
BOND PURCHASE AGREEMENT
BETWEEN
THE CITY OF OVERLAND PARK, KANSAS
AND
MC PRAIRIEFIRE I, LLC

DATED AS OF MARCH 1, 2013

Not to Exceed
\$16,000,000
Federally Taxable Private Activity Revenue Bonds
Series 2013
(Prairiefire at LionsGate Project)

BOND PURCHASE AGREEMENT

On the basis of the representations and upon the terms and conditions of this Bond Purchase Agreement dated as of March 1, 2013 (the “Agreement”), MC Prairiefire I, LLC, a Kansas limited liability company (the “Purchaser” and “Tenant”), offers to purchase up to \$16,000,000 principal amount of the Federally Taxable Private Activity Revenue Bonds, Series 2013, (Prairiefire at LionsGate Project) (the “Bonds”), to be issued by the City of Overland Park, Kansas (the “Issuer”), pursuant to an Ordinance passed by the Governing Body of the Issuer on March 4, 2013, and in accordance with a Trust Indenture dated as of March 1, 2013 (the “Indenture”), between the Issuer and UMB Bank, n.a., Kansas City, Missouri, as trustee (the “Trustee”). The Project Site, as defined in the Indenture, will be leased by the Tenant to the Issuer under a Site Lease dated as of March 1, 2013 (the “Site Lease”), and leased back to the Tenant under a Lease dated as of March 1, 2013 (the “Lease”), between the Issuer and the Tenant. Except for the Unassigned Issuer’s Rights as defined in the Indenture, the Issuer’s rights under the Site Lease and the Lease will be assigned to the Trustee. All capitalized terms not defined in this Agreement shall have the definitions given them in the Indenture.

SECTION 1. REPRESENTATIONS AND WARRANTIES OF THE ISSUER

The Issuer hereby represents and warrants to the Purchaser that:

(A) The Issuer is a duly organized and existing municipal corporation of the State of Kansas.

(B) To the best of the Issuer’s knowledge and belief: when delivered to and paid for by the Purchaser in accordance with the provisions of this Agreement, the Bonds will have been duly authorized, executed, authenticated, issued and delivered; and, the Bonds will constitute valid and binding special limited obligations of the Issuer payable solely and only from the revenues specified in the Indenture and in conformity with, and entitled to the benefit and security of, the Indenture, the Site Lease and the Lease; and, this Agreement, the Bonds, the Indenture, the Site Lease, the Lease and all action taken by the Issuer in connection therewith shall be in conformity with K.S.A. 12-1740 *et seq.*, as amended.

(C) To the best of the Issuer’s knowledge, the execution and delivery of this Agreement, the Bonds, the Site Lease, the Lease and the Indenture and compliance with the provisions thereof, will not conflict with or constitute on the part of the Issuer a violation of, breach of or default under any statute, indenture, mortgage, declaration or deed of trust, note agreement or other agreement or instrument to which the Issuer is a party or by which the Issuer is bound, or, to the knowledge of the Issuer, any order, rule or regulation of any court or governmental agency or body having jurisdiction over the Issuer or any of its activities or properties.

(D) To the best of the Issuer’s knowledge, there is no action, suit, proceeding, inquiry or investigation, at law or in equity, before or by any court, public board or body pending or threatened against or affecting the Issuer, challenging or seeking to enjoin the transactions contemplated by this Agreement, the Indenture, the Site Lease or the Lease, or

contesting the validity or enforceability of the Bonds, the Site Lease, the Lease, the Indenture, this Agreement or any agreement or instrument to which the Issuer is a party, used or contemplated to be used in consummation of the transactions contemplated by this Agreement.

(E) Any certificate signed by any authorized officer or official of the Issuer and delivered to the Purchaser shall be deemed a representation by the Issuer to the Purchaser as to the truth of the statements therein made.

SECTION 2. REPRESENTATIONS AND WARRANTIES OF TENANT

In order to induce the Issuer to issue the Bonds and the Purchaser to purchase the Bonds from the Issuer, the Tenant represents and warrants to the Issuer and the Purchaser as follows:

(A) The Tenant is a limited liability company, duly formed, validly existing, and in good standing under the laws of the State of Kansas, and has the power to own and lease its properties and do business in the State of Kansas.

(B) This Agreement is, and upon the final delivery of the Bonds, this Agreement, the Site Lease and the Lease will be, in accordance with their respective terms, legal, valid and binding obligations of the Tenant. The Tenant's execution and delivery of the Site Lease, the Lease and this Agreement will not conflict with, or constitute on the part of the Tenant a violation or breach of, or default under its Articles of Organization or Operating Agreement, or any instrument to which it is a party or by which it is bound or, to the best of its knowledge, any statute or rule or regulation of any court or governmental body having jurisdiction over it or any of its activities or properties. All consents, approvals and authorizations which are required for the consummation of the transactions by Tenant contemplated by the Site Lease, the Lease and this Agreement have been obtained.

(C) To the Tenant's knowledge there is no action, suit, proceeding, inquiry or investigation before or by any court, public board or body pending or threatened against or affecting the Tenant or any of its property wherein an unfavorable decision, ruling or finding would materially adversely affect the transactions contemplated herein; would in any way adversely affect the validity or enforceability of the Bonds, the Site Lease, the Lease, this Agreement or any instrument to which the Tenant is a party; or might result in any material adverse change in the financial condition or business of the Tenant.

SECTION 3. REPRESENTATIONS AND WARRANTIES OF THE PURCHASER

The Purchaser represents and warrants as follows:

(A) The Purchaser is purchasing the Bonds for investment solely for its own accounts and not with a view to, or for resale in connection with, the distribution thereof. The Purchaser understands that the Bonds have not been registered under the securities laws of any state or under the provisions of Section 5 of the Securities Act of 1933, as amended (the "Act"), and that the Bonds may not be transferred unless they are subsequently registered

under the Act and all applicable state laws requiring registration as a condition of resale, or unless an exemption from such registration is available, with the consequence that the Purchaser may therefore need to bear the risks of its investment for an indefinite time. The Purchaser also understands that no trading market now exists for the Bonds.

(B) The Purchaser acknowledges and agrees that no transfer, sale, assignment or hypothecation of any Bond or Bonds shall be made unless: (i) there shall have been delivered to the Purchaser, the Issuer and the Trustee prior to the transfer, sale, assignment or hypothecation an opinion of nationally recognized bond or securities counsel, satisfactory to the Purchaser, Issuer and Trustee, to the effect that registration under the Act and registration under applicable state securities law or laws is not required; or, (ii) there shall be a registration statement in effect under the Act and under any applicable state securities laws requiring a state-level registration statement with respect to the transfer, assignment, sale or hypothecation, and in the case of both (i) and (ii), there shall have been compliance with all applicable state and federal securities laws and all applicable rules and regulations thereunder.

(C) The Purchaser has undertaken to verify the accuracy, completeness and truth of any and all statements made or omitted to be made concerning any of the material facts relating to this transaction, including information regarding the business and financial condition of the Tenant and warrants and acknowledges that the Purchaser is not relying on any party or person other than Tenant to undertake the furnishing or verification of information relating to this transaction. The Purchaser has been provided all documents, financial information, risk analysis and such other information as the Purchaser deems necessary in order to make an informed investment decision with respect to the investment in the Bonds and the risks which will be incurred which may interfere with or prevent the timely payment of the principal or the interest represented by the Bonds. The Purchaser is aware that there are certain economic variables and risks that could affect adversely the security of the investment in the Bonds, and the Purchaser is able to bear the economic risks of such investment.

(D) The Purchaser hereby acknowledges that the Bonds and the Rental Payments (as such term is defined in the Lease) are not general obligations of the Issuer or of the State of Kansas or any political subdivision thereof and that the Rental Payments pledged to the payment of the Bonds constitute obligations of the Tenant. The Purchaser acknowledges that the payment of any amount owing under the Indenture is limited to the sources of payment and security described in the Indenture and that the Issuer makes no representation or warranty regarding the adequacy of any such sources of payment or security.

(E) The Purchaser has such knowledge and experience in business and financial matters, including: (i) the evaluation of investment risks associated with commercial real estate developments such as the Project, (ii) the evaluation of risks associated with the capabilities of entities such as the Tenant to develop, operate and maintain the Project, and (iii) the analysis, purchase and ownership of industrial revenue bonds and other investment vehicles similar in character to the Bonds, so as to enable it to understand and evaluate the risks of such investments and form an investment decision with respect thereto, the Purchaser has no need for liquidity in such investment and the Purchaser is (or any account

for which it is purchasing is) able to bear the risk of such investment for an indefinite period and to afford a complete loss thereof.

(F) The Purchaser acknowledges that the interest on the Bonds is not exempt from federal income taxation.

(G) The Purchaser has full power and authority to execute this Agreement and to perform its obligations hereunder.

(H) By all necessary action, the Purchaser has duly authorized and approved the execution and delivery of this Agreement.

(I) This Agreement is, and upon the final delivery of the Bonds, this Agreement will be, in accordance with its terms, a legal, valid and binding obligation of the Purchaser. The Purchaser's execution and delivery of this Agreement will not conflict with, or constitute on its part a violation or breach of, or default under, its Articles of Organization or Operating Agreement, or any instrument to which it is a party or by which it is bound or, to the best of its knowledge, any statute or rule or regulation of any court or governmental body having jurisdiction over it or any of its activities or properties. All consents, approvals, authorizations and orders of governmental or regulatory authorities which are required for the consummation of the transactions contemplated by such documents have been obtained.

(J) To the Purchaser's knowledge there is no action, suit, proceeding, inquiry or investigation, before or by any court, public board or body pending or threatened against or affecting the Purchaser or any of its property wherein an unfavorable decision, ruling or finding would materially adversely affect the transactions contemplated herein or would in any way adversely affect the validity or enforceability of this Agreement or any instrument to which the Purchaser is a party.

SECTION 4. PURCHASE, SALE AND DELIVERY OF THE BONDS

(A) On the basis of the representations, warranties and agreements herein contained, and subject to the satisfaction of all terms and conditions of the Issuer's resolution of intent and the terms and conditions herein set forth, at the closing time stated below (the "Closing Time"), the Issuer agrees to sell to the Purchaser, and the Purchaser agrees to purchase from the Issuer the Bonds at a purchase price equal to the aggregate principal amount of the Bonds funded in accordance with this Agreement up to a maximum principal amount of \$16,000,000. The Bonds shall mature, shall bear interest at the rate and shall have the terms established by the Indenture. Payment for the Bonds shall be made by wire-transferred Federal Reserve funds, payable to the order of the Issuer. Upon receipt of the initial funding of the Purchase Price of the Bonds, the Bonds, executed by the Issuer, and authenticated by the Trustee, will be delivered to the Purchaser at the Closing Time, at the offices of Kutak Rock LLP ("Bond Counsel"), Kansas City, Missouri, or at such place or address as may be agreed to by the Purchaser and the Issuer. The Closing Time shall be 9:00 a.m. on March 14, 2013, or such other time as may be agreed to by the Purchaser and the Issuer.

(B) Subject to the conditions of this **Section 4(B)** and the further terms and conditions of this Agreement, the Purchaser shall fund the purchase of the Bonds in increments as provided in Section 2.08 of the Indenture and in Section 4.2 of the Lease, up to the maximum principal amount of the Bonds, as provided in the Indenture. The funding of the initial payment for the Bonds and all subsequent advances shall be made in immediately available funds to the order of the Trustee, for the account of the Issuer. After the initial funding of the Purchase Price at closing, each subsequent advance shall be subject to the following conditions:

(i) *Written Request.* Advances shall be made only in accordance with the provisions of Section 4.02 and Article V of the Lease upon the Tenant's written request or on the request of any person or entity designated in writing by the Tenant to act on the Tenant's behalf. Each written request shall identify the payees and the amounts to be paid to each and shall be accompanied by invoices, lien waivers, percentage completion certificates, and any other documentation deemed necessary by the Purchaser supporting the amounts requested to be paid.

(ii) *Funding Period.* The Purchaser shall have no obligation to advance funds pursuant to this Agreement after the Completion Date.

(C) In addition to the foregoing, and on the basis of the same representations, warranties and agreements herein contained, and subject to the terms and conditions herein set forth, the Tenant agrees to pay from Tenant funds not related to the Bond proceeds all other reasonable Costs of Issuance at the Closing Time or agrees to make provision for payment of such costs according to their terms.

SECTION 5. CONDITIONS OF THE PURCHASER'S OBLIGATIONS

The obligations of the Purchaser to purchase and pay for the Bonds will be subject to the accuracy of the representations and warranties on the part of the Issuer herein, to the performance by the Issuer and the Tenant of their respective obligations hereunder and to the following additional conditions precedent:

(A) The Ordinance, the Indenture, the Site Lease and the Lease shall have been duly authorized and executed by the respective parties thereto in the form hereto before approved by the Purchaser and shall be in full force and effect and shall not have been amended, modified or supplemented, except as may have been agreed to in writing by the Purchaser.

(B) At the Closing Time, the Purchaser shall receive in form and substance satisfactory to it:

(1) The opinion of Bond Counsel approving the issuance and delivery of the Bonds.

(2) A certificate or certificates, satisfactory in form and substance to Bond Counsel and the Purchaser, of an authorized official of the Issuer dated the date of closing to the effect that, to the best of such official's knowledge and belief:

(a) each of the representations and warranties of the Issuer set forth in **Section 1** hereof is true, accurate and complete in all material respects as of the Closing Time, and each of the agreements of the Issuer set forth in this Agreement to be complied with at or prior to the Closing Time has been complied with as of such time; and

(b) no litigation is pending, or to the best knowledge of the Issuer, threatened, to restrain or enjoin the issuance, execution, sale or delivery of the Bonds or contesting the issuance or the validity of the Bonds, the Ordinance, the Indenture, the Site Lease, the Lease, or this Agreement and that none of the proceedings or authority for the issuance of the Bonds has been repealed, revoked or rescinded.

(3) A certificate or certificates, satisfactory in form and substance to Bond Counsel and the Purchaser, of an authorized member of the Tenant dated the date of closing to the effect that:

(a) each of the representations and warranties of the Tenant set forth in **Section 2** hereof is true, accurate and complete in all material respects as of the Closing Time, and each of the agreements of the Tenant set forth in this Agreement to be complied with at or prior to the Closing Time has been complied with as of such time; and

(b) insofar as the signers of such certificate or certificates are aware, after reasonable investigation, since the date of this Agreement, there has been no material adverse change in the property or financial position of the Tenant or results of operation of the Tenant; and

(c) no litigation is pending, or to the knowledge of the Tenant threatened, to restrain or enjoin the issuance, execution, sale or delivery of the Bonds or in any way contesting or affecting any authority for issuance or the validity of the Bonds, the Site Lease, the Lease or this Agreement or the creation, existence, or powers of the Tenant to lease the Project.

(4) Certified conformed copies or manually executed counterparts of the Ordinance, the Indenture, the Site Lease and the Lease.

(5) Such additional certificates, opinions, or documents as the Purchaser may reasonably request to evidence the due satisfaction at or prior to such time of all conditions then to be satisfied in connection with the transactions contemplated hereby.

(C) Subsequent to the Issuer's acceptance of this Agreement:

(1) There shall not have occurred any change, or any development involving a prospective change in or affecting particularly the business or properties of the Tenant which, in the judgment of the Purchaser, materially impairs the investment quality of the Bonds; or

(2) Trading in securities generally on the New York Stock Exchange shall not have been suspended, minimum prices shall not have been established on such Exchange, nor a banking moratorium declared either by Federal or Kansas authorities; or

(3) No order, decree or injunction of any court of competent jurisdiction, nor any order, ruling, regulation or administrative proceeding by any governmental body or board, shall have been issued or commenced nor shall any legislation have been enacted by the Congress, with the purpose or effect of prohibiting the issuing, offering or sale of the Bonds as contemplated hereby; or

(4) The United States shall not be or become engaged in any major outbreak of armed hostilities which result in the declaration of national emergency.

If the conditions to the obligations of the Purchaser contained in this Agreement are not satisfied or if the obligations of the Purchaser shall be terminated for any reason permitted by this Agreement, this Agreement shall terminate and neither the Purchaser nor the Issuer shall have any further obligations hereunder.

SECTION 6. DEFAULT OF THE PURCHASER

If the Purchaser defaults in its obligations to purchase the Bonds hereunder and other arrangements satisfactory to the Issuer and the Tenant for the purchase of the Bonds are not made within thirty-six (36) hours after default, this Agreement may be terminated by the Issuer without liability on its part.

SECTION 7. CONDITIONS OF THE ISSUER'S OBLIGATIONS

The obligations of the Issuer to sell and deliver the Bonds will be subject to the accuracy of the representations and warranties on the part of the Tenant and Purchaser herein, to the performance by the Purchaser and the Tenant of their respective obligations hereunder and to the following additional conditions precedent:

(A) The Ordinance, the Indenture, the Site Lease and the Lease shall have been duly authorized and executed by the respective parties thereto in the form hereto before approved by the Purchaser and shall be in full force and effect and shall not have been amended, modified or supplemented, except as may have been agreed to in writing by the Purchaser. The Tenant shall have provided and there shall be in full force and effect all consents or other appropriate authorizations of the Tenant, as in the opinion of Bond Counsel, are necessary and appropriate in connection with the execution by the Tenant of the Site Lease and the Lease and other Tenant documents contemplated in connection with the issuance of the Bonds.

(B) At the Closing Time, the Issuer shall receive in form and substance satisfactory to Bond Counsel and to it:

(1) The opinion of Bond Counsel approving the issuance and delivery of the Bonds.

(2) The opinion of Counsel for the Tenant and the Purchaser.

(3) A certificate or certificates, satisfactory in form and substance to Bond Counsel and the Purchaser, of an authorized member of the Tenant dated the date of closing to the effect that:

(a) each of the representations and warranties of the Tenant set forth in **Section 2** hereof is true, accurate and complete in all material respects as of the Closing Time, and each of the agreements of the Tenant set forth in this Agreement to be complied with at or prior to the Closing Time has been complied with as of such time; and

(b) insofar as the signers of such certificate or certificates are aware, after reasonable investigation, since the date of this Agreement, there has been no material adverse change in the property or financial position of the Tenant or results of operation of the Tenant; and

(c) no litigation is pending, or to the knowledge of the Tenant threatened, to restrain or enjoin the issuance, execution, sale or delivery of the Bonds or in any way contesting or affecting any authority for issuance or the validity of the Bonds, the Site Lease, the Lease or this Agreement or the creation, existence, or powers of the Tenant to lease the Project.

(4) A certificate or certificates, satisfactory in form and substance to Bond Counsel and the Purchaser, of authorized member of the Purchaser dated the date of closing to the effect that:

(a) each of the representations and warranties of the Purchaser set forth in **Section 3** hereof is true, accurate and complete in all material respects as of the Closing Time, and each of the agreements of the Purchaser set forth in this Agreement to be complied with at or prior to the Closing Time has been complied with as of such time; and

(b) No litigation is pending, or to the knowledge of the Purchaser threatened, to restrain or enjoin the execution and delivery of this Agreement or in any way contesting or affecting any authority for the validity of this Agreement.

(5) Certified conformed copies or manually executed counterparts of the Ordinance, the Indenture, the Site Lease and the Lease.

(6) Such additional certificates, opinions, or documents as the Issuer and Bond Counsel or the Purchaser may reasonably request to evidence the due satisfaction at or prior to such time of all conditions then to be satisfied in connection with the transactions contemplated hereby.

If the conditions to the obligations of the Issuer contained in this Agreement are not satisfied or if the obligations of the Issuer terminate for any reason permitted by this Agreement, this Agreement shall terminate and neither the Purchaser nor the Issuer shall have any further obligations hereunder.

SECTION 8. REPRESENTATIONS AND AGREEMENTS TO SURVIVE DELIVERY

All representations and warranties of the Tenant and Purchaser herein shall remain operative and in full force and shall survive delivery of the Bonds.

SECTION 9. INDEMNITY

The Tenant shall indemnify and hold harmless the Issuer, each of its officials and employees and each person who controls the Issuer within the meaning of Section 15 of the Act (any such person being herein in this paragraph sometimes called an “Indemnified Party”), against all losses, claims, damages or liabilities, joint or several, to which such Indemnified Party may become subject under any statute or at law or in equity or otherwise, and will reimburse any such Indemnified Party for any legal or other expenses incurred by it in connection with investigating any claims against it and defending any actions, insofar as such losses, claims, damages, liabilities or actions arise out of or are based upon an allegation or determination that the Bonds or the obligations of the Issuer under the Indenture have been offered or sold in violation of provisions of the Act, the Securities Exchange Act of 1934, as amended, or the securities laws of any state or territory, or that the Indenture should have been qualified under the Trust Indenture Act of 1939, as amended. This indemnity agreement shall not limit any other liability the Tenant may otherwise have to any such Indemnified Party.

In the event and to the extent that any of the Indemnified Parties is entitled to indemnification from the Tenant under the terms of the preceding paragraph in respect of any of the losses, claims, damages, liabilities or expenses referred to therein, but such indemnification is unavailable to such Indemnified Party in respect of any such losses, claims, damages, liabilities or expenses, due to such indemnification being held impermissible or unenforceable under applicable law or otherwise, then the Tenant, in lieu of indemnifying such Indemnified Party, shall contribute to the amount paid or payable by such Indemnified Party as a result of such losses, claims, damages, liabilities or expenses in such proportion as is appropriate to reflect the relative fault of the Tenant in connection with the offering conduct which resulted in such claims, damages, liabilities or expenses, as well as any other relevant equitable considerations. The Tenant and Issuer, respectively, agree that it would not be just and equitable if contribution pursuant to this paragraph were determined by *pro rata* allocation or by any other method of allocation which does not take into account the equitable considerations referred to in the preceding sentences of this paragraph. The amount paid or payable by any of the Indemnified Parties as a result of the losses, claims, damages or liabilities referred to above in this paragraph shall be deemed to include any legal or other expenses reasonably incurred by such Indemnified Party in connection with defending such action or claim. The covenants and agreements in this paragraph and the preceding paragraph shall survive the delivery of the Bonds.

SECTION 10. PARTIES IN INTEREST

This Agreement has been and is made solely for the benefit of the Issuer and its officers, agents and employees, the Tenant, the Purchaser and their respective successors, and no other person, partnership, association or corporation shall acquire or have any right under or by virtue of this Agreement.

SECTION 11. NOTICES

All communications hereunder shall be in writing, and if sent to the Issuer, the Tenant or the Purchaser shall be mailed or delivered and confirmed to the address shown below:

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

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

SECTION 12. APPLICABLE LAW

This Agreement shall be governed by the laws of the State of Kansas and may not be assigned by the Issuer, the Tenant or the Purchaser.

[Remainder of this page intentionally left blank]

IN WITNESS WHEREOF, the Issuer and the Tenant/Purchaser have caused their authorized representatives to execute and deliver this Agreement as of the date appearing on the first page hereof.

CITY OF OVERLAND PARK, KANSAS
as Issuer

By _____
Carl R. Gerlach
Mayor

IN WITNESS WHEREOF, the Issuer and the Tenant/Purchaser have caused their authorized representatives to execute and deliver this Agreement as of the date appearing on the first page hereof.

MC PRAIRIEFIRE I, LLC,
a Kansas limited liability company,
as Purchaser and Tenant

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

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