

AGREEMENT
(Bed Tax Agreement II)

This Agreement is made and entered into as of December 1, 2010 (the "Effective Date") by and between the COUNTY OF CUYAHOGA, OHIO, a county and political subdivision of the State of Ohio (the "County"), acting pursuant to the authorizations contained in Resolution No. _____, adopted by the Board of County Commissioners on November 18, 2010, a copy of which is attached hereto as Exhibit A, and THE CONVENTION AND VISITORS BUREAU OF GREATER CLEVELAND, INC. d/b/a POSITIVELY CLEVELAND, an Ohio not-for-profit corporation which serves as the convention and visitors' bureau for Cuyahoga County (the "Bureau").

Background Information

A. The County has been working for the past several years to develop a modern, state-of-the-art convention center and medical mart in downtown Cleveland, Ohio, as described in the Development Agreement between the County, Merchandise Mart Properties, Inc., MMPI Cleveland Development LLC (the "Developer"), and Cleveland MMCC LLC (the "Operator") dated April 16, 2009. Pursuant to that certain Construction Administration Agreement, dated as of January 16, 2010 (the "CAA"), as amended, between the County and Developer, Developer is to construct, furnish and equip an integrated facility for (a) a permanent exhibition hall for medical devices and equipment (the "Medical Mart"), and (b) temporary exhibition, tradeshow, meeting rooms, conference facilities and related functions (the "Convention Facilities"). The Medical Mart and Convention Facilities are sometimes collectively referred to herein as the "MMCC Project." Pursuant to that certain Lease Agreement between Developer, as lessor, and the County, as lessee, dated December 1, 2010, the County will lease the MMCC Project from the Developer and sublease the MMCC Project to the Operator for operation thereof in accordance with a Sublease and Operating Agreement dated December 1, 2010. The County intends to issue various bonds to finance development and construction of the MMCC Project (the "Bonds").

B. The Bureau is the convention and visitors bureau operating within the county pursuant to Section 5739.09 of the Ohio Revised Code and serves as the destination marketing organization promoting the facilities, attractions, and events of the County and greater Cleveland area to the convention, trade show, meeting, and visitor industries, and thereby supports the economic vitality of the County. In addition, the Bureau provides support to various events, visitors, and convention attendees throughout the County.

C. The MMCC Project will increase the level of convention activity and travel and tourism in Cleveland and foster economic development throughout the County, and the parties agree that it is in the best interests of the County and the Bureau to work cooperatively toward completion of the MMCC Project.

D. The County currently levies a tax (at times the "Bed Tax") on transactions by which lodging by a hotel is or is to be furnished to transient guests pursuant to Section 5739.09(A)(1) of the Ohio Revised Code (the "O.R.C.") at the rate of three percent, and intends to increase the Bed Tax to four percent pursuant to Section 5739.09(I)(3) of the O.R.C. in order to generate funds necessary to pay the direct and indirect costs of constructing, improving, expanding, equipping, financing, or operating the MMCC Project. The Bureau has agreed to contribute a portion of the revenues it receives from the Bed Tax to support repayment of the Bonds in accordance with this Agreement. Both the increase of the Bed Tax and the Bureau's contribution are necessary components of the financing of the MMCC Project and repayment of the Bonds.

E. The County, the Bureau, and the Gateway Economic Development Corporation of Greater Cleveland, an Ohio not-for-profit corporation entered into a Cooperative Agreement dated as of September 15, 1992, which agreement was amended as of December 22, 1998, regarding the sharing of Bed Tax revenues to support development and financing of the Gateway Project, as defined therein (the "Gateway Agreement").

In consideration of the foregoing and the terms and conditions hereof, the parties agree as follows:

Section 1 Definitions

1.1 Definitions. As used this Agreement, the following terms shall have the following meanings unless a different meaning is specifically provided or the context otherwise requires:

"Bed Tax" means the three percent tax levied by the County on transactions by which lodging by a hotel is or is to be furnished to transient guests pursuant to Section 5739.09(A)(1) of the O.R.C.

"Bed Tax Increase" means the one-percent increase of the Bed Tax pursuant to Section 5739.09(I)(3) of the O.R.C.

"Bureau Contribution" means, for each year of the Term of this Agreement, the amount for that year as set forth on Schedule A, attached hereto.

"Contribution Credit" means the amount, if any, calculated in accordance with Section 3.3 of this Agreement.

"Revenues" means the revenues derived from the Bed Tax Increase in any calendar year during the Term of this Agreement.

"Term" means January 1, 2011 through December 31, 2027.

Section 2 Bed Tax Increase; Revenues

2.1 Bed Tax Increase. The County will implement, and the Bureau agrees to support, the Bed Tax Increase effective January 1, 2011.

2.2 Revenues. Revenues derived from the Bed Tax Increase shall be used solely for the construction, maintenance and operation of the MMCC Project including, without limitation, service charges attributable to the Bonds and future construction, maintenance and operating costs attributable to the MMCC Project.

Section 3 Bureau Contribution; Contribution Credit

3.1 The Bureau Contribution. Subject to the Contribution Credit as calculated under Section 3.3, below, the Bureau shall make the Bureau Contribution on or before June 1 of each year of the Term. The Bureau Contribution shall be delivered to the County at its notice address set forth in Section 5.2, below, Attention: Director, Budget and Management.

3.2 Contribution Credit. In years 2014 through 2027 (the "Contribution Credit Period"), the Bureau Contribution shall be reduced by the Contribution Credit, as calculated in Section 3.3, below.

3.2.1 The Contribution Credit shall be calculated and reported by the County to the Bureau annually, not later than March 31 of each year of the Contribution Credit Period based on the Revenues collected by the County during the previous calendar year (a "Credit Calculation Year").

3.2.2 The Contribution Credit shall be applied to the Bureau Contribution in the year it is calculated, only; a Contribution Credit shall not carry over to any subsequent year in the Contribution Credit Period. A Contribution Credit shall be applied as a credit to a Bureau Contribution, only, and shall not result in a payment to the Bureau. If a Contribution Credit exceeds a Bureau Contribution in any year during the Contribution Credit Period, the Bureau Contribution for that year will be zero (\$00.00).

3.3 Calculation of the Contribution Credit.

3.3.1 First Tier Credit.

A. When Revenues in any Credit Calculation Year are greater than \$3,000,000 but less than or equal to \$3,500,000 (the "First Tier"), the Contribution Credit for the subsequent year shall be 50% of such Revenues in excess of \$3,000,000.

B. The maximum First Tier Contribution Credit shall be \$250,000.

For example, if Revenues in 2013 equal \$3,400,000, the Contribution Credit for 2014 would be the product of: (a) \$400,000 (\$3,400,000 less \$3,000,000) and (b) 50%; or a credit of \$200,000. Accordingly, the Bureau Contribution for 2014 would be \$800,000 (\$1.0MM less \$200,000).

3.3.2 Second Tier Credit.

- A. When Revenues in any Credit Calculation Year are greater than \$3,500,000 but less than or equal to \$4,000,000 (the "Second Tier"), the Contribution Credit for the subsequent year shall be the sum of: (a) \$250,000 (the maximum First Tier Contribution Credit) and 75% of such Revenues in excess of \$3,500,000.
- B. The maximum Second Tier Contribution Credit shall be \$625,000.

For example, if Revenues in 2019 equal \$3,800,000, the Contribution Credit for 2020 would be the sum of (a) \$250,000 (the maximum First Tier Contribution Credit), and (b) the product of (i) \$300,000 (\$3,800,000 less \$3,500,000) and (ii) 75%; or a credit of \$475,000. Accordingly, the Bureau Contribution Credit for 2020 would be \$525,000 (\$1,000,000 less \$475,000).

3.2.3 Third Tier Credit.

When Revenues in any Credit Calculation Year are greater than \$4,000,000, the Contribution Credit for the subsequent year shall be the sum of: (a) \$625,000 (the Maximum Second Tier Contribution Credit), and (b) such Revenues in excess of \$4,000,000.

For example, if the Revenues in 2024 equal \$4,375,000, the Contribution Credit for that year would be the sum of (a) \$625,000 (the maximum Second Tier Credit) and (b) \$375,000 (\$4,375,000 less \$4,000,000); or a credit of \$1,000,000. Accordingly, the Bureau Contribution for 2025 would be \$250,000 (\$1,250,000 less \$1,000,000).

Section 4 Administrative Charges Assessed by the County

4.1 Pursuant to Chapter 5739.09 of the Ohio Revised Code, the County will deduct the real and actual costs of administering the Bed Tax and the Bed Tax Increase from the revenues generated by the Bed Tax and the Bed Tax Increase. Such administrative costs shall be deducted from Bed Tax and the Bed Tax Increase on a pro-rata basis prior to any distribution hereunder. The County will continue to make other deductions from the Bed Tax in accordance with Ohio law.

Section 5 Miscellaneous Provisions

5.1 Termination. This Agreement shall terminate on the earlier of:

- (a) December 31, 2011 if the County has not commenced construction of the MMCC Project by that date, in which case the Bureau Contribution for 2011 will be refunded to the Bureau;
- (b) termination of any County liability under the Bonds;
- (c) the Bureau ceases to provide the services of a convention and visitors' bureau for Cuyahoga County; or
- (d) December 31, 2027.

5.2 Notices. All notices, certificates, requests or other communications hereunder shall be in writing and shall be deemed to be sufficiently given when mailed by registered or certified mail, postage prepaid, and addressed to:

The County at: Cuyahoga County Executive
1219 Ontario Street – 4th Floor
Cleveland, Ohio 44113

With a copy to: Cuyahoga County Prosecutor
1200 Ontario Street
Cleveland, Ohio 44113
Attn: Chief, Civil Division

The Bureau at: 100 Public Square, #100
Cleveland, Ohio 44111
Attn: Executive Director

With a copy to: Dana A. Rose, Esq
Weston Hurd LLP
1301 E. 9th St., #1901
Cleveland, Ohio 44114-1804

Either party may, by notice given hereunder, designate any further or different addresses to which subsequent notices, certificates, requests or communications shall be sent.

5.3 Binding Effect. This Agreement shall inure to the benefit of and shall be binding in accordance with its terms upon the County, the Bureau, and their respective successors and assigns. Neither party shall assign any of it's rights or obligations under this Agreement without the prior written consent of the other party.

5.4 Amendments and Supplements. This Agreement may not be amended or supplemented except by a writing executed by the parties.

5.5 Electronic Signature, Counterparts.

- (a) The Parties agree to conduct this transaction by electronic means and agree that all documents requiring signatures by the County may be executed by electronic means, and that the electronic signatures affixed by the County to this Agreement shall have the same legal effect as if that signature was manually affixed to a paper version of this Agreement. The Parties also agree, to be bound by the provisions of Chapters 304 and 1306 of the Ohio Revised Code as they pertain to electronic transactions, and to comply with the electronic signature policy of Cuyahoga County.
- (b) This Agreement may be executed in any number of counterparts, each of which shall be regarded as an original and all of which shall constitute but one and the same instrument.

5.6 Incorporation. All exhibits, schedules or other attachments referenced in this Agreement are hereby incorporated into this Agreement by such reference and shall be considered a part of this Agreement as if fully rewritten or set forth herein.

5.7 Severability. If any provision of this Agreement, or any covenant, obligation or agreement contained herein, is determined by a court of competent jurisdiction to be invalid or unenforceable, such determination shall not affect any other provision, covenant, obligation or agreement, each of which shall be construed and enforced as if such invalid or unenforceable provision were not contained herein. Such invalidity or unenforceability shall not affect any valid and enforceable application thereof, and each such provision, covenant, obligation or agreement shall be deemed to be effective, operative made, entered into or taken in the manner and to the full extent permitted by law.

5.8 Captions. The captions and headings in this Agreement shall be solely for convenience of reference and shall in no way define, limit or describe the scope or intent of any provisions or Sections of this Agreement.

5.9 Choice of Law. This Agreement shall be deemed to be a contract made under the laws of the State and for all purposes shall be governed by and construed in accordance with the laws of the State.

5.10 Gateway Agreement. Neither party is waiving any rights it may have under the Gateway Agreement which shall remain in full force and effect in all respects.

5.11 Levy of Bed Tax. During the term of this Agreement, and to the extent permitted by law, the County shall continue to levy the Bed Tax without reduction and contribute same to the Bureau.

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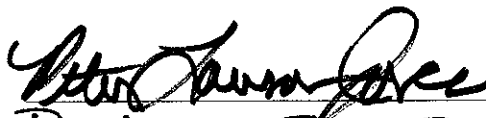
IN WITNESS WHEREOF, this Agreement has been executed and delivered all as of the date first hereinabove written.

POSITIVELY CLEVELAND

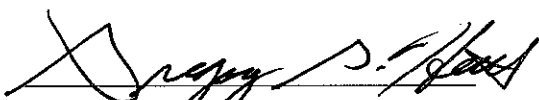
By: _____
Name

Title _____

COUNTY OF CUYAHOGA, OHIO

By: 
Peter Lawson Jones, President
of the Board

The legal form and correctness of the within document is hereby approved.


Assistant Prosecuting Attorney

Date: Nov. 29, 2010

IN WITNESS WHEREOF, this Agreement has been executed and delivered all as of the date first hereinabove written.

POSITIVELY CLEVELAND

By: KCT
Name KURT C. TREU

Title chairman, Board of Directors

COUNTY OF CUYAHOGA, OHIO

By: _____

The legal form and correctness of the within document is hereby approved.

Assistant Prosecuting Attorney

Date: _____

Bureau Contribution Schedule

2011	250,000
2012	250,000
2013	500,000
2014	1,000,000
2015	1,000,000
2016	1,000,000
2017	1,000,000
2018	1,000,000
2019	1,000,000
2020	1,000,000
2021	1,000,000
2022	1,000,000
2023	1,000,000
2024	1,000,000
2025	1,250,000
2026	1,250,000
2027	1,250,000
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	15,750,000