer may, at its sole cost and expense, obtain new environmental audits and inspections including but not limited to a Phase I Environmental Audit and, if recommended by the Phase I, a Phase II Environmental Audit (collectively, the "*Audit*") within the Inspection Period for the benefit of Buyer and any financing source of Buyer and prepared by a professional environmental auditing firm. If Buyer disapproves of anything in the Audit, Buyer may, at Buyer's option, terminate this Agreement upon written notice to Seller within the Inspection Period.

3.4 **Review of Title and Survey.** Buyer shall notify Seller of any objections Buyer has to any matter shown or referred to in the Title Commitment and the Survey, if any, ("*Buyer's Objection Notice*") within the Inspection Period. Seller shall have ten (10) days ("*Seller's Cure Period*") after receipt of Buyer's Objection Notice to cure the items listed in Buyer's Objection Notice to Buyer's satisfaction in Buyer's sole and absolute discretion. If Seller is unable or

unwilling to cure such objections within such period, Buyer may at Buyer's option waive the objections not cured (the "*Permitted Exceptions*") or terminate this Contract by written notice to Seller within ten (10) days from the expiration of Seller's Cure Period.

(a) Notwithstanding anything to the contrary, all deeds of trust, mortgages, security interests and liens evidencing or securing monetary sums (each a "*Monetary Encumbrance*") shall for all purposes be deemed a title defect without the requirement of Buyer making written objection to Seller, which must be terminated and released of record at the Closing, and in no event shall any Monetary Encumbrance be a Permitted Exception. Buyer's notice of objections pursuant to this Section is in addition to, and does not waive or supersede, any other notices of objections given by Buyer pursuant to the Contract, which may be given separately or together herewith.

3.5 *Inspection of the Property.* The condition of the Property, including without limitation the title, environmental, geotechnical, condition and location of the Improvements, wetland, floodplain, drainage, availability of access and utilities, suitability for development, suitability for Buyer's intended use, compaction testing, zoning, and subdivision status thereof, shall meet the approval of Buyer, in Buyer's sole judgment and discretion, upon inspections of the Property to be made by Buyer or Buyer's representatives within one hundred and fifty (150) days after the Effective Date (the "*Inspection Period*"). Buyer and its agents, employees, consultants, inspectors, appraisers, engineers and contractors (collectively, "*Buyer's Representatives*") shall have the right to enter upon and pass through the Property during normal business hours to examine and inspect the same; such inspections of the Property by Buyer or Buyer's Representatives are to be conducted in such a manner as not to permanently physically damage the Property or unreasonably interfere with the usual operation of the Property by Seller, however Buyer may drill test holes, test pits, perform compaction testing, and do other reasonable testing as necessary to determine the condition of the Property. Buyer may terminate this Contract at any time during the Inspection Period for any reason. If Buyer elects to terminate as provided above, the Earnest Money shall be returned to Buyer within one (1) Business Day and neither party shall have any further obligation to the other hereunder. Buyer shall deliver to Seller a list of all unacceptable conditions during the Inspection Period (an "*Inspection Notice*"). If Buyer fails to terminate as provided in this Section and fails to provide an Inspection Notice, this condition shall be deemed satisfied. Buyer may deliver more than one Inspection Notice during the Inspection Period. Seller shall have seven (7) days to inform Buyer, in writing, of which items in the Inspection Notice Seller will correct. The parties have three (3) days after Seller's response to the inspection notice to reach a written agreement with respect to the cure of the items in the Inspection Notice. All items cured by Seller shall be cured to Buyer's satisfaction in Buyer's sole and absolute discretion and shall be completed no later than five (5) days before the Closing. If the parties do not reach such an agreement or if Seller does not provide a response to Buyer's Inspection Notice, Buyer may, at Buyer's election, waive the items in Buyer's Inspection Notice or terminate this Contract in which case the Earnest Money shall be returned to Buyer within one (1) Business Day and neither party shall have any further obligation to the other hereunder. Buyer's notice of objections pursuant to this Section is in addition to, and does not waive or supersede, any other notices of objections given by Buyer pursuant to the Contract, which may be given separately or together herewith.

3.6 Walk-Through. Buyer and Buyer's Representatives shall be entitled to walk through the Property to verify the condition of the Property at any time after the Inspection Period and before the Closing. The utilities shall be turned on during such walk-through. Buyer may terminate this Contract if Buyer is not satisfied with the condition of the Property. If Buyer terminates this Contract pursuant to the foregoing, the Earnest Money shall be returned to Buyer within one (1) Business Day and neither party shall have any further obligation to the other hereunder.

ARTICLE IV

Information, Representations and Warranties

4.1 Representations and Warranties of Seller. Seller hereby represents and warrants as of the date hereof and as of the Closing Date that:

(a) Seller has good and marketable title in fee simple to the Property. The Property has not been assigned or conveyed to any party. Seller has the right to convey the Property pursuant to the terms of this Agreement. No Person (other than Buyer pursuant to this Agreement) has a right to acquire any interest in the Property.

(b) There are no adverse parties in possession of the Property or of any part thereof and no parties in possession thereof except Seller, and no party has been granted any license, lease, or other right relating to the use or possession of the Property.

(c) Seller owns legal and beneficial title to all of the Property included in this sale, free and clear of all liens and encumbrances. There are no restrictive covenants applicable to the Property. True, correct and complete copies of all contractors' or subcontractors' guarantees and warranties relating to the Property, and all agreements, amendments, guarantees, side letters and other documents relating thereto, have been delivered to Buyer by Seller. There are no other such documents or agreements, whether written or oral.

(d) Seller has full right, title, authority and capacity to execute and perform this Contract and to consummate all of the transactions contemplated herein without obtaining any further consents or approvals from, or the taking of any other actions with respect to, any third parties, and the individual of Seller who executes and delivers this Contract and all documents to Buyer hereunder is and shall be duly authorized to do so. Seller is duly organized, validly existing and in good standing under the laws of the state of its organization, and all necessary documents evidencing such standing will be provided to the Title Company at Closing.

(e) There is no pending condemnation or similar proceeding affecting the Property or any portion thereof, and Seller has not received any written notice and has no knowledge that any such proceeding is contemplated.

(f) There are no contracts of employment, management, maintenance, service, supply or rental outstanding which affect any portion of the Property or its operation.

(g) No work has been performed or is in progress by Seller at and no materials have been furnished to the Property or any portion thereof, which might give rise to mechanic's, materialman's or other liens against the Property or any portion thereof.

(h) The Property has never been the site of any activity which would violate any past or present law of any federal, state or local governmental body or agency, including all environmental laws. No part of the Property is presently being used, nor at any time in the past has the same been used, as a dump or other waste disposal site nor are any hazardous waste or deposits stored or buried thereon or therein.

(i) The Property does not contain any chemical, material, or substance to which exposure is prohibited, limited or regulated by any federal, state, county, regional or local authority, including but not limited to asbestos, urea formaldehyde foam insulation, or polychlorinated biphenyls, or which, even if not so regulated, is known to pose or is suspected of posing a hazard to the health and safety of the occupants of the Property or of property adjacent to the Property.

(j) The Property is not now being used nor has ever been used for any activities involving, directly or indirectly, the use, generation, treatment, storage or disposal of any hazardous or toxic chemical, material substance, or waste.

(k) There is utility service available to the Property (including without limitation, gas, electricity, water, sewer capacity, internet, and telephone service).

(l) The Improvements have been constructed in a good and workmanlike manner, free from defects in workmanship and material, are in good working order and condition, and do not require any repair or replacement other than minor routine maintenance, and have been constructed and are being occupied, maintained, and operated in compliance with all applicable laws, regulations, insurance requirements, contracts, permits, ordinances, restrictions, building set-back lines, zoning regulations, covenants, restrictions, and easements, and neither Seller nor its officers, members, managers, employees, or agents have received any notice, written or verbal, claiming any violation of any of the same or requesting or requiring the performance of any repairs, alterations or other work in order to so comply.

(m) The Property has free, uninterrupted access to and from one or more publicly dedicated streets, highways, or roads.

(n) Seller is not prohibited from consummating the transactions contemplated in this Contract, by any law, regulation, agreement, instrument, restriction, order or judgment.

(o) There are no attachments, executions, assignments for the benefit of creditors, receiverships, conservatorships or voluntary or involuntary proceedings in bankruptcy or pursuant to any other debtor relief laws contemplated or filed by Seller or pending against Seller or the Property.

(p) There are no contracts or other obligations outstanding for the sale, exchange or transfer of the Property or any portion thereof.

(q) Seller is not a foreign person selling property as described in the Foreign Investment in Real Property Tax Act ("*FIRPTA*") and agrees to deliver an affidavit at Closing reflecting that Seller is not such a foreign person and provide Seller's tax identification number ("*FIRPTA Affidavit*").

(r) There are no actions, suits, claims, proceedings or causes of action which are pending or have been threatened or asserted against, or are affecting, Seller or the Property or any part thereof in any court or before any arbitrator, board or governmental or administrative agency or other person or entity which might have an adverse effect on the Property or any portion thereof or on Buyer's ability to utilize the Property for its intended purpose from and after the date hereof.

(s) All taxes, assessments, bills, costs, expenses and other liabilities whatsoever attributable to the Property or to its ownership, operation or maintenance due and payable as of the Closing Date shall be paid on or before the Closing.

(t) The continued ownership, operation, use, and occupancy of the Property does not violate any zoning, building, health, flood control, fire, or other law, ordinance, order, regulation, or restrictive covenant. There are no violations of any federal, state, county, or municipal, law, ordinance, order, regulation, or requirement affecting any portion of the Property, and no written notice of any such violation has been issued by any governmental authority.

(u) All information given to Buyer by or on behalf of Seller and pertaining to the Property or the operations thereon is true and correct in all respects, and fully and accurately depicts the matters set forth herein; further, Seller does not know of any facts, conditions or other information which have not been disclosed fully to Buyer and which could reasonably be expected to have a material bearing or effect upon Buyer's decision to enter into the contract and Buyer's decision to consummate the transactions contemplated hereby.

(v) Seller acknowledges that formal approval of this Contract by a vote of Buyer's Board of Aldermen in a public meeting is necessary for Buyer to be bound to this Contract.

The foregoing representations and warranties shall survive the Closing and delivery of the Deed.

ARTICLE V

Conditions Precedent to Buyer's Obligation to Close

Notwithstanding anything to the contrary herein, Buyer's obligation to consummate the transactions contemplated hereunder is conditioned upon satisfaction of each of the following conditions at or prior to the Closing:

- (a) The condition of the Property, including without limitation title and physical condition, shall not have changed in any material respect after Buyer's inspection except as the parties may have agreed in a written agreement signed by the parties pursuant to Section 3.5 hereof;
- (b) The satisfactory completion of Buyer's walk-through as described in section 3.6;
- (c) None of the representations and warranties of Seller set forth herein shall be untrue or inaccurate in any material respect;
- (d) Buyer shall be satisfied, in Buyer's sole and absolute discretion, that the Property is suitable for Buyer's intended use;
- (e) Expiration of the Inspection Period;
- (f) The waiver or cure, to Buyer's satisfaction in its sole and absolute discretion, of all items in Buyer's Objection Notice;
- (g) The Title Company shall have issued the title insurance policy insuring Buyer's good, marketable, and indefeasible title to the Property subject only to the Permitted Exceptions with all endorsements requested by Buyer; and
- (h) Seller shall not have failed to perform or comply with any of its agreements or obligations in a material manner and within the periods provided herein.

In the event that all of the above conditions are not satisfied at or prior to the Closing (or such earlier date as is specified with respect to a particular condition), Buyer may (i) terminate this Contract by notice to Seller and the Earnest Money shall be returned to Buyer within one (1) Business Day or (ii) give written notice of Buyer's election to waive such unsatisfied condition.

ARTICLE VI

Closing

6.1 **Time and Place of Closing.** Provided that all of the conditions of this Contract shall have been satisfied prior to or on the Closing Date, the Closing (herein so called) of this transaction shall take place at the Title Company or via the electronic exchange of documents on

January 20, 2023 or such other date as the parties may mutually agree in writing (the "*Closing Date*").

6.2 *Events of Closing. At the Closing:*

(a) *Seller shall deliver to Buyer the following:*

(1) A General Warranty Deed duly executed and acknowledged by Seller, conveying to Buyer the Property in indefeasible fee simple free and clear of any lien, encumbrance or exception other than the Permitted Exceptions (the "*Deed*");

(2) A Settlement Statement executed by Seller;

(3) Possession of the Property;

(4) Such other evidence of the authority and capacity of Seller as the Title Company may reasonably require;

(5) Any affidavits reasonably necessary for the Title Company to remove all standard exceptions, including but not limited to exceptions for mechanic's liens, to title from the Owner's Policy of Title Insurance; and

(6) Any other documents reasonably requested by Buyer or the Title Company.

(b) *Buyer shall deliver to Seller the following:*

(1) The consideration required pursuant to Article II above, by wire transfer or by Buyer's certified or cashier's check in U.S. funds;

(2) A Settlement Statement executed by Buyer;

(3) Such evidence of the authority and capacity of Buyer and its representatives as Seller or the Title Company may reasonably require.

6.3 *Expenses.*

(a) Seller shall pay the cost of transfer taxes or required documentary stamps, the cost of the Title Commitment, one-half (1/2) of the Title Company's closing fees, its share of the prorations as set forth in Section 6.4 hereof, one-half (1/2) of the wire processing fee charged by the Title Company, if any, one-half (1/2) of the cost of the closing protection letter charged by the Title Company, and its own attorneys' fees.

(b) Buyer shall pay its proportionate share of the prorations as set forth in Section 6.4 hereof, one-half (1/2) of the Title Company's closing fees, the premium for an

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Owner's Policy of Title Insurance insuring Buyer, the cost of any endorsements to the Owner's Policy of Title Insurance, one-half (½) of the wire processing fee charged by the Title Company, if any, one-half (½) of the cost of the closing protection letter charged by the Title Company, any appraisals of the Property, and its own attorneys' fees.

(c) Except as otherwise provided in this Section, all other expenses hereunder shall be paid by the party incurring such expenses.

6.4 Prorations. Real and personal property ad valorem taxes, installments of current year special assessments, and utility charges shall be prorated to the Closing, based upon actual days involved. Seller shall be responsible for all such expenses for any period prior to the Closing, and Buyer shall be responsible for the expenses incurred after Closing. In connection with the proration of both real and personal property ad valorem taxes, if active tax figures for the year of Closing are not available at the Closing Date, an estimated proration of taxes shall be made using tax figures from the preceding year; however, when actual taxes for the year of the Closing are available, a corrected proration of taxes shall be made.

ARTICLE VII

Damage to Property and Condemnation

Seller agrees to give Buyer prompt notice of any fire or other casualty affecting the Property between the date hereof and the Closing Date or of any actual or threatened taking or condemnation of all or any portion of the Property. If prior to the Closing there shall occur:

(a) Damage to the Property caused by fire or other casualty which would cost One Thousand Dollars (\$1,000.00) or more to repair, or

(b) The taking or condemnation of all or any portion of the Property.

then in any such event Buyer may at its option terminate this Contract by written notice to Seller within twenty (20) days after Buyer has received the written notice referred to above or at the Closing, whichever is earlier. If Buyer does not so elect to terminate this Contract, then the Closing shall take place as provided herein without abatement of the Purchase Price, and there shall be assigned to Buyer at the Closing all of Seller's interest in and to all insurance proceeds or condemnation award and further, if the same is insufficient to pay the actual loss, Seller will pay such deficiency to Buyer on demand. If prior to the Closing there shall occur damage to the Property caused by fire or other casualty which would cost less than in any such event, Buyer shall have no right to terminate its obligation but there shall be assigned to Buyer at Closing all interest of Seller in and to any insurance proceeds which may be payable to Seller on account of any such occurrence and further, if the same is insufficient to pay the actual loss, Seller will pay such deficiency to Buyer on demand.

All risks of loss shall be borne by Seller until acceptance by Buyer of delivery of Seller's deed at the Closing.

ARTICLE VIII
Termination, Default and Remedies

8.1 **Permitted Termination.** If this Contract is terminated by either party pursuant to a right expressly given it to do so hereunder (herein referred to as a "*Permitted Termination*"), neither party shall have any further rights or obligations hereunder.

8.2 **Default by Seller.** Seller shall be in default hereunder upon the occurrence of any one or more of the following events:

(a) Any of Seller's warranties or representations set forth herein are untrue or inaccurate in any material respect; or

(b) Seller shall fail to meet, comply with or perform any covenant, agreement, or obligation on its part required, within the time limits and in the manner required in this Contract, for any reason other than a Permitted Termination.

If Seller defaults hereunder, Buyer may, at Buyer's option, do any of the following:

(1) Terminate this Contract by written notice delivered to Seller at or prior to the Closing, whereupon Buyer's Earnest Money deposit shall immediately be returned to Buyer, and Buyer may bring an action against Seller for damages; or

(2) Enforce specific performance of this Contract against Seller.

8.3 **Default by Buyer.** Buyer shall be in default hereunder if Buyer shall fail to deliver at the Closing any of the items required of Buyer in Article VI hereof, for any reason other than a default by Seller hereunder or a Permitted Termination. If Buyer defaults hereunder, Seller, as Seller's sole and exclusive remedy for such default, shall be entitled to terminate this Contract by notice to Buyer and retain Buyer's Earnest Money, it being agreed between Buyer and Seller that such sum shall be liquidated damages for a default of Buyer hereunder because of the difficulty, inconvenience, and the uncertainty of ascertaining actual damages for such default.

8.4 **Attorney's Fees.** If it shall be necessary for either Buyer or Seller to employ an attorney to enforce its rights pursuant to this Contract because of the default of the other party, the prevailing party shall be entitled to recover its reasonable attorney's fees from the non-prevailing party.

ARTICLE IX
Indemnification

9.1 **Indemnification of Buyer.** Seller hereby indemnifies and forever holds Buyer and its successors or assigns harmless from and against any and all claims, expenses, judgments, demands, liens and costs (including without limitation attorneys' fees and costs of litigation and appeal) which Buyer and its successors or assigns may hereafter sustain, suffer, incur, or be

subjected to as a result of any action, suit, proceeding or claim affecting the Property or any portion thereof, any breach of this Agreement or the representations and warranties herein, or any contracts and/or services related thereto, in relation to which the facts which give rise to such actions, suits or proceedings arose or occurred prior to the Closing.

9.2 **Survival.** The foregoing provisions of this paragraph shall survive the Closing.

ARTICLE X Broker's Commission

10.1 **Seller's Broker.** Seller represents and warrants to Buyer that it has not dealt or negotiated with or engaged on its own behalf or for its benefit any broker, finder, consultant, advisor, or professional in the capacity of a broker or finder in connection with this Contract or the transactions contemplated hereby other than Doug Dawson with Keller Williams Tri-Lakes ("*Seller's Broker*"). Seller shall pay all fees and commissions due to Seller's Broker.

10.2 **Buyer's Broker.** Buyer represents and warrants to Seller that it has not dealt or negotiated with or engaged on its own behalf or for its benefit any broker, finder, consultant, advisor, or professional in the capacity of a broker or finder in connection with this Contract or the transactions contemplated.

10.3 **No Other Brokers.** Each party hereby agrees to indemnify, defend, and hold the other, harmless from and against any and all claims, demands, causes of action, losses, costs, and expenses (including but not limited to reasonable attorneys' fees, court costs, and disbursements) arising from any claim for commission, fees, or other compensation or reimbursement for expenses made by any Broker engaged by or claiming to have dealt with such party in connection with this Contract or the transactions contemplated hereby.

ARTICLE XI Miscellaneous

11.1 **No Assumption of Seller's Liabilities.** Buyer is acquiring only the Property from Seller and is not the successor of Seller. Buyer does not assume or agree to pay or indemnify Seller or any other person or entity against, any liability, obligation or expense of Seller or relating to the Property in any way except only to the extent, if any, herein expressly and specifically provided.

11.2 **Seller's Disclosure.** Seller shall provide a Seller's disclosure statement within ten (10) days after the Effective Date of this Contract and shall provide full and prompt updates of any new information discovered or made known to the Seller at any time.

11.3 **Notices.** All notices, demands, requests and other communications required or permitted hereunder shall be in writing, and shall be deemed delivered on the earlier of (1) the third day after deposit with the carrier of registered or certified mail and addressed to the addressee at its address set forth below or at such other address as such party may have specified theretofore

by written notice delivered in accordance with this Section, (2) actual receipt by the addressee or (3) the date sent if sent by email and followed on the same day by notice via regular, certified, or registered US mail:

If to Seller: Keller Williams Tri-Lakes
 Attn: Doug Dawson
 714 State Hwy 248 #10
 Branson, MO 65616
 Email: Doug@dougwilliamsbranson.com

If to Buyer: City of Branson Missouri
 Attn: Lisa Westfall
 110 W Maddux St., Ste. 205
 Branson, MO 65616
 Email: lwestfall@bransonmo.gov

*With a copy,
 which shall not
 constitute
 notice, to:* Kutak Rock LLP
 Attn: James Meadows
 300 S. John Q. Hammons Parkway, Suite 800
 Springfield, MO 65806
 Email: James.Meadows@Kutakrock.com

11.4 **Survival.** All warranties, representations and agreements contained herein, including but not limited to those in Section 4.1, or arising out of the sale of the Property by Seller to Buyer shall survive delivery of Seller's warranty deed and the Closing hereof.

11.5 **Business Day.** A "Business Day" shall be any day other than a Saturday, Sunday, or other day on which the banks located in Branson, Missouri are closed for business.

11.6 **Governing Law; Venue.** This Contract shall be construed in accordance with and governed by the laws of the state of Missouri. Any dispute or cause of action under this Contract shall be resolved in a court of competent subject matter jurisdiction located in Taney County, Missouri.

11.7 **Assignment.** The Buyer may assign this Contract in its sole discretion, without the prior written consent of Seller. Seller shall not assign this Contract and any attempted assignment shall be null and void.

11.8 **Integration; Modification; Waiver.** This Contract constitutes the complete and final expression of the agreement of the parties relating to the Property, and supersedes all previous contracts, agreements, and understandings of the parties, either oral or written, relating to the Property. This Contract cannot be modified, or any of the terms hereof waived, except by an

instrument in writing (referring specifically to this Contract) executed by the party against whom enforcement of the modification or waiver is sought.

11.9 **Counterpart Execution.** This Contract may be executed in several counterparts, each of which shall be fully effective as an original and all of which together shall constitute one and the same instrument. Electronic or facsimile signatures, such as signatures contained in faxes, pdf files or similar electronically transmitted documents shall be considered original signatures and shall be fully effective.

11.10 **Headings; Construction.** The headings which have been used throughout this Contract have been inserted for convenience of reference only and do not constitute matter to be construed in interpreting this Contract. Words of any gender used in this Contract shall be held and construed to include any other gender, and words in the singular number shall be held to include the plural, and vice versa, unless the context requires otherwise. The words "herein," "hereof," "hereunder" and other similar compounds of the word "here" when used in this Contract shall refer to the entire Contract and not to any particular provision or section. If the last day of any time period stated herein shall fall on a day other than a Business Day, then the duration of such time period shall be extended so that it shall end on the next succeeding Business Day. The use of the words "mortgage" or "deed of trust" herein shall be deemed to be interchangeable and shall refer to any mortgage, deed of trust, trust deed or document of similar purpose.

11.11 **Invalid Provisions.** If any one or more of the provisions of this Contract, or the applicability of any such provision to a specific situation, shall be held invalid or unenforceable, such provision shall be modified to the minimum extent necessary to make it or its application valid and enforceable, and the validity and enforceability of all other provisions of this Contract and all other applications of any such provision shall not be affected thereby.

11.12 **Binding Effect.** This Contract shall be binding upon and inure to the benefit of Seller and Buyer, and their respective heirs, personal representatives, successors and assigns.

11.13 **Further Acts.** In addition to the acts recited in this Contract to be performed by Seller and Buyer, Seller and Buyer agree to perform or cause to be performed at the Closing or after the Closing any and all such further acts as may be reasonably necessary to consummate the transactions contemplated hereby.

11.14 **Time is of Essence.** Time shall be of the essence with respect to this Contract.

11.15 **Expiration of Offer.** Buyer's offer to Seller to enter into this Contract shall expire on June 28, 2022 at 5:00 PM CDT (the "Expiration Date"). Seller may accept and execute this Contract at any time until the Expiration Date unless it is withdrawn by Buyer.

SIGNATURES APPEAR ON THE FOLLOWING PAGE.

IN WITNESS WHEREOF, the parties have hereunto set their hands as of the date first above written.

SELLER: Universal Entertainment LLC, a Missouri limited liability company

By: _____

Print: _____

Title: _____



BUYER: The City of Branson

By: Larry D. Milton

Print: Larry D. Milton

Title: Branson Mayor

TITLE COMPANY: ~~Hogson Land Title~~ Great American Title Co.

By: _____

Print: _____

Title: _____

Approved as to form by James Meadows, acting Interim City Attorney: /s/ James E. Meadows.

ATTEST:
Lisa K. Westfall
Lisa K. Westfall
City Clerk

Seller Counter-Offers(Initial) CXN X
Counter offer MSC-2040, which amends the terms of this offer, is attached and incorporated into this contract.

COPY

EXHIBIT A
LEGAL DESCRIPTION