

COPY

DRAFT MINUTES

THE EXECUTIVE SESSION MEETING OF THE BOARD OF ALDERMEN
CITY OF BRANSON, MISSOURI
October 25, 2022

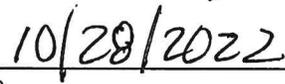
EXCERPT

PURSUANT TO 610.021.2 RSMo. REAL ESTATE:

Alderman LeBlanc moved to authorize Mayor Milton to enter into a Real Estate Purchase Agreement (as presented), with Ballparks of America, LLC for property owned by the City of Branson, located at or near the intersection of W. 76 Country Blvd. and Pat Nash Dr. in Branson, Missouri for one million dollars (\$1,000,000.00), seconded by Alderman Denham. Voting aye: Fenton, Denham, Cooper, Howden, and LeBlanc. Nays: none. Motion carried.



Lisa Westfall, City Clerk



Date

REAL ESTATE PURCHASE AGREEMENT

This REAL ESTATE PURCHASE AGREEMENT (this "Agreement") is made and entered into by and between CITY OF BRANSON, MISSOURI, a Missouri municipal corporation ("Seller"), and BALLPARKS OF AMERICA, LLC, a Missouri limited liability company, and/or its permitted assigns ("Buyer"). The effective date (the "Effective Date") of this Agreement shall be the date upon which the last of the parties hereto executes the same.

In consideration of their mutual promises, covenants, representations, and warranties herein, Seller and Buyer agree as follows:

1. Sale and Purchase.

- (a) Seller agrees to sell and convey to Buyer, and Buyer agrees to purchase from Seller, on the terms and conditions hereinafter set forth, all that certain real property owned by Seller, including all buildings, improvements, fixtures, equipment and structures (if any) thereon, and all appurtenances, easements, oil, gas, and mineral interests and rights of Seller thereto (together, the "Property"), located at or near the intersection of W. 76 Country Blvd. and Pat Nash Dr. in Branson, Missouri, as legally described on Exhibit A attached hereto which is incorporated herein by this reference.
- (b) The parties hereto acknowledge that the Property is subject to that certain Ground Lease Agreement dated January 30, 2020, between Seller, as lessor, and Buyer, as lessee (the "Lease"), pursuant to which Buyer leased from Seller, and is currently in possession of, the Property.

2. Purchase Price.

- (a) The purchase price for the Property shall be One Million and 00/100 Dollars (\$1,000,000.00) (the "Purchase Price"). The Purchase Price shall be payable as follows:
 - (i) Within five (5) business days after the Effective Date, Buyer shall deposit with Preferred Title of Missouri, Inc., 1265 E. Republic Rd., Springfield, MO 65804, as escrow agent (the "Escrow Agent" or "Title Company"), Five Thousand and 00/100 Dollars (\$5,000.00) (the "Deposit"). The Deposit shall be applicable to the Purchase Price in the event of Closing (as hereinafter defined), but otherwise shall be refunded to Buyer in accordance with this Agreement; and
 - (ii) Subject to prorations set forth in this Agreement (including, but not limited to, those outlined in Section 8 below), Buyer shall pay to Seller the balance of the Purchase Price at Closing by wire transfer of immediately available funds through the Title Company.
- (b) For purposes of this Agreement, the term "Closing" or "Closing Date" shall mean the date which is thirty (30) days after the expiration of the Financing Contingency

Period (as hereinafter defined). Closing may be accelerated to an earlier date, or delayed to a later date, at any time by mutual written agreement of Seller and Buyer.

3. **Buyer's Due Diligence.** The obligation of Buyer to close the transactions contemplated by this Agreement is subject to the approval by Buyer of the condition of the Property within one hundred eighty (180) days following the Effective Date (the "Diligence Period"). If Buyer is not satisfied with the condition of the Property, for any reason whatsoever, then Buyer may terminate this Agreement by giving written notice thereof to Seller prior to expiration of the Diligence Period, in which event the Title Company shall immediately return the Deposit to Buyer and neither party shall have any further obligations under this Agreement except for those obligations which expressly survive the termination hereof. If such written notice of termination has not been delivered by Buyer to Seller prior to the expiration of the Diligence Period, then the foregoing right to terminate shall be deemed not to have been exercised by Buyer, and, subject to Buyer's right to terminate this Agreement in accordance with any other provision of this Agreement or as a result of any default by Seller under this Agreement, the sale shall proceed to Closing, and the Deposit shall become nonrefundable to Buyer.

(a) **Title Commitment and Objections.** Buyer shall order from the Title Company a commitment to issue an extended coverage ALTA owner's policy of title insurance effective at Closing (the "Commitment"). On or prior to expiration of the Diligence Period, Buyer shall deliver to Seller notice of Buyer's objections, if any, to any liens, encumbrances or other title exceptions revealed by the Commitment which are unacceptable to Buyer (the "Title Objections"). Upon receipt of any such timely delivered notice of Title Objections from Buyer, Seller may, but shall not be obligated to, elect to cure the Title Objections on or before Closing. Seller shall notify Buyer within five (5) business days of receiving notice of such Title Objections as to Seller's decision to either cure or not to cure the Title Objections. If Seller elects by notice at any time not to cure any Title Objections, then Buyer's right and remedy shall be, on the terms and conditions set forth below, either: (x) to elect not to purchase the Property, in which event this Agreement shall be terminated, and the Deposit shall be returned to Buyer; or (y) to complete the transaction contemplated hereby in accordance with this Agreement subject to such Title Objections without reduction in or abatement of the Purchase Price. Buyer shall exercise its option pursuant to clause (x) of this Section 3(a) by written notice given to and received by Seller within five (5) business days after receipt by Buyer of Seller's notice that Seller will not cure any such Title Objections. If Buyer shall fail to send a written notice to Seller exercising Buyer's option set forth under clause (x) of this Section 3(a) within the applicable time period, then Buyer shall conclusively be deemed to have exercised the option set forth in clause (y) of this Section 3(a).

(i) **Permitted Encumbrances.** If Buyer or Buyer's counsel fails to deliver any such objection notice prior to the expiration of the Diligence Period, Buyer shall be deemed to have waived its right to object to any liens, encumbrances or other title exceptions appearing on the Commitment (and the same shall not constitute Title Objections and shall be deemed

“Permitted Encumbrances”). Buyer shall not be entitled to object to, and shall be deemed to have approved, any liens, encumbrances or other title exceptions (and the same shall not constitute Title Objections but shall be deemed Permitted Encumbrances) (1) over which the Title Company is willing to insure, (2) against which the Title Company is willing to provide affirmative insurance, or (3) which will be extinguished upon the transfer of the Property to Buyer.

- (ii) No Obligation to Cure. It is expressly understood that in no event shall Seller be required to bring any action or institute any proceeding, or to otherwise incur any costs or expenses in order to attempt to eliminate any Title Objections or to otherwise cause title in the Property to be in accordance with the terms of this Agreement on the Closing Date. Notwithstanding anything to the contrary contained herein, if Seller elected to cure one or more Title Objections and is thereafter unable to eliminate such Title Objections by the Closing Date, unless the same are waived by Buyer without any abatement in the Purchase Price, Seller may, upon prior written notice (“Title Cure Notice”) to Buyer adjourn the date of Closing for a period not to exceed thirty (30) days (“Title Cure Period”), in order to attempt to eliminate such exceptions. In the event Seller elects to cure any Title Objections and fails to do so by the Closing Date or within the Title Cure Period, as the case may be, then such failure shall not be deemed a default by Seller hereunder, but rather be deemed to be a failure of a Buyer’s condition to close and Buyer shall have the right to terminate this Agreement and receive a refund of the Deposit or waive such Title Objection and proceed with Closing. In no event shall any lien, encumbrance or other exception arising as a result of any act or omission of Buyer or anyone acting on behalf of Buyer be deemed a Title Objection.
- (b) Survey. Buyer, at Buyer’s expense, may obtain a current ALTA/NSPS land title survey of the Property by a surveyor licensed in the State of Missouri acceptable to Buyer (the “Survey”). Buyer shall have until the expiration of the Diligence Period to raise any objections shown to Buyer by the Survey. Seller shall notify Buyer within five (5) business days of receiving notice of such objections as to Seller’s decision to either cure or not to cure the objections. If Seller elects by notice at any time not to remedy such defects in title based on the Survey, Buyer shall have the option to either: (x) elect not to purchase the Property, in which event this Agreement shall be terminated, and the Deposit shall be returned to Buyer; or (y) to complete the transaction contemplated hereby in accordance with this Agreement subject to such objections without reduction in or abatement of the Purchase Price. Buyer shall exercise its option pursuant to clause (x) of this Section 3(b) by written notice given to and received by Seller within five (5) business days after receipt by Buyer of Seller’s notice that Seller will not cure any such objections. If Buyer shall fail to send a written notice to Seller exercising Buyer’s option set forth under clause (x) of this Section 3(b) within the applicable period, then Buyer shall conclusively be deemed to have exercised the option set forth in clause (y) of this Section 3(b).

- (c) Zoning. Buyer shall have the option of making formal application for any zoning approval(s), with Seller's prior written approval of such application (which approval shall not be unreasonably withheld, conditioned or delayed), required for Buyer's intended development of the Property.
 - (d) Inspections. Subject to the terms and conditions set forth herein, Buyer and Buyer's representatives shall have the right to enter upon the Property to perform such inspections and other examinations of the Property as Buyer deems necessary or desirable (including, without limitation, any tests, analysis, studies, investigations, inspections and other examinations of physical and environmental conditions of the Property) (collectively, "Inspections"). Seller expressly consents to Buyer obtaining a Phase I Environmental Site Assessment. All Inspections shall be at Buyer's sole cost and expense and completed within the Due Diligence Period.
 - (e) Buyer shall repair all damage to the Property caused by Buyer's Inspection of the Property within ten (10) days from the date of such damage. Buyer agrees to indemnify and hold Seller and its officers, directors, trustees, partners, principals, members, employees, agents, affiliates, representatives, consultants, contractors, and advisors, and any successors or assigns of the foregoing (each, individually, a "Seller Related Party" and, collectively with Seller, the "Seller Related Parties") harmless from and against any and all losses, costs, damages, liens, claims, liabilities, or expenses (including, but not limited to, Seller's or any Seller Related Party's reasonable attorneys' fees, court costs, and disbursements) incurred by Seller or any Seller Related Parties arising from or by reason of Buyer's or its member's, manager's, officer's, director's, employee's, agent's, or contractor's access to, or Inspections of, the Property. This section 3(e) shall survive the Closing or earlier termination of this Agreement.
4. Financing Contingency Period. Buyer shall have the Diligence Period to secure financing for (i) its purchase of the Property and (ii) the cost to construct Buyer's intended improvements on the Property (the "Financing Contingency Period"). In the event that such financing suitable to Buyer, in its sole and absolute discretion, cannot be obtained, Buyer may terminate this Agreement by delivering written notice to Seller on or prior to the expiration of the Financing Contingency Period, in which event this Agreement shall be terminated, the Deposit shall be returned to Buyer, and neither party shall have any further rights or obligations hereunder except those which expressly survive the termination hereof. Buyer shall use good faith efforts to obtain such financing within the Financing Contingency Period.
5. Cooperation from Seller. Seller understands that time is of the essence in satisfying each of the conditions and contingencies set forth in this Agreement. In the event Buyer requires Seller's cooperation or consent in connection with such approvals or contingencies, then, at Buyer's cost and expense, Seller shall cooperate in good faith with Buyer and Seller shall provide any consents and/or information reasonably required for the same.
6. Representations and Warranties.

- (a) Seller's Representations and Warranties. Seller hereby warrants and represents to Buyer as of the Effective Date and as of the Closing Date as follows:
- (i) Seller has all requisite power and authority to execute and deliver this Agreement and to perform its obligations hereunder. The person signing this Agreement on behalf of Seller has the authority to do so. The execution and delivery of this Agreement and the performance by Seller of its obligations hereunder has been duly and validly authorized by all necessary action.
 - (ii) Upon execution by all parties hereto, this Agreement and all other agreements, instruments and documents required to be executed or delivered by Seller pursuant hereto have been or (if and when executed) will be duly executed and delivered by Seller, and are or will be the legal, valid and binding obligations of Seller, enforceable against Seller in accordance with their terms, subject only to the effect of bankruptcy, insolvency or similar laws.
 - (iii) The consummation of the transactions contemplated herein and the fulfillment of the terms hereof will not result in a material breach of any of the material terms or provisions of, or constitute a material default under, any material agreement or material document to which Seller is a party or by which it is bound.
 - (iv) There is no litigation or proceeding (including, but not limited to, condemnation or eminent domain proceedings, arbitration proceedings or foreclosure proceedings) pending or, to Seller's knowledge, overtly threatened, against the Property.

Seller makes no representations or warranties regarding the Property except those expressly provided herein.

- (b) Buyer's Representations and Warranties. Buyer hereby warrants and represents to Seller as of the Effective Date and as of the Closing Date as follows:
- (i) Buyer has all requisite power and authority to execute and deliver this Agreement and to perform its obligations hereunder. The person signing this Agreement on behalf of Buyer has the authority to do so. The execution and delivery of this Agreement by the person signing on behalf of Buyer and the performance by Buyer of its obligations hereunder has been duly and validly authorized by all necessary company action.
 - (ii) Upon execution by all parties thereto, this Agreement and all other agreements, instruments and documents required to be executed or delivered by Buyer pursuant hereto have been or (if and when executed) will be duly executed and delivered by Buyer, and are or will be the legal, valid and binding obligations of Buyer, enforceable against Buyer in

accordance with their terms, subject only to the effect of bankruptcy, insolvency or similar laws.

- (iii) The consummation of the transactions contemplated herein and the fulfillment of the terms hereof will not result in a material breach of any of the material terms or provisions of, or constitute a material default under, any material agreement or material document to which Buyer is a party or by which it is bound.
- (iv) Buyer acknowledges that Buyer has made thorough inspections and investigations of the Property and Buyer agrees to take title to the Property "AS-IS, WHERE IS, AND WITH ALL FAULTS" and in the condition existing as of the date of this Agreement, subject to reasonable use, ordinary wear and tear, and without any reduction in or abatement of the Purchase Price. Buyer has undertaken all such investigations of the Property as Buyer deems necessary or appropriate under the circumstances as to the status of the Property and the existence or non-existence of curative action to be taken with respect to any hazardous or toxic substances on or discharged from the Property, and based upon same, Buyer is and will be relying strictly and solely upon such inspections and examinations and the advice and counsel of its own consultants, agents, legal counsel, and officers. Buyer acknowledges that it is familiar with the Property and is currently in possession of the Property under the Lease.

The provisions of this Section shall survive the Closing and shall not be deemed to have merged into any of the documents executed or delivered at the Closing.

7. **Conditions to Closing.**

- (a) As a condition to Buyer's obligation to close, Seller shall have materially performed and complied with all covenants, conditions and contingencies of this Agreement on Seller's part to be performed and complied with prior to or at Closing and shall have executed and delivered the Deed at Closing. In the event that the conditions set forth in this Section 7(a) have not been satisfied on or before Closing, Buyer shall have the option of either: (x) waiving the condition and proceeding to Closing "as-is" without reduction in the Purchase Price or claim against Seller therefor, or (y) terminating this Agreement, in which event the Deposit shall be returned to Buyer.
- (b) As conditions to Seller's obligation to close:
 - (i) All representations and warranties of Buyer contained herein shall be true and accurate in all material respects as though said representations and warranties were made at and as of Closing;
 - (ii) Buyer shall have materially performed and complied with all covenants, conditions and contingencies of this Agreement on Buyer's part to be performed and complied with prior to or at Closing; and

(iii) Buyer shall have delivered the Purchase Price to the Escrow Agent.

Seller, at its sole discretion, may waive any or all of the foregoing conditions.

8. Prorations.

- (a) General. Revenues, receivables and other income, if any, from the Property, and real estate and personal property taxes shall be prorated as of 11:59 P.M. on the day preceding Closing. For purposes of calculating prorations, Buyer shall be deemed to be in title to the Property, and therefore entitled to the income and responsible for the expenses, for the entire day upon which Closing occurs. Seller shall be entitled to all third-party reimbursements and payments which relate to the period prior to Closing. Buyer shall be entitled to all third-party reimbursements and payments which relate to periods on or after Closing. Nothing herein shall change the allocation of any costs or expenses otherwise allocated in the Lease with respect to periods prior to Closing.
- (b) Taxes and Assessments. All real estate and personal property taxes and assessments on the Property shall be paid by Buyer.
- (c) Method of Proration. All prorations shall be made in accordance with customary practice in Taney County, Missouri, except as expressly provided herein. Such prorations, if and to the extent known and agreed upon as of Closing, shall be paid by Buyer to Seller (if the prorations result in a net credit to Seller) or by Seller to Buyer (if the prorations result in a net credit to Buyer) by increasing or reducing the value to be transferred to Seller by Buyer at Closing. Any such prorations not determined or not agreed upon as of Closing shall be paid by Buyer to Seller, or by Seller to Buyer, as the case may be, in cash, as soon as practicable following Closing, but in no event shall Buyer or Seller have any liability for any claim under this Section 8 made more than twelve (12) months after Closing. The terms set forth in this Section 8 shall survive Closing and the delivery of the Deed at Closing.

9. Deliveries at Closing.

- (a) At Closing, Seller will deliver to the Escrow Agent for delivery to Buyer the following documents:
- (i) A Special Warranty Deed by which Seller conveys title of the Property to Buyer subject to general and special taxes for the year in which the Closing occurs and subsequent years and the Permitted Encumbrances (the "Deed") using the legal description of that the parties agree upon in the title commitment;
- (ii) A Seller's affidavit and such other documents as may be reasonably required by Buyer and/or the Title Company sufficient to cause deletion of all standard exceptions in the Commitment other than matters relating to the Survey which Seller has agreed to cure;

- (iii) Any and all affidavits and other instruments and requirements which the Title Company shall reasonably require; and
 - (iv) All additional documents and instruments as in the mutual and reasonable opinion of Seller's and Buyer's counsel are necessary to the proper consummation of this transaction.
- (b) At Closing, Buyer will deliver to Seller the following:
- (i) The Purchase Price;
 - (ii) Any and all affidavits and other instruments and requirements which the Title Company shall reasonably require; and
 - (iii) All additional documents and instruments as in the mutual and reasonable opinion of Seller's and Buyer's counsel are necessary to the proper consummation of this transaction.
10. **Brokers.** Buyer and Seller represent and warrant that they have not dealt with any real estate brokers in connection with this transaction. Seller agrees to indemnify, defend, protect and hold harmless Buyer from and against any and all claims, losses, damages, liabilities, costs or expenses of any kind or character, including reasonable attorneys' fees and expenses, arising out of or resulting from any agreement, arrangement or understanding alleged to have been made by Seller or on Seller's behalf with any broker or finder in connection with this Agreement or the transactions contemplated hereby. Buyer agrees to indemnify, defend, protect and hold harmless Seller from and against any and all demands, claims, losses, damages, liabilities, costs or expenses of any kind or character (including reasonable attorneys' fees and charges) arising out of or resulting from any agreement, arrangement or understanding alleged to have been made by Buyer or on Buyer's behalf with any broker or finder in connection with this Agreement or the transaction contemplated hereby. Notwithstanding anything to the contrary contained herein, this Section 10 shall survive Closing or any earlier termination of this Agreement and the delivery of the Deed at Closing.
11. **Closing Costs.** The parties shall share equally (i) the Escrow Agent's escrow and closing costs, and (ii) the cost of recording the Deed. Seller shall be responsible for the costs of the title search. Buyer shall be responsible for the premium of an ALTA extended coverage owner's insurance policy with Buyer as the insured, any charges for title insurance endorsements requested by Buyer, the title insurance premium for a loan policy for Buyer's mortgage lender, if any, and all costs of inspection and due diligence. Each party shall pay its own attorneys' fees and costs except as provided in Section 18. All other closing costs shall be apportioned or allocated between the parties in the manner customary in the county in which the Property is located.
12. **Remedies.** In the event of default hereunder by Buyer, Seller shall be entitled to terminate this Agreement and recover the Deposit as liquidated and stipulated damages, the parties hereto acknowledging that actual damages will be difficult to quantify, as Seller's sole and exclusive remedy for Buyer's default. In the event of default hereunder by Seller, Buyer

may, in its sole discretion terminate this Agreement and accept the Deposit as liquidated damages, whereupon Seller shall be released from any further liability, and the parties hereto acknowledging that actual damages will be difficult to quantify, as Buyer's sole and exclusive remedy for Seller's default.

13. **Notices.** Any notices required or permitted to be given under this Agreement must be in writing and must be served by (i) depositing the notice in the United States mail, addressed to the party to be notified, postage prepaid, and registered or certified with return receipt requested or (ii) delivering the notice (A) by recognized local courier or overnight delivery service, or (B) in person to such party. Notice given in accordance with (i) above is effective on the third day after mailing. Notice given in accordance with any of the methods listed in (ii) above is effective upon receipt or refusal to accept delivery at the address of the addressee. The parties' respective addresses for delivery of any Notice are set forth below unless another address is designated in writing by any party to the other:

If to Seller:

City of Branson, Missouri
Attn.: Mayor
110 W. Maddux
Branson, Missouri 65616

With a copy, which shall not constitute notice, to:

Kutak Rock LLP
Attn: James Meadows
300 S. John Q. Hammons Pkwy, Suite 800
Springfield, MO 65806

If to Buyer:

Ballparks of America, LLC
Attn.: Greg Snider
2432 E. Madrid St.
Springfield, Missouri 65804

with a copy to:

Lowther Johnson Attorneys at Law, LLC
901 E. St. Louis Street, 20th Floor
Springfield, Missouri 65806
Attention: Adlai Groves

14. **Governing Law.** This Agreement shall be governed by the laws of the State of Missouri without regard to the conflicts of laws principles. Any dispute or cause of action under this Agreement shall be resolved exclusively in a court of competent subject matter jurisdiction in the county in which the Property is located.

15. **Amendments.** This Agreement may not be amended except by a further agreement in writing executed by the parties hereto.
16. **Counterparts.** This Agreement may be executed in two or more counterparts and by electronic (PDF) or similar signature. Each executed counterpart shall be deemed an original hereof, but all counterparts together shall constitute one and the same instrument.
17. **Possession, Risk of Loss.** At Closing, Seller shall deliver possession of the Property to Buyer, and all risk of loss of, or damage to the Property from any source shall, at that time, pass to and become the responsibility of Buyer. Prior to Closing, the risk of loss shall remain with Seller. If all or any material part of any Property is materially destroyed or damaged by fire or other casualty, or taken by condemnation or purchased in lieu thereof prior to Closing, either party hereto may terminate this Agreement by providing written notice to the other party within thirty (30) days of such casualty or condemnation. In the event either party terminates this Agreement pursuant to this Section 17, the Deposit shall be returned to Buyer forthwith. In the event that neither party terminates this Agreement, the Buyer shall purchase the Property without abatement of the Purchase Price.
18. **Attorneys' Fees.** In the event suit is brought or an attorney is retained by any party to this Agreement to seek interpretation or construction of any term or provision of this Agreement, to enforce the terms of this Agreement, to collect any money due, or to obtain any money damages breach as provided in Section 12, the prevailing party shall be entitled to recover reasonable attorneys' fees, court costs, costs of investigation, and other related expenses.
19. **Intended Agreement.** This Agreement is the result of arms-length negotiations between parties of equivalent bargaining power and expresses the complete, actual, and intended agreement of the parties. This Agreement shall not be construed for or against either party as a result of its participation or the participation of its counsel in the preparation and/or drafting of this Agreement or any exhibits hereto.
20. **Relationship.** This Agreement shall not be construed as creating a joint venture, partnership, or any other cooperative or joint arrangement between Buyer and Seller, and it shall be construed strictly in accordance with its terms.
21. **Successors and Assigns.** This Agreement shall be binding upon and inure to the benefit of the parties and their respective successors in interest and permitted assigns.
22. **Further Instruments and Documents.** Each party hereto shall promptly upon the request of the other party or the Escrow Agent, acknowledge and deliver to the other party or the Escrow Agent any and all further instruments and assurances reasonably requested or appropriate to evidence or give effect to the provisions of this Agreement or to satisfy the Escrow Agent's requirements, including those exhibits which are not attached at the time the parties execute this Agreement.
23. **Integration.** This Agreement, including all exhibits attached hereto, represents the entire agreement of the parties with respect to its subject matter, and all agreements, oral or written, entered into prior to this Agreement are revoked and superseded. No

representations, warranties, inducements, or oral agreements have been made by any of the parties except as expressly set forth herein or in other contemporaneous written agreements.

24. **Severability.** If any provision of this Agreement is declared void or unenforceable, such provision shall be deemed severed from this Agreement, and this Agreement shall otherwise remain in full force and effect.
25. **Waiver.** Failure of any party to exercise any right, remedy, or option arising out of a breach of this Agreement shall not be deemed a waiver of any right, remedy, or option with respect to any subsequent or different breach, or in the continuance of any existing breach. No waiver of any breach or default of any term, condition or provision hereof shall be implied from any action of any party, and any such waiver, to be effective, shall be set out in a written instrument signed by the waiving party.
26. **Time of Essence.** Time is hereby declared to be of the essence for the performance of all conditions and obligations under this Agreement. All periods terminating on a given day or date shall terminate at 5:00 p.m. (Central Time) on such day or dates, and references to “days” shall refer to calendar days except for such references which are to “business days,” which shall refer to days which are not Saturday, Sunday or a legal holiday. Notwithstanding the foregoing, if any period of time hereunder terminates on, or if any action is to be taken on a date which is, a Saturday, Sunday or legal holiday, the terminations of such period or the date by which such action must be taken shall be on the next succeeding business day.
27. **Construction/Interpretation.** The captions and paragraph headings used in this Agreement are for convenience and reference only and are not intended to define, limit, or describe the scope or intent of any provision of this Agreement.
28. **Assignment.** Buyer may assign this Agreement without the prior written consent of Seller. Within one (1) business day thereafter, Buyer shall provide Seller written notice of any assignment, including a copy of the fully executed instrument by which such assignment occurred. Seller may not assign this Agreement without the prior written consent of Buyer.
29. **Lease Obligations; Amendment**
- (a) Nothing in this Agreement shall be construed or interpreted as releasing Buyer from its obligations to Seller under the Lease, it being the understanding that of the parties hereto that the Lease will remain in full force and effect until Closing.
 - (b) Seller shall deliver to Buyer an initial draft of an amendment to the Lease (the “Lease Amendment”), within ninety (90) days after the Effective Date, which shall modify the definition of “Property” therein by removing all references to the Property which is the subject matter of this Agreement. Seller and Buyer shall work together in good faith to mutually agree upon, prior to expiration of the Diligence Period, a final form of the Lease Amendment, which shall be executed and delivered by Seller and Buyer at Closing. For the avoidance of doubt, the Lease Amendment shall clarify that any improvements made to the Property, as defined

in this Agreement, shall not have any effect on or be counted towards the capital improvement rent reduction in Section C of the Lease. If a final form of the Lease Amendment cannot be agreed upon by Seller, in its reasonable discretion, and Buyer, in its reasonable discretion, before expiration of the Diligence Period, then Buyer may terminate this Agreement by written notice to Seller on or prior to expiration of the Diligence Period, whereupon the Deposit shall be returned to Buyer and neither party shall have any further rights or obligations hereunder except those which expressly survive the termination hereof.

[SIGNATURE PAGE FOLLOWS]

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed by its duly authorized officers or agents.

SELLER: CITY OF BRANSON, MISSOURI,
a Missouri municipal corporation

By: _____
Name: _____
Title: _____
Date: _____

BUYER: BALLPARKS OF AMERICA, LLC,
a Missouri limited liability company

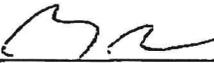
By:  _____
Name: Greg Snider
Title: Manager
Date: 10-18-22

Exhibit A

Legal Description of the Property

Beginning at the Southwest corner of Section 36, Township 23 North, Range 22 West, within the City of Branson; Taney County Missouri; thence, North 01° 09' 00" East, along the West line of said Section 36, a distance of 1,333.395 feet; thence, North 89° 30' 14.8" West, a distance of 1,363.996 feet to the Point of Beginning; thence, North 89° 30' 14.8" West, a distance of 1,546.393 feet; thence, South 01° 11' 47.21" West, a distance of 619.059 feet; thence, North 80° 00' 00" East, a distance of 114.081 feet; thence, South 01° 10' 00" East, a distance of 90 feet; thence South 25° 02' 41.12" East, a distance of 66.356 feet; thence North 46° 44' 19.2" East, a distance of 46.994 feet; thence, along a tangent curve to the right with an arc length of 433.549 feet and a radius of 537.711 feet [arc length missing]; thence, South 87° 03' 51.97" East, a distance of 227.257 feet; thence, South 85° 32' 35.1" East, a distance of 358.71 feet; thence, North 71° 14' 18.5" East, a distance of 256.597 feet; thence, North 17° 32' 27.8" East, a distance of 540.306 feet to the Point of Beginning;

Containing 19.936 acres more or less.