

## MUSEUM OPERATION AGREEMENT

**THIS MUSEUM OPERATION AGREEMENT** (this "Agreement"), is made and entered into this \_\_\_\_ day of October, 2012 (the "Effective Date") by and between the **CITY OF OVERLAND PARK, KANSAS**, a municipal corporation duly organized under the laws of the State of Kansas (the "City") and **MUSEUM OF PRAIRIEFIRE FOUNDATION**, a 501(c)(3) corporation (the "Foundation").

### **RECITALS:**

A. MC Prairiefire, LLC, a Kansas limited liability company (the "Owner") is the owner of approximately fifty-six (56) acres of real property which is located in the City and is generally located at 135th Street between Lamar Avenue and Nall Avenue and, along with approximately five and half (5.5) acres of 137<sup>th</sup> Street right-of-way, is legally described on Exhibit A-1 and generally depicted on Exhibit A-2, as attached hereto (the "Project Site").

B. Reference is hereby made to that certain Prairiefire at LionsGate Development Agreement (the "Development Agreement") dated as of **October \_\_, 2012** between the City and MC Prairiefire I, LLC, a Kansas limited liability company ("MCP I") and MC Prairiefire II, LLC, a Kansas limited liability company (the "MCP II"; and collectively, along with Phase 1 Developer, the "Developer"). Pursuant to the terms and conditions of the Development Agreement, Developer proposes to design, develop, construct, complete and operate a unique destination experience on a portion of the Project Site (the "Project"), which Project is more particularly described therein. Capitalized terms which are not otherwise defined herein shall have the meanings assigned to them in the Development Agreement.

C. Among other things, the Project is intended to include an approximately 35,000 square foot natural history museum (the "Museum"), which is to be designed, constructed and completed by Developer and then conveyed to the Foundation by Developer (and/or the Owner) and thereafter to be operated by the Foundation. The Museum shall be located on that portion of the Project Site described on Exhibit B-1 and generally depicted on Exhibit B-2 as attached hereto.

D. The Museum was a fundamental and primary consideration of the City when the City agreed to the Public Financing set forth in the Development Agreement. Accordingly, the Development Agreement provides that prior to any reimbursement of Public Financing Proceeds to Developer, the City and the Foundation shall enter into this Agreement.

E. The parties desire to enter into this Agreement to set forth certain obligations of the Foundation with respect to the Museum during the Term of the Development Agreement.

### **AGREEMENT**

NOW, THEREFORE, in consideration of the foregoing and in consideration of the mutual covenants and agreements herein contained, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereby agree as follows:

1. Incorporation of Recitals. The parties understand and agree that the Recitals set forth above are hereby incorporated as though more fully set forth herein.

2. Term of Agreement. This Agreement shall commence upon the conveyance of the Museum to the Foundation by the Developer and/or the Owner and shall terminate upon the expiration of the Development Agreement (the "Term").

3. Use and Operation. Subject to the terms and conditions of Section 11 below, the Foundation hereby agrees that at all times during the Term, the Foundation shall own and operate the Museum. The Foundation also hereby covenants that at all times during the Term it will, at its expense, except as otherwise required to maintain its current tax exempt status:

(a) Conduct its operations at all times in a dignified quality manner and in conformity with the first class industry standards and maximize visitation and Museum usage to help establish and maintain a high reputation for the Museum.

(b) Occupy the Museum as soon as possible and thereafter continuously operate and conduct Museum and related services and operations in one hundred percent (100%) of the Museum, and without interruption (except for transition of exhibits, etc.), use, occupy and operate all of the same, other than minor portions thereof as are reasonably required for maintenance, storage and office purposes; furnish and install all trade fixtures and permitted signs; and operate in accordance with first-class industry standards for similarly situated museums or similar attractions in the greater metropolitan Kansas City area.

(c) Have an agreement with the renowned American Museum of Natural History from New York City (the "AMNH") for the exhibits of the Museum (the "AMNH Agreement"), and provide a unique destination science and cultural experience for its patrons. The AMNH Agreement shall provide, among other things: (i) an exclusive radius of three hundred (300) miles in which the Museum shall be the only venue for exhibition of AMNH exhibits, (ii) maintenance of permanent exhibits and approximately 7,000 square feet of traveling exhibits which shall rotate twice per year, and (iii) AMNH Science Bulletins or other similar educational correspondence and amenities for the patrons of the Museum. The City hereby understands and agrees that the AMNH Agreement is initially for a five (5) year term, with one optional (5) year renewal term. However, the Foundation hereby agrees that in the event that AMNH Agreement shall expire, terminate or otherwise not be renewed during the Term of this Agreement, the Foundation shall use best efforts to secure a substantially similar contractual agreement to provide exhibits for the Museum from a similar institution or educational facility (the "Substitute Agreement"), which Substitute Agreement shall be approved by the City in its reasonable discretion. In such event, as long as the Foundation continues to use best efforts to secure a Substitute Agreement, the Foundation shall not be deemed to be in default of Section 3(b) hereof.

(d) Cause the Museum to feature a connection to an interpretive walk, prairie gardens, a discovery room providing an interactive learning experience for children, event space and possible art installations.

4. Payment of Property Taxes. During the Term of this Agreement, the Foundation shall pay when due any real estate taxes and assessments applicable to any portion of the Museum. Notwithstanding the foregoing, nothing contained in this Agreement shall prohibit the Foundation from contesting the assessed value of the property, improvements or the taxes thereon in good faith by appropriate proceedings; provided however that the Foundation shall pay any and all amounts that are contested under protest while any such proceedings are pending. The Foundation shall promptly notify the City in writing of a protest of real estate taxes or valuation of the Museum.

5. Sales Tax Information. The Foundation hereby understands and agrees that the Foundation shall not take any actions or adopt any practices or procedures which are designed to, or which may or will have the effect of, eliminating, reducing or diverting in any way any sales taxes or use taxes payable to the City or the State in connection with sales made or services from, in or on and about the Museum, including without limitation, using its 501(c)(3) status to try to avoid any payment of sales taxes or use taxes by it or any other business operating within the Museum (as set forth below). The Foundation agrees that it will provide the City and/or State, or their designee(s), with documentation of sales tax receipts for each such business within the Museum, indicating the type and amount of the sales taxes and/or use taxes paid within or in connection with the Museum (and not in the aggregate). During the Term of this Agreement, the Foundation shall also provide to the City and/or State, or their designee(s), true and correct copies of all sales tax and/or use tax returns filed with the State with respect to sales in, on or from such business, the same to be provided simultaneously with, or within ten (10) days after such filing. Notwithstanding the above, for any business operating within the Museum that is not owned by the Foundation, the Foundation shall include in its lease or other agreement with such business the language above requiring disclosure of sales taxes and/or use taxes and copies of all sales tax and/or use tax returns, with the City named as a third-party beneficiary with enforcement rights. In no event shall any such business's failure to make the required disclosures be deemed a default of this Agreement, but the Foundation shall not be obligated to enforce such business's disclosure obligations.

6. Continuing Disclosures. The Foundation understands and agrees that the Foundation will be required to execute and deliver Continuing Disclosure Agreements with the Dissemination Agent named therein in connection with the STAR Bonds and the CID Bonds, in which the Foundation will agree to provide information during the Term of this Agreement about the status of the AMNH Agreement or any Substitute Agreement, the touring exhibits which have been presented at the Museum, the touring exhibits scheduled to be presented at the Museum and comparable matters.

7. Maintenance. During the Term, the Foundation shall cause the the Museum and all other of its property used or useful in the conduct of its business and operations in connection with the Museum, to be maintained, preserved and kept in good repair and working order and in a safe condition, consistent at all times with other similarly situated museums or similar attractions in the greater metropolitan Kansas City area, and will make all repairs, renewals,

replacements and improvements necessary for the safe, efficient, and professional conduct of its business and operations in connection with the Museum. Nothing in this Section 6 shall preclude the Foundation from removing or demolishing any building or buildings, if in its reasonable judgment, such removal or demolition is desirable in the conduct of its business, and as long as the same does not materially adversely affect the value of the Museum or the Foundation's ability to (i) perform its obligations under this Agreement, or (ii) generate visitation or sales and use taxes for the Museum. The Foundation may make additions, alterations and changes to the Museum so long as such additions, alterations and changes are made in compliance with all Applicable Laws and Requirements, this Agreement, the Project Plan, the Development Plan, and as long as the same do not materially adversely affect the value of the Museum or the Foundation's ability to perform its obligations under this Agreement, or generate visitation or sales and use taxes for the Museum. The Foundation agrees to set aside on its books such commercially reasonable reserves for future maintenance and capital expenditures.

8. Compliance. The Foundation shall conduct its affairs and carry on its business and operations in such a manner as to comply with all Applicable Laws and Requirements, and to observe and conform to all valid orders, regulations or requirements (including, but not limited to, those relating to safety and health) of any Government Authorities applicable to the conduct of their business and operations and the ownership of the Museum. The Foundation agrees to promptly pay any and all fees and expenses associated with any safety, health or other inspections required under this Agreement or imposed by Applicable Law and Requirements. Provided, however, that nothing contained in this Agreement shall require the Foundation to comply with, observe and conform to any such law, order, regulation or requirement of any Government Authorities so long as the validity thereof shall be contested by the Foundation in good faith by appropriate proceedings, and provided that the Foundation shall have set aside on its books adequate reserves in accordance with GAAP or secured adequate bonding with respect to such contest and such contest shall not materially impair the ability of the Foundation to meet its obligations under this Agreement.

9. Licenses and Permits. During the Term, the Foundation shall procure and maintain all licenses and permits, and conduct or cause to be conducted, all inspections and/or investigations required by Applicable Laws and Requirements or otherwise necessary in the operation of its business and affairs in, on or about the Museum; provided, however, that the Foundation shall not be required to procure or maintain in effect any right, license or accreditation that the Foundation and the City shall have determined in good faith and subject to Applicable Laws and Requirements, is not in the best interests of the Foundation and is no longer necessary in the conduct of its business and that lack of such compliance will not materially impair the ability of the Foundation to pay or perform its obligations under this Agreement.

10. Access. During the Term, the Foundation hereby recognizes, acknowledges and agrees that the City, and its duly authorized representatives and agents, shall have the right to enter the portions of the Museum at reasonable times and upon reasonable notice, to substantiate compliance with this Agreement or, to the extent the Foundation has failed to cure any breach within applicable notice and cure periods, to cure any defaults under this Agreement. In exercising its rights hereunder, the City shall use reasonable efforts to avoid unreasonable interference with the operation of the Project. Except as otherwise provided in this Agreement,

the City shall pay all costs it incurs under this provision. Nothing contained in this Section 7.12 shall restrict or impede the right of the City to enter the Museum pursuant to any Applicable Laws and Requirements.

11. Assignment and Transfer of the Museum. The rights, duties and obligations hereunder of the Foundation hereunder may not be assigned, in whole or in part, to another entity, without the prior approval of the City's governing body, which approval may be granted or withheld in its sole discretion based upon the governing body's findings about whether or not the proposed assignee shall have the commercially reasonable qualifications, experience and financial responsibility which are necessary and adequate to fulfill the obligations of the Foundation with respect to the Museum and/or this Agreement. The City hereby understands and agrees that any approval of the City's governing body pursuant to the prior sentence shall release the Foundation from the obligations set forth in this Agreement. Any proposed assignee shall, by instrument in writing, for itself and its successors and assigns, and expressly for the benefit of the City, assume all of the obligations of the Foundation under this Agreement and agree to be subject to all the conditions and restrictions to which the Foundation is subject.

12. Indemnification. The Foundation agrees to indemnify and hold the City, its employees, agents and independent contractors and consultants (each, a "City Indemnified Party" and collectively, the "City Indemnified Parties") harmless from and against any and all suits, claims, costs of defense, damages, injuries, liabilities, judgments, costs and/or expenses, including court costs and reasonable attorneys fees, resulting from, arising out of, or in any way connected with: (i) the acquisition of the Museum by the Foundation; (ii) the use or occupation of the Museum by the Foundation or anyone acting by, through or under the Foundation; (iii) damage or injury, actual or claimed, of whatsoever kind or character to persons or property occurring or allegedly occurring in, on or about the Museum; (iv) any breach, default or failure to perform by the Foundation under this Agreement; (v) any act by an employee of the City at or on the Museum which is within or under the control of the Foundation or pursued for the benefit of or on behalf of the Foundation; (vi) the Foundation's actions and undertaking in implementation of the Museum or this Agreement; and (vii) any delay or expense resulting from any litigation filed against the Foundation by any member or shareholder of the Foundation, any prospective investor, prospective partner or joint venture partner, lender, co-proposer, architect, contractor, consultant or other vendor. The parties further agree as follows:

(a) This section shall not apply to negligence or willful misconduct of the City or its officers, employees or agents.

(b) This section includes, but is not limited to, any repair, cleanup, remediation, detoxification, or preparation and implementation of any removal, remediation, response, closure or other plan (regardless of whether undertaken due to governmental action) concerning any hazardous substance or hazardous wastes including petroleum and its fractions as defined in (i) the Comprehensive Environmental Response, Compensation and Liability Act ("CERCLA"; 42 U.S.C. Section 9601, et seq.), (ii) the Resource Conservation and Recovery Act ("RCRA"; 42 U.S.C. Section 6901 et seq.), (iii) Article 34, Chapter 65, K.S.A. and all amendments thereto, and any other Applicable Laws and Requirements at the Museum Site or any other place where The Foundation owns or has control of

real property pursuant to any of the Foundation's activities under this Agreement. The foregoing indemnity is intended to operate as an agreement pursuant to Section 107 (e) of CERCLA to assure, protect, hold harmless and indemnify City from liability.

(c) In the event any suit, action, investigation, claim or proceeding (collectively, an "Action") is begun or made as a result of which the Foundation may become obligated to one or more of the City Indemnified Parties hereunder, the City Indemnified Party shall give prompt notice to the Foundation of the occurrence of such event. The failure to notify the Foundation shall not relieve the Foundation of any liability that it may have to a City Indemnified Party; provided however that the City hereby agrees that it shall not defend, settle or otherwise resolve any such Actions without prior notice to the Foundation. After receipt of such notice, the Foundation may elect to defend, contest or otherwise protect a City Indemnified Party against any such Action, at the cost and expense of the Foundation, utilizing counsel approved by a City Indemnified Party. The City Indemnified Party shall have the right, but not the obligation, to participate, at the City Indemnified Party's own cost and expense, in the defense thereof by counsel of the City Indemnified Party's choice. In the event that the Foundation shall fail timely to defend, contest or otherwise protect a City Indemnified Party against such Action, the City Indemnified Party shall have the right to do so, and (if such defense is undertaken by the City Indemnified Party after notice to the Foundation asserting the Foundation's failure to timely defend, contest or otherwise protect against such Action), the City Indemnified Party may submit any bills for fees and costs received from its counsel to the Foundation for payment for services that were rendered no sooner than thirty (30) days after such notice is provided to the Foundation and, within thirty (30) business days after such submission of such bills for fees and costs, the Foundation shall transfer to the City Indemnified Party sufficient funds to pay such bills. The Foundation acknowledges that such bills may be redacted to delete any information which would constitute attorney-client communication or attorney work product.

(d) A City Indemnified Party shall submit to the Foundation any settlement proposal that the City Indemnified Party shall receive. The Foundation shall be liable for the payment of any amounts paid in settlement of any Action to the extent that The Foundation consents to such settlement. Neither the Foundation nor the City Indemnified Party will unreasonably withhold its consent to a proposed settlement.

(e) The Foundation expressly confirms and agrees that it has provided this indemnification and assumes the obligations under this Agreement imposed upon The Foundation in order to induce the City to enter into this Agreement. To the fullest extent permitted by law, a City Indemnified Party shall have the right to maintain an action in any court of competent jurisdiction to enforce and/or to recover damages for breach of the rights to indemnification created by, or provided pursuant to, this Agreement, and the right to apply any deposit or other

funds submitted by the Foundation to the City Indemnified Party in payment of the damages suffered by it, as is necessary to protect the City Indemnified Party from loss. If such court action is successful, the City Indemnified Party shall be reimbursed by The Foundation for all fees and expenses (including attorneys' fees) actually and reasonably incurred in connection with such action (including, without limitation, the investigation, defense, settlement or appeal of such action).

(f) The right to indemnification set forth in this Agreement with respect to events or circumstances that occurred or arose during the term of this Agreement shall survive the termination of this Agreement.

13. Insurance. Not in derogation of the indemnification provisions set forth herein, the Foundation shall, at its sole cost and expense, throughout the Term, maintain or cause to be maintained insurance with respect to the Museum covering such risks that are of an insurable nature and of the character customarily insured against by organizations operating similar properties and engaged in similar operations, similar development projects (including but not limited to property and casualty, worker's compensation, general liability and employee dishonesty) and in such amounts as are adequate to protect the Foundation and the Museum, which amounts shall not be less than those set forth on Exhibit C attached hereto. Throughout the Term, the Foundation agrees to provide the City upon request evidence of property insurance and a certificate of liability insurance ("Certificate") listing all coverages applicable to the Museum.

14. Non-Discrimination. The Foundation agrees that throughout the Term:

(a) The Foundation shall observe the provisions of the Kansas Act Against Discrimination (K.S.A. 44-1001 et seq.) and shall not discriminate against any person in the performance of work under the Agreement because of race, religion, color, sex, national origin, ancestry or age;

(b) In all solicitations or advertisements for employees, the Foundation shall include the phrase, "equal opportunity employer," or a similar phrase to be approved by the Kansas Human Rights Commission ("Commission");

(c) If the Foundation fails to comply with the manner in which the Foundation reports to the Commission in accordance with the provisions of K.S.A. 44-1031 and amendments thereto, the Foundation shall be deemed to have breached the Agreement and it may be canceled, terminated or suspended, in whole or in part, by the City;

(d) If the Foundation is found guilty of a violation of the Kansas Act Against Discrimination under a decision or order of the Commission which has become final, the Foundation shall be deemed to have breached the Agreement and it may be canceled, terminated or suspended, in whole or in part, by the City; and

- (e) The Foundation shall include the provisions of Sections 14(a) through (d) above in every contract, subcontract or purchase order so that such provisions will be binding upon such contractor, subcontractor or vendor.

The Foundation further agrees that throughout the Term the Foundation shall abide by the Kansas Age Discrimination In Employment Act (K.S.A. 44-1111 et seq.) and the applicable provision of the Americans With Disabilities Act (42 U.S.C. 12101 et seq.) as well as all other federal, state and local laws, ordinances and regulations applicable to this Project and to furnish any certification required by any federal, state or local laws, ordinances and regulations applicable to this project.

15. Damage, Destruction and Condemnation. The parties hereby agree as follows:

- (a) In the event of damage to or destruction of any portion of the Museum resulting from fire or other casualty during the Term, or in the event any portion of the Museum is condemned or taken for any public or quasi-public use or title thereto is found to be deficient during the Term, the net proceeds of any insurance relating to such damage or destruction, the net proceeds of such condemnation or taking or the net proceeds of any realization on title insurance shall be paid into, and used in accordance with a construction escrow agreement reasonably satisfactory to the City and the Foundation ("Casualty Escrow").

- (b) If, at any time during the Term, the Museum or any part thereof shall be damaged or destroyed by a Casualty (the "Damaged Facilities"), the Foundation, at its sole cost and expense, shall commence and thereafter proceed as promptly as possible to repair, restore and replace the Damaged Facilities as nearly as possible to their condition immediately prior to the Casualty and shall be entitled to draw upon the Casualty Escrow for payment of said costs.

- (c) If at any time during the Term, title to the whole or substantially all of the Museum shall be taken in condemnation proceedings or by right of eminent domain, the Foundation, at its sole discretion, may terminate this Agreement as of the date of such taking. For purposes of this Section 7.11(c), "substantially all of the Museum" shall be deemed to have been taken if the City and the Foundation, each acting reasonably and in good faith, determine that the untaken portion of the Museum, including the parking improvements therefor, cannot be practically and economically used by the Foundation for the purposes and at the times contemplated by this Agreement.

- (d) In the event of condemnation of less than the whole or substantially all of the Museum during the Term, the Foundation, at its sole cost and expense, shall commence and thereafter proceed as promptly as possible to repair, restore and replace the remaining part of the Improvements, as nearly as possible, to their former condition, and shall be entitled to draw upon the Casualty Escrow for payment of said costs.



(e) Nothing in this section will require the Foundation to expend funds in excess of the Casualty Escrow.

16. Default Provisions. The Foundation shall be in default under this Agreement if:

(a) The Foundation fails to make any of the payments of money required by the terms of this Agreement and the Foundation fails to cure or remedy the same within ten (10) days after the City has given the Foundation written notice specifying such default; or

(b) The Foundation fails to keep or perform any covenant or obligation herein contained on the Foundation's part to be kept or performed, and the Foundation fails to remedy the same within thirty (30) days after the City has given the Foundation written notice specifying such failure and requesting that it be remedied; provided, however, that if any default shall be such that it cannot be corrected within such period, it shall not constitute a default if corrective action is instituted by the Foundation within such period and diligently pursued until the default is corrected; or

(c) The Foundation shall file a voluntary petition under any bankruptcy law or an involuntary petition under any bankruptcy law is filed against any such party in a court having jurisdiction and said petition is not dismissed within sixty (60) days; or the Foundation generally is not paying its debts as such debts become due; or the Foundation or makes an assignment for the benefit of its creditors; or a custodian, trustee or receiver is appointed or retained to take charge of and manage any substantial part of the assets of the Foundation and such appointment is not dismissed within sixty (60) days; or any execution or attachment shall issue against the Foundation whereupon the Museum, or any part thereof, or any interest therein of the Foundation under this Agreement shall be taken and the same is not released prior to judicial sale thereunder (each of the events described in this subparagraph being deemed a default under the provisions of this Agreement).

In the event of such default, the City may take such actions, or pursue such remedies, as exist hereunder, or at law or in equity, and the Foundation covenants to pay and to indemnify the City against all reasonable costs and charges, including attorneys' fees, lawfully and reasonably incurred by or on behalf of the City in connection with the enforcement of such actions or remedies.

17. Rights and Remedies. The rights and remedies reserved by the City hereunder and those provided by law shall be construed as cumulative and continuing rights, no one of which shall be exhausted by the exercise of any one or more of such rights or remedies on any one or more occasions. If a default by the Foundation occurs under this Agreement and is continuing, the City may take whatever action at law or in equity as may appear necessary or desirable to enforce performance and observance by the Foundation of any provision of this Agreement, however, the Foundation's liability for monetary amounts shall be limited to the actual amount, if any, in question, and under no circumstances shall the Foundation be liable for

any remote or consequential damages. The City shall be entitled to specific performance and injunctive or other equitable relief for any breach or threatened breach of any of the provisions of this Agreement, notwithstanding the availability of an adequate remedy at law, and each party hereby waives the right to raise such defense in any proceeding in equity. Failure by the City to enforce any such rights shall not be deemed a waiver thereof. Either party shall have the right to record a memorandum describing this Agreement in the Property records of Johnson County, Kansas.

18. Waiver of Breach. No waiver of any breach of any covenant or agreement herein contained shall operate as a waiver of any subsequent breach of the same covenant or agreement or as a waiver of any breach of any other covenant or agreement, and in case of a breach by either party of any covenant, agreement or undertaking, the non-defaulting party may nevertheless accept from the other any payment or payments or performance hereunder without in any way waiving its right to exercise any of its rights and remedies provided for herein or otherwise with respect to any such default or defaults which were in existence at the time such payment or payments or performance were accepted by it.

19. Power of the City. Notwithstanding anything set forth herein to the contrary, no provision contained herein shall in any manner diminish or usurp the inherent rights and powers of the City to act in its capacity as a public body. Further, nothing herein shall relieve the Foundation from complying with all Applicable Laws and Requirements.

20. Meetings with the City. The Foundation hereby agrees to meet with the City Manager (or a designee of the City Manager) on an annual basis at a time and location that is mutually convenient to both parties to provide the City Manager (or his designee) with an oral report on the operation of the Museum, visitation and the ongoing relationship with AMNH, and to answer any questions about the management and operation of the Museum. Additionally, the Foundation hereby agrees, upon a request from the City, to arrange a meeting for City representatives, the Foundation and administrative officers for AMNH in New York City at a time that is mutually convenient to all of the parties, but such meetings shall occur no more often than annually.

21. Miscellaneous. The parties further agree as follows:

(a) Time of Essence. Time is of the essence of this Agreement. The City and the Foundation will make every reasonable effort to expedite the subject matters hereof and acknowledge that the successful performance of this Agreement requires their continued cooperation.

(b) Amendment. This Agreement, and any exhibits attached hereto, may be amended only by the mutual consent of the parties, upon official action of the City's governing body approving said amendment, and by the execution of said amendment by the parties or their successors-in-interest.

(c) Immunity of Officers, Employees and Members of the City. No personal recourse shall be had for any claim, representation, obligation, covenant or agreement in this Agreement against any past, present or future officer,

member, employee or agent of the City, under any rule of law or equity, statute or constitution or by the enforcement of any assessment or penalty or otherwise, and any liability of any such officers, members, directors, employees or agents is hereby expressly waived and released as a condition of and consideration for the execution of this Agreement. Furthermore, no past, present or future officer, member, employee or agent of the City shall be personally liable to the Foundation, or any successor in interest, for any default or breach by the City.

(d) Right to Inspect. The Foundation agrees that the City, with reasonable advance notice and during normal business hours, shall have the right and authority to review, inspect, audit, and copy, from time to time, all of the Foundation's books and records relating to the Museum as pertinent to the purposes of this Agreement.

(e) No Other Agreement. Except as otherwise expressly provided herein, this Agreement and all documents incorporated herein by reference supersedes all prior agreements, negotiations and discussions, both written and oral, relative to the subject matter of this Agreement and is a full integration of the agreement of the parties.

(f) Severability. If any provision, covenant, agreement or portion of this Agreement, or its application to any person, entity or property, is held invalid or unenforceable in whole or in part, this Agreement shall be deemed amended to delete or modify, in whole or in part, if necessary, the invalid or unenforceable provision or provisions, or portions thereof, and to alter the balance of this Agreement in order to render the same valid and enforceable. In no such event shall the validity or enforceability of the remaining valid portions hereof be affected.

(g) Kansas Law. This Agreement shall be construed in accordance with the laws of the State of Kansas.

(h) Notice. All notices and requests required pursuant to this Agreement shall be in writing and shall be sent as follows:

To the Foundation:  
Museum of PrairieFire Foundation  
6240 West 135<sup>th</sup> Street  
Overland Park, KS 66223  
Attn: Fred Merrill

With copies to:

Lyle D. Pishny, Esq.  
Lathrop & Gage  
10851 Mastin Boulevard  
Building 82, Suite 1000

Overland Park, KS 66210

To the City:  
William Ebel, Jr., City Manager  
City of Overland Park  
8500 Santa Fe Drive  
Overland Park, KS 66212

With copies to:  
Kristy Stallings, Deputy City Manager  
City of Overland Park  
8500 Santa Fe Drive  
Overland Park, KS 66212

Tammy M. Owens, Deputy City Attorney  
City of Overland Park  
8500 Santa Fe Drive  
Overland Park, KS 66212

or at such other addresses as the parties may indicate in writing to the other either by personal delivery, courier, or by registered mail, return receipt requested, with proof of delivery thereof. Mailed notices shall be deemed effective on the third day after mailing; all other notices shall be effective when delivered.

(i) Counterparts. This Agreement may be executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same agreement.

(j) Agreement Runs With the Land; Recording. The Parties understand and agree that this Agreement runs with the land. Additionally, the Parties agree to execute and deliver a Memorandum of this Agreement and any amendments or supplements hereto, in proper form for recording and/or indexing in the appropriate land or governmental records, including, but not limited to, recording in the real estate records of Johnson County, Kansas. Such Memorandum of Agreement shall be promptly recorded against the Museum property by the Foundation at the Foundation's cost after execution, and proof of recording shall be provided to the City. Such Memorandum shall state that a copy of this Agreement shall be on file with the City Clerk.

(k) Survivorship. Notwithstanding the termination of this Agreement, the Foundation's obligations of insurance and indemnification set out in Sections 12 and 13 shall survive the termination of this Agreement to the extent that any incident giving rise to a claim, suit, judgment or demand occurred during Term.

(l) Incorporation of Exhibits. The Exhibits attached hereto and incorporated herein by reference are a part of this Agreement to the same extent as if fully set forth herein.

(m) Tax Implications. The Foundation acknowledges and represents that (i) neither the City nor any of its officials, employees, consultants, attorneys or other agents has provided to the Foundation any advice regarding the federal or state income tax implications or consequences of this Agreement and the transactions contemplated hereby, and (ii) the Foundation is relying solely upon its own tax advisors in this regard.

(n) Required Disclosures. The Foundation shall immediately notify the City of the occurrence of any material event which would cause any of the information furnished to the City by the Foundation in connection with the matters covered in this Agreement to contain any untrue statement of any material fact or to omit to state any material fact required to be stated therein or necessary to make any statement made therein, in the light of the circumstances under which it was made, not misleading.

(o) Counterparts. This Agreement may be executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same agreement.

(p) Amendment to Carry Out Intent. If any provision, covenant, agreement or portion of this Agreement, or its application to any person, entity or property, is held invalid, the parties shall take such reasonable measures including but not limited to reasonable amendment of this Agreement, to cure such invalidity where the invalidity contradicts the clear intent of the parties in entering into this Agreement; provided, however, nothing herein is intended to bind a future governing body of the City in a manner prohibited by the laws of the State of Kansas.

(q) Effectiveness. This Agreement shall not become effective unless and until the Museum is constructed and conveyed to the Foundation pursuant to the terms of the Real Estate Sale Contract by and between the Owner and Foundation.

IN WITNESS WHEREOF, the City and the Foundation have duly executed this Agreement pursuant to all requisite authorizations as of the date first above written.

**CITY OF OVERLAND PARK, KANSAS**

**ATTEST:**

\_\_\_\_\_  
Carl Gerlach, Mayor

\_\_\_\_\_  
Marian Cook, City Clerk

**APPROVED AS TO FORM:**

\_\_\_\_\_  
Michael R. Santos  
City Attorney

**APPROVED AS TO FORM:**

\_\_\_\_\_  
Todd A. LaSala, Esq.  
Stinson Morrison Hecker LLP



## **LIST OF EXHIBITS**

Exhibit A-1 Project Site – Legal Description

Exhibit A-2 Project Site – Map

Exhibit B-1 Museum – Legal Description

Exhibit B-2 - Museum – Map

Exhibit C – Insurance Specifications



**EXHIBIT A-1**

**PROJECT SITE – LEGAL DESCRIPTION**

**EXHIBIT A-2**  
**PROJECT SITE – MAP**

**EXHIBIT B-1**

**MUSEUM – LEGAL DESCRIPTION**

File No. 2007-0004  
Prairiefire  
October 8, 2012

EXH17

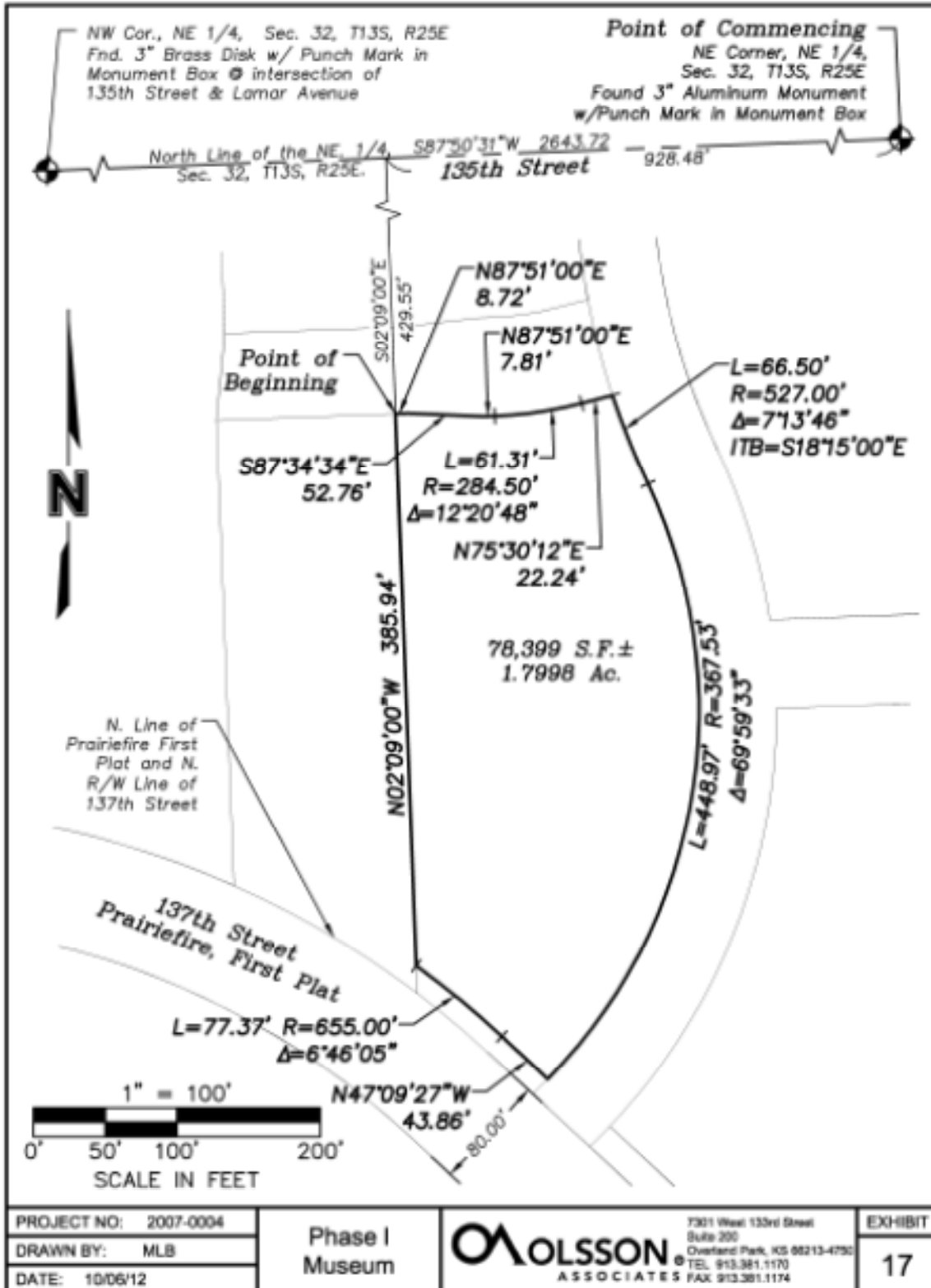
Property Description Phase I Museum

All that part of the Northeast Quarter of Section 32, Township 13 South, Range 25 East, in the City of Overland Park, Johnson County, Kansas, described as follows:

COMMENCING at the Northeast corner of the Northeast Quarter of Section 32, Township 13 South, Range 25 East; thence South 87 degrees 50 minutes 31 seconds West along the North line of the Northeast Quarter of said Section 32 a distance of 928.48 feet to a point; thence South 2 degrees 09 minutes 00 seconds East a distance of 429.55 feet to the POINT OF BEGINNING; thence North 87 degrees 51 minutes 00 seconds East a distance of 8.72 feet to a point; thence South 87 degrees 34 minutes 34 seconds East a distance of 52.76 feet to a point; thence North 87 degrees 51 minutes 00 seconds East a distance of 7.81 feet to a point; thence in a Northeasterly direction along a curve to the left, having a radius of 284.50 feet, through a central angle of 12 degrees 20 minutes 48 seconds, an arc distance of 61.31 feet to a point; thence North 75 degrees 30 minutes 12 seconds East a distance of 22.24 feet to a point; thence in a Southeasterly direction along a curve to the left whose initial tangent bears South 18 degrees 15 minutes 00 seconds East, having a radius of 527.00 feet, through a central angle of 7 degrees 13 minutes 46 seconds, an arc distance of 66.50 feet to a point of reverse curvature; thence along a curve to the right, having a radius of 367.53 feet, through a central angle of 69 degrees 59 minutes 33 seconds, an arc distance of 448.97 feet to a point; thence North 47 degrees 09 minutes 27 seconds West a distance of 43.86 feet to a point; thence in a Northwesterly direction along a curve to the left, having a radius of 655.00 feet, through a central angle of 6 degrees 46 minutes 05 seconds, an arc distance of 77.37 feet to a point; thence North 2 degrees 09 minutes 00 seconds West a distance of 385.94 feet to the POINT OF BEGINNING and containing 78,399 Square Feet or 1.7998 Acres, more or less.

**EXHIBIT B-2**

**MUSEUM – MAP**



## EXHIBIT C

### INSURANCE SPECIFICATIONS

1. Worker's Compensation (as applicable). The Foundation may self-insure, to the extent allowed by applicable law. The self-insured retention shall be that which is standard in the industry. The Foundation will then purchase excess Worker's Compensation Insurance with statutory limits over the self-insured retention. If self-insurance is not available under applicable state law, coverage will be purchased in accordance with the statutory requirements.
2. Comprehensive General Liability. The Foundation will purchase and maintain with primary limits of \$2,000,000.
3. Automobile Liability (as applicable). The Foundation will purchase and maintain with primary limits of \$1,000,000.
4. Excess Liability. The Foundation will purchase and maintain excess liability insurance in an amount not less than \$3,000,000.
5. Special Perils Form Property Insurance. The Foundation will purchase on a replacement cost basis. Deductibles and limits will be standard to those in the industry, and the policy shall include an "Agreed Amount" endorsement. Earthquake and flood insurance, as well as fired vessel, boiler and machinery, and underground collapse, may be required by the City as additional perils.