

**RESIDENTIAL PROJECT ACKNOWLEDGEMENT
AND ASSUMPTION AGREEMENT**

THIS RESIDENTIAL PROJECT ACKNOWLEDGEMENT AND ASSUMPTION AGREEMENT (this "Agreement"), is made and entered into this ____ day of March, 2014 (the "Effective Date") by and between the **CITY OF OVERLAND PARK, KANSAS**, a municipal corporation duly organized under the laws of the State of Kansas (the "City") and **PRAIRIEFIRE APARTMENTS, LLC**, a Kansas limited liability company ("Residential Developer").

RECITALS:

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

B. Pursuant to that certain Prairiefire at Lionsgate Development Agreement (the "Development Agreement") dated as of November 14, 2012 between the City, MC Prairiefire I, LLC, a Kansas limited liability company ("MCP I"), and MC Prairiefire II, LLC, a Kansas limited liability company ("MCP II," and together with MCP I, the "Developer"), Developer proposes to design, develop, construct, complete and operate a unique destination experience on a portion of the Project Site (the "Project"), which Project is more particularly described therein. Capitalized terms which are not otherwise defined herein shall have the meanings assigned to them in the Development Agreement and the Annex of Definitions attached thereto.

C. Among other things, Phase 2 of the Project is intended to include approximately one hundred seventy-five (175) residential units, including condominium units and/or apartment units (collectively, the "Residential Project"), which is to be designed, constructed and completed and operated by the Residential Developer. The Residential Project shall be located on that portion of the Project Site described on **Exhibit B-1** and generally depicted on **Exhibit B-2** as attached hereto (the "Residential Land").

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

E. The parties desire to enter into this Agreement so that the Residential Developer shall acknowledge, assume and agree to perform the obligations, covenants and agreements of the Developer under the Development Agreement, as modified herein, and as the same pertain to the design, construction, completion and operation of the Residential Project.

AGREEMENT

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

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

2. Term of Agreement. This Agreement shall commence upon the Effective Date and shall terminate upon the expiration of the Development Agreement (the "Term").

3. General Acknowledgement and Assumption. Residential Developer hereby acknowledges, assumes and agrees to perform each and every obligation, covenant and agreement of the "Developer" under the Development Agreement, except as modified below, but only to the extent that the same shall pertain to the design, construction, completion and operation of the Residential Project, each of which is hereby incorporated as though more fully set forth herein and Residential Developer hereby understands and agrees that the City may enforce the same directly against Residential Developer.

4. Specific Acknowledgement and Assumption. Without limiting the generality of the foregoing, Residential Developer specifically acknowledges, assumes and agrees to perform the following obligations, covenants and agreements set forth in the Development Agreement, as modified in certain instances below:

(a) All of the terms and conditions in Section 2.05 (Indemnification), Section 2.06 (Insurance) and Section 2.07 (Non-Discrimination).

(b) All of the terms and conditions set forth in Article V (Construction of Improvements), except as follows:

(i) Residential Developer's General Contractor (as that term is used in the Development Agreement) shall be Hearthview Construction – PrairieFire, LLC, an affiliate of Residential Developer, and thus

Residential Developer shall not be subject to Section 5.02(b) and (c) or Section 5.07; and

(ii) Residential Developer shall not be subject to Section 5.04, but Residential Developer shall be obligated to commence construction within ninety (90) days of closing on the purchase of the Residential Land.

(c) Until such time as the Residential Project is Substantially Complete, all of the terms and conditions set forth in Article VI (Assignment and Transfer), after which time Residential Developer shall not be subject to Article VI.

(d) All of the terms and conditions set forth in Sections 7.02 (Use and Operation), 7.04 (Use Restrictions), 7.05 (Continuing Disclosures; Sales and Use Tax Reporting), 7.06 (Maintenance and Use), 7.07 (Compliance), 7.08 (Payment of Taxes and Liens), 7.09 (Payment of Obligations), 7.10 (Licenses and Permits), 7.11 (Damage Destruction or Condemnation), 7.12 (Access), and 7.13 (Power of the City), except as follows:

(i) If and to the extent that the Residential Project does not include any retail components, then Residential Developer's obligations under Section 7.05 shall not include Section 7.05(a), and disclosures under Section 7.05(b) shall be limited to those relating to construction and completion of the Residential Project and the transfer, sale, or other conveyance of the Residential Land and/or Residential Project. Residential Developer shall not have any obligation to disclose residential tenants in the Residential Project.

(ii) In connection with Residential Developer's obligations under Section 7.11, the performance of such obligations shall be subject to the consent of Residential Developer's lender, if any, if and to the extent that the damage, destruction, or condemnation shall affect more than twenty percent (20%) of the gross floor area of the improvements that constitute the Residential Project.

(e) All of the terms and conditions set forth in Article VIII (Default and Remedies).

(f) All of the terms and conditions set forth in Section 9.03 (Time of Essence) through Section 9.19 (Cash Basis and Budget Laws), inclusive. However, the parties hereby understand and agree that the notice address for the Residential Developer in Section 9.10 (Notice) shall be replaced with the following:

To the Residential Developer:

PrairieFire Apartments, LLC
c/o Cityscape Residential, LLC
8335 Keystone Crossing, Suite 106
Indianapolis, IN 46240
Attn: Jim Thomas

With copies to:

John P. Healy, Esq.
Polsinelli PC
6201 College Blvd., Suite 500
Overland Park, KS 66211

(g) Notwithstanding anything herein or in the Development Agreement to the contrary, Article III, Article IV, Section 9.01, and Section 9.02 of the Development Agreement shall not apply to the Residential Developer.

Each of the foregoing provisions is hereby incorporated by reference and Residential Developer hereby understands and agrees that the City may enforce the same against Residential Developer in connection with the Residential Project. Further, parties understand and agree that if and to the extent the various exhibits attached to the Development Agreement are referenced in the obligations that are acknowledged and assumed by the Residential Developer, such exhibits are hereby incorporated by reference as though more fully set forth herein.

[Remainder of page intentionally left blank. Signature pages immediately follow.]

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

CITY OF OVERLAND PARK, KANSAS

ATTEST:

Carl Gerlach, Mayor

Marian Cook, City Clerk

APPROVED AS TO FORM:

Michael R. Santos
City Attorney

APPROVED AS TO FORM:

Todd A. LaSala, Esq.
Stinson Morrison Hecker LLP

STATE OF KANSAS)
)
COUNTY OF JOHNSON)

On this ____ day of March, 2014, before me personally appeared Carl Gerlach, personally known, who being by me duly sworn did say that he is the Mayor of the City of Overland Park, Kansas, a Kansas corporation, that said instrument was signed on behalf of said corporation by authority of its Council, and acknowledged said instrument to be the free act and deed of said corporation.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal at my office in Johnson County, Kansas the day and year last above written.

Notary Public
Printed Name: _____

My commission expires:

**PRAIRIEFIRE APARTMENTS, LLC,
a Kansas limited liability company**

By: Hearthview Prairiefire Apartments, LLC,
an Indiana limited liability company

By: _____
James E. Thomas, Jr., Manager

STATE OF _____)
) ss.
COUNTY OF _____)

On this _____ day of _____, 2014, before me personally appeared James E. Thomas, to me personally known, who being by me duly sworn did say that he is the Manager of Hearthview Prairiefire Apartments, LLC, Manager of PrairieFire Apartments, LLC, a Kansas limited liability company, and that said instrument was signed and delivered on behalf of said limited liability company and acknowledged to me that he/she executed the same as the free act and deed of said limited liability company.

In Testimony Whereof, I have hereunto set my hand and affixed my official seal the day and year first above written.

Notary Public
Printed Name: _____

My commission expires:

LIST OF EXHIBITS

- Exhibit A-1 Project Site – Legal Description
- Exhibit A-2 Project Site – Map
- Exhibit B-1 Residential Project – Legal Description
- Exhibit B-2 Residential Project – Map
- Exhibit C Insurance Specifications

EXHIBIT A-1

PROJECT SITE – LEGAL DESCRIPTION

EXHIBIT A-1: PROJECT SITE - LEGAL DESCRIPTION

File No. 2007-0004
PrairieFire
October 09, 2009
Revised September 27, 2012

Project Site

All of Tract A, and all that part of 137th Street right of way within the final plat of Prairiefire, First Plat, together with an unplatted portion of land, all lying in the North half of Section 32, Township 13 South, Range 25 East, in the City of Overland Park, Johnson County, Kansas, described as follows:

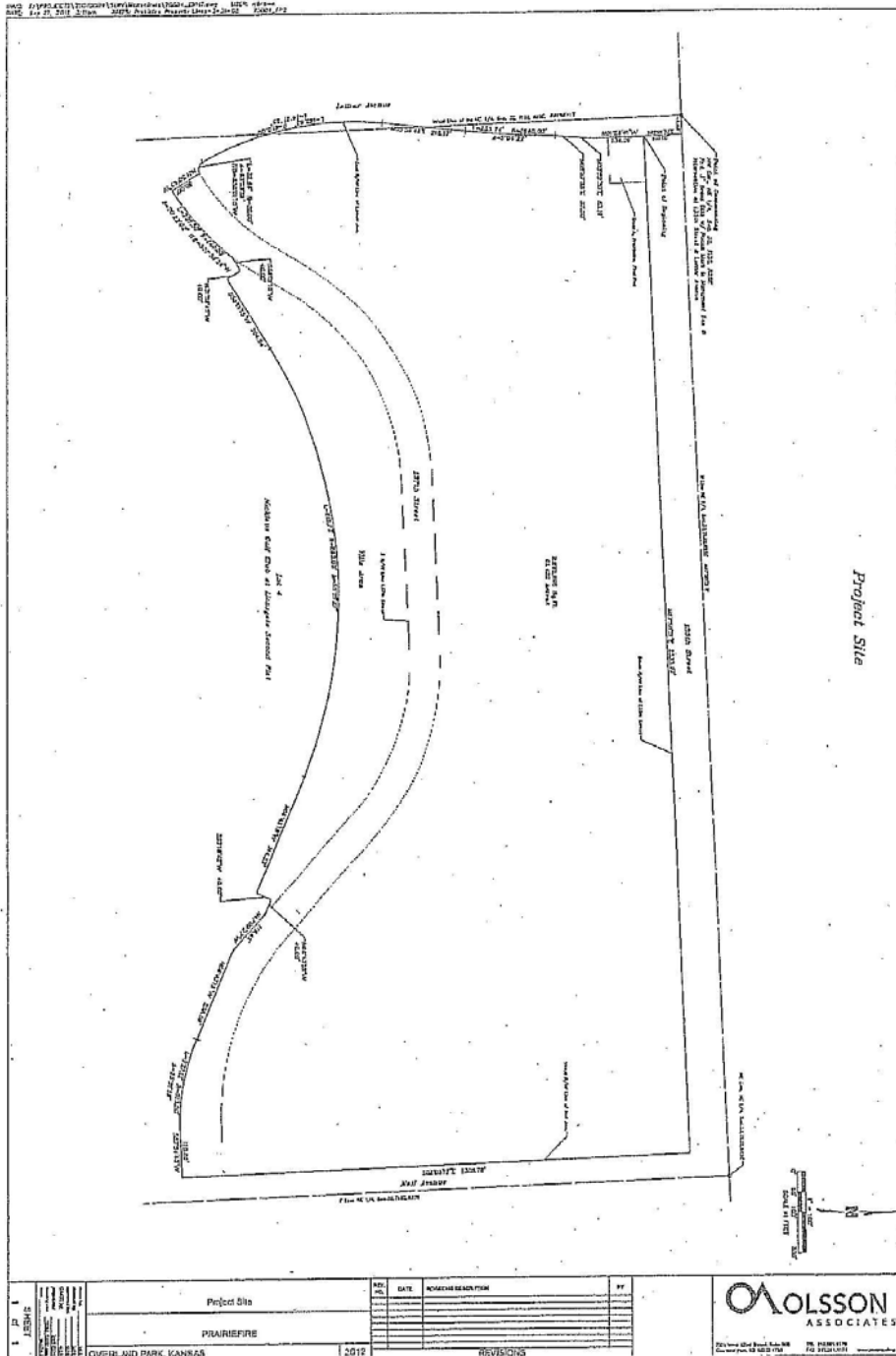
COMMENCING at the Northwest corner of the Northeast Quarter of Section 32, Township 13 South, Range 25 East; thence North 87 degrees 50 minutes 31 seconds East along the North line of the Northeast Quarter of said Section 32 a distance of 47.63 feet to a point; thence South 2 degrees 09 minutes 29 seconds East a distance of 100.00 feet to the Northwest corner of Tract A, Prairiefire, First Plat, a subdivision in the City of Overland Park, Johnson County, Kansas, the POINT OF BEGINNING; thence North 87 degrees 50 minutes 31 seconds East along the North line of said Tract A and the South right of way line of 135th Street a distance of 2535.97 feet to a point on the West right of way line of Nall Avenue; thence South 2 degrees 05 minutes 12 seconds East along the West right of way line of Nall Avenue a distance of 1308.78 feet to a point on the South right of way line of 137th Street as established by the final plat of said Prairiefire, First Plat; thence South 87 degrees 54 minutes 43 seconds West along the South right of way line of said 137th Street a distance of 118.86 feet to a point of curvature; thence in a Northwesterly direction along the South right of way line of said 137th Street and along a curve to the right, having a radius of 513.00 feet, through a central angle of 25 degrees 21 minutes 59 seconds, an arc distance of 227.12 feet to a point; thence North 66 degrees 43 minutes 18 seconds West along the South right of way line of said 137th Street and the North line of Lot 4, Nicklaus Golf Club at Lionsgate Second Plat, a subdivision in the City of Overland Park, Johnson County, Kansas, a distance of 238.09 feet to a point; thence North 47 degrees 09 minutes 27 seconds West along the Southerly right of way line of 137th Street a distance of 119.45 feet to a point; thence North 66 degrees 43 minutes 18 seconds West a distance of 40.00 feet to a point; thence South 23 degrees 16 minutes 42 seconds West a distance of 40.00 feet to a point on the North line of said Lot 4; thence North 66 degrees 43 minutes 18 seconds West along the North line of said Lot 4 a distance of 314.52 feet to a point; thence in a Northwesterly direction along the North line of said Lot 4 and along a curve to the left, having a radius of 1160.00 feet, through a central angle of 55 degrees 15 minutes 27 seconds, an arc distance of 1118.73 feet to a point; thence South 58 degrees 01 minutes 15 seconds West along the North line of said Lot 4 a distance of 204.94 feet to a point; thence North 31 degrees 58 minutes 45 seconds West a distance of 40.00 feet to a point; thence South 58 degrees 01 minutes 15 seconds West a distance of 40.00 feet to a point on the Southerly right of way line of said 137th Street; thence in a Southwesterly direction along the Southerly right of way line of said 137th Street and along a curve to the right whose initial tangent bears South 37 degrees 39 minutes 24 seconds West, having a radius of 640.00 feet, through a central angle of 20

EXHIBIT A-1: PROJECT SITE - LEGAL DESCRIPTION

degrees 22 minutes 02 seconds, an arc distance of 227.50 feet to a point on the East right of way line of Lamar Avenue; thence North 31 degrees 58 minutes 45 seconds West along the East right of way line of Lamar Avenue a distance of 80.00 feet to a point of curvature; thence in a Southwesterly, Westerly and Northwesterly direction along the East right of way line of Lamar Avenue and along a curve to the right whose initial tangent bears South 58 degrees 01 minutes 15 seconds West, having a radius of 20.00 feet, through a central angle of 93 degrees 33 minutes 38 seconds, an arc distance of 32.66 feet to a point of compound curvature; thence in a Northeasterly direction along the East right of way line of Lamar Avenue and along a curve to the right, having a radius of 810.00 feet; through a central angle of 34 degrees 21 minutes 55 seconds, an arc distance of 485.83 feet to a point; thence North 5 degrees 56 minutes 48 seconds East along the East right of way line of Lamar Avenue a distance of 215.17 feet to a point of curvature; thence in a Northeasterly direction along the East right of way line of Lamar Avenue and along a curve to the left, having a radius of 2640.00 feet, through a central angle of 5 degrees 04 minutes 22 seconds, an arc distance of 233.74 feet to a point; thence North 5 degrees 27 minutes 38 seconds East along the East right of way line of Lamar Avenue a distance of 37.20 feet to a point; thence North 3 degrees 52 minutes 30 seconds East along the East right of way line of Lamar Avenue a distance of 63.11 feet to a point; thence North 1 degree 56 minutes 41 seconds West along the East right of way line of Lamar Avenue and the West line of said Tract A, a distance of 134.06 feet to the POINT OF BEGINNING and containing 2,675,895 Square Feet or 61.430 Acres, more or less.

EXHIBIT A-2
PROJECT SITE MAP

EXHIBIT A-2 - Project Site - Map



NO.	DATE	REVISION DESCRIPTION	BY
1			
2			
3			
4			
5			
6			
7			
8			
9			
10			

MOLSSON ASSOCIATES

2012

OVERLAND PARK, KANSAS

REVISIONS

EXHIBIT B-1 – PROJECT SITE LEGAL DESCRIPTION

EXHIBIT B-1: PROJECT SITE – LEGAL DESCRIPTION

ALL THAT PART OF THE NORTH HALF OF SECTION 32, TOWNSHIP 13 SOUTH, RANGE 25 EAST, IN THE CITY OF OVERLAND PARK, JOHNSON COUNTY, KANSAS, DESCRIBED AS FOLLOWS;

COMMENCING AT THE NORTHWEST CORNER OF THE NORTHEAST QUARTER OF SECTION 32, TOWNSHIP 13 SOUTH, RANGE 25 EAST; THENCE NORTH $87^{\circ} 50' 31''$ EAST ALONG THE NORTH LINE OF THE NORTHEAST QUARTER OF SAID SECTION 32 A DISTANCE OF 306.40 FEET TO A POINT, THENCE SOUTH $2^{\circ} 09' 29''$ EAST A DISTANCE OF 653.86 FEET TO THE POINT OF BEGINNING; THENCE NORTH $87^{\circ} 51' 00''$ EAST A DISTANCE OF 238.00 FEET TO A POINT; THENCE SOUTH $2^{\circ} 09' 00''$ EAST A DISTANCE OF 73.85 FEET TO A POINT; THENCE SOUTH $28^{\circ} 32' 15''$ EAST A DISTANCE OF 47.97 FEET TO A POINT ON THE NORTHERLY RIGHT OF WAY LINE OF 137TH STREET AS ESTABLISHED BY THE FINAL PLAT OF PRAIRIEFIRE, FIRST PLAT, A SUBDIVISION IN THE CITY OF OVERLAND PARK, JOHNSON COUNTY, KANSAS; THENCE IN A SOUTHWESTERLY DIRECTION ALONG THE NORTHERLY RIGHT OF WAY LINE OF SAID 137TH STREET AND ALONG A CURVE TO THE LEFT WHOSE INITIAL TANGENT BEARS SOUTH $58^{\circ} 45' 18''$ WEST, HAVING A RADIUS OF 640.00 FEET, THROUGH A CENTRAL ANGLE OF $28^{\circ} 13' 49''$, AN ARC DISTANCE OF 315.33 FEET TO A POINT; THENCE SOUTH $30^{\circ} 31' 29''$ WEST ALONG THE NORTHERLY RIGHT OF WAY LINE OF SAID 137TH STREET A DISTANCE OF 109.88 FEET TO A POINT; THENCE IN A SOUTHWESTERLY DIRECTION ALONG THE NORTHERLY RIGHT OF WAY LINE OF SAID 137TH STREET AND ALONG A CURVE TO THE RIGHT HAVING A RADIUS OF 560.00 FEET, THROUGH A CENTRAL ANGLE OF $27^{\circ} 29' 59''$, A DISTANCE OF 268.78 FEET TO A POINT ON THE EASTERLY RIGHT OF WAY LINE OF LAMAR AVENUE AS ESTABLISHED BY THE FINAL PLAT OF THE LAKES AT LIONSGATE FOURTH PLAT, A SUBDIVISION IN THE CITY OF OVERLAND PARK, JOHNSON COUNTY, KANSAS; THENCE IN A NORTHWESTERLY DIRECTION ALONG THE EASTERLY RIGHT OF WAY LINE OF SAID LAMAR AVENUE AND ALONG A CURVE TO THE RIGHT WHOSE INITIAL TANGENT BEARS SOUTH $58^{\circ} 01' 15''$ WEST, HAVING A RADIUS OF 20.00 FEET, THROUGH A CENTRAL ANGLE OF $93^{\circ} 33' 38''$, AN ARC DISTANCE OF 32.66 FEET TO A POINT OF COMPOUND CURVATURE; THENCE CONTINUING ALONG THE EASTERLY RIGHT OF WAY LINE OF LAMAR AVENUE AND ALONG A CURVE TO THE RIGHT, HAVING A RADIUS OF 810.00 FEET, THROUGH A CENTRAL ANGLE OF $33^{\circ} 08' 06''$, AN ARC DISTANCE OF 468.43 FEET TO A POINT; THENCE NORTH $87^{\circ} 51' 00''$ EAST A DISTANCE OF 230.60 FEET TO A POINT; THENCE IN A NORTHEASTERLY DIRECTION ALONG A CURVE TO THE LEFT, HAVING A RADIUS OF 95.50 FEET, THROUGH A CENTRAL ANGLE OF $90^{\circ} 00' 00''$, AN ARC DISTANCE OF 150.01 FEET TO A POINT; THENCE NORTH $2^{\circ} 09' 00''$ WEST A DISTANCE OF 47.21 FEET TO THE POINT OF BEGINNING, EXCEPT ANY PART USED OR DEDICATED FOR STREETS, ROADS OR PUBLIC RIGHTS OF WAY.

EXHIBIT B-2 – RESIDENTIAL PROJECT - MAP

EXHIBIT C

INSURANCE SPECIFICATIONS

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