
SITE LEASE AGREEMENT

Dated as of March 1, 2013

by and between

MC PRAIRIEFIRE I, LLC

as Lessor

and

CITY OF OVERLAND PARK, KANSAS

as Lessee

Relating to:

NOT TO EXCEED \$16,000,000

FEDERALLY TAXABLE PRIVATE ACTIVITY REVENUE BONDS

SERIES 2013

(PRAIRIEFIRE AT LIONSGATE PROJECT)

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Exhibit A

SITE LEASE AGREEMENT

THIS SITE LEASE AGREEMENT dated as of March 1, 2013 (the “Site Lease”), by and between **MC PRAIRIEFIRE I, LLC**, a Kansas limited liability company, (the “Company”), as lessor and the **CITY OF OVERLAND PARK, KANSAS**, a political subdivision duly organized and existing under the laws of the State of Kansas (the “Issuer”), as lessee.

WITNESSETH:

WHEREAS, the Issuer is authorized under the provisions of K.S.A. 12-1740 to 12-1749d, inclusive, as amended (the “Act”), to purchase, acquire, construct, improve, equip, remodel, sell and lease certain facilities within its jurisdiction for commercial purposes, and to issue revenue bonds for the purpose of paying the cost of such facilities, and to pledge the income and revenues to be derived from the operation of such facilities to secure the payment of the principal of, and interest on such bonds; and

WHEREAS, pursuant to the Act, the Governing Body of the Issuer has heretofore passed Ordinance No. EDRB-2997 on March 4, 2013, authorizing the Issuer to issue its Federally Taxable Private Activity Revenue Bonds, Series 2013 (Prairiefire at LionsGate Project), in the principal amount not to exceed \$16,000,000 (the “Bonds”), for the purpose of financing the construction, equipping and furnishing of a portion of a mixed use development, including buildings, improvements and furnishings (collectively, the “Improvements”); and

WHEREAS, the Company has a leasehold interest in certain real property, as more particularly described on **Exhibit A** attached hereto (the “Land”), on which the Improvements will be located pursuant to the terms of a Ground Lease dated as of December 26, 2012 (the “Retail Ground Lease”), and a Ground Lease dated as of December 28, 2012 (the “Museum Ground Lease”), each by and between MC Prairiefire LLC, a Kansas limited liability company (the “Landlord”) and the Company; and

WHEREAS, in order to satisfy the requirements of the Act, the Issuer proposes to acquire a leasehold interest in the Land, as more particularly described on **Exhibit A** attached hereto, pursuant to this Site Lease and proposes to lease the Land back to the Company pursuant to the Lease dated as of March 1, 2013 (the “Lease”), between the Issuer, as sublessor and the Company, as sublessee, for rentals which will be sufficient to provide for the payment of the principal, redemption premium, if any, and interest on the Bonds; and

WHEREAS, pursuant to the foregoing, the Company desires to lease the Land to the Issuer and the Issuer desires to lease the Land from the Company, for the rentals and upon the terms and conditions hereinafter set forth;

NOW, THEREFORE, in consideration of the premises and the mutual representations, covenants and agreements herein contained, the Issuer and the Company do hereby represent, covenant and agree as follows:

ARTICLE I

DEFINITIONS

Section 1.01. Definitions. The capitalized terms used in this Site Lease and not otherwise defined herein shall have the meanings assigned to them in the Trust Indenture dated as of March 1, 2013 (the “Indenture”), between the Issuer and UMB Bank, n.a., as trustee (the “Trustee”), relating to the Bonds.

ARTICLE II

REPRESENTATIONS

Section 2.01. Representations by the Company. The Company represents and warrants that:

(a) The Company is, and at all times will be, a limited liability company duly organized, validly existing, and in good standing under the laws of the State of Kansas. The Company has, and will at all times have, all requisite power to own its property and conduct its business as now conducted and as presently contemplated, to execute and deliver this Site Lease and to perform its duties and obligations hereunder.

(b) Neither the execution and delivery by the Company of this Site Lease nor the compliance with the terms and conditions of this Site Lease,

(i) will, to the knowledge of the Company, violate any material provision of applicable law, any order of any court or other agency of government applicable to the Company;

(ii) will violate any material provision of any of the organizational or other governing documents of the Company, or any indenture, agreement or other instrument to which the Company is now a party or by which it or any of its properties or assets is bound;

(iii) will be in conflict with, result in a material breach of or constitute a material default (with due notice or the passage of time or both) under any material provision of any such indenture, agreement or other instrument;

(iv) will, to the knowledge of the Company, be in conflict with or result in a material breach of or constitute a material default under any material provision of any license, judgment, decree, applicable law, statute, order, rule or regulation of any governmental agency or body having jurisdiction over the Company or any of its activities or properties; or

(v) will result in the creation or imposition of any charge or encumbrance of any nature whatsoever upon any of the property or assets of the Company, except for Permitted Encumbrances.

(c) The Company has a leasehold interest in the Land, and its interest therein is subject to no liens or encumbrances other than Permitted Encumbrances.

Section 2.02. Representations by Issuer. The Issuer represents that:

(a) The Issuer is a political subdivision duly organized and existing under the laws of the State of Kansas. Under the provisions of the Act, the Issuer has lawful power and authority to enter into the transactions contemplated by this Site Lease and to carry out its obligations hereunder. The Issuer has been duly authorized to execute and deliver this Site Lease, acting by and through its duly authorized officers. The Issuer agrees that it will do or use its best efforts to cause to be done all things necessary to preserve and keep in full force and effect Issuer's existence.

(b) The Issuer is authorized, and has taken all necessary action, to issue the Bonds to provide funds for the financing of the Project Improvements and the acquisition of a leasehold interest in the Land as described on **Exhibit A** pursuant hereto, and proposes by the Lease to sublease the Project to the Company.

(c) No member of the governing body or any officer of the Issuer has any significant or conflicting interest, financial, employment or otherwise, in the Company or in the transactions contemplated hereby.

ARTICLE III

GRANTING CLAUSE

Section 3.01. Lease of the Land. The Company hereby rents, leases and lets the Land to the Issuer, and the Issuer rents, leases and hires the Land from the Company, subject to Permitted Encumbrances and for rentals and upon and subject to the terms and conditions herein set forth, for a term commencing on the date of delivery of this Site Lease and ending on December 31, 2014; provided, however, this Site Lease shall remain in full force and effect so long as any obligation of the Company under the Lease shall be outstanding and so long as the Lease shall remain in effect as more fully provided in **Section 2.01** of the Lease (the "Lease Term"), unless sooner terminated in a manner provided for herein, provided that the Company shall not exercise any right so reserved in any manner that will interfere with any rights of the Issuer hereunder.

ARTICLE IV

QUIET ENJOYMENT; RENTAL PROVISIONS

Section 4.01. Quiet Enjoyment. The Company hereby covenants and agrees that it will not take any action, other than pursuant to the Lease and **Article V**, **Article VII** and **Article VIII** of this Site Lease, to prevent the Issuer from having quiet and peaceable possession and

enjoyment of the Land during the Lease Term and will, at the request of the Issuer, and at the expense of the Company, cooperate with the Issuer in order that the Issuer may have quiet and peaceable possession and enjoyment of the Land and will defend the Issuer's enjoyment thereof against all parties.

Section 4.02. Consideration and Rentals. The Issuer shall deposit the proceeds from the sale of the Bonds with the Trustee in accordance with the Indenture. Such deposit shall constitute full and complete payment of all rentals due hereunder and following such deposit the Issuer shall not have any obligation to make any payments to any person in connection with this Site Lease.

Section 4.03. Sublease by Issuer. It is understood and agreed by the Issuer and the Company that the Issuer will sublease the Land to the Company pursuant to the Lease. The Issuer shall at no time agree to any amendment or modification of the provisions of the Lease without the prior written consent of the Company and the Trustee.

Section 4.04. Payment of Taxes. The Company covenants and agrees that it will, from time to time, promptly pay and discharge or cause to be paid and discharged, prior to delinquency, all taxes, assessments and other governmental charges lawfully imposed upon the Land or any part thereof or upon the income and profits thereof.

ARTICLE V

SPECIAL COVENANTS

Section 5.01. Granting of Easements. The Company may, to the extent permitted under the Lease, at any time or times (a) grant easements, licenses, rights-of-way and other rights or privileges in the nature of easements with respect to any property included in the Project, 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 Company shall determine.

Section 5.02. Indemnification. The Company hereby agrees to indemnify the Issuer to the extent required under the Lease and the Bond Purchase Agreement.

ARTICLE VI

ASSIGNMENT, SUBLEASING AND MORTGAGING

Section 6.01. No Assignment, Subleasing and Mortgaging of the Project by the Issuer. The Issuer agrees that, except for the Lease and the assignment of its interest in the Lease to the Trustee pursuant to the Indenture, it will not sell, assign, convey, mortgage, encumber, further sublease or otherwise dispose of its interest in this Site Lease or any part of its interest in the Project except as expressly permitted by this Site Lease and the Lease during the Lease Term. If the laws of the State of Kansas at the time shall so permit, nothing contained in this Section shall prevent the consolidation of the Issuer with, or merger of the Issuer into, or transfer of the complete interest of the Issuer in the Project to, any municipal or public corporation whose property and income are not subject to taxation and which has corporate authority to carry on the business of leasing the Project; provided that, upon any such

consolidation, merger or transfer, the due and punctual performance and observance of all the agreements and conditions of this Site Lease to be kept and performed by the Issuer, shall be expressly assumed in writing by such entity resulting from such consolidation or surviving such merger or to which the Issuer's complete interest in the Project shall be transferred.

Section 6.02. Assignment, Subleasing and Mortgaging of the Project by the Company. Except as otherwise provided in Section 9.01 of the Lease, the Company may not assign or mortgage its interest or any part hereof in this Site Lease without the prior written consent of the Governing Body of the Issuer. In the event of any such assignment, the Company 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 Company of any of its duties and obligations hereunder. The Issuer and the Company 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 Company, 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 Company further acknowledge that this Site Lease is subordinate to the Mortgage and that the Lender has not granted any rights of nondisturbance with respect to this Site Lease.

ARTICLE VII

DEFAULT AND REMEDIES

Section 7.01. Events of Default. An "Event of Default" shall mean, wherever used in this Site Lease, any failure by the Issuer or the Company to observe and perform any applicable covenant, condition or agreement in this Site Lease on its part to be observed or performed and the lapse of a period of sixty days after written notice (or, if such a cure is not possible within sixty days, such longer period as may be needed provided that the curing party is continuously and diligently pursuing such cure), specifying such failure and requesting that it be remedied, given to the Issuer and the Trustee by the Company if there is an Event of Default by the Issuer, or given to the Company and the Trustee by the Issuer, if there is an Event of Default by the Company, unless the Issuer or the Company (as applicable) shall agree in writing to an extension of such time prior to its expiration.

Section 7.02. Remedies on Default. Whenever an Event of Default specified in **Section 7.01** shall have happened and be continuing, the Company shall have the option to provide for the termination of this Site Lease in the manner provided in **Article VIII**. The Issuer and the Company shall be entitled to specific performance and injunctive or other equitable relief for any breach or threatened breach of any of the provisions of this Site Lease, notwithstanding availability of an adequate remedy at law, and each party hereby waives the right to raise such defense in any proceeding in equity; provided, however, no remedy shall be exercised against such party in any manner which may impair the payment of principal of, premium, if any, or interest on any of the Bonds.

Section 7.03. Performance by Issuer. The Issuer shall not be obligated to take any action or execute any instrument pursuant to any provision hereof until it shall have been

requested to do so by the Company, or shall have received the instrument to be executed, and at the Issuer's option shall have received from the Company assurance satisfactory to the Issuer that the Issuer shall be reimbursed for its reasonable expenses incurred or to be incurred in connection with taking such action or executing such instrument. Nothing in this Section is intended to imply that the Issuer must take any action or execute any instrument unless specifically required to do so by this Site Lease.

ARTICLE VIII

EARLY TERMINATION OF SITE LEASE

Section 8.01. Early Termination of Site Lease. In the event the Company shall cause all of the Bonds to be paid in the manner set forth in **Article XIII** of the Indenture, the Company shall be entitled to terminate this Site Lease prior to the end of the Lease Term upon written notice to the Issuer and the Trustee. Upon such termination, the Issuer shall deliver to the Company any instruments which may be reasonably required by the Company to evidence such termination and the relinquishment of all of the Issuer's rights and interest in the Land and in this Site Lease.

ARTICLE IX

GROUND LEASES

Section 9.01. Notice to the Issuer. The Company 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 of the Lease, 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 Company or the Landlord to assign either the Museum Ground Lease or the Retail Ground Lease;
- (d) The intent of the Company 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 Site Lease.

Section 9.02. No Liability of the Issuer. The Company 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 Site Lease with the Company.

ARTICLE X

RELEASE OF LAND

Section 10.01. Release of Portions of the Land. Except as provided in this Section 10.01, the Company shall not transfer or sell a portion of the Land without the prior written consent of the Issuer. The Company shall give the Issuer not less than 90 days' notice of its intent to transfer or sell a portion of the Land. The Company 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** attached hereto and the Improvements located thereon, shall be purchased by the Company and released by the Issuer and the Company from the terms of this Site 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** attached hereto and the Improvements located thereon, shall be purchased by the Company and released by the Issuer and the Company from the terms of this Site 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 XI

MISCELLANEOUS

Section 11.01. Notices. All notices, certificates or other communications hereunder shall be sufficiently given and shall be deemed given when given in the manner and to the notice addresses provided in **Section 14.03** of the Indenture. Copies of each notice, certificate or other communication given hereunder by any party hereto shall be given to all parties hereto. By notice given hereunder, any party may designate further or different addresses to which subsequent notices, certificates or other communications are to be sent. A duplicate copy of each notice, certificate, request or other communication given hereunder to the Issuer or the Company shall also be given to the Trustee and the Lender.

Section 11.02. Binding Effect. This Site Lease shall inure to the benefit of and shall be binding upon the Issuer, the Company and their respective successors and assigns. The Trustee shall be a third-party beneficiary of the Site Lease.

Section 11.03. Severability. In the event any provision of this Site Lease shall be held invalid or unenforceable by any court of competent jurisdiction, such holding shall not invalidate or render unenforceable any other provision hereof.

Section 11.04. Amendments, Changes and Modifications. Subsequent to the issuance of the Bonds and prior to their payment in full, this Site Lease may not be amended, changed, modified, altered or terminated without the prior written consent of the parties hereto and the Trustee.

Section 11.05. Execution in Counterparts. This Site Lease may be executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument.

Section 11.06. Applicable Law. This Site Lease shall be governed by and construed in accordance with the laws of the State of Kansas.

Section 11.07. Captions. The captions or headings in this Site Lease are for convenience only and in no way define, limit or describe the scope or intent of any provisions or sections of this Site Lease.

[Remainder of the Page Intentionally Left Blank]

IN WITNESS WHEREOF, the Issuer has caused this Site 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 Company has caused this Site 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:_____

EXHIBIT A

The following described real estate in Johnson County, Kansas:

The Museum Land:

The Retail Land: