
CITY OF OVERLAND PARK, KANSAS

AS ISSUER

AND

MC PRAIRIEFIRE I, LLC

AS TENANT

LEASE

DATED AS OF MARCH 1, 2013

RELATING TO

**NOT TO EXCEED \$16,000,000
FEDERALLY TAXABLE PRIVATE ACTIVITY REVENUE BONDS
SERIES 2013
(PRAIRIEFIRE AT LIONSGATE PROJECT)**

The interest of City of Overland Park, Kansas (the “Issuer”), in this Lease has been pledged and assigned to the Trust Estate created under a Trust Indenture dated as of March 1, 2013, between UMB Bank, n.a., as trustee, and the Issuer.

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LEASE

THIS LEASE, made and entered into as of March 1, 2013, between the City of Overland Park, Kansas (the “Issuer”), and MC Prairiefire I, LLC (the “Tenant”).

WITNESSETH:

WHEREAS, the Issuer is a municipal corporation incorporated as a city of the first class, duly organized and existing under the laws of the State, with full lawful power and authority to enter into this Lease by and through its Governing Body; and

WHEREAS, the Issuer, in furtherance of the purposes and pursuant to the provisions of the laws of the State, particularly K.S.A. 12-1740 *et seq.*, as amended (the “Act”), and in order to provide for the economic development and welfare of the City of Overland Park, Kansas, and its environs and to provide employment opportunities for its citizens and to promote the economic stability of the State, has proposed and does hereby propose that it shall:

(a) acquire, construct, equip and furnish the Project (as defined in the Indenture):

(b) lease the Project to the Tenant for the rentals and upon the terms and conditions hereinafter set forth; and

(c) issue, for the purpose of paying Project Costs (as defined in the Indenture), the Series 2013 Bonds under and pursuant to and subject to the provisions of the Act and the Indenture (herein defined), said Indenture being incorporated herein by reference and authorized by an ordinance of the Governing Body of Issuer; and

WHEREAS, the Tenant, pursuant to the foregoing proposals of the Issuer, desires to lease the Project from the Issuer for the rentals and upon the terms and conditions hereinafter set forth;

NOW, THEREFORE, in consideration of the premises and the mutual covenants and agreements herein set forth, the Issuer and the Tenant do hereby covenant and agree as follows:

ARTICLE I

Section 1.01. Definitions. Capitalized terms not otherwise defined in this Lease shall have the meanings set forth in **Appendix B** to the Indenture. In addition to the words, terms and phrases defined in **Appendix B** to the Indenture and elsewhere in this Lease, the capitalized words, terms and phrases as used herein shall have the meanings set forth in the Glossary of Words and Terms attached as **Appendix C**, unless the context or use indicates another or different meaning or intent.

Section 1.02. Representations and Covenants by Tenant. Tenant makes the following covenants and representations as the basis for the undertakings on its part herein contained:

(a) The Tenant is a limited liability company, duly formed and existing under the laws of the State, and is duly authorized and qualified to do business in the State, with lawful power and authority to enter into this Lease, acting by and through its duly authorized members.

(b) The Tenant shall (A) maintain and preserve its existence as a limited liability and its authority to do business in the State and to operate the Project; (B) shall not initiate any proceedings of any kind whatsoever to dissolve or liquidate without (1) securing the prior written consent thereto of the Issuer and (2) making provision for the payment in full of the principal of and interest and redemption premium, if any, on the Bonds.

(c) To the Tenant's knowledge, neither the execution and/or delivery of this Lease, the consummation of the transactions contemplated hereby or by the Indenture, nor the fulfillment of or compliance with the terms and conditions of this Lease contravenes in any material respect any provision of its articles of organization or operating agreement or conflicts in any material respect with or results in a material breach of the terms, conditions or provisions of any mortgage, debt, agreement, indenture or instrument to which the Tenant is a party or by which it is bound, or to which it or any of its properties is subject, or would constitute a material default (without regard to any required notice or the passage or any period of time) under any of the foregoing, or would result in the creation or imposition of any lien, charge or encumbrance upon any of the property or assets of the Tenant under the terms of any mortgage, debt, agreement, indenture or instrument, or violates in any material respect any existing law, administrative regulation or court order or consent decree to which the Tenant is subject.

(d) This Lease constitutes a legal, valid and binding obligation of the Tenant enforceable in accordance with its terms.

(e) The Tenant agrees to operate and will operate the Project, or cause the Project to be operated, as a "facility," as that term is contemplated in the Act, from the date of the Issuer's acquisition of its leasehold interest in the Project to the end of the Lease term.

(f) The estimated total cost of the Improvements to be financed by the Series 2013 Bonds, plus interest on the Series 2013 Bonds during construction, equipping and furnishing of the Improvements, and expenses anticipated to be incurred in connection with the issuance of the Series 2013 Bonds, will not be less than the face amount of the Series 2013 Bonds outstanding at any time.

Section 1.03. Representations and Covenants by the Issuer. The Issuer makes the following representations and covenants as the basis for the undertakings on its part herein contained:

(a) It is a municipal corporation incorporated as a city of the first class, duly organized under the constitution and laws of the State. Under the provisions of the Act and the Ordinance, the Issuer has the power to enter into and perform the transactions contemplated by the Lease and the Indenture and to carry out its obligations hereunder or thereunder.

(b) It has not, in whole or in part, assigned, leased, hypothecated or otherwise created any other interest in, or disposed of, or caused or permitted any lien, claim or encumbrance to be placed against the Project, except for this Lease, any Permitted Encumbrances, any Impositions and the pledge of the Project pursuant to the Indenture.

(c) Except as otherwise provided herein or in the Indenture, it will not during the Term, in whole or in part, assign, lease, hypothecate or otherwise create any other interest in, or dispose of, or cause or permit any lien, claim or encumbrance (other than Permitted Encumbrances) to be placed against, the Project, except this Lease, any Impositions and the pledge of the Project pursuant to the Indenture.

(d) It has duly authorized the execution and delivery of this Lease and the Indenture and the issuance, execution and delivery of the Series 2013 Bonds.

(e) It has obtained the consent to and/or approval of the issuance of the Series 2013 Bonds by each municipal corporation and political subdivision the consent or approval of which is required by the provisions of the Act.

(f) This Lease constitutes a legal, valid and binding obligation of the Issuer enforceable in accordance with its terms.

ARTICLE II

Section 2.01. Granting of Leasehold. The Issuer by these presents hereby rents, leases and lets unto the Tenant and the Tenant hereby rents, leases and hires from the Issuer, for the rentals and upon and subject to the terms and conditions hereinafter set forth, the Project for the Basic Term.

ARTICLE III

Section 3.01. Basic Rent. The Issuer reserves and the Tenant covenants and agrees to pay to the Trustee hereinafter and in the Indenture designated, for the account of the Issuer and during the Basic Term, for deposit in the Principal and Interest Payment Account referred to herein and in the Indenture established, on each Basic Rent Payment Date, Basic Rent in immediately available funds.

Section 3.02. Presentation of Bonds in Satisfaction of Rent. In the event the Tenant acquires any Outstanding Bonds, the Tenant may present the same to the Trustee for

cancellation, and upon such cancellation, the Tenant's obligation to pay Basic Rent shall be reduced accordingly, but in no event shall the Tenant's obligation to pay Basic Rent be reduced in such a manner that the Trustee shall not have on hand in the Principal and Interest Payment Account funds sufficient to pay the maturing principal of, redemption premium, if any, and interest on Outstanding Bonds as and when the same shall become due and payable in accordance with the provisions of the Indenture.

Section 3.03. Additional Rent. Within 30 days after receipt of written notice thereof, Tenant shall pay any Additional Rent required to be paid pursuant to this Lease.

Section 3.04. Rent Payable Without Abatement or Setoff. The Tenant covenants and agrees with and for the express benefit of the Issuer and the Bondowners that all payments of Basic Rent and Additional Rent shall be made by the Tenant as the same become due, and that the Tenant shall perform all of its obligations, covenants and agreements hereunder without notice or demand and without abatement, deduction, setoff, counterclaim, recoupment or defense or any right of termination or cancellation arising from any circumstance whatsoever, whether now existing or hereafter arising, and irrespective of whether the Improvements shall have been acquired, started or completed, or whether the Issuer's interest in the Project or any part thereof is transferred, defective or non-existent, and notwithstanding any failure of consideration or commercial frustration of purpose, the eviction or constructive eviction of the Tenant, any Change of Circumstances, any change in the tax or other laws of the United States of America, the State, or any municipal corporation of either, any change in the Issuer's legal organization or status, or any default of the Issuer hereunder, and regardless of the invalidity of any action of the Issuer or any other event or condition whatsoever, and regardless of the invalidity of any portion of this Lease, and the Tenant hereby waives the provisions of any statute or other law now or hereafter in effect contrary to any of its obligations, covenants or agreements under this Lease or which releases or purports to release the Tenant therefrom. Nothing in this Lease shall be construed as a waiver by the Tenant of any rights or claims Tenant may have against the Issuer under this Lease or otherwise, but any recovery upon such rights and claims shall be had from the Issuer separately, it being the intent of this Lease that the Tenant shall be unconditionally and absolutely obligated to perform full all of its obligations, agreements and covenants under this Lease (including the obligation to pay Basic Rent and Additional Rent) for the benefit of the Bondowners.

Section 3.05. Prepayment of Basic Rent. The Tenant may at any time prepay all or any part of the Basic Rent without penalty or premium.

Section 3.06. Deposit of Rent by Trustee. As assignee of the Issuer's rights hereunder, the Trustee shall deposit, use and apply all payments of Basic Rent and Additional Rent in accordance with the provisions of this Lease and the Indenture.

ARTICLE IV

Section 4.01. Disposition of Original Proceeds; Project Fund. The Original Proceeds shall be paid over to the Trustee for the account of the Issuer. The Trustee shall pay from such Original Proceeds into the Principal and Interest Payment Account the full amount of any accrued interest received upon such sale. The remainder of such proceeds shall be deposited by

the Trustee in the Project Fund to be used and applied as provided in this Lease and the Indenture, except that Costs of Issuance may be paid from the Project Fund without further order or authorization.

Section 4.02. Funding of Project Fund.

(a) Prior to the Completion Date for a portion of the Project, the Project Fund will be funded by the Original Purchaser in one or more installments as requests for disbursements in the form attached to this Lease as **Appendix A** are submitted to and accepted by the Trustee. Without the consent of the Trustee, the Tenant shall not submit more than one request for disbursement per month. In accordance with the Bond Purchase Agreement, the Original Purchaser shall disburse installments to the Trustee, for deposit in the Project Fund, as the construction, equipping and furnishing of the Project progresses.

(b) The Original Purchaser's obligation to fund the Project Fund ceases upon the earlier of the Completion Date or the advancement of maximum principal amount of the Bonds.

ARTICLE V

Section 5.01. Acquisition of Land and Improvements. The Tenant shall prior to or concurrently with the issuance of the Bonds lease to the Issuer the Land described in **Schedule I** and such of the Improvements as are then completed, installed or in progress pursuant to the Site Lease. The Tenant shall also concurrently with such conveyance make provisions for the discharge of any liens or encumbrances incurred by it in connection with the construction, furnishing or equipping of the Improvements other than Permitted Encumbrances.

Section 5.02. Environmental Matters. An Environmental Assessment has been obtained which revealed no evidence on the Project of Hazardous Substances or other materials defined or designated as hazardous or toxic waste, hazardous or toxic material, a hazardous, toxic or radioactive substance or similar term defined by CERCLA or any other Environmental Law, the removal of which is required by the provisions of any applicable Environmental Law, or the maintenance of which is not in compliance with any such law.

The Tenant acknowledges that it is responsible for maintaining the Project in compliance with all Environmental Laws. In the event that the Tenant does not expeditiously proceed with any compliance action with respect to the Project lawfully required by any local, state or federal authority under applicable Environmental Law, Issuer, immediately after notice to the Tenant, may elect (but may not be required) to undertake such compliance. Any moneys expended by the Issuer in efforts to comply with any applicable Environmental Law (including the cost of hiring consultants, undertaking sampling and testing, performing any cleanup necessary or useful in the compliance process and attorneys' fees) shall be due and payable as Additional Rent hereunder with interest thereon at the average rate of interest per annum on the Bonds, plus two (2) percentage points, from the date such cost is incurred. There shall be unlimited recourse to the Tenant to the extent of any liability incurred by the Issuer with respect to any breaches of the provisions of this Section.

The Tenant shall and does hereby indemnify the Issuer, the Trustee and the Bondowners and agrees to defend and hold them harmless from and against all loss, cost, damage and expense (including, without limitation, reasonable attorneys' fees and costs associated incurred in the investigation, defense and settlement of claims) that they may incur, directly or indirectly, as a result of or in connection with the assertion against them or any of them of any claim relating to the presence on, escape or removal from the project of any hazardous substance or other material regulated by any applicable Environmental Law, or compliance with any applicable Environmental Law, whether before, during or after the term of this Lease, including claims relating to personal injury or damage to property.

The Tenant agrees to give immediate written notice to the Issuer and the Trustee of any violation of any Environmental Law of which violation Tenant has actual knowledge.

Section 5.03. Project Contracts. Prior to the delivery of this Lease, the Tenant may have entered into a contract or contracts with respect to the acquisition and/or construction of the Improvements. Those contracts, and any such contracts entered into by the Tenant after delivery of this Lease are hereinafter referred to as the "Project Contracts." Prior to the delivery hereof, certain work has been or may have been performed on the Improvements pursuant to said Project Contracts or otherwise. The Tenant hereby conveys, transfers and assigns to the Issuer all of the Tenant's interest in the Project Contracts and the Issuer hereby designates the Tenant as Issuer's agent for the purpose of executing and performing the Project Contracts. After the execution hereof, the Tenant shall cause the Project Contracts to be fully performed by the contractor(s), subcontractor(s) and supplier(s) thereunder in accordance with the terms thereof, and the Tenant covenants to cause the Improvements to be acquired, constructed and/or completed in accordance with the Project Contracts. Any and all amounts received by the Issuer, the Trustee or the Tenant from any of the contractors or other suppliers by way of breach of contract, refunds or adjustments shall become a part of and be deposited in the Project Fund.

Section 5.04. Payment of Project Costs for Buildings and Improvements. Issuer hereby agrees to pay for the acquisition, construction and furnishing of the Improvements, but solely from the Project Fund, and hereby authorizes and directs the Trustee to fund all amounts submitted by the Tenant on certificates for payment of Project Costs in accordance with this Lease, but solely from the Project Fund, from time to time, while the Tenant is in compliance with the requirements of **Section 6.01** hereof, upon receipt by the Trustee of a certificate signed by the Authorized Tenant Representative in the form set forth by **Appendix A** hereto which is incorporated herein by reference.

The sole obligation of the Issuer under this paragraph shall be to cause the Trustee to make such disbursements upon receipt of such certificates. The Trustee may rely fully on such certificate and shall not be required to make any investigation in connection therewith.

Section 5.05. Payment of Project Costs for Machinery and Equipment. The Issuer hereby agrees to pay for the purchase and acquisition of machinery and equipment constituting a part of the Improvements, but solely from the Project Fund, from time to time, upon receipt by the Trustee of a certificate signed by the Authorized Tenant Representative in the form provided

by **Appendix A** hereto which is incorporated herein by reference and accompanied by the following specific information:

- (a) Name of Seller;
- (b) Name of the manufacturer;
- (c) A copy of the seller's invoice, purchase order or other like document evidencing the purchase by the Tenant of such machinery and/or equipment;
- (d) Common descriptive name of machinery or equipment;
- (e) Manufacturer's or seller's technical description of machinery or equipment;
- (f) Capacity or similar designation;
- (g) Serial number, if any; and
- (h) Model number, if any.

The sole obligation of the Issuer under this Section shall be to cause the Trustee to make such disbursements upon receipt of said certificates. The Trustee may rely fully on any such certificate and shall not be required to make any independent investigation in connection therewith. All machinery, equipment and/or personal property acquired, in whole or in part, from funds deposited in the Project Fund pursuant to this Section shall be a part of the Project.

Section 5.06. Completion of Project. The Issuer and the Tenant each covenant and agree to proceed diligently to complete the Improvements on or before the Completion Date. Upon completion of the Improvements, the Tenant shall cause the Authorized Tenant Representative to deliver a Certificate of Completion, in the form substantially as attached hereto as **Appendix B**, to the Trustee. In the event funds remain on hand in the Project Fund on the date the Certificate of Completion is furnished to Trustee or on the Completion Date, whichever shall first occur, such remaining funds shall be transferred by the Trustee to the Principal and Interest Payment Account on the earlier of receipt of the Certificate of Completion or the Completion Date and shall be applied in accordance with the provisions of the Indenture.

Section 5.07. Deficiency of Project Fund. If the Project Fund shall be insufficient to pay fully all Project Costs and to fully complete the Improvements, lien free (except for Permitted Encumbrances), the Tenant covenants to pay the full amount of any such deficiency by making payments directly to the contractors and to the suppliers of materials, machinery, equipment, property and services as the same shall become due, and the Tenant shall save Issuer and Trustee whole and harmless from any obligation to pay such deficiency.

Section 5.08. Machinery, Equipment, Furnishings and Other Personal Property Purchased by the Tenant. If no part of the purchase price of an item of machinery, equipment, furnishings or other personal property is paid from funds deposited in the Project Fund pursuant

to the terms of this Lease, then such item of machinery, equipment or personal property shall not be deemed a part of the Project.

Section 5.09. Project Property of Issuer. All Improvements, all work and materials on the Improvements as such work progresses, any Project Additions, anything under this Lease which becomes, is deemed to be, or constitutes a part of the Project, and the Project as repaired, rebuilt, rearranged, restored or replaced by the Tenant under the provisions of this Lease, except as otherwise specifically provided herein, shall immediately when erected or installed become the property of the Issuer. In the event this Lease is deemed to be a security agreement with respect to any of such Improvements or Project Additions, the Tenant hereby grants the Issuer a security interest in the Improvements and Project Additions, and all attachments, accessions, additions, substitutions, replacement and proceeds thereof (including insurance proceeds) (collectively “Collateral”) to secure all payments of Basic Rent and Additional Rent and all obligations, covenants and agreements to be performed by the Tenant hereunder, and agrees that this security interest shall be prior to all other security interests in the Collateral.

ARTICLE VI

Section 6.01. Liability Insurance. As a condition precedent to payment of Costs of Issuance or disbursement of funds from the Project Fund pursuant to **Article V** hereunder, the following policies of insurance shall be in full force and effect:

(a) Comprehensive general liability insurance covering the Tenant’s operations in or upon the Project (including coverage for all losses whatsoever arising from the ownership, maintenance, use or operation of any automobile, truck or other vehicle in or upon the Project) under which the Tenant shall be named as insured and the Issuer and the Trustee shall be named as additional insureds, as their interests in the Project shall appear, in an amount not less than \$1,000,000 per occurrence); which policy shall provide that such insurance may not be canceled by the issuer thereof without at least 30 days’ (10 day’s for cancellation due to nonpayment of premium) advance written notice to the Issuer, the Tenant, the Bondowners and the Trustee, such insurance to be maintained throughout the life of this Lease. The policy should include blanket contractual liability coverage, independent contractors’ coverage and broad form property damage coverage.

(b) Worker’s compensation with statutory benefits including employers’ liability in such amount as is satisfactory to Bondowners, or, if such limits are established by law, in such amounts.

Section 6.02. Property Insurance. The Tenant shall and covenants and agrees that it will, throughout the Basic Term at its sole cost and expense, keep the Improvements continuously insured against loss or damage by fire, lightning and all other risks covered by the broadest form extended coverage insurance endorsements then in use in the State in an amount equal to the Full Insurable Value thereof in such insurance company or companies as it may select.

Section 6.03. General Insurance Provisions.

(a) Prior to the expiration dates of the expiring policies, or within 30 days of renewal, certificates of the policies provided for in this Article shall be delivered by the Tenant to the Trustee. All policies of such insurance and all renewals thereof shall name the Tenant as insured and Issuer and the Trustee as additional insureds and loss payees as their respective interests may appear, shall contain a provision that such insurance may not be canceled or amended by the issuer thereof without at least 30 days' (10 days for cancellation due to nonpayment of premium) written notice to the Issuer, the Tenant and the Trustee and shall be payable to the Issuer, the Tenant and Trustee as their respective interests appear. The Issuer and the Tenant each hereby agree to do anything necessary, be it the endorsement of checks or otherwise, to cause any such payment to be made to the Trustee, as long as such payment is required by this Lease to be made to the Trustee. Any charges made by the Trustee for its services shall be paid by the Tenant.

(b) Each policy of insurance hereinabove referred to shall be issued by an insurance company qualified under the laws of the State to assume the risks covered therein.

(c) Certificates of insurance evidencing the insurance coverage herein required shall be filed with the Trustee continuously during the term of this Lease, or immediately upon the change or transfer of such insurance coverage.

(d) Each policy of insurance hereinabove referred to may be subject to a reasonable deductible.

(e) Each policy of insurance required herein may be provided through blanket policies maintained by the Tenant.

(f) Anything in this Lease to the contrary notwithstanding, the Tenant shall be liable to the Issuer and Trustee pursuant to the provisions of this Lease or otherwise, as to any loss or damage which may have been occasioned by the negligence of the Tenant, its agents, licensees, contractors, invitees or employees.

ARTICLE VII

Section 7.01. Impositions. The Tenant shall, during the Term of this Lease, bear, pay and discharge, before the delinquency thereof, any and all Impositions. In the event any Impositions may be lawfully paid in installments, the Tenant shall be required to pay only such installments thereof as become due and payable during the Term of this Lease as and when the same become due and payable.

Section 7.02. Receipted Statements. Unless the Tenant exercises its right to contest any Impositions in accordance with **Section 7.04** hereof, the Tenant shall, within 30 days after the last day for payment, without penalty or interest, of an Imposition which the Tenant is required to bear, pay and discharge the same pursuant to the terms hereof, and deliver to Issuer a photostatic or other suitable copy of the statement issued therefor duly receipted to show the payment thereof.

Section 7.03. Issuer May Not Sell. The Issuer covenants that except pursuant to **Article XX** hereof after an Event of Default has occurred and is continuing, without the Tenant's written consent, unless required by law, it will not sell or otherwise part with or encumber its leasehold interest in the Project at any time during the Term of this Lease without the Tenant's prior written consent.

Section 7.04. Contest of Impositions. The Tenant shall have the right, in its own or the Issuer's name or both, to contest the validity or amount of any Imposition by appropriate legal proceedings instituted at least 10 days before the Imposition complained of becomes delinquent if, and provided, the Tenant (i) before instituting any such contest, shall give Issuer and Trustee written notice of its intention to do so and, if requested in writing by Issuer, shall deposit with the Trustee a surety bond of a surety company acceptable to Issuer as surety, in favor of Issuer, or cash, in a sum of at least the amount of the Imposition so contested, assuring the payment of such contested Impositions together with all interest and penalties to accrue thereon and court costs, and (ii) diligently prosecutes any such contest and at all times effectively stays or prevents any official or judicial sale therefor, under execution or otherwise, and (iii) promptly pays any final judgment enforcing the Imposition so contested and thereafter promptly procures record release or satisfaction thereof. The Tenant shall hold Issuer whole and harmless from any costs and expenses Issuer may incur related to any such contest due to the Issuer's ownership of the Project.

Section 7.05. No Exemption from Ad Valorem Taxes. The Tenant acknowledges that nothing in this Lease is to be construed as an agreement by the Issuer to grant an exemption from general ad valorem and property taxes for the property financed with the proceeds of the Series 2013 Bonds.

ARTICLE VIII

Section 8.01. Use of Project. Subject to the provisions of this Lease, the Tenant shall have the right to use the Project for any and all purposes allowed by law and contemplated by the constitution of the State and the Act. The Tenant shall comply in all material respects with all statutes, laws, ordinances, orders, judgments, decrees, regulations, directions and requirements of all federal, state, local and other governments or governmental authorities, now or hereafter applicable to the Project or to any adjoining public ways, as to the manner of use or the condition of the Project or of adjoining public ways. The Tenant shall comply with the mandatory requirements, rules and regulations of all insurers under the policies required to be carried under the provisions of this Lease. The Tenant shall pay all costs, expenses, claims, fines, penalties and damages that may in any manner arise out of, or be imposed as a result of, the failure of the Tenant to comply with the provisions of this Article.

ARTICLE IX

Section 9.01. Sublease by the Tenant. The Tenant may rent and sublease all or portions of the Project for use by others in the normal course of its business to Store Operators for the uses permitted under the Development Agreement. Any such subleases shall be subject and subordinate in all respects to the provisions of this Lease. Nothing in this Lease shall allow the Issuer, its successor or assigns, to disturb the rights of a Store Operator to use the Land and

the Improvements thereon under the terms and conditions as set forth in such Store Operator's lease with the Tenant.

Section 9.02. Assignment by the Tenant. Except as otherwise provided in this Section and in **Section 9.01**, the Tenant may not assign or mortgage its interest or any part hereof in this Lease without the prior written consent of the Governing Body of the Issuer. In the event of any such assignment, the Tenant shall remain fully liable for the performance of its duties and obligations hereunder, except to the extent hereinafter provided, and no such assignment and no dealings or transactions between Issuer or the Trustee and any such assignee shall relieve the Tenant of any of its duties and obligations hereunder, except as may be otherwise provided in the following Section. The Issuer and the Tenant acknowledge that a portion of the Land is encumbered by and subject to the terms of a certain Mortgage and Security Agreement (the "Mortgage"), dated effective as of December 28, 2012, granted by the Tenant, as borrower, to the Lender as agent for certain lenders, recorded beginning at Book 201212 Page 011056 of the Office of the Recorder of Deeds for Johnson County, Kansas. The Issuer and the Tenant further acknowledge that this Lease is subordinate to the Mortgage and that the Lender has not granted any rights of nondisturbance with respect to this Lease.

Section 9.03. Release of the Tenant. If, in connection with an assignment by the Tenant of its interest in this Lease, (1) the Issuer and the Owners of 75% in aggregate principal amount of the Outstanding Bonds (including any Additional Bonds) shall file with the Trustee their prior written consent to such assignment and (2) the proposed assignee shall expressly assume and agree to perform all of the obligations of the Tenant under this Lease; then Tenant shall be fully released from all obligations accruing hereunder after the date of such assignment.

Section 9.04. Mergers and Consolidations. Notwithstanding the provisions of **Sections 9.02** and **9.03** above, if Tenant shall assign or transfer, by operation of law or otherwise, its interests in this Lease in connection with a transaction involving the merger or consolidation of the Tenant with or into, or a sale, lease or other disposition of all or substantially all of the property of the Tenant as an entirety to another person, association, corporation or other entity, and (1) the Issuer shall file with the Trustee its prior written consent to such assignment or transfer, (2) the proposed assignee, transferee or surviving corporation or other entity shall expressly assume and agree to perform all of the obligations of the Tenant under this Lease, and (3) the Tenant shall furnish the Trustee and the Issuer with evidence in the form of financial statements accompanied by the certificate of an independent certified public accountant of recognized standing establishing that the net worth of such proposed assignee, transferee or surviving corporation or other entity immediately following such assignment or transfer will be at least equal to the net worth of the Tenant as shown by the most recent financial statement of the Tenant furnished to the Trustee pursuant to this Lease; then and in such event the Tenant shall be fully released from all obligations accruing hereunder after the date of such assignment or transfer.

Section 9.05. Covenant Against Other Assignments. The Tenant will not assign or in any manner transfer its interests under this Lease, nor will it suffer or permit any assignment thereof by operation of law, except in accordance with the limitations, conditions and requirements herein set forth.

Section 9.06. Notice to the Issuer. The Tenant hereby agrees to give immediate written notice to the Issuer of the following:

- (a) An occurrence of a default under the terms of either the Museum Ground Lease or the Retail Ground Lease;
- (b) Except as provided in **Section 17.11**, the intent of either the Landlord or the Tenant to terminate either the Museum Ground Lease or the Retail Ground Lease;
- (c) The intent of either the Tenant or the Landlord to assign either the Museum Ground Lease or the Retail Ground Lease;
- (d) The intent of the Tenant and the Landlord to amend either the Museum Ground Lease or the Retail Ground Lease; and
- (e) The bringing of an action to foreclose on the Mortgage.

Upon receipt of notice of one of the above, the Issuer shall have the right to terminate this Lease.

Section 9.07. No Liability of the Issuer. The Tenant hereby agrees that the Issuer assumes no obligations or liabilities under either the Museum Ground Lease or the Retail Ground Lease by entering into this Lease with the Tenant.

ARTICLE X

Section 10.01. Repairs and Maintenance. The Tenant covenants and agrees that it will, during the Term of this Lease, at its own expense, keep and maintain the Project and all parts thereof in good condition and repair, including but not limited to the furnishing of all parts, mechanisms and devices required to keep the machinery, equipment and personal property constituting a part of the Project in good mechanical and working order.

Section 10.02. Removal, Disposition and Substitution of Machinery or Equipment. The Tenant shall have the right, provided the Tenant is not in default in the payment of Basic Rent and Additional Rent, to remove and sell or otherwise dispose of any machinery or equipment which constitutes a part of the Project and is no longer used by the Tenant or, in the opinion of the Tenant, are no longer useful to the Tenant in its operations (whether by reason of changed processes, changed techniques, obsolescence, depreciation or otherwise), subject, however, to the following conditions:

- (a) With respect only to such items of machinery or equipment that originally cost \$25,000 or more, to the following:
 - (i) Prior to any such removal, the Tenant shall furnish the certificate to the Trustee and pay any consideration received for such machinery or equipment as set forth in said certificate to the Trustee and the Trustee shall deposit such amount in the Principal and Interest Payment Account. Any money deposited in the Principal and Interest Payment Account pursuant to this Section

shall be used to redeem Outstanding Bonds at their earliest optional redemption date.

(ii) The Tenant may remove any machinery or equipment constituting a part of the Project without complying with the provisions of subsection (b) below; provided, however, that the Tenant shall promptly replace any such machinery or equipment so removed with machinery or equipment of the same or a different kind but which perform the same function as the machinery or equipment so removed, and the machinery or equipment so acquired by the Tenant to replace such machinery or equipment thereafter shall be deemed a part of the Project. The Tenant shall maintain accurate records of such replacements and upon request shall prepare a certificate of the Authorized Tenant Representative setting forth a complete description, including make, model and serial numbers, if any, of the machinery or equipment which the Tenant has acquired to replace the machinery or equipment so removed by the Tenant, stating the cost thereof and the respective acquisition dates.

(iii) Prior to any such removal, the Tenant shall prepare a certificate signed by the Authorized Tenant Representative (A) containing a complete description, including the make, model and serial numbers, if any, of any machinery and equipment constituting a part of the Project which it proposes to remove, (B) stating the reasons for such removal, (C) stating what disposition, if any, of the machinery or equipment is to be made by the Tenant after such removal and the names of the party or parties to whom such disposition is to be made and any consideration to be received by the Tenant therefor, if any, and (D) setting forth the original cost of such machinery or equipment.

(b) With respect to such items of machinery or equipment that originally cost less than \$25,000, the Tenant shall deliver to the Trustee a certificate setting forth the facts provided for in subsection (a)(i) above. In no event shall the Tenant pursuant to this subsection (b) remove items of machinery or equipment having an aggregate original cost of more than \$100,000.

All machinery or equipment constituting a part of the Project and removed by the Tenant pursuant to this Section shall become the absolute property of the Tenant and may be sold or otherwise disposed of by the Tenant subject to the certification requirements of this Section. In all cases, the Tenant shall pay all the costs and expenses of any such removal and shall immediately repair at its expense all damage to the Project caused thereby. The Tenant's rights under this Article to remove machinery or equipment constituting a part of the Project is intended only to permit the Tenant to maintain an efficient operation by the removal of such machinery and equipment no longer suitable to the Tenant's use for any of the reasons set forth in this Section and such right is not to be construed to permit a removal under any other circumstances and shall not be construed to permit the wholesale removal of such machinery or equipment by the Tenant.

ARTICLE XI

Section 11.01. Alteration of Project. The Tenant shall have and is hereby given the right, at its sole cost and expense, to make such changes and alterations in and to any part of the Project as the Tenant from time to time may deem necessary or advisable without consent of the Issuer or the Trustee; provided, however, the Tenant shall not make any major change or alteration which will materially adversely affect the intended use or structural strength of any part of the Improvements. All changes and alterations made by Tenant pursuant to the authority of this Article shall (a) be made in a workmanlike manner and in strict compliance with all laws and ordinances applicable thereof, (b) when commenced, be prosecuted to completion with due diligence, and (c) when completed, shall be deemed a part of the Project; provided, however, that additions of machinery, equipment and/or personal property of the Tenant, not purchased or acquired from proceeds of the Bonds and not constituting a part of the Project shall remain the separate property of the Tenant and may be removed by the Tenant at any time; provided further, however, that all such additional machinery, equipment and/or personal property which remain in the Project after the termination of this Lease for any cause other than the purchase of the Project pursuant to **Article XVII** hereof shall, upon and in the event of such termination, become the separate and absolute property of the Issuer.

ARTICLE XII

Section 12.01. Additional Improvements. The Tenant shall have and is hereby given the right, at its sole cost and expense, to construct on the Land or within areas occupied by the Improvements, or in airspace above the Project, such additional buildings and improvements as the Tenant from time to time may deem necessary or advisable. All additional buildings and improvements constructed by the Tenant pursuant to the authority of this Article shall, during the Term, remain the property of the Tenant and may be added to, altered or razed and removed by the Tenant at any time during the Term hereof. The Tenant covenants and agrees (a) to make any repairs and restorations required to repair any damage to the Project because of the construction of, addition to, alteration or removal of, said additional buildings or improvements, (b) to keep and maintain said additional buildings and improvements in good condition and repair, ordinary wear and tear excepted, and (c) to promptly and with due diligence either raze and remove from the Land, in a good, workmanlike manner, or repair, replace or restore such of said additional buildings or improvements as may from time to time be damaged by fire or other casualty, and (d) that all additional buildings and improvements constructed by the Tenant pursuant to this Article which remain in place after the termination of this Lease for any cause other than the purchase of the Project pursuant to **Article XVII** hereof shall, upon and in the event of such termination, become the separate and absolute property of the Issuer; provided, however, the Tenant shall have the right, prior to or within 60 days after the termination of this Lease, to remove from or about the Project the buildings, improvements, machinery, equipment, personal property, furnishings and trade fixtures which the Tenant owns under the provisions of this Lease and are not a part of the Project.

ARTICLE XIII

Section 13.01. Securing of Permits and Authorizations. The Tenant shall not do or permit others under its control to do any work in or in connection with the Project or related to

any repair, rebuilding, restoration, replacement, alteration of or addition to the Project, or any part thereof, unless all requisite municipal and other governmental permits and authorizations shall have first been procured and paid for. All such work shall be done in a good and workmanlike manner and in compliance with all applicable building, zoning and other laws, ordinances, governmental regulations and requirements and in accordance with the requirements, rules and regulations of all insurers under the policies required to be carried under the provisions of this Lease.

Section 13.02. Mechanic's Liens. The Tenant shall make every reasonable effort to prevent or suffer anything to be done whereby the Project, or any part thereof, may be encumbered by any mechanic's or other similar lien and if, whenever and so often as any mechanic's or other similar lien is filed against the Project, or any part thereof, the Tenant shall discharge the same of record within 30 days after the date of filing, unless such time is otherwise extended in accordance with **Section 13.03** hereof. Notice is hereby given that the Issuer does not authorize or consent to and shall not be liable for any labor or materials furnished to the Tenant or anyone claiming by, through or under the Tenant upon credit, and that mechanic's or similar liens for any such labor, services or materials shall not attach to or affect the estate of the Issuer in and to the Project, or any part thereof.

Section 13.03. Contest of Liens. The Tenant, notwithstanding the above, shall have the right to contest any such mechanic's or other similar lien if within 30 days after the date of filing it (i) notifies the Issuer and Trustee in writing of its intention so to do, and if requested by Issuer, deposits with the Trustee a surety bond issued by a surety company acceptable to the Issuer as surety, in favor of the Issuer or cash, in the amount of the lien claim so contested, indemnifying and protecting the Issuer from and against any liability, loss, damage, cost and expense of whatever kind or nature growing out of or in any way connected with said asserted lien and the contest thereof, and (ii) diligently prosecutes such contest, at all times effectively staying or preventing any official or judicial sale of the Project or any part thereof or interest therein, under execution or otherwise, and (iii) promptly pays or otherwise satisfies any final judgment adjudging or enforcing such contested lien claim and thereafter promptly procures record release or satisfaction thereof.

Section 13.04. Utilities. All utilities and utility services used by the Tenant in, on or about the Project shall be contracted for by the Tenant in the Tenant's own name and the Tenant shall, at its sole cost and expense, procure any and all permits, licenses or authorizations necessary in connection therewith.

ARTICLE XIV

Section 14.01. Indemnity. The Tenant shall and hereby covenants and agrees to indemnify, protect, defend and save the Issuer and the Trustee harmless from and against any and all claims, demands, liabilities and costs, including attorneys' fees, arising from damage or injury, actual or claimed, of whatsoever kind or character, to property or persons, occurring or allegedly occurring in, on or about the Project during the Term hereof, including any mechanic's, materialmen's or similar liens against the Project, and upon timely written notice from the Issuer or the Trustee, the Tenant shall defend the Issuer and the Trustee in any action or proceeding brought thereon; provided, however, that nothing contained in this Section shall be construed as

requiring the Tenant to indemnify the Issuer for any claim resulting from any willful, malicious or negligent act of the Issuer, or its respective agents and employees or requiring the Tenant to indemnify the Trustee for any claim resulting from any willful, malicious or negligent act of the Trustee, or its respective agents and employees. The Tenant also covenants and agrees, at its expense, to pay and to indemnify the Issuer and Trustee from and against all costs, expenses and charges, including reasonable counsel fees (to the extent permitted by law), incurred in obtaining possession of the Project after default of the Tenant, or in enforcing any covenant or agreement of the Tenant contained in this Lease or the Indenture.

ARTICLE XV

Section 15.01. Access to Project. The Issuer, for itself and its duly authorized representatives and agents, including the Trustee, reserves the right to enter the Project at all reasonable times during usual business hours throughout the Term, upon reasonable notice to and subject to supervision by employees or agents of the Tenant, for the purpose of (a) examining and inspecting the same, (b) performing such work as may be made necessary by reasons of the Tenant's default under any of the provisions of this Lease, and (c) while an Event of Default is continuing hereunder, and with reasonable notice to the Tenant for the purpose of exhibiting the Project to prospective purchasers or lessees. The Issuer may, during the progress of said work mentioned in (b) above, keep and store on the Project all necessary materials, supplies and equipment and shall not be liable for necessary inconvenience, annoyances, disturbances, loss of business or other damage suffered by reason of the performance of any such work or the storage of such materials, supplies and equipment.

ARTICLE XVI

Section 16.01. Option to Extend Term. The Tenant shall have the option to extend the Basic Term of this Lease for the Additional Term provided that (a) the Tenant shall give the Issuer written notice of its intention to exercise each such option at least 30 days prior to the expiration of the Basic Term and (b) the Tenant is not in default hereunder in the payment of Basic Rent or Additional Rent at the time it gives the Issuer such notice or at the time the Additional Term commences. In the event the Tenant exercises such option, the terms, covenants, conditions and provisions set forth in this Lease shall be in full force and effect and binding upon the Issuer and the Tenant during the Additional Term except that the Basic Rent during any extended term herein provided for shall be the sum of \$1,000.00 per year, payable in advance on the first Business Day of such Additional Term.

ARTICLE XVII

Section 17.01. Option to Purchase Project. Subject to the provisions of this Article, the Tenant shall have the option to purchase the Project at any time during the Term hereof and for 10 days thereafter. The Tenant shall exercise its option by giving the Issuer written notice of Tenant's election to exercise its option and specifying the date, time and place of closing, which date (the "Closing Date"), shall neither be earlier than 30 days nor later than 180 days after the notice is given. The Tenant may not, however, exercise such option if the Tenant is in Default hereunder on the Closing Date unless all Defaults are cured upon payment of the purchase price specified in **Section 17.02.**

Section 17.02. Purchase Price of the Project. If said notice of election to purchase is given, the Issuer shall sell and convey all of its interests in the Project to the Tenant on the Closing Date free and clear of all liens and encumbrances except (a) Permitted Encumbrances, (b) those to which title was subject on the date of conveyance to the Issuer of a leasehold interest in the Land, or to which title became subject with the Tenant's written consent, or which resulted from any failure of the Tenant to perform any of its covenants or obligations under this Lease, (c) outstanding taxes and assessments, general and special, if any, which have been assessed but not yet paid and (d) the rights of any party having condemned or who is attempting to condemn title to, or the use for a limited period of, all or any part of the Project, for a price determined as follows (which the Tenant agrees to pay in immediately available funds at the time of delivery of the Issuer's deed or other instrument or instruments of transfer of the Project to the Tenant as hereinafter provided):

(a) The full amount which is required, when added to the amount in the Principal and Interest Account on the Closing Date, to provide Issuer and the Trustee with funds or securities sufficient, in accordance with the provisions of the Indenture, to pay to maturity or to redeem and pay in full (i) the principal of all of the outstanding Bonds, (ii) all interest due thereon to date of maturity or redemption, whichever first occurs, and (iii) all costs, expenses and premiums incident to the redemption and payment of said Bonds in full, plus

(b) \$1,000.00.

If Tenant fails to deposit the purchase price as described above its option to purchase shall terminate until the next Basic Rent Payment Date. Nothing in this Article shall release or discharge the Tenant from its duty or obligation under this Lease to make any payments of Basic Rent or Additional Rent which, in accordance with the terms of this Lease, become due and payable prior to the Closing Date, or its duty and obligation to fully perform and observe all covenants and conditions herein stated to be performed and observed by Tenant prior to the Closing Date.

Section 17.03. Closing of Purchase. On the Closing Date the Issuer shall deliver to the Tenant appropriate instrument or instruments of release, properly executed and releasing the Issuer's leasehold interest in the Project to the Tenant free and clear of all liens and encumbrances except as set forth in **Section 17.02** above, provided as follows: (a) the amount specified in clause (i) of **Section 17.02** shall be paid to the Trustee for deposit in the Principal and Interest Payment Account to be used to pay or redeem Bonds and the interest thereon as provided in the Indenture, and (b) the amount specified in clause (ii) of said **Section 17.02** shall be paid to the Issuer; provided, however, nothing herein shall require the Issuer to deliver its appropriate instrument or instruments of assignment or release to the Tenant until after all duties and obligations of the Tenant under this Lease to the date of such delivery have been fully performed and satisfied. Upon the delivery to the Tenant of the Issuer's appropriate instrument or instruments of assignment or conveyance or release and payment of the purchase price by the Tenant, this Lease shall *ipso facto* terminate, subject to the provisions of **Section 20.02** hereof.

Section 17.04. Effect of Failure to Complete Purchase. If, for any reason, the purchase of the Project by the Tenant pursuant to valid notice of election to purchase is not

effected on the Closing Date, this Lease shall be and remain in full force and effect according to its terms the same as though no notice of election to purchase had been given, except that if such purchase is not effected on the Closing Date because the Issuer is unable to release its leasehold interest in the Project, the Tenant shall have the right to cancel this Lease forthwith if, but only if, the principal of and interest on the Bonds and all costs incident to the redemption and payment of the Bonds have been paid in full. The Tenant shall also have the right to exercise any legal or equitable remedies, in its own name or in the name of the Issuer, to obtain a release of the Issuer's leasehold interest in the Project.

Section 17.05. Application of Condemnation Awards if Tenant Purchases Project.

The right of the Tenant to exercise its option to purchase the Project under the provisions of this Article shall remain unimpaired notwithstanding any condemnation of title to, or the use for a limited period of, all or any part of the Project. If the Tenant shall exercise its option and pay the purchase price as provided in this Article, all of the condemnation awards received by the Issuer after the payment of said purchase price, less all attorneys' fees and other expenses and costs incurred by the Issuer as the owner of the Project in connection with such condemnation, shall belong and be paid to the Tenant.

Section 17.06. Option to Purchase Unimproved Portions of Land. With the prior written consent of the Issuer, the Tenant shall have the option to purchase at any time and from time to time during the Term any vacant part or vacant parts of the unimproved Land constituting a part of the Project; provided, however, the Tenant shall furnish the Issuer and Trustee with a certificate of an Authorized Tenant Representative, dated not more than 90 days prior to the date of the purchase and stating that, in the opinion of the Authorized Tenant Representative, (a) the portion of said Land with respect to which the option is exercised is not needed for the operation of the Project for the purposes herein stated and (b) the purchase will not impair the usefulness or operating efficiency or materially impair the value of the Project and will not destroy or materially impair the means of ingress thereto and egress therefrom. The Tenant shall exercise this option by giving Issuer and Trustee written notice of the Tenant's election to exercise its option and specifying the legal description and the date, time and place of closing, which date shall neither be earlier than 90 days nor later than 120 days after the notice is given, and (c) specifying the appraised current fair market value of the portions of the Land with respect to which the Tenant's option is exercised as determined by an independent, qualified appraiser whose report shall be furnished to the Trustee together with the Tenant's notice of election to purchase and (d) a certificate signed by an authorized agent of the Tenant stating that no event has occurred and is continuing which, with notice or lapse of time or both, would constitute an Event of Default; provided, however, that the Tenant may not exercise this option if there has occurred and is continuing any event which, with notice or lapse of time or both, would constitute an Event of Default at the time said notice is given and may not purchase said real property on the specified closing date if any such event has occurred and is continuing on said date unless all defaults are cured. The option hereby given shall include the right to purchase a perpetual easement for right-of-way to and from the public roadway and the right to purchase such land as is necessary to assure that there will always be access between the real property purchased pursuant to these **Sections 17.06** through **17.10** and the public roadway.

Section 17.07. Purchase Price of Unimproved Portions of Land. If the notice of election to purchase is given as provided in **Section 17.06** the Issuer shall release and/or convey

the real property described in the Tenant's notice to the Tenant on the specified date free and clear of all liens and encumbrances except (i) Permitted Encumbrances, (ii) those to which the title was subject on the date of conveyance of the leasehold interest to the Issuer of the Land, or to which title became subject with the Tenant's written consent, or which resulted from any failure of the Tenant to perform any of its covenants or obligations under this Lease, (iii) outstanding taxes and assessments, general and special, if any, and (iv) the interests of any party having condemned or who is attempting to condemn title to, or the use for a limited period of, all or any part of the real property described in the Tenant's notice. The purchase price shall be an amount equal to the then current fair market value thereof, as determined with reference to the independent appraiser's report furnished to the Trustee or the original cost to the Tenant, whichever is less.

Section 17.08. Closing of Purchase of Unimproved Portions of Land. If the Issuer has a leasehold interest to such vacant real property free and clear of all liens and encumbrances except as stated above, then on the specified date, the Issuer shall deliver to the Tenant its release of real estate, properly executed and such real property from this Lease free and clear of all liens and encumbrances except as stated above, and the Tenant shall pay the purchase price for such real property, said purchase price to be paid pursuant to **Section 17.07** shall be paid to the Trustee for the account of the Issuer and deposited by the Trustee in the Principal and Interest Payment Account and shall be used to redeem Bonds pursuant to the extraordinary mandatory redemption provisions of the Indenture. Nothing herein shall require the Issuer to deliver its instrument(s) of release to the Tenant until after all duties and obligations of the Tenant under this Lease to the date of such delivery have been fully performed and satisfied.

Section 17.09. Effect of Purchase on Lease. The exercise by the Tenant of the option granted herein and the purchase and sale and conveyance of a portion or portions of the Land constituting a part of the Project pursuant hereto shall in no way whatsoever affect this Lease, and all the terms and provisions hereof shall remain in full force and effect the same as though no notice of election to purchase had been given, and specifically, but not in limitation of the generality of the forgoing, exercise of such option shall not affect, alter, diminish, reduce or abate the Tenant's obligations to pay all Basic Rent and Additional Rent required hereunder.

Section 17.10. Effect of Failure to Complete Purchase. If, for any reason whatsoever, the purchase by the Tenant of the real property described in said notice is not effected on the specified date, this Lease shall be and remain in full force and effect according to its terms the same as though no notice of election to purchase had been given.

Section 17.11. Purchase by the Tenant of Improved Portions of the Project. Except as provided in this **Section 17.11**, the Tenant shall not transfer or sell a portion of the Project without the prior written consent of the Issuer. The Tenant shall give the Issuer not less than 90 days' notice of its intent to transfer or sell a portion of the Project. The Tenant may transfer the Museum Land, as defined herein, together with the Improvements located thereon to the Museum Owner upon written notice to the Issuer.

(a) The real property subject to the Museum Ground Lease and constituting a portion of the Land (the "Museum Land") as shown on **Exhibit A to Schedule I** attached hereto and the Improvements located thereon, shall be purchased by the Tenant and

released by the Issuer and the Tenant from the terms of this Lease upon the transfer or sale of the Museum Land by the Landlord to a third party and the payment and redemption of a portion of the Bonds in the principal amount of the Bond proceeds used to finance the Improvements located on the Museum Land in accordance with the terms of the Indenture.

(b) The real property subject to the Retail Ground Lease and constituting a portion of the Land (the "Retail Land") as shown on **Exhibit A to Schedule I** attached hereto and the Improvements located thereon, shall be purchased by the Tenant and released by the Issuer and the Tenant from the terms of this Lease upon the transfer or sale of the Retail Land by the Landlord to a third party and the payment and redemption of a portion of the Bonds in the principal amount of the Bond proceeds used to finance the Improvements located on the Retail Land in accordance with the terms of the Indenture.

ARTICLE XVIII

Section 18.01. Damage and Destruction.

(a) If, during the Term, the Improvements are damaged or destroyed, in whole or in part, by fire or other casualty, the Tenant shall promptly notify the Issuer and the Trustee in writing as to the nature and extent of such damage or loss and whether it is practicable and desirable to rebuild, repair, restore or replace such damage or loss.

(b) If the Tenant shall determine that such rebuilding, repairing, restoring or replacing is practicable and desirable, the Tenant shall (at Tenant's expense) forthwith proceed with and complete with reasonable dispatch such rebuilding, repairing, restoring or replacing. In such case, any Net Proceeds of property and/or casualty insurance required by this Lease and received with respect to any such damage or loss to the Improvements shall be paid to the Trustee and shall be deposited in the Project Fund and shall be used and applied for the purpose of paying the cost of such rebuilding, repairing, restoring or replacing such damage or loss. Any amount remaining in the Project Fund after such rebuilding, repairing, restoring or replacing shall be paid to the Tenant.

(c) If the Tenant shall determine that rebuilding, repairing, restoring or replacing the Improvements are not practicable and desirable, any Net Proceeds of property and/or casualty insurance required by this Lease and received with respect to any such damage or loss to the Project shall be paid into the Principal and Interest Payment Account. Such moneys shall be used to redeem Bonds at their earliest optional redemption date. The Tenant agrees that it shall be reasonable in exercising its judgment pursuant to this subsection (c).

(d) The Tenant shall not, by reason of its inability to use all or any part of the Improvements during any period in which the Improvements are damaged or destroyed, or are being repaired, rebuilt, restored or replaced nor by reason of the payment of the costs of such rebuilding, repairing, restoring or replacing, be entitled to any reimbursement or any abatement or diminution of the Basic Rent or Additional Rent

payable by the Tenant under this Lease nor of any other obligations of the Tenant under this Lease except as expressly provided in this Section.

Section 18.02. Condemnation.

(a) If, during the Term title to, or the temporary use of, all or any part of the Project shall be condemned by any authority exercising the power of eminent domain, the Tenant shall, within 90 days after the date of entry of a final order in any eminent domain proceedings granting condemnation, notify the Issuer and the Trustee in writing as to the nature and extent of such condemnation and whether it is practicable and desirable to acquire or construct substitute improvements.

(b) If the Tenant shall determine that such substitution is practicable and desirable, the Tenant shall forthwith proceed with and complete with reasonable dispatch the acquisition or construction of such substitute improvements. In such case, any Net Proceeds received from any award or awards with respect to the Project or any part thereof made in such condemnation or eminent domain proceeds shall be paid to the Trustee for the account of the Tenant and shall be deposited in the Project Fund and shall be used and applied for the purpose of paying the cost of such substitution. Any amount remaining in the Project Fund after such acquisition, construction or installation shall be paid to the Tenant.

(c) If the Tenant shall determine, in its sole discretion, that it is not practicable and desirable to acquire or construct substitute improvements, any Net Proceeds of condemnation awards received by the Tenant shall be paid into the Principal and Interest Payment Account. Such moneys shall be used to redeem Bonds at their earliest optional redemption date. The Tenant agrees that it shall be reasonable in exercising its judgment pursuant to this subsection (c).

(d) The Tenant shall not, by reason of its inability to use all or any part of the Improvements during any such period of restoration or acquisition nor by reason of the payment of the costs of such restoration or acquisition, be entitled to any reimbursement or any abatement or diminution of the Basic Rent or Additional Rent payable by the Tenant under this Lease nor of any other obligations hereunder except as expressly provided in this Section.

(e) The Issuer shall cooperate fully with the Tenant in the handling and conduct of any prospective or pending condemnation proceedings with respect to the Project or any part thereof so long as the Issuer is not the condemning authority. In no event will the Issuer voluntarily settle or consent to the settlement of any prospective or pending condemnation proceedings with respect to the Project or any part thereof without the written consent of the Tenant.

Section 18.03. Effect of Tenant's Defaults. Anything in this Article to the contrary notwithstanding, the Issuer and the Trustee shall have the right at any time and from time to time to withhold payment of all or any part of the Net Proceeds from the Project Fund attributable to damage, destruction or condemnation of the Project to the Tenant or any third party if an Event

of Default has occurred and is continuing, or the Issuer or Trustee has given notice to the Tenant of any Default which, with the passage of time, will become an Event of Default. In the event the Tenant shall cure any Defaults specified herein the Trustee shall make payments from the Net Proceeds to the Tenant in accordance with the provisions of this Article. However, if this Lease is terminated or the Issuer or Trustee otherwise re-enters and takes possession of the Project without terminating this Lease, the Trustee shall pay all the Net Proceeds held by it into the Principal and Interest Payment Account and all rights of the Tenant in and to such Net Proceeds shall cease.

ARTICLE XIX

Section 19.01. Change of Circumstances. If a Change of Circumstances occurs, then the Tenant shall have the option to purchase the Project pursuant to **Article XVII** or the option to terminate this Lease by giving the Issuer notice of such termination within 90 days after Tenant has actual knowledge of the event giving rise to such option. Such termination shall become effective when all of the Bonds Outstanding are paid or payment is provided for pursuant to the Indenture.

ARTICLE XX

Section 20.01. Remedies on Default. Whenever any Event of Default shall have happened and be continuing, the Issuer may take any one or more of the following remedial actions:

(a) By written notice to the Tenant upon acceleration of maturity of the Bonds as provided in the Indenture, the Trustee may declare the aggregate amount of all unpaid Basic Rent or Additional Rent then or thereafter required to be paid under this Lease by the Tenant to be immediately due and payable as liquidated damages from the Tenant, whereupon the same shall become immediately due and payable by the Tenant; provided, however, that the Owners of at least 75% in aggregate principal amount of the Outstanding Bonds must provide written consent to the Issuer and the Trustee to declare all unpaid Basic Rent immediately due;

(b) Give the Tenant written notice of intention to terminate this Lease on a date specified therein, which date shall not be earlier than 10 days after such notice is given and, if all defaults have not then been cured on the date so specified, the Tenant's rights to possession of the Project shall cease, and this Lease shall thereupon be terminated, and the Issuer may re-enter and take possession of the Project; or

(c) Without terminating the Term hereof, or this Lease, conduct inspections or an Environmental Assessment of the Project, and re-enter the Project or take possession thereof pursuant to legal proceedings or any notice provided for by law and this Lease. The Issuer or the Trustee acting on behalf of the Issuer may refuse to re-enter or take possession of the Project if it has reasonable cause for such refusal. "Reasonable cause" shall include the presence on the Project of conditions which are in violation of any Environmental Law or the existence or threat of a remedial action against the Tenant under any Environmental Law resulting from conditions on the Project.

Having elected to re-enter or take possession of the Project without terminating the Term of this Lease, the Issuer and the Trustee acting on behalf of Issuer shall use reasonable diligence to relet the Project, or parts thereof, for such term or terms and at such rental and upon such other terms and conditions as are deemed advisable, with the right to make alterations and repairs to the Project, and no such re-entry or taking of possession of the Project shall be construed as an election to terminate this Lease, and no such re-entry or taking of possession shall relieve the Tenant of its obligation to pay Basic Rent or Additional Rent (at the time or times provided herein), or of any of its other obligations under this Lease, all of which shall survive such re-entry or taking of possession. The Tenant shall continue to pay the Basic Rent and Additional Rent provided for in this Lease until the end of the Term, whether or not the Project shall have been relet, less the net proceeds, if any of reletting the Project.

Having elected to re-enter or take possession of the Project pursuant to subsection (c) hereunder, the Issuer or Trustee acting on behalf of the Issuer may (subject, however, to any restrictions against termination of this Lease in the Indenture), by notice to the Tenant given at any time thereafter while the Tenant is in default in the payment of Basic Rent or Additional Rent or in the performance of any other obligation under this Lease, elect to terminate this Lease in accordance with subsection (b) hereunder and thereafter proceed to sell its interest in the Project.

If, in accordance with any of the foregoing provisions of this Article, the Issuer shall have the right to elect to re-enter and take possession of the Project, the Issuer may enter and expel the Tenant and those claiming through or under the Tenant and remove the property and effects of both or either by all lawful means without being guilty of any manner of trespass and without prejudice to any remedies for arrears of Basic Rent or Additional Rent or preceding breach of covenant.

Net proceeds of any reletting or sale of the Project shall be deposited in the Principal and Interest Payment Account. "Net Proceeds" for this purpose shall mean the receipts obtained from reletting or sale after deducting all expenses incurred in connection with such reletting or sale, including without limitation, all repossession costs, brokerage commissions, legal expenses, expenses of employees, alteration costs and expenses of preparation of the Project for reletting or sale.

Section 20.02. Survival of Obligations. The Tenant covenants and agrees with Issuer and the Bondowners that until all Bonds and the interest thereon and redemption premium, if any, are paid in full or provisions made for the payment thereof in accordance with the Indenture, its obligations under this Lease shall survive the cancellation and termination of this Lease, for any cause, and that the Tenant shall be obligated to pay Basic Rent and Additional Rent (reduced by any net income the Issuer or Trustee may receive from the Project after such termination) and perform all other obligations provided for in this Lease, all at the time or times provided in this Lease. Notwithstanding any provision of this Lease or the Indenture, the Tenant's obligations under **Section 14.01** hereof shall survive any termination, release or assignment of this Lease or the Indenture and payment or provisions for payment of the Bonds.

Section 20.03. No Remedy Exclusive. No remedy herein conferred upon or reserved to the Issuer is intended to be exclusive of any other available remedy or remedies, but each and

every such remedy shall be cumulative and shall be in addition to every other remedy given under this Lease or now or hereafter existing at law or in equity or by statute, subject to the provisions of the Indenture. No delay or omission to exercise any right or power accruing upon any Event of Default shall impair any such right or power, or shall be construed to be a waiver thereof, but any such right or power may be exercised from time to time and as often as may be deemed expedient. In order to entitle the Issuer to exercise any remedy reserved to it in this Article, it shall not be necessary to give any notice, other than notice required herein.

ARTICLE XXI

Section 21.01. Performance of Tenant's Obligations by Issuer. If the Tenant shall fail to keep or perform any of its obligations as provided in this Lease, then the Issuer may (but shall not be obligated to do so) upon the continuance of such failure on the Tenant's part for 90 days after notice of such failure is given the Tenant by the Issuer or the Trustee and without waiving or releasing the Tenant from any obligation hereunder, as an additional but not exclusive remedy, make any such payment or perform any such obligation, and the Tenant shall reimburse the Issuer for all sums so paid by the Issuer and all necessary or incidental costs and expenses incurred by the Issuer in performing such obligations through payment of Additional Rent. If such Additional Rent is not so paid by the Tenant within ten (10) days of demand, the Issuer shall have the same rights and remedies provided for in **Article XX** in the case of default by the Tenant in the payment of Basic Rent.

ARTICLE XXII

Section 22.01. Surrender of Possession. Upon accrual of the Issuer's right of re-entry as the result of the Tenant's default hereunder or upon the cancellation or termination of this Lease by lapse of time or otherwise (other than as a result of the Tenant's purchase of the Project), the Tenant shall peacefully surrender possession of the Project to the Issuer in good condition and repair, ordinary wear and tear excepted; provided, however, the Tenant shall have the right, prior to or within 60 days after the termination of this Lease, to remove from on or about the Project the buildings, improvements, machinery, equipment, personal property, furnishings and trade fixtures which the Tenant owns under the provisions of this Lease and which are not a part of the Project. All repairs to and restorations of the Project required to be made because of such removal shall be made by and at the sole cost and expense of the Tenant. All buildings, improvements, machinery, equipment, personal property, furnishings and trade fixtures owned by the Tenant and which are not so removed from on or about the Project prior to or within 60 days after such termination of this Lease shall become the separate and absolute property of the Issuer.

ARTICLE XXIII

Section 23.01. Notices. All notices required or desired to be given hereunder shall be in writing and shall be delivered in person to the Notice Representative sent via United States mail, postage prepaid, certified or registered mail, return receipt requested, to the Notice Address. All notices given by certified or registered mail as aforesaid shall be deemed duly given as of the date of first attempted delivery at the Notice Address. Notwithstanding the foregoing provisions of this **Section 23.01**, notices, certificates or communications to the Trustee shall be deemed

duly and fully given only upon receipt by the Trustee. A duplicate copy of each notice, certificate or other communication given hereunder by either the Issuer or Tenant to the other shall also be given to the Trustee and the Lender.

ARTICLE XXIV

Section 24.01. Net Lease. The parties hereto agree (a) that this Lease is intended to be a net lease, (b) that the payments of Basic Rent and Additional Rent are designed to provide the Issuer and the Trustee with funds adequate in amount to pay all principal of and interest on all Bonds as the same become due and payable and to pay and discharge all of the other duties and requirements set forth herein, and (c) that to the extent that the payments of Basic Rent and Additional Rent are not adequate to provide Issuer and the Trustee with funds sufficient for the purposes aforesaid, the Tenant shall be obligated to pay, and it does hereby covenant and agree to pay, upon demand therefor, as Additional Rent, such further sums of money as may from time to time be required for such purposes.

Section 24.02. Funds Held by Trustee After Payment of Bonds. If, after the principal of and interest on all Bonds and all costs incident to the payment of Bonds have been paid in full, the Trustee holds unexpended funds received in accordance with the terms hereof, such unexpended funds shall, except as otherwise provided in this Lease and the Indenture and after payment therefrom to Issuer of any sums of money then due and owing by the Tenant under the terms of this Lease, be the absolute property of and be paid over forthwith to the Tenant.

ARTICLE XXV

Section 25.01. Rights and Remedies. The rights and remedies reserved by the Issuer and the Tenant hereunder and those provided by law shall be construed as cumulative and continuing rights. No one of them shall be exhausted by the exercise thereof on one or more occasions. The Issuer and the Tenant shall each be entitled to specific performance and injunctive or other equitable relief for any breach or threatened breach of any of the provisions of this Lease, and each party hereby waives the right to raise such defense in any proceeding in equity.

Section 25.02. Waiver of Breach. No waiver of a 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 nondefaulting 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.

Section 25.03. Issuer Shall Not Unreasonably Withhold Consents and Approvals. Wherever in this Lease it is provided that the Issuer shall, may or must give its approval or consent, or execute supplemental agreements, exhibits or schedules, the Issuer shall not unreasonably withhold or refuse to give such approvals or consents or refuse to execute such supplemental agreements, exhibits or schedules.

ARTICLE XXVI

Section 26.01. Quiet Enjoyment and Possession. The Tenant shall enjoy peaceable and quiet possession of the Project as long as no Event of Default has occurred and is continuing.

ARTICLE XXVII

Section 27.01. Investment Tax Credit; Depreciation. The Tenant shall be entitled to claim the full benefit of (1) any investment credit against federal or state income tax allowable with respect to expenditures of the character contemplated hereby under any federal or state income tax allowable with respect to expenditures of the character contemplated hereby under any federal or state income tax laws now or from time to time hereafter in effect, and (2) any deduction for depreciation with respect to the Project from federal or state income taxes. The Issuer agrees that it will upon the Tenant's request execute all such elections, returns or other documents which may be reasonably necessary or required to more fully assure the availability of such benefits to the Tenant.

ARTICLE XXVIII

Section 28.01. Amendments. This Lease may be amended, changed or modified in the following manner:

(a) With respect to an amendment, change or modification which reduces the Basic Rent or Additional Rent, or any amendment which reduces the percentage of Bondowners whose consent is required for any such amendment, change or modification, by an agreement in writing executed by the Issuer and the Tenant and consented to in writing by the Trustee and by the Owners of at least 90% of the aggregate principal amount of the Bonds then Outstanding; and

(b) With respect to any other amendment, change or modification which will materially adversely affect the security or rights of the Bondowners, by an agreement in writing executed by the Issuer and the Tenant and consented to in writing by the Trustee and by the Owners of at least 66-2/3% of the aggregate principal amount of the Bonds then Outstanding;

(c) With respect to all other amendments, changes, or modifications, by an agreement in writing executed by the Issuer and the Tenant.

At least 30 days prior to the execution of any agreement pursuant to (c) above, the Issuer and the Tenant shall furnish the Trustee with a copy of the amendment, change or modification proposed to be made.

(d) The Trustee shall be entitled to receive, and, shall be fully protected in relying upon, an opinion of Bond Counsel addressed and delivered to the Trustee stating that the execution of such amendment is authorized and permitted by and in compliance with the terms of this Lease.

Section 28.02. Granting of Easements. If no Event of Default under this Lease shall have happened and be continuing, the Tenant may, at any time or times, (a) grant easements,

licenses and other rights or privileges in the nature of easements with respect to any property included in the Project, free from any rights of the Issuer or the Bondowners, or (b) release existing easements, licenses, rights-of-way and other rights or privileges, all with or without consideration and upon such terms and conditions as the Tenant shall determine, and the Issuer agrees, to the extent that it may legally do so, that it will execute and deliver any instrument necessary or appropriate to confirm and grant or release any such easement, license, right-of-way or other right or privilege or any such agreement or other arrangement, upon receipt by the Issuer of: (i) a copy of the instrument of grant or release or of the agreement or other arrangement, (ii) a written application signed by the Authorized Tenant Representative requesting such instrument, and (iii) a certificate executed by the Tenant stating (aa) that such grant or release is not detrimental to the proper conduct of the business of the Tenant, and (bb) that such grant or release will not impair the effective use or interfere with the efficient and economical operation of the Project and will not materially adversely affect the security of the Bondowners. If the instrument of grant shall so provide, any such easement or right and the rights of such other parties thereunder shall be superior to the rights of the Issuer and the right of the Bondowners and shall not be affected by any termination of this Lease or default on the part of the Tenant hereunder. If no Event of Default shall have happened and be continuing, any payments or other consideration received by the Tenant for any such grant or with respect to or under any such agreement or other arrangement shall be and remain the property of the Tenant, but, in the event of the termination of this Lease because of Default of the Tenant, all rights then existing of the Tenant with respect to or under such grant shall inure to the benefit of and be exercisable by the Issuer.

Section 28.03. Security Interests. If requested in writing by the Owners of 100% of the Outstanding Bonds, the Issuer and the Tenant agree to execute and deliver all instruments (including financing statements and statements of continuation thereof) requested by such Owner for perfection of and continuance of the security interest of the Issuer in and to the Project. After receipt of such Bondowner request, the Issuer shall file or cause to be filed all such original instruments and the Trustee shall continue or cause to be continued the liens of such instruments for so long as the Bonds shall be Outstanding.

Under the Indenture, the Issuer will, as additional security for the Bonds assign, transfer, pledge and grant a security interest in certain of its rights under this Lease to the Trustee. The Trustee is hereby given the right to enforce, either jointly with the Issuer or separately, the performance of the obligations of the Tenant, and the Tenant hereby consents to the same and agrees that the Trustee may enforce such rights as provided in the Indenture and the Tenant will make payments required hereunder directly to the Trustee.

Section 28.04. Construction and Enforcement. This Lease shall be construed and enforced in accordance with the laws of the State. The provisions of this Lease shall be applied and interpreted in accordance with the rules of interpretation set forth in the Indenture. Wherever in this Lease it is provided that either party shall or will make any payment or perform or refrain from performing any act or obligation, each such provision shall, even though not so expressed, be construed as an express covenant to make such payment or to perform, or not to perform, as the case may be, such act or obligation.

Section 28.05. Invalidity of Provisions of Lease. If, for any reason, any provision hereof shall be determined to be invalid or unenforceable, the validity and effect of the other provisions hereof shall not be affected thereby.

Section 28.06. Covenants Binding on Successors and Assigns. The covenants, agreements and conditions herein contained shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns.

Section 28.07. Section Headings. The section headings hereof are for the convenience of reference only and shall not be treated as a part of this Lease or as affecting the true meaning of the provisions hereof. The reference to section numbers herein or in the Indenture shall be deemed to refer to the numbers preceding each section.

Section 28.08. Execution of Counterparts. This Lease may be executed simultaneously in multiple counterparts, each of which shall be deemed to be an original, but all of which together shall constitute one instrument.

Section 28.09. Limitation of Rights Under the Lease. With the exception of rights herein expressly conferred, nothing expressed or mentioned in or to be inferred from this Lease is intended or shall be construed to give any person, other than the parties hereto and the Trustee and Bondowners, any right, remedy or claim under or with respect to this Lease, and all of the covenants, conditions and provisions hereof being intended to be and being for the sole and exclusive benefit of the parties hereto, the Trustee and the Bondowners as herein provided.

Section 28.10. Integration. This Lease contains the final and complete understanding of the parties as of the date hereof and constitutes their entire agreement regarding the subject matter hereof, all prior negotiations, representations and statement having been merged herein.

[Remainder of the Page Intentionally Left Blank]

IN WITNESS WHEREOF, the Issuer has caused this Lease to be signed by an authorized official, such signature to be attested by an authorized officer, and its official seal to be applied, as of the date first above written.

CITY OF OVERLAND PARK, KANSAS

By _____
Carl R. Gerlach
Mayor

(SEAL)

ATTEST:

Marian Cook
City Clerk

ACKNOWLEDGMENT

STATE OF KANSAS)
) SS.
COUNTY OF JOHNSON)

BE IT REMEMBERED that on this ____ day of March, 2013, before me, the undersigned, a Notary Public in and for the State and County aforesaid, came Carl R. Gerlach, Mayor of the City of Overland Park, Kansas, a municipal corporation duly organized and validly existing under the laws of the State of Kansas, and Marian Cook, City Clerk of said Issuer, who are personally known to me to be the same persons who executed the foregoing instrument of writing as such officials, and said Carl R. Gerlach, as Mayor, duly acknowledged the execution of the same to be the act of the Issuer, and Marian Cook, as City Clerk, for and on behalf of said Issuer affixed thereto the seal of the Issuer.

IN TESTIMONY WHEREOF, I have hereunto subscribed my name and affixed my official seal, the day and year last above written.

Notary Public

My Commission Expires: _____

IN WITNESS WHEREOF, the Tenant has caused this Lease to be signed by an authorized member, such signature to be attested by an authorized member, and its seal (if any) to be applied, as of the date first above written.

MC PRAIRIEFIRE I, LLC,
a Kansas limited liability company

By: Merrill Companies, LLC,
a Kansas limited liability company, its Manager

By: _____
Name: Fred L. Merrill, Jr.
Title: Manager

ACKNOWLEDGMENT

STATE OF KANSAS)
) SS.
COUNTY OF JOHNSON)

BE IT REMEMBERED that on this _____ day of March, 2013, before me, the undersigned, a Notary Public in and for the State and County aforesaid, came Fred L. Merrill, Jr. as Manager of Merrill Companies, LLC as Manager of MC Prairiefire I, LLC, a Kansas limited liability company (the “Company”) who is personally known to me to be the same person who executed the foregoing instrument of writing as such officials, and said Fred L. Merrill, Jr., as Manager, duly acknowledged the execution of the same to be the act of the Company.

IN TESTIMONY WHEREOF, I have hereunto subscribed my name and affixed my official seal, the day and year last above written.

Notary Public

My Commission Expires:_____

(Seal) (if any)

APPENDIX A

FORM OF CERTIFICATE FOR PAYMENT OF PROJECT COSTS

CITY OF OVERLAND PARK, KANSAS
Project Fund
(Prairiefire at LionsGate Project)
Payment Order No. ____

Corporate Trust & Escrow Services
UMB Bank, n.a.
1010 Grand Boulevard, 4th Floor
Kansas City, MO 64106
Attention: Corporate Trust Department

You are hereby authorized and directed by the undersigned, the Authorized Tenant Representative, acting on behalf of MC Prairiefire I, LLC (the "Tenant") to disburse funds held by you as Trustee in the above-mentioned Project Fund for the purposes and in the amounts set forth in the Payment Schedules attached hereto and incorporated herein by reference (the "Payment Schedules").

I hereby certify that the amounts requested in the attached Payment Schedules have either been advanced by the Tenant or are justly due to contractors, subcontractors, suppliers, vendors, materialmen, engineers, architects or other persons named in the Payment Schedules who have performed necessary and appropriate work in connection with any installation of machinery, equipment or personal property, or have furnished necessary and appropriate materials in the construction or acquisition of land, buildings and improvements constituting a part of the Project. I further certify that the fair value of such work or materials, machinery, equipment and furnishings, is not exceeded by the amount requested, and such cost is one which may be capitalized for federal income tax purposes.

I further certify that, except for the amounts set forth in the Payment Schedules, there are no outstanding debts now due and payable for labor, wages, materials, supplies or services in connection with the construction of said buildings and improvements or the purchase and/or installation of machinery, equipment and personal property which, if unpaid, might become the basis of a vendor's, mechanic's, laborer's or materialmen's statutory or other similar lien upon the Land, the Project or any part thereof.

I further certify that no part of the amounts set forth in the Payment Schedules have been the basis for any previous withdrawal of any moneys from the said Project Fund.

I further certify that each of the representations and covenants on the part of the Tenant contained in the Lease dated as of March 1, 2013, by and between the City of Overland Park, Kansas, as the Issuer, and the Tenant are now true and correct in all material respects and are now being materially complied with.

I further certify that the amounts set forth in the Payment Schedules constitute Project Costs, as said term is defined in the Lease, and that all insurance policies which are required to be in force as a condition precedent to disbursement of funds from the Project Fund pursuant to the provisions of **Section 6.01** of the Lease are in full force and effect.

DATED _____, 20__.

Authorized Tenant Representative

ACCEPTED, as of the _____ day of _____ 20__

By _____
Name: _____
Title: _____

EXHIBIT A - Payment Order No. _____

**PAYMENT SCHEDULE
FOR BUILDINGS AND IMPROVEMENTS**

I hereby request payment of the amounts specified below to the payees whose names and addresses are stated below, and I certify that the description of the purchase or nature of each payment is reasonable, accurate and complete:

PAYMENT SCHEDULE

<u>Payee Name</u>	<u>Payee Address</u>	<u>Purpose or Nature of Payment</u>	<u>Amount</u>
-------------------	----------------------	-------------------------------------	---------------

Initial

EXHIBIT B

Payment Order No. _____

PAYMENT SCHEDULE FOR MACHINERY AND EQUIPMENT

I hereby request payment of the amounts specified below to the payees whose names and addresses are stated below, and I certify that the description of the purchase or nature of each payment is reasonable, accurate and complete:

PAYMENT SCHEDULE

Payee Name	Description of Equipment (include name and address of manufacturer, descriptive name, technical description, capacity, serial number or model number as appropriate)	Amount
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Initials

APPENDIX B

FORM OF CERTIFICATE OF COMPLETION

The undersigned, being the Authorized Tenant Representative for MC Prairiefire I, LLC (the "Tenant"), as tenant under a certain Lease dated as of March 1, 2013, between the City of Overland Park, Kansas (the "Issuer"), and the Tenant, and as beneficiary of the Issuer's Federally Taxable Private Activity Revenue Bonds, Series 2013, (Prairiefire at LionsGate Project) issued pursuant to a certain Trust Indenture dated as of March 1, 2013 (the "Indenture"), hereby certifies:

1. The Improvements (as defined in the Indenture) have been completed in accordance with the plans and specifications prepared at Tenant's direction.

2. The Improvements have been completed in a good and workmanlike manner.

3. There are no mechanic's, materialmen's liens or other statutory liens on file encumbering title to the Land (as defined in the Indenture); all bills for labor and materials furnished for the Improvements which could form the basis of a mechanic's materialmen's or other statutory lien against the Land have been paid in full, and within the past four months no such labor or materials have been furnished which have not been paid for.

4. All Improvements are located or installed upon the Land.

5. All material provisions of applicable building codes have been complied with and, if applicable, a certificate of occupancy has been issued with respect to the Project.

6. All moneys remaining in the Project Fund being held by the Trustee under the Indenture should be transferred to the Principal and Interest Payment Account being held by the Trustee under the Indenture as required by **Section 5.04** of the Indenture, to be applied as provided therein.

IN WITNESS WHEREOF, the undersigned Authorized Tenant Representative has signed this Certificate, and states, under penalty of perjury, that the statements of fact made in this Certificate are true and correct.

MC PRAIRIEFIRE I, LLC,
a Kansas limited liability company

By: Merrill Companies, LLC,
a Kansas limited liability company, its Manager

By: _____
Name: _____
Title: _____

STATE OF KANSAS)
) SS.
COUNTY OF JOHNSON)

Subscribed and sworn to or affirmed before me, a notary public, this _____, 20__.

Notary Public
Typed or printed name _____

My Appointment Expires: _____

APPENDIX C

GLOSSARY OF WORDS AND TERMS

“Additional Rent” means all fees, charges, costs and expenses of the Trustee (including reasonable attorneys’ fees) payable under the Indenture, all Impositions, all Default Administration Costs (as defined in the Indenture), all other payments of whatever nature payable or to become payable pursuant to the Indenture or which the Tenant has agreed to pay or assume under the provisions of this Lease and any and all expenses (including reasonable attorneys’ fees) incurred by Issuer in connection with the issuance of the Bonds or the administration or enforcement of any rights under this Lease or the Indenture. The fees, charges, costs and expenses of the Trustee shall include all costs incurred in connection with the issuance, transfer, exchange, registration, redemption or payment of the Bonds except (a) the reasonable fees and expenses in connection with the replacement of a Bond or Bonds mutilated, stolen, lost or destroyed or (b) any tax or other government charge imposed on the Trustee in relation to the transfer, exchange, registration, redemption or payment of the Bonds.

“Additional Term” shall mean that term commencing on the last day of the Basic Term and terminating one year thereafter.

“Bankruptcy Code” means Title 11 of the United States Code, as amended.

“Basic Rent” means the semi-annual pro rata amount which, when added to Basic Rent Credits, will be sufficient to pay, on the next Payment Date, all principal of, redemption premium, if any, and interest on all Outstanding Bonds (as defined in the Indenture) which is due and payable on such Payment Date.

“Basic Rent Credits” means all funds on deposit in the Principal and Interest Payment Account and available for the payment of principal of, redemption premium, if any, and interest on the Bonds on any Payment Date.

“Basic Rent Payment Date” means December 31, 2014.

“Basic Term” means that term commencing as of the date of this Lease and ending on December 31, 2014, subject to prior termination as specified in this Lease, but ending, in any event, when all of the principal of, redemption premium, if any, and interest on all Outstanding Bonds shall have been paid in full or provision made for their payment in accordance with the provisions of the Indenture.

“CERCLA” means the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. §9601, *et seq.*

“Certificate of Completion” means a written certificate signed by the Authorized Tenant Representative stating that (1) the Improvements have been completed in accordance with the plans and specifications prepared or approved by Issuer or Tenant, as the case may be; (2) the

Improvements have been completed in a good and workmanlike manner; (3) no mechanic's or materialmen's liens have been filed, nor is there any basis for the filing of such liens, with respect to the Project; (4) all Improvements constituting a part of the project are located or installed upon the Land; and (5) if required by ordinances duly adopted by Issuer or by applicable building codes, that an appropriate certificate of occupancy has been issued with respect to the Improvements. A form of Certificate of Completion is attached as **Appendix B**.

"Default" means any event or condition the occurrence of which, with the lapse of time or the giving of notice or both, may constitute an Event of Default.

"Development Agreement" means Prairiefire at LionsGate Development Agreement dated as of November 12, 2012, by and between the City of Overland Park, Kansas and MC Prairiefire I, LLC a Kansas limited liability company and MC Prairiefire II, LLC, a Kansas limited liability company.

"Environmental Assessment" means the Phase I Environmental Site Assessment performed on the Land by _____ as evidenced by a report dated _____.

"Environmental Law" means CERCLA, SARA, and any other federal, state or local environmental statute, regulation or ordinance presently in effect or coming into effect during the Term of this Lease.

"Event of Bankruptcy" means an event whereby the Tenant shall: (i) admit in writing its inability to pay its debts as they become due; (ii) file a petition in bankruptcy or for reorganization or for the adoption of an arrangement under the Bankruptcy Code as now or in the future amended, or file a pleading asking for such relief; (iii) make an assignment for the benefit of creditors; (iv) consent to the appointment of a trustee or receiver for all or a major portion of its property; (v) be finally adjudicated as bankrupt or insolvent under any federal or state law; (vi) suffer the entry of a final and nonappealable court order under any federal or state law appointing a receiver or trustee for all or a major part of its property or ordering the winding-up or liquidation of its affairs, or approving a petition filed against it under the Bankruptcy Code, which order, if the Tenant has not consented thereto, shall not be vacated, denied, set aside or stayed within 60 days after the day of entry; or (vii) suffer a writ or warrant of attachment or any similar process to be issued by any court against all or any substantial portion of its property, and such writ or warrant of attachment or any similar process is not contested, stayed, or is not released within 60 days after the final entry, or levy or after any contest is finally adjudicated or any stay is vacated or set aside.

"Event of Default" means any one of the following events:

- (a) Failure of the Tenant to make any payment of Basic Rent within three days of the time and in the amounts required hereunder; or
- (b) Failure of the Tenant to make any payment of Additional Rent at the times and in the amounts required hereunder, or failure to observe or perform any other

covenant, agreement, obligation or provision of this Lease on the Tenant's part to be observed or performed, and the same is not remedied within 30 days after the Issuer or the Trustee has given the Tenant and the Bondowners written notice specifying such failure (or such longer period as shall be reasonably required to correct such default; provided that (i) Tenant or the Bondowners has commenced such correction within said 30-day period, and (ii) Tenant or the Bondowners diligently prosecutes such correction to completion); or

(c) An Event of Bankruptcy; or

(d) Abandonment of the Project by the Tenant.

“Full Insurable Value” means full actual replacement cost less physical depreciation.

“Hazardous Substances” shall mean “hazardous substances” as defined in CERCLA.

“Impositions” means all taxes and assessments, general and special, which may be lawfully taxed, charged, levied, assessed or imposed upon or against or payable for or in respect of the Project or any part thereof, or any improvements at any time thereon or the Tenant's interest therein, including any new lawful taxes and assessments not of the kind enumerated above to the extent that the same are lawfully made, levied or assessed in lieu of or in addition to taxes or assessments now customarily levied against real or personal property, and further including all water and sewer charges, assessments and other governmental charges and impositions whatsoever, foreseen or unforeseen, which, if not paid when due, would encumber the Issuer's title to the Project.

“Indenture” means the Trust Indenture delivered concurrently with this Lease, as from time to time amended and supplemented by Supplemental Indentures in accordance with the provisions of **Article XI** of the Indenture.

“Lease” means this Lease between the Issuer and the Tenant, as from time to time supplemented and amended in accordance with the provisions hereof and of the Indenture.

“Museum Owner” means Museum of Prairiefire Foundation, a Kansas not-for-profit corporation which has been designated as an Internal Revenue Code Section 501(c)(3) organization, its successors and assigns.

“Net Proceeds” means, when used with respect to any insurance or condemnation award with respect to the Project, the proceeds from the insurance or condemnation award remaining after the payment or all expenses (including the Tenant's attorneys' fees and any extraordinary expenses of the Trustee occasioned by such casualty or condemnation) incurred in the collection of such proceeds.

The term “Notice Address” shall mean:

(1) With respect to the Tenant:

MC Prairiefire I, LLC
c/o Merrill Companies
6240 West 135th Street
Overland Park, KS 66223
Attention: Fred L. Merrill, Jr.

(2) With respect to the Issuer:

City of Overland Park, Kansas
8500 Santa Fe Drive
Overland Park, KS 66212
Attention: City Manager

(3) With respect to the Trustee:

Corporate Trust & Escrow Services
UMB Bank, n.a.
1010 Grand Boulevard, 4th Floor
Kansas City, Missouri 64106
Attention: Corporate Trust Department

(4) With respect to the Lender:

PNC Bank, National Association
120 South Central Avenue, Suite 900
St. Louis, Missouri 63105
Attention: _____

“Project Contracts” means a contract or contracts with respect to the acquisition and/or construction of the Improvements entered into by the Tenant or the Issuer.

“SARA” means the Superfund Amendments and Reauthorization Act of 1986, as now in effect and as hereafter amended.

“Store Operators” means each tenant, owner, user or operator of a store in the Retail Space.

“Term” means, collectively, the Basic Term and any Additional Term of the Lease.

SCHEDULE I

DESCRIPTION OF PROJECT

The following property acquired by the City of Overland Park, Kansas (the “Issuer”) in connection with the issuance by the City of its Federally Taxable Private Activity Revenue Bonds, Series 2013, (Prairiefire at LionsGate Project) (the “Series 2013 Bonds”):

- (a) The following described real estate in Johnson County, Kansas:

See Exhibit A attached hereto

said real property constituting the “Land” as referred to in the Indenture and the Lease entered into by the Issuer concurrently with the issuance of the Series 2013 Bonds (the “Indenture” and the “Lease”).

- (b) All buildings, building additions, improvements, machinery and equipment now constructed, located or installed on the Land, all or any portion of the costs of which were paid from the proceeds of the Issuer’s Series 2013 Bonds, and which constitute Improvements as defined in the Indenture, together with any substitutions or replacements therefor, the property described in paragraphs (a) and (b) of this **Schedule I** together constituting the “Project” as referred to in the Indenture and the Lease.

EXHIBIT A

The following described real estate in Johnson County, Kansas:

The Museum Land:

The Retail Land: