

CONSTRUCTION ADMINISTRATION AGREEMENT

between

THE COUNTY OF CUYAHOGA, OHIO

and

MERCHANDISE MART PROPERTIES, INC.

and

MMPI CLEVELAND DEVELOPMENT LLC

Dated January __, 2010

TABLE OF CONTENTS

ARTICLE 1 DEFINITIONS.....1

 1.1 Definitions.....1

 1.2 Accounting Terms.....15

 1.3 Other Terms.....15

 1.4 Context.....16

 1.5 Incorporation by Reference.....16

 1.6 Calculation of Time.....16

ARTICLE 2 COOPERATION, PHASING AND PROJECT DELIVERY16

 2.1 Cooperation of the Parties; Partnering.....16

 2.2 County Representative.....16

 2.3 Developer Manager and Developer Representative.....17

 2.4 Phasing.....18

 2.5 County Approval of Architect and Contractor.....19

 2.6 Project Delivery Method; GMP Development.....19

 2.7 Key Personnel.....20

 2.8 Anti-Kickback.....21

ARTICLE 3 ACQUISITION AND DELIVERY OF SITE.....21

 3.1 Selection and Acquisition of the Site.....21

 3.2 Purchase and Sale Agreement.....21

 3.3 Site Due Diligence.....21

 3.4 Environmental Matters.....22

 3.5 Concealed Conditions and Geotechnical Matters.....23

 3.6 Construction Easements.....23

ARTICLE 4 DESIGN OF THE FACILITY.....23

 4.1 Selection of Architect, Approval of Architect Agreement.....23

 4.2 County Requirements.....23

 4.3 Design Budget.....24

 4.4 Ongoing Right to Cause Revisions.....24

 4.5 Green Building Standards and Design.....24

 4.6 Historic Tax Credits.....24

 4.7 Master Project Schedule.....24

 4.8 Design Meetings.....24

 4.9 County Design Approval Procedures.....24

 4.10 Continuing with Design.....25

 4.11 Feasibility Plans.....26

 4.12 Conceptual Plans; Design Options; IGMP Documents.....26

 4.13 Design Development Documents; GMP Documents.....26

 4.14 Construction Documents.....26

 4.15 CD Review Session.....26

 4.16 Master Project Budget.....27

 4.17 Budget Cap.....27

4.18	Master Project Schedule.....	27
4.19	Public Auditorium.....	28
4.20	Ownership of Documents.....	28
4.21	Local Business and Resident Participation.....	28
4.22	Final Project Finance Approval.....	28
4.23	Termination Rights During Design Phases.....	29
ARTICLE 5 CONSTRUCTION OF THE PROJECT.....		29
5.1	Compliance with Master Project Schedule and Master Project Budget.....	29
5.2	Developer Responsibility for Design and Construction.....	29
5.3	Developer Responsibility for Enforcement of Agreements.....	30
5.4	Selection of Contractor; Approval of Construction Agreement.....	30
5.5	Payment and Performance Bonds.....	30
5.6	Applications for Payment.....	30
5.7	Project Meetings.....	30
5.8	Bidding; Selecting of Subcontractors.....	31
5.9	Permits.....	31
5.10	FF&E; Tenant Fit Out.....	31
5.11	Applicable Laws.....	31
5.12	Governmental Approvals.....	31
5.13	Local Business and Resident Participation.....	31
5.14	Prevailing Wage Requirements.....	32
5.15	Third Party Beneficiary.....	32
5.16	Supervision of Construction.....	32
5.17	Inspections.....	32
5.18	Construction Materials.....	33
5.19	Site Safety.....	33
5.20	Environmental Matters.....	33
5.21	Correction of Work.....	33
5.22	Legal Actions; Liens.....	33
5.23	Change Orders.....	34
5.24	Approvals by the County.....	34
5.25	Add Alternates.....	35
5.26	Changes to Contracts.....	35
5.27	Commissioning and Close-Out Plan.....	35
5.28	As-Built Drawings.....	35
5.29	Inspection Rights of the County.....	36
ARTICLE 6 SCHEDULES AND REPORTS.....		36
6.1	Master Project Schedule.....	36
6.2	Progress Reports.....	36
6.3	Inspection, Safety and Quality Assurance Programs and Reports.....	36
6.4	Significant Event Reports.....	36
6.6	Final Completion Report.....	37
6.7	Documents Required by Law.....	37

ARTICLE 7 RECORDS; AUDITING	37
7.1 Public Records.....	37
7.2 Trade Secrets.....	37
7.3 Auditable Records Retention	38
7.4 Audit.....	38
7.5 Limitations	39
ARTICLE 8 FEES, EXPENSES AND CONTRIBUTIONS	39
8.1 Developer Fee	39
8.2 Pre-Development Costs.....	39
8.3 Reimbursable Expenses.....	39
8.4 County Reimbursement.....	40
8.5 MMPI Contribution.....	40
8.6 Payments upon Termination.....	40
ARTICLE 9 FUNDING AND DISBURSEMENTS	41
9.1 Project Funding	41
9.2 Remaining Funds.....	42
9.3 Budget Cap.....	42
9.4 Grants and Tax Credits.....	42
9.5 Nontax Revenue Sources	42
9.6 Payment for Project Costs.....	42
ARTICLE 10 INDEMNIFICATION.....	44
10.1 Developer's Indemnification of the County	44
10.2 MMPI's Indemnification of the County	44
10.3 Indemnification Procedures.....	44
10.4 Survival	45
ARTICLE 11 INSURANCE; CASUALTY	45
11.1 Insurance Requirements	45
11.2 General Insurance Provisions.....	47
11.3 Damage or Destruction Prior to Completion.....	47
ARTICLE 12 REPRESENTATIONS, WARRANTIES AND COVENANTS	47
12.1 MMPI's and Developer's Representations, Warranties and Covenants	47
12.2 County's Representations, Warranties and Covenants	48
ARTICLE 13 DEFAULTS AND REMEDIES	48
13.1 Developer Default	48
13.2 County Default	49
13.3 Non-Exclusive Remedies	49
13.4 Equitable Relief.....	50
13.5 Self-Help Remedies.....	50
TERMINATION.....	51
14.1 Termination Rights.....	51

14.2 Termination of the Development Agreement.....	51
ARTICLE 15 DISPUTE RESOLUTION	52
15.1 Dispute Notice.....	52
15.2 Settlement By Mutual Agreement.....	52
15.3 Expedited Dispute Resolution.....	52
15.4 Arbitration Dispute Process.....	53
15.5 Continued Obligations.....	54
15.6 Emergency Relief.....	54
15.7 Pending Dispute Fund.....	54
15.8 Litigation.....	54
15.9 Jurisdiction and Venue.....	54
15.10 Governing Law.....	55
ARTICLE 16 ASSIGNMENT.....	55
16.1 Developer Assignments.....	55
16.2 Assignment by the County.....	55
16.3 Violation of Assignment Provisions.....	55
16.4 Estoppel Certificate.....	55
ARTICLE 17 CONDITIONS PRECEDENT.....	56
17.1 Conditions Precedent for the Benefit of Developer.....	56
17.2 Conditions Precedent for the Benefit of the County.....	56
ARTICLE 18 MISCELLANEOUS.....	57
18.1 Force Majeure Event.....	57
18.2 Amendment.....	57
18.3 Consent in Writing.....	57
18.4 Severability.....	57
18.5 Captions.....	57
18.6 Agreement Binding on the Parties; No Personal Liability.....	57
18.7 Relationship of Parties.....	58
18.8 Notices.....	58
18.9 Costs.....	59
18.10 Discrimination Prohibited.....	59
18.11 Further Assurances.....	59
18.12 Counterparts.....	59
18.13 No Waiver of Regulatory Authority.....	59
18.14 Other Agreements.....	60
18.15 This Agreement.....	60
18.16 Language.....	60
18.17 Attorneys' Fees.....	60
18.18 Term of Agreement.....	60
18.19 Time of the Essence.....	60
18.20 <u>Commercially Reasonable Efforts</u>	60
18.21 Limitation of Liability.....	60
18.22 MMPI Guaranty.....	61

EXHIBITS

EXHIBIT A	Master Project Schedule
EXHIBIT B	Insurance Requirements
EXHIBIT C	Environmental and Geotechnical Reports
EXHIBIT D	Construction Agreement (Required Provisions)
EXHIBIT E	Architect Agreement (Required Provisions)
EXHIBIT F	Reimbursable Expense Policy and Budget
EXHIBIT G	Form of Funding Request
EXHIBIT H	Key Personnel
EXHIBIT I	Staffing Chart
EXHIBIT J	Form of Construction Guarantee

CONSTRUCTION ADMINISTRATION AGREEMENT

This Construction Administration Agreement (this "Agreement") has been made and entered into as of the ____ day of January, 2010 (the "Effective Date"), by and among THE COUNTY OF CUYAHOGA, OHIO (the "County"), a political subdivision duly organized and validly existing under the Constitution and laws of the State of Ohio, MERCHANDISE MART PROPERTIES, INC. ("MMPI"), a Delaware corporation, and MMPI CLEVELAND DEVELOPMENT LLC ("Developer"), a Delaware limited liability company.

WITNESSETH

WHEREAS, the County, MMPI, Developer and the Operator have entered into the Development Agreement (as defined below), pursuant to which the Parties agreed to cooperate in planning, designing, financing, constructing, furnishing, equipping and operating an integrated facility for (a) a permanent exhibition hall for medical devices and equipment and related parking facilities, if any (the "Medical Mart"), (b) temporary exhibition, tradeshow, meeting rooms, conference facilities, related functions and related parking facilities, if any (the "Convention Facilities") and (c) renovation of the Public Auditorium and related parking facilities, if any ("Public Auditorium");

WHEREAS, the County has determined that Developer and MMPI have the ability to perform or cause the performance of this Agreement, and that the construction of the Facility (as defined below) and the successful completion of the Project (as defined below) are in the vital and best interests of the County and the health, safety, morals and welfare of its residents; and

WHEREAS, the Parties are entering into this Agreement to evidence, among other things, their agreements regarding the design, construction, furnishing, equipping and development of the Facility.

NOW, THEREFORE, in consideration of the representations, covenants and agreements contained herein, the Parties hereto agree as follows:

ARTICLE 1

DEFINITIONS

1.1 Definitions. As used in this Agreement, the following terms shall have the meanings indicated in this Article 1 unless a different meaning is specifically provided or the context otherwise requires:

"Action" shall mean any dispute, lawsuit, proceeding, Governmental Authority investigation, hearing, audit, claim, appeal, administrative proceeding or judicial proceeding.

"Affiliate" of any Person means any other Person Controlling, Controlled by or under Common Control with the first Person.

"Agreement" shall mean this Construction Administration Agreement by and among the Parties, together with all schedules, exhibits and appendices hereto, as the same may be amended or modified from time to time in accordance with the terms hereof.

"Applicable Law" shall mean all present and future laws, ordinances, codes, orders, rules, regulations and requirements of all federal, state and local governments, courts departments, commissions, boards and officers.

"Arbitration Dispute" shall mean: (a) any dispute or matter expressly identified in this Agreement as an Arbitration Dispute or as subject to the Arbitration Dispute Resolution Process; and (b) any other dispute or claim, not described in the preceding clause (a), arising from or in connection with this Agreement involving an amount not more than Two Million Five Hundred Thousand Dollars (\$2,500,000) in Equivalent Dollars; provided, however, that any claim for specific performance or other equitable relief shall not be an Arbitration Dispute for purposes of this Agreement.

"Arbitration Dispute Resolution Process" shall mean, with respect to matters under this Agreement, the dispute resolution process set forth in Article 15.

"Architect" shall mean the principal design architect for the Project or any Phase of the Project, whether engaged directly by Developer or by Contractor under a bridging design-build arrangement.

"Architect Agreement" shall mean (a) in the case of a bridging design-build arrangement, the agreement between Developer and Bridging Consultant, and the agreement between Contractor and Architect or (b) in the case the Parties agree not to use a bridging design-build arrangement, the agreement between Developer and Architect, all as any of the same may be amended from time to time in accordance with this Agreement.

"As-Built Drawings" shall mean reproducible record drawings and electronic (CADD) drawings of the Construction Documents, noting all deviations between the Work and the originally issued Construction Documents, including those deviations established by Change Order.

"Auditable Records" shall mean all accounting records for the expenditures of all funds comprising Project Costs or the Loan relating to the design, construction, furnishing and equipping of the Facility through Final Completion, including records, books, papers, documents, subscriptions, recordings, agreements, purchase orders, invoices, equipment leases, contracts, commitments, arrangements, notes, daily diaries, reports, receipts, vouchers, and similar documents reasonably requested by the County that pertain to Developer's design and construction obligations under this Agreement.

"Available Funds" shall mean, in the aggregate, the Bond Proceeds and the Non-Bond Proceeds.

"Bonds" shall mean one or more series of bonds issued by the County in connection with the funding of the costs of the acquisition of the Site and design, construction, development, furnishing and equipping the Facility, the aggregate principal, maturities and other terms of

which will be consistent with the goal that the annual debt service on such bonds will not, in the County's reasonable estimate, exceed Thirty-Six Million Dollars (\$36,000,000).

"Bond Proceeds" shall mean the proceeds of the Bonds net of any portion thereof used for the payment of costs of issuance of the Bonds or for the funding of debt service reserves required by the Financing Agreements.

"Bridging Consultant" shall mean the design architect engaged directly by Developer to prepare at least the Conceptual Plans and Design Options.

"Budget Cap" shall mean the fixed limit of Project Costs available for the design, construction, furnishing, equipping and development of the Facility, as established in the Master Project Budget submitted by Developer and approved by the County.

"Business Day" shall mean a day of the year on which commercial banks are not required or authorized to be closed for business in Cleveland, Ohio. The use herein of the word "day", as opposed to "Business Day," shall mean a calendar day.

"Casualty" shall have the meaning set forth in Section 11.3.1 hereof.

"CD Review Session" shall have the meaning set forth in Section 4.15.1 hereof.

"Change Order" shall mean a written instrument, including a construction change directive, signed by Developer and Contractor authorizing a change or modification in the Work, the contract sum set forth in the contract relating to the Work or the time of performance of such Work.

"City" shall mean the City of Cleveland, Ohio.

"Commissioning and Close-Out Plan" shall mean the commissioning and close-out plan prepared by Contractor for Developer in accordance with industry standards that addresses the close-out and turnover of the Facility, including the following: occupancy prior to Substantial Completion; Substantial Completion and Final Completion inspections, equipment testing and start-up; completion of Punch List Items; training of employees for operation and maintenance of major systems and equipment; submittal of warranties from manufacturers and suppliers; turnover of spare parts and acquired excess materials; turnover of Project documents; and issuance of temporary and permanent certificates of occupancy for a Phase or the Facility, as applicable.

"Conceptual Plans" shall mean the conceptual design plans, carrying forward the Feasibility Plans into more detailed plans and specifications and illustrating the scale and relationship of the various Facility components, which shall contain square footage and volume calculations for the building interior spaces, the general layout, location of general and specific areas, building exterior spaces, major architectural and interior finishes and such additional plans and information as are reasonably required for commencement of the design development design phase of the Facility.

"Construction Agreement" shall mean any construction agreement between Developer and a Contractor, as the same may be amended from time to time in accordance with this Agreement. The Construction Agreement for the design and construction of the Facility is expected to be in the form of a bridging design-build agreement.

"Construction Certification" shall mean the certificate of Developer stating whether or not the Available Funds remaining in the Construction Trust Fund after a disbursement will be sufficient to complete the construction of the Facility in accordance with the Construction Documents.

"Construction Contingency Fund" shall mean a contingency for Construction Costs that shall be included in the total GMP under the Construction Agreement, and which shall be established at the time that the final GMP is established and shall be separate and apart from any other Project contingency funds.

"Construction Cost" shall mean the total cost to Developer of all elements of the Work contained in the Construction Documents, and shall include the cost of the Work at current market rates of labor, equipment and materials plus the Contractor's fee.

"Construction Cost Reserve Fund" shall mean the fund established as a reserve for any Excess Construction Costs and held by the Indenture Trustee.

"Construction Documents" shall mean the working construction drawings and specifications describing the size, character, appearance, functionality, design, construction, materials, finishes, structure and mechanical, electrical and all other systems, amenities and components of the Facility, and shall, at a minimum, contain the details and information required by Applicable Laws in order to obtain a building permit or other construction permits for the construction of the Facility. Change Orders approved in accordance with this Agreement shall be considered Construction Documents.

"Construction Guarantee" shall mean a construction completion guarantee, substantially in the form attached hereto as Exhibit J (or such other form as may be satisfactory to the County and Developer), executed by Contractor in favor of the County, that guarantees the GMP for the Work and the date on which Substantial Completion for the Work shall occur, that has no exclusion for concealed, unknown or unforeseen conditions other than conditions resulting from a Force Majeure Event or Environmental Conditions not caused by Contractor.

"Construction Period" shall mean the period commencing on the Lease Commencement Date and terminating on the Substantial Completion Date.

"Construction Schedule" shall mean the construction schedule or schedules relating to the Work to be prepared by Contractor pursuant to the requirements of the Construction Agreement.

"Construction Trust Fund" shall mean the account or accounts to hold the proceeds under the Loan Agreement (other than the portion thereof disbursed by the County from Non-Bond Proceeds prior to the date of the first issuance of Bonds) created under the Indenture between the County and Indenture Trustee.

"Consultant" shall mean the Persons contracted by Developer, Bridging Consultant, Architect or Contractor in connection with the design or engineering of the Facility.

"Contractor" shall mean a general contractor, construction manager or design-builder selected and engaged by Developer to provide pre-construction, construction or design-build services to one or more Phases.

"Control" or "Controlled" shall mean (a) the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of a Person, whether through ownership of voting securities, by contract or otherwise and (b) the ownership, direct or indirect, of no less than 51% of the voting securities of such Person, and the terms Controlled, Controlling and Common Control shall have correlative meanings.

"Convention Facilities" shall mean the temporary exhibition, tradeshow and conference facilities, and back-of-house functions, related parking facilities, if any, and the site therefor.

"Cost Overruns" shall mean all costs and expenses in connection with the design, construction, development, furnishing and equipping of the Facility to the extent such costs and expenses exceed the Budget Cap.

"County" shall mean the County of Cuyahoga, Ohio, a political subdivision duly organized and validly existing under the Constitution and laws of the State of Ohio.

"County Contingency Fund" shall mean the fund equal to one percent (1%) of design costs and Construction Costs budgeted in the Master Project Budget, which fund shall be fixed at Final Project Finance Approval, and separate and apart from any other Project contingency funds and which shall be specifically identified in the Master Project Budget.

"County Default" shall have the meaning set forth in Section 13.2 hereof.

"County Default Notice" shall mean a written notice of default from the County to Developer, identifying with particularity a Developer Default.

"County Design Approval Procedures" shall have the meaning set forth in Section 4.9.

"County Indemnified Persons" shall mean the County, the County Representative, the City of Cleveland, and their respective elected officials, appointed officials, board members, officers, directors, employees and agents.

"County Payments" shall mean, collectively, the Supplemental Payments and the Monthly Base Rental Payments.

"County Project Costs" shall mean the following costs incurred by the County: (a) Site acquisition costs, and (b) the County's costs incurred in its coordination and administration of the development and construction of the Project. The County Project Costs will be reimbursed to the County from Available Funds, provided that such reimbursement shall not exceed the amount specifically identified as County Project Costs in the Master Project Budget. County Project

Costs do not include costs and expenses incurred by the County in issuing the Bonds or otherwise providing funds for the Project.

"County Rent Reserve" shall mean the reserve established by the County from the Non-Bond Proceeds.

"County Representative" shall mean Barbara Shergalis.

"County Requirements" shall mean those goals, attributes and components initially identified in the Development Agreement, which shall be updated and revised by the County, in consultation with Developer, as part of the County's approval of the Conceptual Plans.

"Design Budget" shall mean the budget submitted by Developer to the County for the preparation of the Design Documents through the completion and acceptance of the Conceptual Plans and Design Options.

"Design Development Documents" shall mean drawings and specifications carrying forward the Conceptual Plans and County elected Design Option, illustrating the scope, relationship, forms, size, functionality and appearance of the Facility, by means of plans, sections and elevations, typical construction details, equipment layouts and specifications, including site plans, floor plans, elevations, enlarged floor plans, miscellaneous details and updated outline specifications, prepared, reviewed and approved, subject to the comments and objections provided by the Parties in accordance with Section 4.9 hereof.

"Design Documents" shall mean such program statements, schematics, plans, drawings and documents that fix and describe the size, character and design of the Facility, including, as applicable, the Feasibility Plans, Conceptual Plans, Design Options, Design Development Documents and Construction Documents.

"Design Option" shall mean one of three (3) distinct exterior design theme options for the Facility.

"Developer" shall mean MMPI Cleveland Development LLC, a Delaware limited liability company.

"Developer Default" shall have the meaning set forth in Section 13.1 hereof.

"Developer Default Notice" shall mean a written notice of default from Developer to the County, identifying with particularity a County Default.

"Developer Fee" shall mean the fee to be paid by the County to MMPI in consideration for the development and construction management services to be provided by MMPI pursuant to this Agreement or the other Financing Agreements, which fee is Twelve Million Dollars (\$12,000,000.00)

"Developer Representative" shall mean Lloyd Davidson.

"Development Agreement" shall mean that certain Development Agreement dated as of April 16, 2009, by and among the County, Developer, MMPI and Operator.

"Diligence Objections" shall mean a reasonably detailed written description of the reasons why a Party believes the Site (or material portion thereof relating to a Phase) is not physically or economically feasible for the Project.

"Dispute" shall mean any dispute, controversy or claim between the Parties that is related in any way to this Agreement or the relationship of the Parties under this Agreement, including a dispute, controversy or claim relating to the effectiveness, validity, interpretation, implementation, termination, cancellation or enforcement of this Agreement.

"Dispute Notice" shall mean such written notice that one Party hereto delivers to the other Party to give notice of any Arbitration Dispute.

"Draw Package" shall mean the monthly request prepared by Developer and delivered to the County for disbursement from the Available Funds in accordance with Section 9.6.2.1 hereof.

"Draw Package Submittal Date" shall have the meaning set forth in Section 9.6.3 hereof.

"Effective Date" shall mean the date set forth in the first paragraph hereof.

"Environmental Condition" shall mean (a) any spill, discharge, leakage, emission, injecting, escaping, dumping, disposing, migration or other release of any kind of Hazardous Materials on or in the Site that may cause a threat or actual injury to human health, the environment, plant or animal life; (b) the presence of Hazardous Materials on, in or under the Site in amounts that require remediation under Environmental Law; or (c) any claim or Action pursuant to any Environmental Laws arising out of any of the foregoing.

"Environmental Law" shall mean all laws, including any consent decrees, settlement agreements, judgments, or orders, issued by or entered into with a Governmental Authority, pertaining or relating to: (a) pollution or pollution control; (b) protection of human health or the environment; (c) the presence, use, management, generation, processing, treatment, recycling, transport, storage, collection, disposal or release or threat of release of Hazardous Materials; and (d) the protection of endangered or threatened species.

"Environmental Reports" shall mean those certain environmental reports, assessments, analyses and other documents set forth in Exhibit C attached hereto and made a part hereof.

"Equivalent Dollars" shall mean the equivalent purchasing power at any time of the value of the same number of U.S. Dollars as of January 1, 2009. The Equivalent Dollars of any amount shall be determined by multiplying said amount by one (1) plus a fraction (but not less than zero) expressed as a percentage, the numerator of which is the difference obtained by subtracting (a) the Consumer Price Index for January 1, 2009 from (b) the monthly Consumer Price Index last published prior to the date of such determination, and the denominator of which is the Consumer Price Index for December 31, 2008. As used herein, the term "Consumer Price Index" shall mean the Consumer Price Index - All Urban Consumers - U.S. All Items (Base Year

1982-4 = 100) for the applicable month published by the Bureau of Labor Statistics of the United States Department of Labor or, if such index is no longer available, a substitute index selected by the County that is available to the general public and is intended and commonly used to measure or reflect relative increases and decreases in consumer prices over time.

"Excess Construction Costs" shall have the meaning set forth in Section 9.6.2.3 hereof.

"Expedited ADR" shall have the meaning set forth in Section 15.3.1 hereof.

"Expedited ADR Dispute" shall have the meaning set forth in Section 15.3.1 hereof.

"Facility" shall mean the buildings and other improvements comprising the integrated facility that will include the Medical Mart, Convention Facilities and Public Auditorium, all as described in this Agreement and as will be more particularly described in the Construction Documents.

"Feasibility Plans" shall mean the conceptual elevations, schematic layouts and such additional plans, specifications and information as are reasonably required for the determination of the feasibility and further design and development of the Facility.

"Final Completion" shall mean the completion of the construction of a Phase or the Facility, as applicable, in all material respects in accordance with the Construction Documents and the Construction Agreement and the issuance of a final certificate of occupancy for such Phase or the Facility, as applicable. For the purposes of this Agreement, the term "Final Completion" also shall include: (a) all material Punch List Items have been completed in accordance with industry standards and accepted by the County (in its reasonable judgment) and Developer; (b) all applicable Governmental Authorities issuing the Permits have accepted the Work performed pursuant to such Permits as complete and in compliance with the applicable Permits; (c) final completion of the Work has been certified by Architect; and (d) Developer, Contractor and Subcontractors have completed the Project close-out requirements in accordance with the Commissioning and Close-Out Plan.

"Final Project Finance Approval" shall mean the point in time when the following have been mutually agreed to by the County and Developer: (a) the final Master Project Schedule, the final Master Project Budget and the final Budget Cap; (b) the plan of finance for the development and construction of the Facility; (c) the terms and conditions of the Financing Agreements; and (d) the forms of all Financing Agreements.

"Financing Agreements" shall mean this Agreement, the Trust Indenture, the Loan Agreement, the Land Lease, the Lease, the Sublease, the Operating Agreement and other bond-financing and operating agreements (as determined by the County to be reasonably necessary) entered into in connection with the issuance of the Bonds, the funding of the Project, or the construction and operation of the Facility.

"Force Majeure Event" shall mean the occurrence of any of the following: acts of God; the confiscation or seizure by any Government Authority; insurrections; wars or war-like action (whether actual or threatened); multi-site or regional strikes; landslides, lightning, earthquakes, fires, hurricanes, storms, floods or other severe weather; explosions; epidemics (as declared by

the Center for Disease Control and Prevention); civil disturbance or disobedience; riot, sabotage, terrorism or threats of sabotage or terrorism; change in law that prohibits or materially interferes with development or construction of the Project; or other cause that is not within the reasonable control of the Party claiming the right to delay or excuse performance on account of such occurrence. Notwithstanding the foregoing, "Force Majeure Event" shall not include an inability to pay debts or other monetary obligations in a timely manner.

"Geotechnical Reports" shall mean the geotechnical reports and other matters described on Exhibit C.

"GMP" shall mean the guaranteed maximum price for the Work established in the Construction Agreement.

"GMP Documents" shall have the meaning set forth in Section 2.6.4.

"Governmental Authority" shall mean any and all jurisdictions, entities, courts, boards, agencies, commissions, authorities, offices, divisions, subdivisions, departments or bodies of any nature whatsoever and any and all governmental units (federal, state, county, municipality or otherwise) whether now or hereafter in existence.

"Hazardous Material" shall mean any substance or material identified now or in the future as hazardous under any Environmental Law, or any other substance or material which may be considered hazardous or otherwise subject to statutory or regulatory requirements governing handling, disposal or clean-up, including asbestos and asbestos-containing materials.

"IGMP" shall mean the initial guaranteed maximum price for the Work established pursuant to the terms of this Agreement.

"IGMP Documents" shall have the meaning set forth in Section 2.6.3 hereof.

"Indenture" shall mean the trust indenture by and between the County and the Indenture Trustee that will secure the Bonds.

"Indenture Trustee" shall mean the indenture trustee that shall enter into the Indenture with the County.

"Inspection" shall mean the physical inspection of the Site and due diligence related thereto, which shall include review of title information, surveys, environmental assessment reports and other information concerning the condition of the Site, taking soil and ground water samples, conducting hazardous materials inspections, tests and assessments, reviewing the books and records of Seller concerning the Site and otherwise conducting a due diligence inspection generally in accordance with market practices.

"Inspection Period" shall mean the due diligence or inspection period provided for in each Purchase and Sale Agreement.

"Insurance Policies" shall have the meaning set forth in Section 11.1.

"Known Environmental Conditions" shall mean those certain existing Environmental Conditions depicted in the Environmental Reports that required response or remedial actions in connection therewith.

"Land Lease" shall mean that certain lease between the County, as lessor, and Developer, as lessee, to be entered into pursuant to the terms of the Development Agreement, relating to the land upon which the Site is located.

"Lease" shall mean that certain lease between Developer, as lessor, and the County, as lessee, to be entered into pursuant to the terms of the Development Agreement, relating to the land, building and other improvements comprising the Facility.

"Lease Commencement Date" shall mean the date of execution and delivery of the Lease by the County and Developer.

"Loan" shall mean the Available Funds (other than such funds used for the acquisition of the Site) made available by the County to Developer in one or more disbursements pursuant to the Loan Agreement.

"Loan Agreement" shall mean the agreement between the County and Developer, pursuant to which the County makes available to Developer the Loan.

"Losses" shall mean any and all liability, damages, actions, claims, penalties, suits, judgments, costs and expenses, including reasonable attorneys' fees and expenses (at both trial and appellate levels, whether in actions between the Parties or actions brought by third parties).

"Master Project Budget" shall mean the master budget for the Project setting forth the budget for all Project Costs and County Project Costs through Final Completion, as well as the MMPI Contribution, which shall be expended in accordance with the terms and conditions of this Agreement before or after Final Completion. The Master Project Budget shall include, at a minimum, separate line items for the various categories of Construction Cost, design costs, County Project Costs (including a separate line item for Site acquisition costs), Project Contingency Fund, County Contingency Fund and the MMPI Contribution. County Project Costs shall be shown in the Master Project Budget but are not included in Project Costs, and arrangements for the reimbursement of County Project Costs to the County shall be made separately from the arrangements provided herein for the advance of Project Costs to Developer. Although the Master Project Budget will contain a separate line item for the MMPI Contribution, the expenditure of the MMPI Contribution shall be separately accounted for as provided in Section 8.5.

"Master Project Schedule" shall mean the master schedule for the Project that, using a critical path method, identifies, coordinates and integrates the County's and Developer's responsibilities, Government Authority reviews and other activities as are necessary for the timely completion of the Project and that sets forth, among other things, the date for delivery of the Site, dates for delivery of the various Design Documents and for the review and approval thereof, the duration of design phases, dates for required submittals and bid packages, the schedule of all design meetings with Bridging Consultant or Architect, and milestone dates for the permitting, construction, furnishing and equipping of the Facility and that otherwise complies

with the requirements of Section 4.18 hereof. A preliminary draft of the Master Project Schedule is attached hereto as Exhibit A.

"Medical Mart" shall mean a building containing permanent showrooms for medical devices and equipment and related facilities.

"MMPI" shall mean Merchandise Mart Properties, Inc., a Delaware corporation.

"MMPI Contribution" shall mean an amount equal to Twenty Million Dollars (\$20,000,000).

"Monthly Base Rental Payments" shall have the same meaning as is ascribed to such term in the Lease or, until the Lease has been executed, the Development Agreement.

"Neutral" shall have the meaning set forth in Section 15.3.2 hereof.

"Non-Bond Proceeds" shall mean an amount of Nontax Revenues of the County (a) that does not exceed the aggregate amount of Sales Tax Proceeds collected by the County prior to the issuance of the Bonds and (b) that the County has determined to use to fund a portion of the advances under the Loan Agreement or otherwise to pay Project Costs.

"Non-Reimbursable Expenses" shall mean the following costs and expenses incurred by Developer, MMPI, Operator or their respective Affiliates: salaries, benefits or other compensation of their officers, employees, or other staff; overhead costs of Developer and MMPI, including rent, insurance, equipment, accounting, legal and administrative costs and expenses (except for rent, insurance and equipment costs of an on-site or local project office to the extent included in Reimbursable Expenses described in Exhibit F), and one-half of all meal, travel, transportation and hotel expenses incurred by Developer, MMPI, Operator or their respective Affiliates on or before the Effective Date.

"Nontax Revenues" shall mean all moneys of the County that are not moneys raised by taxation, to the extent available for the purpose of making the County Payments including, but not limited to, the following: (a) grants from the United States of America and the State of Ohio; (b) payments in lieu of taxes now or hereafter authorized by State of Ohio statute to the extent not pledged to pay debt charges on other County indebtedness; (c) fines and forfeitures that are deposited in the County's General Fund; (d) fees deposited in the County's General Fund for services provided and from properly imposed licenses and permits; (e) investment earnings on the County's General Fund; (f) investment earnings on other funds of the County that are credited to the County's General Fund; (g) proceeds from the sale of assets that are deposited in the County's General Fund; (h) gifts and donations; and (i) all rental payments that are deposited in the County's General Fund.

"Operator" shall mean Cleveland MMCC LLC, a Delaware limited liability company.

"Operating Agreement" shall mean that certain Operating Agreement by and between the County and Operator (which may be incorporated into the Sublease) to be entered into pursuant to the terms of the Development Agreement, setting forth certain agreements relating to the operation of the Facility.

"Parties" shall mean the County, Developer and MMPI.

"Pending Dispute Fund" shall have the meaning set forth in Section 15.7 hereof.

"Permits" shall mean all permits, consents, approvals, authorizations, variances, waivers, certificates and approvals from all Governmental Authorities, utility companies and any other Person that are required for the planning, design, construction, furnishing, equipping, completion, use and occupancy of the Project and the Facility.

"Permitted Transfer" shall mean any transfer to (a) any entity that is directly or indirectly Controlled by or is under Common Control with MMPI, Vornado Realty Trust or Vornado Realty L.P., or (b) a Permitted Transferee approved in writing by the County.

"Permitted Transferee" shall mean (a) the County, (b) any other governmental entity established under the laws of the State of Ohio, and (c) any other entity (i) with a net worth, together with its Affiliates, as of the date of the transfer, of at least \$100 Million (exclusive of the value of Project), and (ii) who, immediately prior to such transfer, controls, together with its Affiliates, real estate equity assets of at least \$200 Million.

"Person" shall mean any natural person, firm, partnership, association, corporation, limited liability company, trust, entity, public body, authority, governmental unit or other entity, as applicable.

"Phase" shall mean the planning, design, construction, furnishing, equipping and development activities related to any one of the Medical Mart, Convention Facilities or Public Auditorium.

"Phase I Survey" shall mean a Phase I environmental survey and asbestos survey provided by an environmental consultant reasonably satisfactory to the County.

"Plan Objections" shall have the meaning set forth in Section 4.23 hereof.

"Pre-Agreement Cost Report" shall mean the report delivered by Developer to the County setting forth all Pre-Development Costs that Developer incurred prior to April 16, 2009 (the effective date of the Development Agreement), together with receipts or other indicia of the expenses incurred reasonably acceptable to the County.

"Pre-Development Costs" shall mean actual cash expenditures incurred by Developer, or by MMPI on behalf of Developer, and paid to third parties in connection with planning, design, construction, furnishing, equipping and development of the Project, or otherwise for the purpose of furthering the Project and meeting the goals of the Development Agreement and the transaction contemplated thereby, prior to the start of construction, including evaluation of alternative sites for the Site, presentations to public officials regarding the Project, preliminary cost estimating and Project sizing, engineering studies and Environmental Reports, due diligence and Inspections, preparation of Design Documents, negotiation and preparation of construction, engineering, architectural and other consultants' contracts, and negotiation and preparation of the Purchase and Sale Agreement. Pre-Development Costs do not include any expenses that are classified as Reimbursable Expenses or Non-Reimbursable Expenses.

"Progress Report" shall mean the monthly report to be provided by Developer to the County that includes the then-current Master Project Schedule and Construction Schedule, and generally describes the status of the permitting, design, construction, furnishing and equipping of the Facility. Each Progress Report shall include: actual versus estimated percentage completion for each component of the Phases; any change in Project Costs incurred in connection with the construction, furnishing and equipping of the Facility; expenditures to date, on a line item basis, against the Master Project Budget; performance against the Master Project Schedule; any change in the critical path of the Project; approved revisions to the Master Project Schedule as of the end of each reporting period; a discussion of all material issues relating to the design, construction, furnishing, equipping and development of the Project, along with proposed solutions for each issue. Each Progress Report shall address significant plans and actions for the next month.

"Project" shall mean, collectively, the design, construction, furnishing, equipping, and development of the Facility through Final Completion.

"Project Contingency Fund" shall mean a contingency not to exceed four percent (4%) of the Project Costs budgeted in the Master Project Budget, which fund shall be fixed at Final Project Finance Approval, and separate and apart from the County Contingency Fund, the Construction Contingency Fund and any other Project contingency funds, and which shall be specifically identified in the Master Project Budget.

"Project Costs" shall mean Pre-Development Costs, Reimbursable Expenses and other costs and expenses incurred by Developer, or MMPI on behalf of Developer, and paid to third parties that are directly related to the planning, designing, constructing, furnishing, equipping and marketing the Facility through Final Completion, excluding, however, Non-Reimbursable Expenses, County Project Costs and any other cost or expense that this Agreement expressly excludes from Project Costs.

"Public Auditorium" shall mean the potential renovation and use of all or a portion of Cleveland Public Auditorium and related parking facilities, if any.

"Punch List Items" mean those minor items identified during the Substantial Completion inspection that (a) are at variance with the Construction Documents as of Substantial Completion, and (b) do not materially interfere with the use and occupancy of the Facility.

"Purchase and Sale Agreement" shall mean each purchase and sale agreement for the Site.

"Recovery Plan" shall mean a written plan prepared by Contractor that addresses an anticipated or actual delay to an item on the critical path of the Master Project Schedule, and that describes in detail how the Work will be completed by the Substantial Completion Date notwithstanding such anticipated or actual delay.

"Reimbursable Expense" shall mean (a) travel, hotel, transportation, meals or similar expenses of Developer's or MMPI's employees and staff incurred by Developer in connection with performing their respective duties under this Agreement (including travel, hotel, transportation, meals or similar expenses of potential tenants and trade show owners and operators that are paid for by Developer as part of its marketing efforts) to the extent consistent

with the policies and procedures set forth in Exhibit F attached hereto, and (b) such other expenses incurred for the benefit of the Project as are listed on Exhibit F attached hereto; provided, however, only one-half of the travel, hotel, transportation and meal expenses incurred by Developer, MMPI, Operator or their respective Affiliates on or before the Effective Date shall be considered Reimbursable Expenses.

"Reimbursable Expenses Limit" shall mean Three Million Two-Hundred Forty-Six Thousand Dollars (\$3,246,000).

"Sales Tax Proceeds" shall mean the 0.25% sales tax levied by the County pursuant to Resolution Nos. 073101 and 073102 adopted by the Board of County Commissioners on July 26, 2007.

"SBE Program" shall mean the County's Small Business Enterprise Program Policies and Procedures, dated as of October 1, 2009, a copy of which Developer has received.

"Seller" shall mean the Person identified in a Purchase and Sale Agreement as the record owner of a portion of the Site.

"Significant Event Report" shall have the meaning set forth in Section 6.4.

"Site" shall mean the site where the Facility is located.

"Site Delivery Date" shall mean the actual date on which the County delivers the Site to Developer.

"Site Selection Notice" shall mean the written notice to be provided by the County to Developer identifying the site selected for the Facility, which shall include a legal description for the Site.

"Subcontract" shall mean an agreement between Contractor and a Subcontractor.

"Subcontractor" shall mean any Person in privity with Contractor or any other subcontractor at any tier to perform a portion of the Work. Subcontractors include suppliers of materials or equipment.

"Sublease" shall mean that certain sublease between the County, as sublessor, and Operator, as sublessee, to be entered into pursuant to the terms and conditions of the Development Agreement, relating to the building and other improvements that comprise the Facility.

"Substantial Completion" or "Substantially Completed" shall mean the completion of a Phase or the Facility (as applicable) to the extent that: (a) the Facility can be legally occupied and operated, (b) all applicable Permits have been issued, including a temporary or final (as the case may be) certificate of occupancy and other certificates from applicable Governmental Authorities necessary to occupy and operate the Facility for its intended purposes including conducting a public event therein, (c) Architect has delivered a Substantial Completion certificate to Developer and the County stating that the Work has been substantially completed

subject only to Punch List Items listed therein, and (d) the County Representative has approved such certificate.

"Substantial Completion Date" shall mean the date that a Phase or the Facility (as applicable) achieves Substantial Completion.

"Supplemental Payment" shall have the same meaning as is ascribed to such term in the Lease or, until the Lease has been executed, the Development Agreement.

"Surety Bond" shall mean a performance and payment bond in an amount equal to the full amount of the GMP issued by a United States or European financial institution having total assets in excess of U.S. \$70,000,000,000 and such institution's senior unsecured long-term indebtedness must be rated A- (stable) or higher by S&P or A2 (stable) or higher by Moody's.

"Survey" shall mean a current "as built" land survey of the Site prepared by a licensed surveyor in accordance with the 2005 Minimum Standard Detail Requirements promulgated by the American Congress on Surveying and Mapping.

"Tenant Lease-Up Costs" shall have the same meaning as ascribed to such term in the Sublease (or the Operating Agreement) or, until the Sublease (or the Operating Agreement) has been executed, the Development Agreement.

"Termination Notice" shall mean the written notice delivered by a Party exercising its rights under this Agreement to terminate this Agreement.

"Title Commitment" shall mean a commitment for title insurance for the Site issued by Chicago Title Insurance Company.

"Transfer" shall mean any transfer of Control of Developer or any sale, assignment, transfer, pledge, mortgage or encumbrance of this Agreement.

"Work" shall mean the furnishing of all materials, labor, detailing, layout, equipment, supplies, plants, tools, scaffolding, transportation, temporary construction, superintendence, demolition, and all other services, facilities and items, necessary for the full and proper performance and completion of the Facility as set forth in the Construction Documents and such items as are reasonably inferable therefrom, whether or not performed or located on or off of the Site.

1.2 Accounting Terms. Any accounting term used in this Agreement shall have, unless otherwise specifically provided herein, the meaning customarily given in accordance with generally accepted accounting principles ("GAAP"), and all financial computations hereunder shall be computed, unless otherwise specifically provided herein, in accordance with GAAP, as consistently applied.

1.3 Other Terms. Unless otherwise defined herein, words that have well known construction industry meanings are used in this Agreement with such recognized meanings.

1.4 Context. As the context of this Agreement may require, terms in the singular shall include the plural (and vice versa) and the use of feminine, masculine or neuter genders shall include each other. Wherever the word "including" or any variation thereof is used herein, it shall mean "including, without limitation," and shall be construed as a term of illustration, not a term of limitation. Wherever the word "or" is used herein, it shall mean "and/or".

1.5 Incorporation by Reference. 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.

1.6 Calculation of Time. Unless otherwise stated, all references to "day" or "days" shall mean calendar days. If any time period set forth in this Agreement expires on other than a Business Day, such period shall be extended to and through the next succeeding Business Day.

ARTICLE 2

COOPERATION, PHASING AND PROJECT DELIVERY

2.1 Cooperation of the Parties; Process Facilitation.

2.1.1 The Parties shall cooperate with each other, and shall cause their respective contractors, subcontractors, consultants and agents (including Bridging Consultant, Architect, Consultants, Contractor and Subcontractors) to cooperate with each other at all times so as to effect an efficient and timely completion of the Project consistent with the dates set forth in the Master Project Schedule. The Parties shall use diligent, good faith efforts to resolve expeditiously any disputes that may arise among their respective representatives, consultants and agents during the construction of the Facility in a manner that allows the funding, planning, design, construction, furnishing and equipping to proceed expeditiously in order to achieve Substantial Completion on or before the Substantial Completion Date and in accordance with the Master Project Schedule.

2.1.2 In furtherance thereof, the Parties shall participate, and shall cause their respective representatives, consultants and agents to participate, in one or more process facilitation sessions involving all members of their respective project development teams to "dress rehearsal" the project's processes and procedures, including pay application, change order and dispute resolution processes. The County, Developer and Contractor shall cooperate to develop the process facilitation sessions jointly. Each participant shall bear its own cost and expense of attendance.

2.2 County Representative.

2.2.1 The County has designated the County Representative as its agent and representative with respect to the design, construction, furnishing, equipping and development of the Facility. The County Representative shall act as liaison and contact person between Developer and the County in administering and implementing the terms of this Agreement. The County may change or replace the County Representative upon five (5) days' prior written notice to Developer.

2.2.2 Whenever in this Agreement the County and Developer have rights or obligations with respect to communication, delivery of documents, processing of submittals and similar administrative matters, the term "County" shall mean "County Representative." Unless specifically provided otherwise herein, all instructions from the County to Developer relating to this Agreement shall be issued or made in writing through the County Representative. All communications and submittals from Developer to the County shall be issued or made through the County Representative, except as otherwise specifically provided herein or unless the County or the County Representative shall direct otherwise in writing. Except as otherwise specifically provided in this Agreement, Developer shall submit to the County Representative any request for approval or review of matters that require approval or review by the County pursuant to this Agreement, and the County Representative shall either approve or deny, or obtain the County's approval or denial (as to matters requiring County approval), or obtain the County's review (as to matters requiring County review), as required or applicable hereunder. Developer may rely upon the authority of the County Representative to act for and bind the County for matters pertaining to this Agreement regarding actions, consents, reviews and approvals to be made by the County Representative, except as otherwise provided herein.

2.2.3 In addition to matters specifically provided for herein, the County Representative is authorized to: (a) monitor the performance and progress of all aspects of the design, construction, furnishing, equipping and development of the Facility and report its findings to the County; and (b) inspect and approve (to the extent such approval is permitted or required) all documents delivered pursuant to this Agreement to ensure compliance with the provisions hereof. The County Representative shall not perform the reviews or inspections required for issuance of Permits, and the provisions for review and approvals set forth in this Section 2.2 do not apply to Permit review by the County exercising its regulatory authority.

2.2.4 No approval by the County Representative shall impose, imply, or be construed as an assumption by the County or the County Representative of any duties or responsibilities of others with respect to the design, construction, development, furnishing or equipping of the Facility or for the construction means and methods employed by or on behalf of Developer.

2.3 Development Manager and Developer Representative.

2.3.1 MMPI is authorized as Development Manager to act, and shall act, on behalf of Developer with respect to all matters regarding the coordination, administration and management of the planning, design and construction of the Project, including all matters in respect of the Project arising under this Agreement. MMPI shall have authority and responsibility to give all notices, directions, authorizations, approvals and notices of disapproval on behalf of Developer as may be contemplated or permitted hereunder; provided, however, MMPI is not authorized to amend this Agreement, which shall require the written approval of the County, Developer and MMPI. Without limitation on the foregoing, MMPI shall undertake responsibility for (a) coordinating and managing (i) site due diligence under Section 3.3, (ii) preparation and submission of Design Documents, the Master Project Budget and the Master Project Schedule under Article 4, and (iii) the planning, development, design, construction, furnishing and equipping of the Facility under Article 5; (b) the preparation and submission of schedules and reports under Article 6; and (c) the preparation and submission of Draw Packages

under Section 9.6. All actions taken by MMPI under this Agreement shall be deemed performed with the authority of Developer and shall be binding upon Developer; provided that Developer reserves the right to perform any such actions on its own behalf. Pursuant to this Agreement, MMPI shall exercise its professional skill and judgment and use commercially reasonable efforts in performing the above described coordination, management and administration services and shall be directly liable both to Developer and to the County for the performance of such services; provided, however, that MMPI does not assume or undertake the obligation of Developer under this Agreement or the Development Agreement to cause the Facility to be constructed or completed or to fund Cost Overruns with respect to the Project.

2.3.2 MMPI has designated the Developer Representative as its and Developer's agent and representative with respect to the design, construction, furnishing, equipping and development of the Facility. The Developer Representative shall act as liaison and contact person between Developer and MMPI and the County in administering and implementing the terms of this Agreement. MMPI may change or replace the Developer Representative upon five (5) days' prior written notice to the County.

2.3.3 Whenever in this Agreement the County and Developer (or MMPI) have rights or obligations with respect to communication, delivery of documents, processing of submittals and similar administrative matters, the term "Developer" or "MMPI" shall mean "Developer Representative." Unless specifically provided otherwise herein, all instructions from Developer or MMPI to the County relating to this Agreement shall be issued or made in writing through the Developer Representative. All communications and submittals from the County to Developer or MMPI shall be issued or made through the Developer Representative, except as otherwise specifically provided herein or unless Developer, MMPI or the Developer Representative shall direct otherwise in writing. Except as otherwise specifically provided in this Agreement, the County shall submit to the Developer Representative any request for approval or review of matters that require approval or review by Developer or MMPI pursuant to this Agreement, and the Developer Representative shall either approve or deny, or obtain Developer's or MMPI's approval or denial (as to matters requiring Developer or MMPI approval), or obtain Developer's or MMPI's review (as to matters requiring Developer's or MMPI's review), as required or applicable hereunder. The County may rely upon the authority of the Developer Representative to act for and bind Developer and MMPI for matters pertaining to this Agreement regarding actions, consents, reviews and approvals to be made by the Developer Representative, except as otherwise provided herein.

2.4 Phasing. As contemplated by the Master Project Schedule, the Facility shall be designed, constructed, furnished, equipped and developed in phases. Unless otherwise set forth in this Agreement, all of the terms and conditions of this Agreement (including the defined terms used herein), and all rights and remedies of the Parties, shall independently apply to each Phase. For example, if a provision of this Agreement refers to "Design Documents" or "Substantial Completion", it is intended to apply to the Design Documents or Substantial Completion for each Phase, as the case may be. The Parties shall cooperate in all reasonable ways to adjust the various submission, review and approval dates set forth in this Agreement to accommodate the phased delivery of the Facility in a manner consistent with the Master Project Schedule. Construction on any one Phase shall not commence without the mutual agreement of the County

and Developer, and in no event until a GMP for all Phases and the Budget Cap for the Facility have been agreed to by the County and Developer.

2.5 County Approval of Bridging Consultant, Architect and Contractor. The County shall have the right to approve in advance, such approval not to be unreasonably withheld, conditioned or delayed, the following: (a) Contractor; (b) Bridging Consultant, (c) Architect (whether selected by Developer directly or selected by Contractor in a bridging design-build arrangement); (c) the Architect Agreements; and (d) the Construction Agreement. In reviewing the proposed Contractor, the County may consider, among other relevant factors, the financial strength of the proposed Contractor and its surety, and the proposed Contractor's ability to provide the Construction Guarantee. The Construction Agreement shall contain the provisions (in a final form reasonably satisfactory to the County) set forth in Exhibit D hereof. The Architect Agreements shall contain the provisions (in a final form reasonably satisfactory to the County) set forth in Exhibit E hereof. Developer shall provide drafts of the Construction Agreement and the Architect Agreements and the County shall be entitled to review and provide comments to the Construction Agreement and the Architect Agreements. Contractor shall be selected using a competitive proposal process whereby Developer shall solicit at least three (3) competitive proposals from design-build firms with proven experience in projects of similar size, scope and complexity. Developer shall, subject to the County's approval as set forth above, select the design-build firm that provides the best value to the Project, which the Parties acknowledge may not necessarily be the firm with the lowest cost proposal.

2.6 Project Delivery Method; GMP Development.

2.6.1 Developer shall employ a bridging design-build project delivery method whereby the Bridging Consultant shall be directly engaged by Developer to prepare the Design Documents through at least the Conceptual Plans and Design Options phases, and thereafter Contractor (through Architect) shall produce the remaining Design Documents, including, at a minimum, the Construction Documents. Developer shall prepare and deliver to the County its plan for the division of responsibility between Bridging Consultant and Contractor (through Architect) with respect to the production of the Design Development and GMP Documents, and the County shall have the right to approve such plan, which approval shall not be unreasonably withheld or delayed. After Contractor (through Architect) takes over responsibility for producing the Design Documents, the Bridging Consultant shall continue to work for Developer and shall be responsible for, among other duties, reviewing and providing comments to the Design Documents produced by Contractor (through Architect), reviewing selected shop drawings and other Contractor submittals, reviewing and certifying Contractor pay applications and establishing the dates of Substantial and Final Completion. The Contractor shall expressly assume design responsibility for all Design Documents that the Architect is preparing including, at a minimum, the Construction Documents.

2.6.2 Use of a project delivery method other than bridging design-build shall require the prior approval of the County. Regardless of the project delivery method ultimately employed for any Phase, the County shall continue to have the approval rights of the County set forth in this Agreement, including the County's right to approve the Design Documents, Bridging Consultant, Architect and Contractor, and, subject to the limitations set forth in Section 2.5, the Construction Agreement and the Architect Agreements. Regardless of the project delivery

method applicable to any Phase, the minimum requirements set forth in this Article 2 and otherwise in this Agreement shall be incorporated into the applicable contracts.

2.6.3 On or before the applicable dates set forth in the Master Project Schedule, Developer shall submit to the County the completed Conceptual Plans for each Phase along with the following: (a) its preliminary Master Project Budget for the entire Project, (b) its proposed initial guaranteed maximum price for the design, construction, furnishing and equipping of each Phase (the "IGMP"), (c) its list of qualifications and assumptions relating to the IGMP (the Conceptual Plans, together with the qualifications and assumptions relating to the IGMP, are collectively referred to herein as the "IGMP Documents"), and (d) the written confirmation of Contractor that it agrees with the IGMP and the IGMP Documents. The IGMP is intended as the initial estimated limit of Construction Cost available for all Work relating to the Facility.

2.6.4 On or before the applicable dates set forth in the Master Project Schedule, Developer shall submit to the County the Design Development Documents for each Phase along with the following: (a) its updated Master Project Budget proposed for the entire Project, which shall specifically identify the Budget Cap, (b) its proposed Master Project Schedule for the entire Project, (c) its proposed GMP for the entire Project (and any allocation of the GMP for the respective Phases proposed by Developer), (d) its list of qualifications and assumptions relating to the GMP (the Design Development Documents, together with the qualifications and assumptions relating to the GMP, are collectively referred to herein as the "GMP Documents"), (e) the Construction Guarantee, (f) a commitment from the surety to supply the Surety Bond for the Project in an amount not less than the GMP (which Surety Bond may come into effect in phases in coordination with commencement of work on the respective Phases of the Project), with the terms and conditions set forth in Section 5.5, and (g) a binder or insurance policy for the insurance required pursuant to Section 11.1.4 hereof. On or before the date or dates set forth in the Master Project Schedule, Developer, the County, Bridging Consultant, Contractor and Architect shall meet to reconcile any questions, discrepancies or disagreements relating to the proposed GMP or the GMP Documents. The reconciliation shall be documented by an addendum to the GMP Documents that shall be approved in writing by Developer, the County, Bridging Consultant, Architect and Contractor. Developer and Contractor shall then enter into an amendment to the Construction Agreement incorporating the approved GMP and GMP Documents. A draft of the amendment establishing the GMP shall be delivered to the County for its review, comment and approval. After the County's approval, Developer shall deliver to the County a copy of the executed amendment along with the executed Construction Guarantee. Prior to the start of construction for any Phase, Developer shall deliver to the County a copy of the executed Surety Bond in the amount equal to the GMP that applies to such Phase. The GMP, once established, shall be revised only upon the issuance of a properly authorized Change Order approved by the County. If the County disapproves the proposed GMP, then either Party may deliver a Termination Notice in accordance with the procedure set forth in Section 4.23; provided that for this purpose the term "economically feasible" as used in said Section 4.23 shall also include a determination by either Party as to whether the proposed GMP is reasonable in the context of the Master Project Budget and in relation to the Facility reflected in the Design Development Documents.

2.7 Key Personnel. MMPI represents to the County that MMPI shall employ a sufficient number of employees, personnel and consultants to perform its and Developer's duties

under this Agreement. MMPI shall staff the Project substantially as set forth on Exhibit I, as amended and approved by the County to reflect design and construction phase activities, and the personnel listed on Exhibit H shall be assigned to this Project and shall not, so long as they are in the employ of MMPI, be removed from the Project without the prior written consent of the County (which consent shall not be unreasonably withheld). The County shall have the right to approve (which approval shall not be unreasonably withheld, conditioned or delayed) the person proposed by Developer to fill any key personnel position listed on Exhibit H that has not been filled prior to the Effective Date. MMPI shall comply with all equal employment opportunity and other diversity opportunity programs as required by federal, state and local laws, rules, ordinances and codes. If requested by the County, Developer shall promptly replace any employee of Developer that the County, in its reasonable judgment, determines is acting in an unprofessional manner or has performed illegal or immoral acts. Any replacement of personnel shall be at no additional cost to the County, and any employee selected as a replacement shall be mutually agreed to in writing by MMPI and the County (which agreement by the County shall not be unreasonably withheld).

2.8 Anti-Kickback. Developer and MMPI shall not offer to any Person, or accept from any Person, any money, fee, commission, credit, gift, gratuity, thing of value, or compensation of any kind that is provided (or offered to be provided), directly or indirectly, to any Person for the purpose of improperly obtaining or rewarding favorable treatment in connection with any contract or agreement entered into in connection with the development, construction, furnishing or equipping of the Facility (including the Architect Agreements and the Construction Agreement).

ARTICLE 3

ACQUISITION AND DELIVERY OF SITE

3.1 Selection and Acquisition of the Site. The County shall be responsible for selecting the parcel or parcels comprising the Site where the Facility will be located and shall identify the Site in the Site Selection Notice delivered by the County to Developer. Provided there are no Diligence Objections, the County shall deliver the Site on or before the date or dates set forth in the Master Project Schedule.

3.2 Purchase and Sale Agreement. The County shall be responsible for acquiring the parcel or parcels comprising the Site pursuant to one or more Purchase and Sale Agreements to be entered into by the County with each Seller.

3.3 Site Due Diligence.

3.3.1 During the Inspection Period, the County and Developer shall cooperate to physically inspect the Site and conduct the Inspections. As part of the Inspection, Developer shall order, and provide to the County, unless the Purchase and Sale Agreement specifies otherwise, a Phase I Survey and a Survey. As part of the Inspections, the County shall order and shall provide Developer with the Title Commitment.

3.3.2 The County shall pay, and may reimburse itself or Developer and MMPI from the Available Funds, as a Project Cost, all costs reasonably incurred by it or Developer and MMPI in connection with the Survey, Phase I Survey, the Title Commitment, any title policy issued in connection with the acquisition of the Site, and any costs incurred in connection with the Inspection. Reimbursements shall be in accordance with Article 8.

3.3.3 Prior to the expiration of the Inspection Period, both Developer and the County shall have the right to provide any Diligence Objections. Upon the delivery of any Diligence Objections, Developer and the County shall cooperate in good faith to address the Diligence Objections in a manner reasonably satisfactory so that the Party providing notice of the Diligence Objections shall be willing to move forward with the Project. Such cooperation shall be for a period not to exceed the later of (a) the expiration of the Inspection Period, or (b) sixty days after delivery of the Diligence Objections. If Developer and the County are unable to resolve Diligence Objections in a manner reasonably acceptable to the Party giving the Diligence Objections within such period, then the Parties shall have the right to terminate this Agreement. If either Party exercises its right to terminate this Agreement pursuant to this Section 3.3.3, then the rights and obligations of the Parties hereunder shall immediately cease and be of no further force or effect.

3.3.4 The County shall arrange for access to the Site for Developer, its consultants, Bridging Consultant, Architect and Contractor. No physical inspection shall be conducted without the County's approval as to the time and manner thereof, which approval shall not be unreasonably withheld, conditioned or delayed. Developer shall deliver to the County copies of all information and written materials obtained or generated in connection with the conduct of all Inspections.

3.4 Environmental Matters.

3.4.1 On and after the Site Delivery Date, Developer shall be responsible for remediating all of the Known Environmental Conditions, and the cost and expense thereof shall be a Project Cost. Such remediation and response actions shall be performed in accordance with all Applicable Laws. Copies of any updates to the Environmental Reports shall be made available to the County, and Developer shall keep the County informed in writing as to the development, approval and implementation of all environmental remediation.

3.4.2 If any Environmental Condition is discovered during the course of construction, then the Party discovering such Environmental Condition shall notify the other Party immediately and before such Environmental Condition is disturbed, but in no event later than two (2) Business Days after either (a) the date the Party first observes the conditions or (b) the date that such Environmental Condition is reported to any of the Parties by a third party. On and after the Site Delivery Date, Developer shall be responsible for the assessment, analysis and remediation of any such newly-discovered Environmental Condition. Provided that any newly-discovered Environmental Condition does not result from the construction operations of Contractor, then the cost of any remedial action, after the application of the proceeds from applicable insurance required under Article 11 hereof, shall be a Project Cost. Developer shall give the County the reasonable right and opportunity to review and comment on any proposed remedial actions relating to such newly-discovered Environmental Condition.

3.5 Concealed Conditions and Geotechnical Matters. Developer shall be responsible for all concealed conditions encountered during construction and any conditions encountered during any subsurface operations, whether natural or man-made (excluding for this purpose any Environmental Conditions, as to which Section 3.4.2 controls). The costs of remediating, accommodating or otherwise addressing such conditions shall be a Project Cost, subject to the GMP and Budget Cap.

3.6 Construction Easements. The Parties shall cooperate with each other to obtain for Developer, and its respective contractors, agents, employees and invitees, any necessary temporary easement or license over, under and upon the Site for purposes of performing the Work, together with all activities incidental and related thereto, including the location of temporary office trailers, the location and establishment of staging areas and project storage areas, the installation and operation of one or more construction cranes, and the right to secure the Site.

ARTICLE 4

DESIGN OF THE FACILITY

4.1 Selection of Architect and Bridging Consultant, Approval of Architect Agreements. The County shall have the right to approve Bridging Consultant and Architect and to review and approve the Architect Agreements, as set forth in Section 2.5 hereof.

4.2 County Requirements.

4.2.1 The Facility shall be designed, constructed, furnished, equipped and developed so that it has, at a minimum, attributes and components as will cause the Facility to satisfy the County Requirements. When the term "should" is used in the County Requirements, such term shall be interpreted to indicate that the applicable standard or requirement is the minimally acceptable standard or requirement. If there is any ambiguity in the County Requirements, then the reasonable interpretation of the County shall control so long as such determination is made in good faith; provided that if Developer provides a written notice to the County that the County's interpretation is not reasonable, then such dispute shall be subject to Expedited ADR. Developer acknowledges that the County Requirements shall not be modified or deleted, nor the scope or quality thereof be reduced, without the prior written approval of the County, which approval may be denied in the County's sole discretion.

4.2.2 The standard of quality and design of the Facility shall be first-class, state-of-the-art Facility and substantially equivalent, taken as a whole, to the standard of quality used in the design, construction, furnishing and equipping of similar facilities throughout the country and in all events consistent with Design Documents approved by the County. Notwithstanding anything set forth herein to the contrary, however, Developer may cause the Facility to exceed this standard by including products, features or materials of better quality than those in the comparable facilities or that did not exist when the comparable facilities were constructed. In no event, however, shall the County be required to pay any costs above the GMP or Budget Cap.

4.3 Design Budget. Developer shall submit the Design Budget to the County as promptly as possible, but no later than thirty (30) days after the County submits the Site Selection Notice to Developer. The Design Budget costs shall not be exceeded without the County's prior written approval, such approval not to be unreasonably withheld, conditioned or delayed.

4.4 Ongoing Right to Cause Revisions. Any time during the preparation of the Design Documents, the County shall have the right to cause Developer to make certain changes to the Design Documents to incorporate attributes or components that exceed the County Requirements, subject to the following conditions: (a) such changes shall not (i) materially and adversely impact the structural, functional or operational components or characteristics of the Facility, or (ii) materially and adversely impact the Master Project Schedule, and (b) such changes shall be fully paid for from and out of the County Contingency Fund. Any dispute as to whether a change to the Design Documents requested by the County satisfies the foregoing conditions shall be subject to Expedited ADR.

4.5 Green Building Standards and Design. The Parties intend to design, construct, furnish and equip the Facility in conformance with sustainable design standards such as the Leadership in Energy and Environmental Design Green Building Rating System of the United States Green Building Council. Developer shall cause Bridging Consultant or Architect (as applicable) to address and include green building standards in the Design Documents, and the County shall consider and adhere to such standards in its review and approval of any of the Design Documents.

4.6 Historic Tax Credits. The Parties shall cooperate in good faith to design the Facility and the renovation of any Phase to obtain the benefit of historic tax credits.

4.7 Master Project Schedule.

4.7.1 During the design process, Developer shall establish, and update at least monthly, the Master Project Schedule and shall deliver a copy of all updates thereof to the County. If revisions in the Master Project Schedule reflect delays in any critical path elements of the Master Project Schedule, then Developer shall prepare and submit to the County a Recovery Plan detailing the actions and timeline to be taken for achieving conformance of the critical path elements with the Master Project Schedule.

4.8 Design Meetings. Developer shall keep the County apprised of the status of the Design Documents on a weekly basis. The County shall be invited to participate in all design and planning meetings with regard to the preparation of the Design Documents. Developer shall prepare and distribute minutes of such design meetings and shall distribute such minutes to the County and others in attendance at such meeting within seven (7) days after each design meeting. Such minutes shall be reviewed, amended if necessary, and approved at the next design meeting following the distribution thereof.

4.9 County Design Approval Procedures. The County shall have the right to approve the Design Documents. The approval procedures set forth in this Section 4.9 shall be referred to herein as the "County Design Approval Procedures." After receipt of the applicable Design

Documents, the County shall notify Developer in writing of the County's approval or disapproval of such Design Documents (and in the case of the Conceptual Plans, its election of one of the Design Options) within forty-five (45) days following Developer's submission of the applicable Design Documents to the County; provided that the following shall apply:

4.9.1 The County's review and approval, which shall not be unreasonably delayed, conditioned or withheld, shall be limited to the County's determination of whether the applicable Design Documents are consistent and comply with the County Requirements and the previously approved Design Documents. The County shall not be allowed to object to any aspect that is consistent in all material respects with the County Requirements and the previously approved Design Documents unless, as a result of any subsequent material change to the applicable Design Documents, such aspect has been materially and adversely affected by such changes since the date the prior Design Documents were approved or deemed approved by the County.

4.9.2 If the County disapproves of the Design Documents on the basis that such Design Documents are inconsistent with the County Requirements or the previously approved Design Documents, then the County shall specify the reasons for such disapproval and Developer shall make such reasonable modifications as may be necessary to conform the applicable Design Documents to the County Requirements and the previously approved Design Documents.

4.9.3 Upon any resubmission of the Design Documents to the County, the procedure for approval by the County set forth in this Section 4.9 shall again apply.

4.9.4 If and to the extent that any aspect or component of the Design Documents approved by the County pursuant to this Section 4.9 conflicts with or otherwise materially modifies the County Requirements as then in effect, then the County Requirements shall be deemed to be amended to incorporate such aspect or component for purposes of further application of the County Requirements for the purposes of this Agreement.

4.9.5 On or before the date or dates set forth in the Master Project Schedule, as such date may be modified by this Agreement, the County shall prepare and submit to Developer and Bridging Consultant or Architect (as applicable) in writing any comments, suggestions, modifications or objections it may have to the applicable Design Documents. The failure of the County to approve or disapprove the applicable Design Documents within forty-five (45) days following Developer's submission of the applicable Design Documents to the County shall constitute a deemed approval.

4.9.6 Developer shall submit eight (8) copies (plus an electronic version) of all applicable Design Documents to the County under cover of a review request that shall state the date upon which the County's approval or disapproval of such Design Documents is due to Developer.

4.10 Continuing with Design. During the course of the County's review of the Design Documents, Developer, Bridging Consultant and Architect shall proceed with the design in good faith. Developer, Bridging Consultant and Architect shall make available to the County such

Persons involved in the preparation of the Design Documents or the construction of the Phase described therein as the County shall reasonably request for the purpose of consultation and explanation of such Design Documents.

4.11 Feasibility Plans. Within sixty (60) days after the later of (a) the County's delivery of the Site Selection Notice for the Project or (b) the County's approval of the Design Budget, Developer shall deliver the Feasibility Plans for the Project to the County for approval or disapproval, consistent with the County Design Approval Procedures.

4.12 Conceptual Plans; Design Options; IGMP Documents. On or before the date or dates set forth in the Master Project Schedule, Developer shall cause Bridging Consultant, Architect or Contractor, as the case may be, to prepare the Conceptual Plans, the Design Options and the other IGMP Documents. Developer shall deliver such documents to the County for approval or disapproval, consistent with the County Design Approval Procedures, no later than the date or dates set forth in the Master Project Schedule.

4.13 Design Development Documents; GMP Documents. On or before the date or dates set forth in the Master Project Schedule, Developer shall cause Bridging Consultant, Architect or Contractor, as the case may be, to prepare the Design Development Documents and the other GMP Documents. Developer shall deliver such documents to the County, for approval or disapproval consistent with the County Design Approval Procedures, no later than the date or dates set forth in the Master Project Schedule.

4.14 Construction Documents. On or before the date or dates set forth in the Master Project Schedule, Developer shall cause Architect or Contractor, as the case may be, to prepare the Construction Documents. Developer shall deliver such documents to the County, for approval or disapproval consistent with the County Design Approval Procedures, no later than the date or dates set forth in the Master Project Schedule; provided, however, the County shall have sixty (60) days (instead of forty-five (45) days as set forth in the County Design Approval Procedures) to approve or disapprove the Construction Documents. Simultaneously with the delivery of the Construction Documents, either Developer or Architect shall notify the County of any material revisions or changes from the Design Development Documents approved pursuant to Section 4.13 hereof.

4.15 CD Review Session.

4.15.1 At the stage in which the Construction Documents are approximately 75% complete, the County and Developer shall conduct a Construction Document review session (the "CD Review Session"). The CD Review Session shall be a collaborative working session at which Bridging Consultant, Architect, Contractor, Developer and the County (and other representatives of the County and Developer) shall review the Construction Documents in detail, provide comments and approve the same, subject to such comments. The CD Review Session shall be scheduled to provide sufficient time for document review.

4.15.2 The Parties' review, comment and approval at the CD Review Session shall include: (a) confirmation whether the approximately 75% complete Construction Documents are consistent and comply with the County Requirements and approved Design

Development Documents, and (b) the County's reasonable approval of (i) building components, equipment and systems that may materially affect the operation of the Facility, and (ii) exterior and interior finishes and furniture, to the extent that any of the foregoing items included in clauses (i) and (ii) were not included or addressed in the Design Development Documents or have been materially modified from the Design Development Documents.

4.16 Master Project Budget. Developer shall prepare, or cause to be prepared, and submit to the County the Master Project Budget on or before the date that is thirty (30) days after the County submits the Site Selection Notice to Developer. The County shall have the right to approve the Master Project Budget. Developer may request that the Master Project Budget be reviewed and confirmed, or updated, revised and approved by agreement of Developer and the County, in connection with the approval of the Construction Documents, and the Master Project Budget is subject to the Parties' review and final approval at the time of Final Project Finance Approval as provided in Section 4.22. After Final Project Finance Approval, the Master Project Budget may not be amended or modified without the County's prior written approval, which approval shall not be unreasonably withheld, delayed or conditioned. In addition to identifying the County Contingency Fund, the Master Project Budget shall also contain and identify the Project Contingency Fund; and the Construction Contingency Fund shall be included in the GMP. Developer shall notify the County promptly of any proposed use of any contingency funds. The County shall have a right to disapprove any use of funds from the Project Contingency Fund if such use (a) is not, in the County's reasonable determination, a legitimate Project Cost hereunder or cost of the Work under the Construction Agreement, or (b) Developer has not, in the County's reasonable determination, used good faith efforts to pursue contractual rights of recovery in lieu of using contingency funds. The Construction Contingency Fund may be used in accordance with the terms of the Construction Agreement. Savings from one line item on the Master Project Budget may be used by Developer to offset overruns from another line item, provided MMPI shall notify the County promptly of any such proposed use of savings to offset overruns.

4.17 Budget Cap. The amount set forth as the total Project Costs in the Master Project Budget approved by the County shall establish the Budget Cap. Any Project Costs that exceed the Budget Cap shall be the responsibility of, and shall be paid for by Developer and no such payments shall be eligible for reimbursement under this Agreement.

4.18 Master Project Schedule.

4.18.1 Developer shall submit to the County the Master Project Schedule no later than thirty (30) days after the date the County submits the Site Selection Notice to Developer. The County shall have the right to approve the Master Project Schedule. The Master Project Schedule is subject to review, adjustment and final approval by the Parties at the time of Final Project Finance Approval as provided in Section 4.22. After Final Project Finance Approval, the Master Project Schedule may not be amended or modified without the County's prior written approval, which shall not be unreasonably withheld, delayed or conditioned.

4.18.2 The Master Project Schedule shall include a reasonable amount of time for adverse weather conditions to the extent normally encountered in the Cleveland, Ohio area; establish dates for the beginning and end of commissioning, Substantial Completion and

beginning of operations for each Phase; delineate all Phases of the Project; and set forth a date for Final Completion of each Phase in sufficient detail to allow the County to monitor progress of the Project. The Master Project Schedule shall specify the dates for the commencement and completion of the various stages of the permitting, design, construction, furnishing, equipping and occupancy of the Facility.

4.18.3 The Parties acknowledge and agree that, notwithstanding any theoretical delay or theoretical extensions of time for completion as may be shown on any schedules, the Master Project Schedule shall be governed by this Agreement and the anticipated Substantial Completion Date shown thereon for each Phase shall only be extended as provided herein.

4.18.4 Developer shall update, and deliver to the County, the Master Project Schedule monthly to reflect measured job progress. Should, at any time, Developer know of or anticipate delays in any of the Work that is likely to result in a delay of the date established as the date for Substantial Completion, Developer shall present to the County for its review and approval a detailed Recovery Plan showing how (to the extent feasible) the delay shall be overcome, together with an update of the Master Project Schedule.

4.19 Public Auditorium. Developer shall schedule the design, construction, furnishing and equipping of the Facility and development of the Project to minimize disruption, to the extent practicable, to continuing use of the Public Auditorium. The Master Project Schedule shall reflect such goal and, in respect thereof, appropriate flexibility as to timing.

4.20 Ownership of Documents. The Design Documents shall be the joint property of the County and Developer. The County shall have the right to use the Design Documents (and the design concepts contained therein) for the design, construction, furnishing, equipping and maintenance of the Facility, and Developer shall cause Bridging Consultant, Architect and Consultants to grant such licenses as are necessary to permit the County to use the copyright and other intellectual property rights as may pertain to the Design Documents.

4.21 Local Business Participation.

4.21.1 Developer shall, to the extent practicable, solicit services from local architects, engineers, consultants and other service providers in connection with the planning and design of the Facility. Developer understands and acknowledges that the County is committed to providing equal opportunities to small business enterprises, and that the County, in choosing Developer, expects Developer to further the County's initiative by considering, throughout the Project, potential small business contractors, subcontractors and suppliers that Developer can utilize to perform the Work.

4.21.2 The County shall provide Developer the written policies and procedures applicable to each of the County programs referenced in this Section 4.21 so that the same can be implemented by Developer and included, as applicable, in each contract or agreement entered into in connection with the development, design, construction, furnishing or equipping of the Facility (including the Architect Agreements and the Construction Agreement).

4.22 Final Project Finance Approval. Notwithstanding anything to the contrary contained in this Agreement: (a) the Master Project Budget, Budget Cap and Master Project

Schedule shall be agreed to by the Parties as part of Final Project Finance Approval, but shall remain subject to review and revision until Final Project Finance Approval; (b) the final GMP under the Construction Agreement (and any allocation of the GMP to Phases of the Project) shall be agreed to and memorialized in an amendment to the Construction Agreement not later than the Final Project Finance Approval, and until Final Project Finance Approval, the County shall not unreasonably withhold its consent to any amendment or modification of the GMP proposed by Developer; and (c) construction of the Facility shall not commence prior to Final Project Finance Approval.

4.23 Termination Rights During Design Phases. At any time during the preparation, review or resubmission of the Design Documents and continuing until the Final Project Finance Approval, either Party may deliver a Termination Notice to the other Party advising such other Party that in the submitting Party's reasonable opinion, the development of the Facility as contemplated by the County Requirements and the previously approved Design Documents is not physically or economically feasible. The Termination Notice shall include, with reasonable specificity, the reasons why the submitting Party believes the development of the Facility is not physically or economically feasible ("Plan Objections"). Upon the delivery of a Termination Notice, Developer and the County shall cooperate in good faith for a period of sixty (60) days after delivery of the Termination Notice to address the Plan Objections so that the Parties shall be willing to move forward with the Project. If Developer and the County are unable to resolve the Plan Objections in a manner reasonably acceptable to the Parties within such sixty (60) day period, then either Party may terminate this Agreement and thereupon the rights and obligations of the Parties hereunder shall immediately cease and be of no further force or effect.

ARTICLE 5

CONSTRUCTION OF THE PROJECT

5.1 Compliance with Master Project Schedule and Master Project Budget. Developer shall accomplish the completion of the Facility, as described in the Construction Documents, in accordance with the Master Project Budget and shall use commercially reasonable efforts to accomplish the same in accordance with the Master Project Schedule. Developer shall use all commercially reasonable efforts to cause Contractor to diligently pursue and prosecute the construction of the Facility substantially in accordance with the Construction Documents, the Master Project Schedule, the Master Project Budget and the terms and conditions of this Agreement, and, subject to Force Majeure Events and adjustments permitted by the terms of this Agreement, to cause Substantial Completion to occur on or before the Substantial Completion Date established in the Master Project Schedule.

5.2 Developer Responsibility for Design and Construction.

5.2.1 In accordance with this Agreement, Developer shall manage, direct, supervise and coordinate the planning, development, design, construction, furnishing and equipping of the Facility and shall enter into all contracts in connection with the same. Developer shall perform the services, establish and implement appropriate administrative and financial controls, and carry out the responsibilities with respect to the development of the Facility as set forth in this Agreement. Developer shall confirm that the construction of the

Facility is being carried out in accordance with the Construction Documents or, in the event such construction is not being so carried out, promptly notify the County, including details regarding elements of the construction that do not substantially comply with the Construction Documents. Except as otherwise provided herein, Developer shall be responsible for taking all reasonable action necessary for the orderly performance of all aspects of the Work required in connection with the construction of the Facility.

5.2.2 As provided in Section 2.3.1 (and without limiting the generality of such Section), MMPI shall specifically have responsibility for performing on behalf of Developer the activities set forth in this Section 5.2.

5.3 Developer Responsibility for Enforcement of Agreements.

5.3.1 Developer shall negotiate, enter into, administer and enforce all necessary agreements for architectural, engineering, testing, consulting and construction services for the design, construction, furnishing, equipping and development of the Facility, including the Architect Agreements and the Construction Agreement. Developer shall assemble and retain all contracts, agreements and other records and data as may be necessary to carry out Developer's functions hereunder and shall make such information available to the County. In selecting and engaging such architectural, engineering, testing, consulting and construction services, Developer shall give due consideration to engaging professionals in the Cleveland area to provide such services.

5.3.2 As provided in Section 2.3.1 (and without limiting the generality of such Section), MMPI shall specifically have responsibility for performing on behalf of Developer the activities set forth in this Section 5.3.

5.4 Selection of Contractor; Approval of Construction Agreement. The County shall have the right to approve Contractor, and to review and approve the Construction Agreement, as set forth in Section 2.5 hereof.

5.5 Payment and Performance Bonds. Prior to the commencement of construction of any Phase, Developer shall require Contractor to submit to Developer and the County the Surety Bond in the amount of the portion of the GMP applicable to that Phase and naming Developer and the County as joint obligees. Developer and the County shall explore alternative surety bonding techniques to assure that the most efficient and economical method is used to implement the bonding strategy for the Work, including the issuance of separate Surety Bonds of limited durations for each Phase or the issuance of a single aggregate Surety Bond in which the bond amount periodically increases as construction begins for each Phase.

5.6 Applications for Payment. Developer shall process and recommend approval of applications for payment or invoices submitted by Bridging Consultant, Architect, Contractor and any other Person performing Work or providing services in connection with the design, construction, development, furnishing or equipping of the Facility.

5.7 Project Meetings. The County shall be invited to participate in weekly Project meetings with regard to the construction of the Facility. Developer shall prepare and distribute minutes of each Project meeting and shall distribute such minutes to the County and others in

attendance at such meeting within seven (7) days after each Project meeting. Such minutes shall be reviewed, amended if necessary, and approved at the next Project meeting following the distribution thereof.

5.8 Bidding; Selecting of Subcontractors.

5.8.1 Developer shall oversee, administer, and cause Contractor to manage, the bidding process. Developer shall make commercially reasonable efforts to ensure that Contractor solicits at least three (3) competitive bids or proposals for Subcontractors whose Subcontracts have an estimated value of \$100,000 or more. Prior to its implementation, the proposed bidding process shall be submitted to the County for its review, comment and approval.

5.8.2 For each bid package, Developer and Contractor shall propose a list of qualified bidders and submit the same to the County for the County's review. The County shall have the right to disapprove, in its reasonable discretion, any proposed bidder on the list and shall inform Developer of such disapproval within ten (10) days after the County's receipt of the list. Bid packages shall be sent only to those bidders that the County has not disapproved.

5.9 Permits. Developer shall apply for and maintain in full force and effect any and all Permits and approvals required for the lawful construction of the Facility.

5.10 FF&E; Tenant Fit Out. Developer shall coordinate and administer the design, construction, furnishing and equipping of all interior tenant improvements to the extent required under any leases or other occupancy agreements whether involving building standard or non-building standard work.

5.11 Applicable Laws. Developer shall comply, and shall make commercially reasonable efforts to cause Contractor to comply, with all Applicable Laws, the requirements of any national or local Board of Fire Underwriters or Insurance Services having jurisdiction where the Facility is located or the requirements of any insurance carriers providing any insurance coverage for the Facility.

5.12 Governmental Approvals. Developer shall diligently seek all governmental approvals that may be required for the design, construction, furnishing, equipping and development of the Facility. The County will cooperate in good faith in Developer's efforts to obtain, maintain, alter or amend such governmental approvals, and will join in applications for the governmental approvals to the extent necessary.

5.13 Local Business and Resident Participation.

5.13.1 Developer shall, to the extent practicable, solicit services from local architects, engineers, consultants, contractors and other service providers. Developer understands and acknowledges that the County is committed to providing equal opportunities to small business enterprises, and that the County, in choosing Developer, expects Developer to further the County's initiative by considering, on a per Phase basis, potential small business, contractors, subcontractors and suppliers that Developer can utilize to perform the Work. To achieve this purpose, Developer shall use commercially reasonable efforts to cause Contractor to comply with the SBE Program and to use good faith efforts to achieve the following goals:

5.13.1.1 Twenty-five percent (25%) in value of Subcontracts shall be awarded to small business enterprises certified by the County.

5.13.1.2 Forty percent (40%) of Contractor's and Subcontractor's workforce shall hold residency in Cuyahoga County, and twenty percent (20%) of Contractor's and Subcontractor's workforce shall hold residency in the City of Cleveland.

5.13.2 The County shall provide Developer the written policies and procedures applicable to each of the County programs referenced in this Section 5.13 so that the same can be implemented by Developer and included in the Construction Agreement and applicable Subcontracts.

5.14 Prevailing Wage Requirements. The prevailing wage shall be paid to laborers and mechanics as required in Ohio Revised Code Chapter 4511 in accordance with the most current schedule published by the State of Ohio, Department of Commerce, Division of Labor and Worker Safety, Wage and Hour Bureau.

5.15 Third Party Beneficiary. Developer shall include in each contract or agreement entered into by it in connection with the development, construction, furnishing or equipping of the Facility (including the Architect Agreements and the Construction Agreement) a provision making the County a third party beneficiary under any such contract or agreement.

5.16 Supervision of Construction.

5.16.1 Developer shall use all commercially reasonable efforts to cause Contractor to supervise and coordinate the Work so that the Facility is constructed, equipped, furnished and completed in a good and workmanlike manner and in accordance with the terms of this Agreement, the Construction Agreement and the Construction Documents. Developer shall enforce compliance with the terms of the Construction Agreement. Notwithstanding the foregoing, neither Developer nor MMPI guarantees Contractor's performance of the Construction Agreement.

5.16.2 If the County determines, in its reasonable judgment, that the Facility is not being constructed substantially in accordance with the Construction Documents, the Master Project Budget or the Master Project Schedule, then the County shall have the right to demand, in writing, and Developer shall provide within five (5) Business Days of such written demand, a detailed written explanation (and, as applicable, a proposed Recovery Plan) of the same. If the County is not reasonably satisfied with Developer's written explanation (or, as applicable, the Recovery Plan), then the County shall have the right, subject first to the application of Expedited ADR, to pay Supplemental Payments and up to ten percent (10%) of the Monthly Base Rental Payment into the Construction Cost Reserve Fund until Developer cures such failure or the funds in the Construction Trust Fund, together with the funds in the Construction Cost Reserve Fund, are adequate to complete the construction of the Facility in accordance with the Construction Documents.

5.17 Inspections. Developer shall contract with one or more independent Persons to inspect the construction, perform soils and materials testing and conduct other inspections, in each case to the extent required by Applicable Laws or the Permits for the Facility, for the

purposes of monitoring the Contractor's performance of the Work in accordance with the Construction Documents. The cost of such inspectors shall be a Project Cost.

5.18 Construction Materials. All construction materials shall be stored in a safe and secure manner, and such construction materials shall not include any Hazardous Substances, unless the same are necessary for construction of the Facility and are stored, handled and secured in compliance with all Applicable Laws.

5.19 Site Safety. From and after the Site Delivery Date, Developer shall maintain the Site in accordance with industry standard construction practices for projects of similar size and scope as the Project, and shall keep the Site secured.

5.20 Environmental Matters. At all times during construction of the Facility, Developer shall comply, and shall make commercially reasonable efforts to cause Contractor, Subcontractors, and any other Person under its or their control accessing the Site to comply, with the provisions of applicable Environmental Laws pertaining to the Site, including the materials used in the construction of the Facility and the activities conducted on the Site. Developer shall cause the performance of any response action for, or remediation of, Hazardous Materials that may become located on the Site or any Environmental Condition occurring as a result of the actions of Contractor, Subcontractors, or any Person under their respective control. The costs of any response action or remediation shall constitute Project Costs, but only if and to the extent Developer, after exercising reasonably diligent efforts, is unable to recover the costs from applicable insurance required under Article 11 hereof, or from, or on behalf of, the Person responsible for the Environmental Condition or the presence of Hazardous Materials on the Site.

5.21 Correction of Work. If, during construction, Developer reasonably determines or otherwise becomes aware that construction is not proceeding in accordance with the Construction Documents or this Agreement, then Developer shall exercise diligent, good faith efforts to cause the Person responsible for any non-conforming Work to re-execute or correct such non-conforming Work at such Person's expense (or to have the cost thereof paid in another manner that does not result in such cost of corrective Work being an additional Project Cost); provided, however, that to the extent Developer is unable, after exercising diligent and good faith efforts as required herein, and after consultation and approval by the County, to cause any non-conforming Work to be corrected without the cost therefor being an additional Project Cost, then the cost of correcting such non-conforming Work shall be a Project Cost. If, however, Developer reasonably determines that it is inexpedient to require the correction of such non-conforming Work, then, after consultation and approval by the County, an equitable deduction under the applicable contract or agreement or other remedy mutually acceptable to Developer and the County may be pursued. Any actions taken by Developer pursuant to this Section 5.21 shall not result in any material deviation from the County Requirements.

5.22 Legal Actions; Liens.

5.22.1 Developer shall notify the County within two (2) Business Days of notice of any Action that is initiated or threatened in writing related to the Project. Developer shall commence, defend and settle in good faith Actions concerning the development, design, construction, furnishing and equipping of the Facility as are necessary or required, and

Developer shall be entitled to retain counsel in connection therewith. In connection with such Action: (a) the County shall have the right to review and provide comments to Developer in connection with all such Action; and (b) the County must approve the terms of any settlement where the County is named as a defendant or the settlement amount exceeds One Hundred Thousand Dollars (\$100,000).

5.22.2 So long as the County has made all payments required of it under this Agreement, if any Actions or liens are filed with respect to the Project, Developer shall take such action as is necessary to cause the prompt release and removal thereof, including liens against any fee simple, leasehold or other real property interest of either the County or Developer in and to the Facility.

5.23 Change Orders.

5.23.1 Developer Change Orders.

5.23.1.1 Developer shall (a) timely provide the County with notice and copies of any proposed Change Order for review prior to Developer authorizing the Change Order, and (b) provide copies to the County of the executed Change Order. Without the prior written approval of the County, which approval shall not be unreasonably withheld, delayed or conditioned, Developer shall not execute any Change Order that (i) materially alters the external appearance of the Facility; (ii) materially and adversely impacts the structural, functional or operational components or characteristics of the Facility, (iii) represents a change in the scope of work from the Construction Documents approved by the County; (iv) extends the date of Substantial Completion of any Phase of the Facility; or (v) represents a change with a value greater than One Hundred Thousand Dollars (\$100,000). Any dispute as to whether the County has the right to approve a proposed Change Order, and any withholding of any approval by the County, shall be subject to Expedited ADR.

5.23.1.2 The County may object within five (5) Business Days of its receipt of a proposed Change Order that it has a right to approve under Section 5.23.1.1, and shall provide Developer with an explanation in reasonable detail of the basis of such objection. Developer shall modify and resubmit the proposed Change Order to address the County's reasonable objections.

5.23.2 County Change Orders. The County shall have the right to cause Developer to make certain changes in the Work, provided that such changes are fully paid for from and out of the County Contingency Fund and such changes do not (a) materially and adversely impact the structural, functional or operational components or characteristics of the Facility or (b) materially and adversely impact the Master Project Schedule for the construction of the Facility. Any dispute as to whether a change to the Work requested by the County satisfies the foregoing conditions shall be subject to Expedited ADR.

5.24 Approvals by the County. No approval by the County shall impose, imply or be construed as an assumption by the County of any duties or responsibilities of others with respect to the design, construction, furnishing or equipping of the Work, or for the construction means

and methods employed by, or on behalf of, the County, of Developer or any Person retained by, or on behalf of, either the County or Developer.

5.25 Add Alternates. Developer and the County shall mutually agree to a list of add alternates that shall be bid with the base construction Work. Developer shall propose the priority of implementing the add alternates and the County shall have the right to approve such priority list, which approval shall not be unreasonably withheld. Developer, in its discretion, may, after notice to the County, implement such add alternates in the order of priority approved by the County. In addition, the County may require Developer to implement any such add alternates but all costs in respect thereof shall be paid from the County Contingency Fund.

5.26 Changes to Contracts. The County shall have the right to approve any material change, modification or amendment to the Architect Agreements, the Construction Agreement, or any Subcontract that exceeds One Million Dollars (\$1,000,000). For purposes of the foregoing, a material change, modification or amendment to the Architect Agreements, the Construction Agreement, or any Subcontract that exceeds One Million Dollars (\$1,000,000) shall be limited to (a) any change that increases or decreases the compensation under such agreement by One Hundred Thousand Dollars (\$100,000) or more; or (b) any change, modification or amendment to any of the provisions set forth on Exhibits D and E. Developer shall submit to the County for review and approval any such proposed change, modification or amendment. The County shall have fourteen (14) days to approve or disapprove in writing such change. Any disapproval shall state with specificity the reasons for such disapproval. If the County shall fail to approve or disapprove such change in writing within fourteen (14) days, or does not specify the reasons for disapproval, then the change, modification or amendment shall be deemed to have been approved. The County's approval shall not be unreasonably withheld, conditioned or delayed.

5.27 Commissioning and Close-Out Plan. Developer shall use commercially reasonable efforts to cause Contractor to prepare and deliver to Developer the Commissioning and Close-Out Plan not later than six (6) months prior to the Substantial Completion Date for each Phase. Developer shall submit to the County, for its review and approval, the Commissioning and Close-Out Plan, which approval shall not be unreasonably withheld. Upon its receipt of the Commissioning and Close-Out Plan, the County shall review the same and either approve or disapprove such plan in writing within forty five (45) days of its receipt thereof. If the County disapproves the Commissioning and Close-Out Plan, then the County shall specify in writing the reasons for such disapproval. In the event of such disapproval, the County and Developer will negotiate diligently and in good faith to agree on the final Commissioning and Close-Out Plan. In the event the County and Developer are unable to agree on the final Commissioning and Close-Out Plan within forty five (45) days of Developer's receipt of written notice of disapproval thereof, either Party may then submit the dispute to Expedited ADR. If the County fails to either approve or disapprove in writing the Commissioning and Close-Out Plan within forty five (45) days of its receipt thereof, then the Commissioning and Close-Out Plan shall be deemed approved.

5.28 As-Built Drawings. Developer shall cause to be delivered to the County a preliminary set of As-Built Drawings upon Substantial Completion. Developer shall cause to be provided to the County as soon as reasonably practicable, but in no event later than forty-

five (45) days after the date of Final Completion, a reproducible set of As-Built Drawings and an electronic version thereof.

5.29 Inspection Rights of the County. Developer agrees that the County shall have the right at all times during normal business hours of Developer or Contractor, as the case may be, and at such other times as the County may reasonably request, to review the Construction Documents and to inspect the progress of the construction of the Facility. The County shall also have the right to have other County representatives and guests on the Site to inspect or observe the construction and development of the Facility. The County agrees to require the County and any other County representative or guest to comply with all applicable Site safety and security requirements and procedures applicable to non-construction personnel. Any such physical inspection or observation by the County or County representatives or guests shall not unreasonably obstruct or interfere with the construction of the Facility.

ARTICLE 6

SCHEDULES AND REPORTS

6.1 Master Project Schedule. Developer shall prepare, or cause to be prepared, the Master Project Schedule as set forth in Section 4.18.

6.2 Progress Reports. Developer shall prepare and deliver, or cause to be prepared and delivered, to the County a Progress Report for each month during design, construction, furnishing and equipping of the Facility.

6.3 Inspection, Safety and Quality Assurance Programs and Reports. Developer shall implement and require, or cause to be implemented and required, all necessary inspection, testing, quality assurance and peer review and safety programs in accordance with industry standards and in compliance with Applicable Law for the design, construction, furnishing and equipping of the Facility, and shall prepare and submit its procedures, schedules and requirements with respect to such programs in writing to the County for review and approval, which approval shall not be unreasonably withheld, conditioned or delayed. The quality assurance and peer review program shall detail the methods and procedures intended to assure that the Work conforms to the Construction Documents. Developer shall cause copies of all inspection reports, peer review and soils and materials testing reports to be timely sent to the County. Progress Reports required under Section 6.2 hereof shall advise the County of the status of such programs. Within ninety (90) days after the Effective Date, Developer shall submit to the County an emergency notification protocol, addressing such matters as accidents, injuries or other emergencies, which shall be submitted to the County for its review and approval, which shall not be unreasonably conditioned, withheld or delayed.

6.4 Significant Event Reports. Developer shall use commercially reasonable efforts to cause Contractor to provide written notification to Developer and County of any Force Majeure Event or any other situation or event that is likely to have a material adverse impact on the Work as promptly as possible, but in no event later than two (2) Business Days after Contractor knew or should have known, of the occurrence of such event. In addition, Developer shall use commercially reasonable efforts to cause Contractor to prepare a report and analysis

addressing the nature and impact of such event and Contractor's proposed methods and procedures for addressing and resolving any problems or issues resulting from such event (a "Significant Event Report") and to deliver any such Significant Event Report within ten (10) Business Days of the event, which Significant Event Report shall be updated thereafter as necessary.

6.5 Final Completion Report. Within ninety (90) days after Final Completion of the Project, Developer shall deliver, or cause to be delivered, to the County a report that shall set forth: (a) the total Project Costs incurred in connection with the design, construction, furnishing and equipping of the Facility through the date of such report, (b) all warranty items that are in the process of, or will be, corrected and the schedule for such corrections, and (c) the status of any Actions affecting Developer or the County and related to the Project. After delivery of such report, Developer shall continue to deliver, or cause to be delivered, to the County, an updated monthly final completion report until (i) no Project Costs are sought for payment from the Construction Trust Fund, (ii) all warranty items are corrected, and (iii) no Actions remain against either or both Parties arising out of or pertaining to this Agreement.

6.6 Documents Required by Law. Developer shall execute, and file punctually when due, all forms, reports and documents relating to the Project required by Applicable Law.

ARTICLE 7

RECORDS; AUDITING

7.1 Public Records. The Parties agree that all records and reports that MMPI and Developer provide to the County pursuant to this Agreement or that the County obtains from MMPI or Developer pursuant to this Agreement (including, without limitation, this Article 7) shall be considered public records unless exempted from disclosure pursuant to Ohio's public record laws (including O.R.C. 149.43, O.R.C. 1333.61(D) and applicable common law), and that the County shall have the right to copy and, subject to Section 7.2, disclose the same.

7.2 Trade Secrets.

7.2.1 MMPI and Developer may consider certain records with regard to the design, construction, furnishing, equipping and development of the Facility as containing "trade secret" information under O.R.C. 1333.61(D), which is exempt from disclosure as a public record. If the County receives a public records request for a record (a) that MMPI or Developer has made available or provided to the County pursuant to this Agreement or that the County has obtained from MMPI or Developer pursuant to this Agreement, and (b) that MMPI or Developer has designated in writing as containing trade secret information, then the County shall advise the requestor that the records requested are considered to contain trade secret information, and shall promptly notify MMPI or Developer, as applicable, of the request. Thereafter, MMPI, or Developer, as applicable, shall have sole responsibility for initiating or defending such legal action as it deems necessary to prevent public disclosure of such information, and shall pay all costs and expenses associated therewith, including any legal fees or expenses incurred by the County. Such costs shall not be a Project Cost.

7.2.2 The County shall, to the extent legally permissible without being required to initiate legal action, maintain the confidentiality of such requested information until the matter is resolved by legal action, provided that MMPI or Developer (as applicable, as the designating party or parties under Section 7.2.1) agree to indemnify, defend and hold harmless the County from any claims, losses, liabilities, costs and expenses incurred by the County as a result thereof. The Parties agree that the provisions set forth in this Section 7.2 shall not apply to information maintained by Developer and provided to the County pursuant to Section 7.3 hereof.

7.3 Auditable Records Retention. Developer shall maintain, and shall require by written agreement Contractor, Bridging Consultant, Architect, Consultants and other Subcontractors to maintain all Auditable Records. For the purposes of this Article 7, each Person obligated to maintain Auditable Records as provided herein is referred to as a "Reporting Person." Such Auditable Records shall include hard copy and computer readable data. All Auditable Records shall be retained by each Reporting Person for a period of five (5) full years from the date of Substantial Completion of the Facility.

7.4 Audit.

7.4.1 The County will have the right to designate an independent auditor to audit the Auditable Records from time to time.

7.4.2 The County shall have full access in a timely manner during regular business hours (for inspection, review and audit) to all Auditable Records for purposes of reviewing compliance with this Agreement, subject to establishing mutually agreeable audit protocols. Such Auditable Records shall be made available at the Reporting Person's local place of business or at another local location upon reasonable notice to the Reporting Person or the County, as applicable. The direct cost of copying any Auditable Records, excluding any overhead costs, shall be at the expense of the County. The County shall have reasonable access to the Reporting Person's facilities, may interview all current and former employees of the Reporting Person to discuss matters pertinent to the performance of this Agreement, the Architect Agreements, the Construction Agreement or Subcontracts, as applicable, and shall have adequate and appropriate work space in order to conduct audits. In those situations where Auditable Records have been generated from computerized data (whether mainframe, mini-computer, or PC based computer systems), the County shall be provided with extracts of data files in computer readable format on data disks or suitable alternative computer exchange formats.

7.4.3 If any audit or inspection by the County discloses overpricing or overcharges (of any nature) to the County in connection with charges or expenses submitted pursuant to the Construction Agreement, Architect Agreements or any Subcontract, then the amounts of such overpricing or overcharges shall be reimbursed to the County. If such overpricing or overcharges are in excess of one-half of one percent (0.5%) of the total contract billings for such contract or agreement, then Developer shall cause the reasonable actual cost of the audit to be reimbursed to the County by the Person committing such overcharges. Any adjustments or payments that must be made as a result of any such audit or inspection of the Reporting Party's invoices and/or records and supporting documents shall be made within a

reasonable amount of time (not to exceed 90 days) from presentation of the audit to the Reporting Party.

7.5 Limitations. It is acknowledged and agreed that the provisions of this Article 7 relate to records of Project Costs and the construction and development of the Project, including all costs funded by the Loan; and that this Article 7 is not intended to and shall not extend to matters relating to the leasing and operations of the Facility, with regard to which the providing of information to the County shall be controlled by other Financing Agreements (or, while it remains in effect, the Development Agreement).

ARTICLE 8

FEES, EXPENSES AND CONTRIBUTIONS

8.1 Developer Fee. In consideration of its undertaking in this Agreement, and specifically as provided in Section 2.3.1, MMPI shall be paid the Developer Fee from Available Funds in monthly installments, on or before the fifteenth (15th) day of each month, in an amount equal to Three Hundred Thirty Three Thousand Three Hundred Thirty-Three Dollars and 33/100 (\$333,333.33); provided, however, that not more than a cumulative aggregate amount of Four Million Dollars (\$4,000,000) shall be paid prior to the Lease Commencement Date. Pursuant to the Development Agreement, the County commenced paying the monthly installments on May 15, 2009. From and after the Lease Commencement Date, the balance of the Developer Fee shall be paid in equal monthly installments, calculated on the basis of the projected Construction Period, on or before the fifteenth (15th) day of each month, commencing on the fifteenth day (15th) of the month following the Lease Commencement Date. The Construction Period is currently projected to be thirty-six (36) months. The Developer Fee is intended to cover all fees of MMPI and Developer and all Non-Reimbursable Expenses and there shall be no separate reimbursement by the County of any such costs or expenses.

8.2 Pre-Development Costs. Developer and MMPI incurred Pre-Development Costs prior to the Effective Date. Such Pre-Development Costs incurred prior to April 16, 2009 (the effective date of the Development Agreement) were credited against the MMPI Contribution and were documented in the Pre-Agreement Cost Report. Pre-Development Costs incurred from and after April 16, 2009 and prior to the Effective Date were reimbursable or payable in cash by the County in accordance with the terms of the Development Agreement within sixty (60) days after presentation of invoice to the County (and to the extent any such Pre-Development Costs remain unpaid as of the Effective Date, such unpaid costs shall be reimbursed or paid by the County pursuant to the terms of the Development Agreement). With respect to any Pre-Development Costs incurred by Developer or MMPI after the Effective Date, the County shall, at the County's sole option, either (a) pay directly or (b) reimburse Developer or MMPI for payment of incurred Project Costs, in each case, within sixty (60) days after receipt of a Draw Package.

8.3 Reimbursable Expenses. Developer's budget for Reimbursable Expenses is set forth in Exhibit F. Subject to the Reimbursable Expenses Limit, the County shall pay Developer and/or MMPI for those Reimbursable Expenses incurred by Developer, MMPI, Operator and their Affiliates in compliance with the procedures and limits set forth in the reimbursable expense policy attached hereto as to Exhibit F. Notwithstanding anything to the contrary in this

Agreement, Reimbursable Expenses payable to Developer and MMPI shall not exceed the Reimbursable Expenses Limit. Reimbursable Expenses incurred in excess of the Reimbursable Expense Limit shall not be deemed Project Costs, and Developer and MMPI shall not be entitled to any reimbursement from the County for any Reimbursable Expense incurred by Developer, MMPI, Operator or their Affiliates in excess of the Reimbursable Expense Limit. Payment for Reimbursable Expenses shall be based upon the submission of satisfactory documentation as set forth in Section 9.6.

8.4 County Reimbursement. The County shall be entitled to pay or be reimbursed for all payments made to Developer and MMPI pursuant to this Article 8 from the Available Funds. The County shall also be entitled to pay or be reimbursed for County Project Costs from the Available Funds.

8.5 MMPI Contribution.

8.5.1 Pursuant to the Development Agreement, Developer agreed to pay or incur (or to cause Operator to pay or incur) the MMPI Contribution, and to the extent the MMPI Contribution is not paid or incurred by Developer (or Operator), MMPI agreed to do so. The MMPI Contribution is expected to be expended on Tenant Lease-Up Costs and other items not included as Project Costs in the Master Project Budget (other than Pre-Development Costs credited against the MMPI Contribution as described in Section 8.2, and those paid for by Developer as set forth in Section 8.5.3); provided, however, that Developer reserves the right to apply the MMPI Contribution to Cost Overruns, as may be needed in the course of the Project. Any Project Cost that was or is paid as part of the MMPI Contribution shall not be reimbursed to Developer. Developer shall account to the County with regard to the expenditure of the MMPI Contribution in accordance with the terms of the Lease, Sublease and Operating Agreement (and so long as it remains in effect, the Development Agreement).

8.5.2 Notwithstanding anything to the contrary in this Agreement, MMPI and Developer acknowledge that the Available Funds shall not be available to be used for (a) payments made to third parties to terminate obligations to hold trade shows in other locations or (b) incentive payments made to tenants and trade show owners and operators to locate in the Facility.

8.5.3 It is hereby expressly acknowledged that the following portion of Non-Reimbursable Expenses incurred prior to the Effective Date and paid for by Developer may be credited to the MMPI Contribution: one-half of all meal, travel, transportation and hotel expenses incurred by Developer, MMPI, Operator or their respective Affiliates on or before the Effective Date.

8.6 Payments upon Termination. Notwithstanding anything to the contrary contained in this Agreement, upon any termination of this Agreement for any reason but subject to offset for liabilities accrued prior to the effective date of termination as described in Section 14.1.3 (a) MMPI shall be entitled to payment of, and the County shall pay, the Developer Fee pursuant to Section 8.1, prorated to the effective date of termination, (b) Developer and MMPI shall be entitled to reimbursement or payment of, and the County shall reimburse or pay, pursuant to Sections 8.2, 8.3 and 9.6, any Pre-Development Costs, Reimbursable Expenses or other Project

Costs incurred prior to the effective date of termination, and (c) in the case of Developer's or MMPI's termination of this Agreement pursuant to Section 4.23, the County shall be entitled to reimbursement of the costs and expenses set forth in Section 18.9.

ARTICLE 9

FUNDING AND DISBURSEMENTS

9.1 Project Funding.

9.1.1 The financing for the design, construction, furnishing, equipping and development of the Facility shall be set forth with more particularity in the Financing Agreements.

9.1.2 On or before the dates set forth in the Master Project Schedule, the County shall use its best efforts to issue the Bonds. If, at anytime prior to Final Project Finance Approval, the County determines that the annual debt service that would generate sufficient Bond Proceeds would exceed Thirty-Six Million Dollars (\$36,000,000) and that no prudent alternative structure for the Bonds would cure that insufficiency, then the County shall have the right to terminate this Agreement and/or the Financing Agreements, as applicable.

9.1.3 Pursuant to the Loan Agreement, the County shall make available the Loan to Developer in one or more disbursements to pay for designing, constructing, furnishing, equipping and developing the Facility. As more specifically set forth in the Loan Agreement, the proceeds under the Loan Agreement, including both Bond Proceeds and Non-Bond Proceeds (other than funds disbursed by the County from Non-Bond Proceeds prior to the date of the first issuance of Bonds) will be placed into the Construction Trust Fund created under the Indenture.

9.1.4 The Available Funds in the Construction Trust Fund will be held and disbursed by the Indenture Trustee for Project Costs in accordance with the terms and conditions of this Agreement, the Loan Agreement and other Financing Agreements.

9.1.5 As provided in the Loan Agreement, during the Construction Period, the County shall deposit annually Five Million Dollars (\$5,000,000) of the County Payments otherwise payable to Developer and/or Operator, up to a total of Fifteen Million Dollars (\$15,000,000), such deposit to be made in equal monthly installments (or, upon the election of the County, by an annual lump sum payment of some or all of the funds to be deposited pursuant to this Section 9.1.5) of Four Hundred Sixteen Thousand Six Hundred Sixty-Six Dollars and 66/100 (\$416,666.66), into the Construction Cost Reserve Fund. The Construction Cost Reserve Fund will be held as a reserve for any Excess Construction Costs and used as the first source for the payment of any Excess Construction Costs. Within sixty (60) days after the opening of the Facility to the general public, and provided that there are no unpaid Excess Construction Costs, the Construction Cost Reserve Fund shall be paid to Developer (or to Developer and/or Operator as jointly directed by them).

9.1.6 Developer shall be entitled, and shall be obligated, to use funds from the Construction Cost Reserve Fund to pay Excess Construction Costs. If funds in the Construction Cost Reserve Fund are not sufficient to fund in full the Excess Construction Costs, then the

County, in accordance with the terms of the Lease and the Sublease (and/or the Development Agreement, if the Development Agreement is still in effect) shall be entitled to pay into the Construction Cost Reserve Fund all Supplemental Payments plus up to ten percent (10%) of the Monthly Base Rental Payments next becoming payable, until Developer's most current Construction Certification indicates that the Available Funds in the Construction Trust Fund, together with the funds in the Construction Cost Reserve Fund, will be sufficient to complete the construction of the Facility in accordance with the Construction Documents. After use of the Construction Cost Reserve Fund, Developer shall pay the full amount of any Excess Construction Costs from other funds that it shall deposit or cause to be deposited in the Construction Cost Reserve Fund.

9.1.7 In the event of any ambiguity or inconsistency between the terms of the other Financing Agreements and this Section 9.1, the terms of the other Financing Agreements shall be controlling.

9.2 Remaining Funds. Any funds remaining in the Construction Trust Fund after Final Completion shall be credited to and deposited into the Capital Reserve Fund established under the Operating Agreement.

9.3 Budget Cap. Developer covenants that the total Project Costs shall not exceed the Budget Cap. Developer shall pay all Cost Overruns.

9.4 Grants and Tax Credits. It is acknowledged that, in accordance with the terms of the Development Agreement, if federal, state or local assistance or grants in support of the Project are obtained or if the construction or renovation of any part of the Facility qualifies for and benefits from historic tax credits, and if such assistance or grants or tax credits are monetized prior the issuance of the Bonds, then the monetized value thereof (less any amounts to be paid to third parties pursuant to any agreements entered into in connection with the Project) will be used as a source of Available Funds for the design, construction, development and equipping of the Project and disbursed for Project Costs in accordance with the terms of this Agreement.

9.5 Nontax Revenue Sources. Nothing herein shall be construed as requiring the County to use or apply to the payment of County Payments any funds or revenues from any source other than Nontax Revenues; provided, however, that nothing herein shall be deemed to prohibit the County, of its own volition, from using, to the extent that it is authorized by law to do so, any other resources for the fulfillment of any of the terms, conditions or obligations of this Agreement or the Financing Agreements.

9.6 Payment for Project Costs.

9.6.1 Obligation to Pay Project Costs. Except as otherwise provided in this Agreement, Developer shall timely cause to be paid all due and owing Project Costs pursuant to the payment procedures established in this Agreement and, as applicable, the Financing Agreements.

9.6.2 Requisition and Payment Procedures. Each month, Developer shall prepare a Draw Package. Each Draw Package shall be delivered to the County and the Indenture Trustee, shall be certified as true and correct by Developer and shall contain the following:

9.6.2.1 A properly completed and executed funding request in the form of Exhibit G attached hereto. Along with each funding request, Developer shall provide the County and the Indenture Trustee with a report setting forth (a) the name, address and federal taxpayer identification number of each payee, (b) the amounts to be paid, (c) a description of the Work or other services provided by each payee, (d) invoices and other supporting documentation reasonably acceptable to the County, (e) during the Construction Period, a properly completed and executed Construction Certification, and (f) all additional certifications, receipts or documents as may be required by the Loan Agreement or the other Financing Agreements ("Draw Package"). Each Draw Package shall include a copy of the invoice, bill or application for payment from each payee for whom payment is being requested, along with appropriate lien waivers in a form and substance reasonably satisfactory to the County.

9.6.2.2 With respect to the Draw Packages relating to the Construction Agreement, the Draw Package shall include: (a) the most recent schedule of values prepared in accordance the Construction Agreement, which schedule of values shall allocate the GMP or fixed contract sum among the various portions of the Work relating to the applicable Phase and shall identify the percentage of that portion of the Work that has actually been completed, and (b) to the extent applicable, conditional partial waivers of lien from each payee covering all Work performed by such payee since the last payment application of such payee.

9.6.2.3 During the Construction Period, if Developer cannot certify with each requested disbursement that, after the requested disbursement, there will be sufficient Available Funds in the Construction Trust Fund to complete the construction and development of the Facility, then the Construction Certification shall set forth in detail satisfactory to the County the anticipated shortfall of such Available Funds (the amount of such shortfall as determined from time to time shall hereafter be referred to as the "Excess Construction Costs").

9.6.3 The period covered by each Draw Package shall be one (1) calendar month ending on the last day of the month. The Draw Package shall be delivered to the County and the Indenture Trustee on or before the fourth (4th) Business Day of the next calendar month following the period covered by the Draw Package (the "Draw Package Submittal Date"). If a Draw Package is not submitted by the Draw Package Submittal Date, then the same shall be included in the next month's Draw Package. Notwithstanding the foregoing, however, Developer shall be obligated to keep the County reasonably informed with respect to the development and content of each Draw Package being prepared for submittal.

9.6.4 Upon delivery of each Draw Package, the procedure for review and approval of such Draw Package and the disbursement of funds for the payment of Project Costs shall be as follows:

9.6.4.1 Within ten (10) Business Days of each Draw Package Submittal Date, the County shall notify Developer of the County's approval or disapproval of all or any portion of any Draw Package, which notification shall be in writing and shall specify any objections.

9.6.4.2 If the County approves all or part of a Draw Package, then it shall cause to be paid the approved Project Costs as follows: (a) by the last Business Day of the month

for all Construction Costs, (b) sixty (60) days after receipt of the Draw Package for all Pre-Development Costs, and (c) thirty (30) days after receipt of the Draw Package for Reimbursable Expenses and other Project Costs other than Pre-Development Costs.

9.6.4.3 Developer shall pay all payees listed in the prior Draw Package for which the County approves payment within ten (10) Business Days following the date on which the County pays such approved Project Costs to the Developer and shall provide to the County and the Indenture Trustee evidence that such payments have been made.

ARTICLE 10

INDEMNIFICATION

10.1 Developer's Indemnification of the County. In addition to all other rights and remedies under this Agreement, Developer shall indemnify, defend and hold harmless the County Indemnified Persons from and against any and all Losses, in contract or in tort, arising, directly or indirectly, from, out of or in connection with: (a) any material breach of any representation or any warranty made by Developer or MMPI in this Agreement or in any other certificate or document delivered by Developer or MMPI to the County pursuant to this Agreement; (b) the negligence of Developer, MMPI or their Affiliates; and (c) any breach by Developer or MMPI of any covenant or obligation of Developer or MMPI in this Agreement. Notwithstanding the provisions of this Section 10.1, Developer shall not be liable for any Losses arising from or to the extent incurred in connection with any injury to or death of a Person or any damage to property (including loss of use) to the extent caused by the negligence or willful misconduct of any County Indemnified Person.

10.2 MMPI's Indemnification of the County. In addition to all other rights and remedies under this Agreement, MMPI shall indemnify, defend and hold harmless the County Indemnified Persons from and against any and all Losses, in contract or in tort, arising, directly or indirectly, from, out of or in connection with: (a) any material breach of any representation or any warranty made by MMPI in this Agreement or in any other certificate or document delivered by MMPI to the County pursuant to this Agreement; (b) the negligence of MMPI; and (c) any breach by MMPI of any covenant or obligation of MMPI in this Agreement. Notwithstanding the provisions of this Section 10.2, MMPI shall not be liable for any Losses arising or resulting from the acts or omissions of Developer or arising from or to the extent incurred in connection with any injury to or death of a Person or any damage to property (including loss of use) to the extent caused by the negligence or willful misconduct of any County Indemnified Person.

10.3 Indemnification Procedures.

10.3.1 Notice. Any County Indemnified Person entitled to indemnification under this Article 10 shall, promptly after the receipt of notice of any Action against such County Indemnified Person by a third party in respect of which indemnification may be sought pursuant to this Article 10, notify Developer or MMPI, as the case may be, of such Action; provided that a delay in giving such notice shall not affect the liability of Developer or MMPI under this Agreement except to the extent the failure materially and adversely affects the ability of Developer or MMPI to defend the Action.

10.3.2 Defense. If any such Action shall be made or brought against the County Indemnified Person, then Developer or MMPI, as the case may be, shall assume the defense thereof unless the County Indemnified Person determines, in its reasonable judgment, that there is a conflict between the interest of Developer or MMPI and that of the County with respect to the Action, in which case the County Indemnified Person shall be represented by counsel of its selection and the cost thereof shall be paid for by Developer or MMPI, as the case may be. If Developer or MMPI assumes the defense of the County Indemnified Person, then such defense shall be with counsel of Developer's or MMPI's selection reasonably acceptable to the County Indemnified Person, provided that Developer or MMPI provides written notice to the County Indemnified Person that Developer or MMPI will undertake such defense and will indemnify the County Indemnified Person with respect to such Action. In such circumstances, the County Indemnified Person shall (a) cooperate with Developer or MMPI, as the case may be, and provide Developer or MMPI with such information and assistance as Developer or MMPI shall reasonably request in connection with such Action, and (b) have the right, at the County Indemnified Person's own expense, to participate and be represented by counsel of its own choice with respect to such Action. If Developer or MMPI assumes the defense of any Action, then Developer or MMPI shall control the settlement of such Action; provided, however, that Developer or MMPI shall not conclude any settlement or consent to the entry of any judgment that does not include an unconditional release of the County Indemnified Person from all liability in connection with the claim or action without the prior written consent of the County Indemnified Person.

10.4 Survival. The obligations of Developer and of MMPI set forth in this Article 10 shall survive termination or expiration of the Agreement.

ARTICLE 11

INSURANCE; CASUALTY

11.1 Insurance Requirements. Developer shall purchase and maintain, or cause Bridging Consultant, Architect, Contractor or Subcontractors (as appropriate) to purchase and maintain, the following insurance policies (the "Insurance Policies"):

11.1.1 Professional Liability Insurance. Professional liability insurance for Losses that arise out of the professional services of Bridging Consultant, Architect and other professionals working on the Facility. Policy limits for Bridging Consultant and Architect shall be as set forth on Exhibit B. If available at commercially reasonable rates, Developer may procure Owners Protective Professional Insurance ("OPPI"), or cause Contractor to procure Contractors Protective Professional Insurance ("CPPI"), in either case with a minimum limits of at least \$20,000,000 each claim/annual aggregate. The County shall be an additional insured to any OPPI or CPPI policy.

11.1.2 Workers' Compensation. Workers' compensation insurance meeting the statutory requirements of the State of Ohio and employers' liability insurance in limits not less than those set forth in Exhibit B.

11.1.3 General Liability. Commercial general liability insurance coverage for third party bodily injury or property damage claims (a) arising out of services performed by Developer or the Contractor prior to the start of construction for a combined single limit for bodily injury and property damage of not less than \$5,000,000 each occurrence, \$10,000,000 annual aggregate, (b) arising out of construction services performed on the Site after the start of construction for a combined single limit for bodily injury and property damage of not less than the limits set forth on Exhibit B, and (c) arising out of construction services performed on the Site after the date of Substantial Completion (for example, punch list or warranty work) for a combined single limit for bodily injury and property damage of not less than \$2,000,000 each occurrence/annual aggregate. The completed operations coverage under the commercial general liability insurance relating to construction services performed on the Site shall continue for a period of not less than five (5) years after Substantial Completion. The County and the City of Cleveland shall be shown as additional insureds with respect to this coverage. The foregoing policy limits may be achieved by any combination of primary and excess policies so long as the overall minimum limits are procured. If available at commercially reasonable rates, and approved by the County, which approval shall not be unreasonably withheld, conditioned or delayed, Developer may procure and maintain an Owner Controlled Insurance Program ("OCIP"), or cause Contractor to procure and maintain a Contractor Controlled Insurance Program ("CCIP"), in either case providing the coverage described above. The County shall be an additional insured to any OCIP or CCIP policy.

11.1.4 Pollution Liability. Developer shall procure and maintain environmental impairment/pollution liability insurance for environmental clean up costs and third party liability for bodily injury and property damage that result from the emission, discharge, release, or escape of any contaminants, irritants, pollutants or other Hazardous Materials into or on the Site. Such insurance shall be on a form reasonably acceptable to the County, shall contain minimum limits of \$10,000,000 per claim/annual aggregate and shall be maintained for not less than a five (5) year period that begins at the commencement of construction of the Facility. The County shall be an additional insured on the policy.

11.1.5 Business Automobile Liability Insurance. Business automobile liability insurance covering all owned, non-owned and hired vehicles used in connection with this agreement in an amount not less than the limits set forth on Exhibit B.

11.1.6 Builder's Risk Insurance. Builder's risk (or inland marine) insurance for direct physical loss or damage resulting from an insured peril to the building, structures and other improvements comprising all or part of the Facility, including materials and equipment that are intended for incorporation into the Facility, whether located at the Site, in storage, or in transit. The policy shall include coverage for physical loss or damage from fire and other perils as are included under an "all risk" or "special form" policy and shall include such endorsements as are commercially available and typically procured for construction projects of a scope and size similar to the Project. Policy limits shall be equal to the replacement cost of the Facility, subject to sub-limits commercially and reasonably available in the Ohio insurance market. The County shall be a named insured on the policy as its interests may appear.

11.1.7 County Review. Developer shall provide to the County a copy of all Insurance Policies required by this Article 11 for the County's review, comment and approval,

which approval shall not be unreasonably withheld, conditioned or delayed. Developer shall cause to be incorporated into such Insurance Policies comments of the County, provided that such comments are commercially reasonable for construction projects of a size and scope similar to the Project .

11.2 General Insurance Provisions. Developer shall cause to be furnished to the County certificates of insurance for the Insurance Policies setting forth deductibles, self-insurance retentions and the limits and sub-limits for each of the Insurance Policies. Developer shall cause to be furnished to the County copies of the Insurance Policies within thirty (30) days after Developer's receipt of the Insurance Policies. The Insurance Policies, where appropriate, shall name the County as an additional insured, as its interests may appear. The Insurance Policies shall provide that coverage shall not be materially modified, reduced or cancelled until the insurance carrier(s) provide at least thirty (30) days' prior written notice of such modification, reduction or cancellation to the County. Developer shall provide the County written notice of any material changes to the Insurance Policies within thirty (30) days prior to the date the change becomes effective, if practicable, but in no instance later than the date such changes become effective. The Insurance Policies shall be obtained from financially sound insurance companies rated not less than A-;VII by A.M. Best & Company (or any equivalent rating agency approved by the County's Risk management division, which approval shall not be unreasonably withheld) and authorized to do business in the State of Ohio. The costs and expenses incurred by Developer in discharging obligations under this Article 11 shall be included as Project Costs.

11.3 Damage or Destruction Prior to Completion.

11.3.1 If at any time after commencement of construction and prior to Substantial Completion, as the case may be, all or any part of the Facility shall be damaged or destroyed by a casualty of any nature (a "Casualty"), Developer shall, to the extent Applicable Laws permit, promptly restore, replace, rebuild, repair or alter (such work being "Casualty Repair Work") all or such portion of the Facility as shall have been damaged or destroyed. All Casualty Repair Work shall be performed in accordance with the same requirements of this Agreement as apply to the Work.

11.3.2 Developer shall be responsible to fund all deductibles and amounts exceeding any sub-limits due under any applicable property insurance policy for all Casualty Repair Work. Payment of such deductibles on sub-limits shall be a Project Cost.

11.3.3 All builder's risk or other property insurance proceeds shall be deposited into the Construction Trust Fund for application toward payment of the Casualty Repair Work.

ARTICLE 12

REPRESENTATIONS, WARRANTIES AND COVENANTS

12.1 MMPI's and Developer's Representations, Warranties and Covenants. MMPI and Developer, severally and not jointly, hereby represent and warrant to, and covenant with, the County, as follows, as each such representation, warranty and covenant may be applicable to it:

12.1.1 This Agreement constitutes the legal, valid, and binding obligation of MMPI and Developer, enforceable against each of them in accordance with its terms, except insofar as enforcement may be limited by bankruptcy, insolvency, or other laws affecting generally the enforceability of creditors' rights and by limitations on the availability of equitable remedies.

12.1.2 MMPI and Developer are under common Control.

12.1.3 Developer is, and shall be during the term of this Agreement, a special purpose entity with the sole purpose of exercising the rights and performing the obligations of Developer set forth herein. Developer shall own no tangible asset other than its interest in the Facility. Developer shall not incur any obligations other than obligations arising out of the design, construction, furnishing, equipping and development of the Site and the Facility.

12.1.4 MMPI and Developer shall each disclose any of their or their Affiliates' ownership interest in, or lending relationship with, any Bridging Consultant, Architect, Consultant, Contractor, Subcontractor or other Person performing services in connection with the design, construction, furnishing, equipping or development of the Facility; provided that ownership of less than five percent (5%) of the equity or publicly issued debt of any publicly traded entity shall not require disclosure pursuant to the terms hereof.

12.2 County's Representations, Warranties and Covenants. The County hereby represents and warrants to, and covenants with, Developer that the execution, delivery and performance by the County of this Agreement are within the power of the County and have been duly authorized by all necessary action and are authorized by and will not violate Applicable Laws or result in the breach of any material agreement to which the County is a party. This Agreement has been duly executed and delivered by the County and this Agreement and the documents referred to herein constitute valid and binding obligations of the County.

ARTICLE 13

DEFAULTS AND REMEDIES

13.1 Developer Default.

13.1.1 If, at any time, Developer or MMPI shall: (a) commit a material breach of this Agreement (including the failure to pay any sums or amounts required hereunder) that remains uncured for a period of more than thirty (30) days after its receipt of written notice of default from the County, identifying with particularity such failure or violation (a "County Default Notice") (provided, however, that if such matter, other than the non-payment of amounts required hereunder, cannot be cured within such thirty (30) day period, Developer or MMPI shall not be in default if Developer or MMPI shall commence the cure within such thirty (30) days and thereafter diligently pursues the cure thereof to completion, provided further that Developer or MMPI shall not have more than one hundred twenty (120) days to cure such matter); (b) make a general assignment for the benefit of creditors, or if bankruptcy, reorganization, receivership, insolvency, liquidation or other similar proceedings are instituted by or against Developer or MMPI that result in the entry of an order for any such relief and, if such proceedings are

instituted against Developer or MMPI, such order is not vacated, discharged, stayed or bonded pending appeal within ninety (90) days after entry thereof; or (c) any representation or warranty made by Developer or MMPI herein shall prove to have been incorrect when made in any material and adverse respect (with each or any of the foregoing being a "Developer Default"), then the same shall constitute a default hereunder and, upon the occurrence of a Developer Default, subject to the provisions of Article 15, the County may exercise any and all remedies available at law and in equity. If the County terminates this Agreement resulting from a Developer Default, then Developer shall be obligated, at the County's request, to assign its rights under the Architect Agreements, Construction Agreement and any other agreements relating to the Project to which Developer or MMPI is a party, as necessary, in order for the County to complete the Facility as contemplated hereunder. Any dispute in respect of the occurrence of a Developer Default under clauses (a) or (c) above shall be an Arbitration Dispute.

13.2 County Default. If the County shall: (a) commit a material breach (including the failure to pay any sums or amounts due from the County hereunder) of this Agreement that remains uncured for a period of more than thirty (30) days after receipt of a written notice of default from Developer, identifying with particularity such failure or violation ("Developer Default Notice") (provided, however, that if such matter, other than the non-payment of amounts due as provided above, cannot be cured within such thirty (30) day period, then the County shall not be in default if the County shall commence the cure within such thirty (30) days and thereafter diligently pursues the cure thereof to completion, provided further that the County shall not have more than one hundred twenty (120) days to cure such matter); (b) make a general assignment for the benefit of creditors, or if bankruptcy, reorganization, receivership, insolvency, liquidation or other similar proceedings are instituted by or against the County that result in an entry of an order for any such relief, and, if such proceedings are instituted against the County, such order is not vacated, discharged, stayed or bonded pending appeal within ninety (90) days after the entry thereof; or (c) any representation or warranty made by the County herein shall prove to have been incorrect when made in any material and adverse respect (with each or any of the foregoing being a "County Default"), the same shall constitute a default hereunder and, upon the occurrence of a County Default, subject to the provisions of Article 15, Developer may exercise any and all remedies available at law and in equity. Any dispute as to the occurrence of a County Default under clauses (a) or (c) above shall be an Arbitration Dispute.

13.3 Non-Exclusive Remedies. Subject to the provisions of Article 15, all rights and remedies set forth in this Agreement are cumulative and in addition to the Parties' rights and remedies at law or in equity, and a Party's exercise of any such right or remedy shall not prevent the concurrent or subsequent exercise of any other right or remedy. A Party's delay or failure to exercise or enforce any rights or remedies shall not constitute a waiver of any such rights, remedies or obligations. No Party shall be deemed to have waived any default unless such waiver is expressly set forth in an instrument signed by such Party. If a Party waives in writing any default, then such waiver shall not be construed as a waiver of any covenant or condition set forth in this Agreement except as to the specific circumstances described in such written waiver. Neither payment of a lesser amount than the sum due hereunder nor endorsement or statement on any check or letter accompanying such payment shall be deemed an accord and satisfaction, and the other Party may accept the same without prejudice to the right to recover the balance of such sum or to pursue any other remedy.

13.4 Equitable Relief. The Parties acknowledge that the rights conveyed by this Agreement and the covenants of the Parties are of a unique and special nature, and that any violation of this Agreement shall result in immediate and irreparable harm to Developer or the County, as the case may be, and that in the event of any actual or threatened breach or violation of any of the provisions of this Agreement, the affected Party shall be entitled as a matter of right to injunctive relief from any equity court of competent jurisdiction. Each Party waives the right to assert the defense that such breach or violation can be compensated adequately in damages in an action at law.

13.5 Self-Help Remedies.

13.5.1 If a Developer Default occurs and the County terminates this Agreement, or if Developer abandons the Project for a period of sixty (60) consecutive days without providing to the County reasonable assurances as to Developer's ability to proceed with the Project, then, in addition to any other remedy available to the County under this Agreement, the County may take possession of the Site and complete the design, construction, development, furnishing and equipping of the Facility and do anything required, necessary or advisable in the County's sole judgment to fulfill the obligations of Developer hereunder, including the rights to avail itself of or procure performance of the Construction Agreement and the Architect Agreements, to let any contracts with contractors, architects, subcontractors or others and to employ watchmen to protect the Site from injury. Without restricting the generality of the foregoing and for the purposes aforesaid, the County may perform the following actions:

13.5.1.1 to complete the design, construction, development, furnishing and equipping of the Facility;

13.5.1.2 to use all Available Funds to complete the Facility;

13.5.1.3 to make changes in the Design Documents that shall be necessary or desirable to complete the design, construction, furnishing, equipping and development of the Facility;

13.5.1.4 to retain or employ new contractors, subcontractors, architects, engineers and inspectors;

13.5.1.5 without inquiring into and without respect to the validity thereof, to pay, settle or compromise all existing bills and claims that may be liens, or to avoid such bills and claims becoming liens against the Site (or any leasehold estate or other interest therein) or as may be necessary or desirable for the completion of the design, construction, development, furnishing and equipping of the Facility and for the clearance of title to the Site;

13.5.1.6 to prosecute and defend Actions in connection with the Project;
and

13.5.1.7 to take action and require such performance as the County deems necessary or advisable under the Surety Bond and to make settlements and compromises with the surety or sureties thereunder, and in connection therewith, to execute instruments of release and satisfaction.

ARTICLE 14

TERMINATION AND EXPIRATION

14.1 Termination Rights.

14.1.1 Conveyance. Upon the termination of this Agreement pursuant to Article 13 or pursuant to the exercise of any other termination rights under this Agreement, the Facility (including all additions and improvements thereto), all tangible and intangible assets (including the Design Documents) acquired or obtained by Developer or Operator with the disbursed Loan funds or other Available Funds, and (to the extent assignable) all of Developer's and Operator's interest in the Construction Trust Fund, all leases, contracts, purchase orders and reservations with non-Affiliated third parties in connection with the design, construction, furnishing, equipping, development and operation of the Facility shall, without further act of Developer or Operator, automatically be deemed conveyed, transferred and assigned to the County, and upon request by the County, Developer and Operator shall promptly deliver any reasonably requested document to confirm such conveyance, transfer and assignment to the County free and clear of all liens whatsoever, except for liens and encumbrances permitted under any of the Financing Agreements. The foregoing is in addition to all other rights, liabilities and obligations that a Party may have in connection with such termination.

14.1.2 Concurrent Termination of Financing Agreements and Development Agreement. Notwithstanding anything to the contrary contained in this Agreement, (a) a termination of this Agreement shall result in the automatic termination of the other Financing Agreements (and/or the Development Agreement, if the Development Agreement is still in effect); and (b) upon any termination of the other Financing Agreements (and/or the Development Agreement, other than by its being superseded by the execution and delivery of the Financing Agreements), this Agreement shall automatically be terminated.

14.1.3 Effect of Termination. Upon the termination of this Agreement pursuant to Article 13 or pursuant to the exercise of any other termination rights under this Agreement and upon the conveyance contemplated by Section 14.1.1 hereof, no Party shall have any further liability or obligation to any other Party except as expressly set forth in this Agreement; provided that no Party shall be relieved of any liability for breach of this Agreement related to events or obligations arising prior to such termination.

14.2 Termination of the Development Agreement. By its terms, the Development Agreement shall terminate and cease to be of any force or effect upon execution and delivery of all of the Financing Agreements. The responsibilities and obligations set forth in the Development Agreement that pertain to the design, construction, furnishing, equipping, and development of the Facility through Final Completion shall terminate and cease to be of any force or effect upon execution of this Agreement.

ARTICLE 15

DISPUTE RESOLUTION

15.1 Dispute Notice. If a Dispute arises pursuant to this Agreement which a Party believes constitutes an Arbitration Dispute, then such Party will give written notice of such Arbitration Dispute by promptly delivering a Dispute Notice to the other Party. Such Dispute Notice shall include sufficient details of the Arbitration Dispute to enable the recipient to consider and formulate its position in relation to the Arbitration Dispute. Such Dispute Notice shall also indicate whether the party giving the notice believes that the matter is to proceed under the Expedited ADR process under Section 15.3 or the Arbitration Dispute process under Section 15.4.

15.2 Settlement By Mutual Agreement. In the event any Arbitration Dispute arises, the Parties shall first attempt in good faith to settle and resolve such Arbitration Dispute by mutual agreement within fifteen (15) days of either Party receiving a Dispute Notice from the other Party.

15.3 Expedited Dispute Resolution.

15.3.1 Disputes or deadlocks among the Parties arising under Article 4 or Section 9.6 hereof or issues where Expedited ADR is specifically required hereunder (each, an "Expedited ADR Dispute"), shall be submitted to expedited alternative dispute resolution ("Expedited ADR") under this Section 15.3. The Parties have mutually agreed to establish a panel ("Panel") of at least three (3) arbitrators qualified to resolve design and construction-related contract disputes to be available to resolve Expedited ADR Disputes. Unless the Parties mutually agree otherwise, the arbitrators will be chosen from the AAA Large and Complex Case Panel of Arbitrators except that none of the arbitrators shall have performed, directly or indirectly, a material amount of work for any Party within the five (5)-year period immediately preceding the date of their selection or intend or desire to perform work for any Party within one (1) year following the date of their selection. The Parties shall exchange proposed Panel compositions within thirty (30) days after the Effective Date and agree on the Panel within sixty (60) days after the Effective Date. Any Expedited ADR Dispute will be resolved in accordance with this Section 15.3, and the provisions of this Section 15.3 shall be the exclusive means of resolving any Expedited ADR Dispute; provided, however a Party may seek injunctive or other equitable relief from a court of competent jurisdiction as necessary to avoid any irreparable harm.

15.3.2 As to each Expedited ADR Dispute, the Parties shall mutually select an arbitrator from the approved Panel to whom Expedited ADR Disputes shall be submitted for resolution under this Section 15.3 and that Person is hereinafter referred to as the "Neutral." Notwithstanding the foregoing, the Neutral for any Expedited ADR Dispute related to whether a particular design matter complies with the County Requirements or whether, under Section 4.4, a design change proposed by the County complies with the requirements of said Section 4.4, shall be Conventional Wisdom, Inc., unless either Party within five (5) Business Days after delivery of the Dispute Notice notifies the other Party that it objects to the designation of Conventional Wisdom, Inc. as the Neutral (and in such case the Parties shall mutually select a Neutral from the

Panel). If the Parties do not agree upon the selection of the Neutral within ten (10) Business Days after delivery of the Dispute Notice, then, at the request of either Party, the Neutral shall be selected by lot from the Panel.

15.3.3 The Neutral shall have the power and authority to decide Expedited ADR Disputes, but shall not have the power or authority to award any damages. There shall be no discovery permitted with respect to any Expedited ADR other than that required by the Neutral. Each of the Parties who is party to such Expedited ADR shall present its position with respect to the issues to be determined by such Expedited ADR by written submission to the Neutral and the other Party, followed at least two days later by an oral presentation to the Neutral. Each of the Parties who is party to such Expedited ADR shall be given the opportunity to hear and orally respond to the others' presentations to the Neutral, and to present documents to the Neutral in support of such Party's position. The Neutral shall have the right to limit the documents presented to the Neutral to assure a prompt resolution of the issues to be determined by the Neutral. The Parties who are party to such Expedited ADR may have their respective counsels present at such Expedited ADR, but there shall be no examination or cross-examination of witnesses other than as required or permitted by the Neutral.

15.3.4 The Parties shall use Expedited ADR exclusively, rather than arbitration or litigation, as the means of resolving all Expedited ADR Disputes. Expedited ADR will be scheduled so that it is completed and a written decision is rendered within fourteen (14) days from the date of selection of the Neutral. The written decision by the Neutral shall be the binding, final determination on the merits of the Expedited ADR Dispute and judgment thereon may be entered in any court having jurisdiction. Each Party shall bear its own attorneys' fees and costs relating to the Expedited ADR, but the fees and costs of the Neutral shall be borne equally by the Parties to the Expedited ADR.

15.3.5 Each of the Parties shall (a) accept such terms and conditions as the Neutral may seek to impose in relation to the discharge of his or her functions; (b) give the Neutral such assistance, facilities and information as the Neutral requests in the discharge of his or her duties and such Party is reasonably able to provide; and (c) make all reasonable efforts to ensure that the Neutral reaches a decision as soon as practicable.

15.4 Arbitration Dispute Process.

15.4.1 Except for Expedited ADR Disputes, any Arbitration Dispute shall be resolved in accordance with this Section 15.4, and the provisions of this Section 15.4 shall be the exclusive means of resolving any Arbitration Dispute; provided, however a Party may seek injunctive or other equitable relief from a court of competent jurisdiction as necessary to avoid any irreparable harm.

15.4.2 Any Arbitration Dispute shall be resolved exclusively by final and binding arbitration to be held in Cuyahoga County, Ohio before all three (3) independent arbitrators comprising the Panel pursuant to the rules of the American Arbitration Association ("AAA") then in effect. Any Dispute regarding real estate development or construction matters shall be governed by the AAA Complex Construction Arbitration Rules then in effect, and any Dispute regarding other matters shall be governed by the AAA Commercial Arbitration Rules then in

effect. Unless otherwise provided in this Agreement, the arbitration hearing will be scheduled so that it is completed within sixty (60) days from the appointment of the arbitrators and a written award is rendered within forty-five (45) days from the date of such completion. The Parties agree that although the arbitration shall be governed by the applicable AAA rules, the arbitration itself shall not be administered by the AAA unless the Parties mutually agree to file the Arbitration Dispute with the AAA. The award rendered by the arbitrators shall be final and conclusive and binding upon the Parties. Judgment may be entered on the arbitrators' award in any court having jurisdiction. Each Party shall bear its own attorneys' fees and costs relating to the arbitration, but the fees and costs of the arbitrators shall be borne equally by the Parties to the Arbitration Dispute.

15.5 Continued Obligations. Notwithstanding any Dispute, the Parties shall continue to comply with their respective obligations under this Agreement with respect to all matters that are not the subject of the Dispute.

15.6 Emergency Relief. Notwithstanding the foregoing provisions in this Article 15, a Party may seek a preliminary injunction or other provisional judicial remedy if, in its reasonable judgment, such action is necessary to avoid irreparable damage or to preserve the status quo. Notwithstanding any provision of this Agreement to the contrary, each Party may seek temporary or preliminary injunctive relief or another form of ancillary relief at any time from any court of competent jurisdiction, including with respect to any Arbitration Dispute. If a Party seeks such temporary or preliminary injunctive relief before the underlying Dispute is resolved by Arbitration, then the procedures set forth in this Article 15 shall still govern the ultimate resolution of the Arbitration Dispute notwithstanding the fact that a court of competent jurisdiction may have entered an order providing for injunctive or another form of temporary or preliminary relief.

15.7 Pending Dispute Fund. During the pendency of any Arbitration Dispute involving the termination of this Agreement (or the Financing Agreements), the County shall have the right to pay the Supplemental Payments and ten percent (10%) of the Monthly Base Rental Payment into a reserve fund with the Indenture Trustee (the "Pending Dispute Fund"). Developer and Operator shall be entitled to withdraw funds from the Pending Dispute Fund for all proper operating expenses of the Facility, and the terms and conditions of the Pending Dispute Fund shall contain appropriate provisions providing for the disbursement of funds to pay or reimburse such operating expenses of the Facility on a timely basis. If it is determined that the County is permitted to terminate this Agreement (or the Financing Agreements, as applicable), then the County shall have the right to receive all amounts remaining in the Pending Dispute Fund (after payment of Facility operating expenses as provided above) and Developer shall have no right to such funds. If it is determined that the County is not permitted to terminate this Agreement (or the Financing Agreements, as applicable), then Developer shall have the right to receive all amounts remaining in the Pending Dispute Fund.

15.8 Litigation. All Disputes not subject to the Expedited ADR or the Arbitration Dispute Process shall be resolved through litigation.

15.9 Jurisdiction and Venue. Subject to the requirements of this Article 15, any Dispute may be brought by suit, action or proceeding before any federal or state court of

competent jurisdiction located in Cleveland, Ohio. Subject to the requirements of this Article 15, the Parties agree to the exclusive jurisdiction and venue of such courts to resolve any Dispute. Any Dispute that seeks confirmation of an award in an Arbitration Dispute may be brought by suit, action, or proceeding before any federal or state court of competent jurisdiction located in Cleveland, Ohio.

15.10 Governing Law. This Agreement shall be governed exclusively by and construed in accordance with the laws of the State of Ohio, without regard to its conflict of law provisions that would cause the application of the laws of another jurisdiction.

ARTICLE 16

ASSIGNMENT

16.1 Developer Assignments. Except for Permitted Transfers, Developer and MMPI shall not Transfer this Agreement, their respective rights and obligations hereunder or suffer or permit any transfer of Control of Developer without first obtaining the written consent of the County.

16.2 Assignment by the County. The County shall not assign this Agreement or its rights and obligations hereunder without the prior written consent of MMPI and Developer.

16.3 Violation of Assignment Provisions. If MMPI, Developer or the County assigns this Agreement in violation of the provisions of this Article 16, without the prior written consent of the other Party, then the Party so assigning this Agreement shall not be relieved of its obligations hereunder and the non-transferring Party shall have the right to terminate this Agreement and the Financing Agreements (as applicable) for the breach of this covenant.

16.4 Estoppel Certificate. Each Party shall, upon the reasonable request of the other Party (or any current or prospective source of financing for the County, Developer, MMPI or any of their Affiliates, or any Permitted Transferee), and in each case within ten (10) Business Days after the other Party has requested it, execute and deliver to the appropriate Parties a certificate in stating:

16.4.1 that this Agreement is unmodified and is in full force and effect (or, if there have been modifications, that this Agreement is in full force and effect as modified and stating the modifications or, if this Agreement is not in full force and effect, that such is the case);

16.4.2 to the knowledge of the Party providing the certificate, that there are no defaults by it or the other Parties (or specifying each such default as to which it may have knowledge);

16.4.3 to its knowledge, whether there are any counterclaims against the enforcement of any Party's obligations; and

16.4.4 any other matters reasonably requested.

ARTICLE 17

CONDITIONS PRECEDENT

17.1 Conditions Precedent for the Benefit of Developer.

17.1.1 Notwithstanding anything to the contrary set forth herein, Developer's performance of its obligations under this Agreement is expressly conditioned upon the fulfillment or satisfaction of each of the following conditions, any of which may be waived only in writing by Developer in its sole discretion:

17.1.1.1 All of the County's representations and warranties in this Agreement are accurate in all material respects as of their respective dates of execution and delivery.

17.1.1.2 All of the covenants and obligations that the County is required to perform or to comply with pursuant to this Agreement prior to the date of Developer's performance (as applicable) have been performed and complied with in all material respects.

17.1.1.3 The County shall have delivered all documents and notices required by this Agreement that shall, among other things, verify the due authorization for the execution and delivery of this Agreement.

17.1.2 If any of the foregoing conditions is not satisfied on or prior to the respective dates set forth in this Section 17.1, then Developer shall have the right to terminate this Agreement by giving the County written notice to such effect.

17.2 Conditions Precedent for the Benefit of the County.

17.2.1 Notwithstanding anything to the contrary set forth herein, the County's performance of its obligations under this Agreement is expressly conditioned upon the fulfillment or satisfaction of each of the following conditions, any of which may be waived only in writing by the County in its sole discretion:

17.2.1.1 All of Developer's representations and warranties in this Agreement are accurate in all material respects as of their respective dates of execution and delivery.

17.2.1.2 All of the covenants and obligations that Developer is required to perform or to comply with pursuant to this Agreement prior to the date of the County's performance (as applicable) have been performed and complied with in all material respects.

17.2.1.3 Developer shall have delivered all documents and notices required by this Agreement that shall, among other things, verify the due authorization for the execution and delivery of this Agreement.

17.2.2 If any of the foregoing conditions is not satisfied on or prior to the respective dates set forth in this Section 17.2, the County shall have the right to terminate this Agreement by giving Developer written notice to such effect.

ARTICLE 18

MISCELLANEOUS

18.1 Force Majeure Event. Notwithstanding anything to the contrary set forth herein, if either Party shall be delayed or hindered in, or prevented from, the performance of any covenant or obligation hereunder, as a result of any Force Majeure Event, and, provided that the Party delayed, hindered or prevented from performing notifies the other Party both of the commencement and of the expiration of such delay, hindrance or prevention (each notice being required within fourteen (14) days of when such Party knew or should have known, using commercially reasonable diligence, of the respective event), then the performance of such covenant or obligation shall be excused for the period of such delay, hindrance or prevention and the period for the performance of such covenant or obligation shall be extended by the number of days equivalent to the number of days of the impact of such delay, hindrance or prevention. The Parties shall use all commercially reasonable efforts to mitigate the adverse effect and duration of the Force Majeure Event and to perform all of their other obligations hereunder that are not affected by the Force Majeure Event.

18.2 Amendment. No alteration, amendment or modification hereof shall be valid unless executed by an instrument in writing by the Parties hereto with the same formality as this Agreement.

18.3 Consent in Writing. Unless otherwise specifically provided herein, no consent or approval by the a Party permitted or required under the terms of this Agreement shall be valid or be of any validity whatsoever unless the same shall be in writing, signed by the Party by or on whose behalf such consent is given.

18.4 Severability. If any section, provision in this Agreement or any portion thereof shall be invalid or unenforceable for any reason, such invalidity or lack of enforceability shall not affect the validity or enforceability of any other section, provision or portion thereof. To the extent an interpretation of a section, provision or a portion thereof can be made which will make it valid or enforceable, the Parties agree that the interpretation making it valid or enforceable should be chosen.

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

18.6 Agreement Binding on the Parties; No Personal Liability.

18.6.1 Subject to the terms of Article 16 hereof, the terms of this Agreement shall be binding upon, inure to the benefit of and be enforceable solely by the Parties and their permitted successors and assigns, and nothing in this Agreement or by virtue of the transactions contemplated hereby, whether express or implied, shall be construed to constitute, create or

confer rights, remedies or claims in or upon any Person (as third-party beneficiary or otherwise) not a Party hereto, or to create obligations or responsibilities of the Parties to such Persons, or to permit any Person other than the Parties hereto and their respective successors and assigns to rely upon or enforce the covenants, conditions and agreements contained herein, except as otherwise specifically provided herein.

18.6.2 No such covenant, obligation or agreement under this Agreement shall be deemed to be a covenant, obligation or agreement of any present or future member, officer, agent or officer, or employee of the County in other than their official County position or of any individual Person who is an officer, member, manager, director or shareholder of MMPI or Developer or other owner other than in such capacity as an officer, member, manager, director or shareholder, and neither the members of the County Board of County Commissioners nor any County official executing this Agreement, nor any individual person executing this Agreement on behalf of MMPI or Developer shall be liable personally by reason of the covenants, obligations or agreements of MMPI, the County or Developer contained in this Agreement.

18.7 Relationship of Parties. The relationship of the Parties under this Agreement is that of independent parties, each acting in its own best interests. Notwithstanding anything in this Agreement to the contrary, no partnership, joint venture or relationship of principal and agent is established or intended hereby between or among the Parties.

18.8 Notices. Any notice or communication between the Parties required or permitted to be given under this Agreement shall be deemed sufficiently given if delivered personally or mailed by U.S. registered or certified mail, return receipt requested, which shall be deemed delivered when either the return receipt is signed or refused, and addressed as follows:

1. Notices to the County:

Cuyahoga County Administrator
1219 Ontario Street, 4th Floor
Cleveland, OH 44113

With copies to:

Cuyahoga County Prosecutor's Office
Chief of the Civil Division
1200 Ontario Street, 8th Floor
Cleveland, OH 44113

Thompson Hine, LLP
3900 Key Center
127 Public Square
Cleveland, OH 44114
Attn: Jeffrey R. Appelbaum, Esq.
Facsimile: (216) 566-5800

2. Notices to Developer, Operator and MMPI:

c/o Merchandise Mart Properties, Inc.
222 Merchandise Mart Plaza, Suite 470
Chicago, IL 60654
Attn: Mark Falanga, Senior Vice President
Facsimile: (312) 321-4551

with copies to:

Merchandise Mart Properties, Inc.
222 Merchandise Mart Plaza, Suite 470
Chicago, IL 60654
Attn: Legal Department
Facsimile: (312) 321-4551; and

Drinker Biddle & Reath LLP
191 N. Wacker Drive, Suite 3700
Chicago, IL 60606
Attn: Michael F. Csar, Esq.
Facsimile: (312) 569-3223

18.9 Costs. The costs and expenses of Developer and MMPI (including each party's fees and expenses of legal counsel, accountants and other advisors) in connection with negotiating this Agreement are deemed to be Project Costs and shall be paid from Available Funds. Notwithstanding the foregoing, however, if Developer terminates this Agreement pursuant to Section 4.23 hereof, then Developer shall reimburse to the County the foregoing costs and expenses of Developer to the extent such costs and expenses have been paid as Project Costs from Available Funds.

18.10 Discrimination Prohibited. Developer shall not discriminate against any Person or group of Persons based upon race, creed, sex, religion, color, age, national origin or ancestry in the development, construction, sale, lease or other transfer, use or occupancy of the Site.

18.11 Further Assurances. The Parties shall each execute, acknowledge and deliver, after the Effective Date, without additional consideration, such further assurances, instruments and documents, and shall take such further actions, as the Parties shall reasonably request of the other in order to fulfill the intent of this Agreement and the transactions contemplated thereby.

18.12 Counterparts. This Agreement may be signed in several counterparts, each of which shall be an original but all of which shall constitute but one and the same instrument.

18.13 No Waiver of Regulatory Authority. Notwithstanding anything herein to the contrary, Developer acknowledges that nothing set forth in this Agreement shall serve as a waiver, impairment or compromise of the County's regulatory authority in the review, approval, permitting or inspection of the construction of the Facility or development of the Project, and the

County shall not be responsible for damages, delays or Cost Overruns resulting from the proper and timely exercise of its regulatory authority.

18.14 Other Agreements. With respect to the design, construction, development, furnishing and equipping of the Facility, the provisions of this Agreement shall prevail in the event of a conflict between this Agreement and the Development Agreement or the Financing Agreements.

18.15 This Agreement. The words "herein," "hereof," "hereunder," "hereby," "this Agreement" and other similar references shall be construed to mean and include this Agreement and all amendments hereof and supplements hereto unless the context clearly indicates or requires otherwise.

18.16 Language. The language used in this Agreement shall be deemed to be the language chosen by the Parties hereto to express their mutual intent, and no rule of strict construction shall be applied against any Party. This Agreement has been negotiated at arm's length and between Persons sophisticated and knowledgeable in the matters dealt with herein. In addition, each Party has been represented by experienced and knowledgeable legal counsel. Accordingly, this Agreement shall be interpreted to achieve the intents and purposes of the Parties, without any presumption against the Party responsible for drafting any part of this Agreement.

18.17 Attorneys' Fees. In the event of any controversy, claim or dispute between the Parties arising from or relating to this Agreement (including the enforcement of any indemnity provisions), the prevailing party shall be entitled to recover reasonable costs, expenses and attorneys' fees, except as otherwise provided in Article 15.

18.18 Term of Agreement. The term of this Agreement shall end, and this Agreement shall terminate, upon the Parties' performance of all of their respective obligations required herein, unless terminated sooner pursuant to any termination right granted in this Agreement.

18.19 Time of the Essence. Time is of the essence with respect to the performance of each of the covenants and obligations contained in this Agreement.

18.20 Commercially Reasonable Efforts. In each instance under this Agreement where Developer or MMPI (as applicable) is required to exercise commercially reasonable efforts to cause Contractor to perform a particular action, such efforts shall include taking all appropriate efforts to enforce the terms and conditions of the Construction Agreement and, as applicable, the Surety Bond.

18.21 Limitation of Liability. Notwithstanding anything to the contrary in this Agreement, the liability of Developer and MMPI with respect to the development and construction of the Facility and otherwise under the Development Agreement, this Agreement and the other Financing Agreements to the date of Final Completion shall in no event exceed Three Billion Dollars (\$3,000,000,000).

18.22 Developer Guaranty. Developer hereby guarantees the performance of MMPI under this Agreement and shall be directly liable to the County for the failure of MMPI to perform its obligations, duties and covenants under this Agreement.

[Signature page follows]

IN WITNESS WHEREOF, the Parties have each caused their duly authorized representatives to execute this Agreement as of the date aforesaid.

THE COUNTY OF CUYAHOGA, OHIO

By: _____
Name: _____
Title: _____

MERCHANDISE MART PROPERTIES, INC.

By: _____
Name: _____
Title: _____

MMPI CLEVELAND DEVELOPMENT LLC

By: _____
Name: _____
Title: _____

The legal form for the within instruments is hereby approved.

By: _____
Date: _____

JOINDER

CLEVELAND MMCC LLC ("Operator"), a Delaware limited liability company, hereby acknowledges that it has received a fully executed copy of that certain Construction Administration Agreement ("Agreement"), dated January ___, 2010, entered into by and among COUNTY OF CUYAHOGA, OHIO (the "County"), a political subdivision duly organized and validly existing under the Constitution and laws of the State of Ohio, MERCHANDISE MART PROPERTIES, INC. ("MMPI"), a Delaware corporation, and MMPI CLEVELAND DEVELOPMENT LLC, a Delaware limited liability company ("Developer"), to which Agreement this Joinder is attached.

Operator acknowledges that, as a condition to entering into the Agreement, the County required Operator to enter into this Joinder. Accordingly, in order to induce the County to enter into the Agreement, Operator hereby agrees that it shall be bound by (and, to the extent applicable, shall perform its obligations under) the following provisions of the Agreement, to the extent the same are applicable to Operator: Sections 5.16.2, 8.5, 9.1.5, 9.1.6, and 14.1.1.

Cleveland MMCC LLC, a Delaware limited liability company

By: _____
Name: _____
Title: _____

STATE OF OHIO)
) SS:
COUNTY OF CUYAHOGA)

On this _____ day of January, 2010, before me a Notary Public in and for said County and State, personally appeared _____, _____ of the County of Cuyahoga, Ohio, who acknowledged the execution of the foregoing instrument as the authorized officer of the County on behalf of the County, and that the same is his voluntary act and deed as the officer on behalf of the County and the voluntary act and deed of said County.

IN WITNESS WHEREOF, I have hereunto subscribed my name and affixed my official seal on the day and year aforesaid.

[SEAL]

Notary Public

STATE OF _____)
) SS:
COUNTY OF _____)

On this _____ day of January, 2010, before me a Notary Public in and for said County and State, personally appeared _____ being the _____ of Merchandise Mart Properties, Inc., a Delaware corporation, who acknowledged the execution of the foregoing instrument as the duly authorized representative thereof, and that the same is his voluntary act and deed as said representative and the voluntary act and deed of said company.

IN WITNESS WHEREOF, I have hereunto subscribed my name and affixed my official seal on the day and year aforesaid.

[SEAL]

STATE OF OHIO)
) SS:
COUNTY OF CUYAHOGA)

On this _____ day of January, 2010, before me a Notary Public in and for said County and State, personally appeared _____, being the duly authorized executive of MMPI Cleveland Development LLC, a Delaware limited liability company, who acknowledged the execution of the foregoing instrument as the duly authorized representative thereof, and that the same is his voluntary act and deed as said representative and the voluntary act and deed of said company.

IN WITNESS WHEREOF, I have hereunto subscribed my name and affixed my official seal on the day and year aforesaid.

[SEAL]

STATE OF OHIO)
) SS:
COUNTY OF CUYAHOGA)

On this _____ day of January, 2010, before me a Notary Public in and for said County and State, personally appeared _____, being the duly authorized executive of Cleveland MMCC LLC, a Delaware limited liability company, who acknowledged the execution of the foregoing instrument as the duly authorized representative thereof, and that the same is his voluntary act and deed as said representative and the voluntary act and deed of said company.

IN WITNESS WHEREOF, I have hereunto subscribed my name and affixed my official seal on the day and year aforesaid.

[SEAL]

EXHIBIT A

Master Project Schedule

A preliminary Master Project Schedule is attached hereto. Such Master Project Schedule shall be amended by Developer and submitted to the County for review and approval by the County and its consultants and advisors no later than the date that is thirty (30) days after the County submits the Site Selection Notice to Developer. The amended Master Project Schedule shall list due dates for all critical design, construction, furnishing, equipping and development activities for the Project, to the extent including, at a minimum:

1. Inspection periods for the due diligence review of each parcel comprising the Site.
2. Closing dates under each Purchase and Sale Agreement for any parcel comprising the Site.
3. Site Delivery Dates for each parcel comprising the Site.
4. Dates of Developer's submission to the County of the Conceptual Plans, Design Options, IGMP and preliminary proposed Budget of Project Costs for each of the Public Auditorium, Convention Center and Medical Mart.
5. County's review period for acceptance or rejection of the Conceptual Plans, Design Options, IGMP and preliminary proposed Budget of Project Costs for each of the Public Auditorium, Convention Center and Medical Mart.
6. Dates of Developer's submission to the County of the Design Development Documents, Master Project Schedule, Master Project Budget and Budget Cap for each of the Public Auditorium, Convention Center and Medical Mart.
7. County's review period for acceptance or rejection of the Design Development Documents, Master Project Schedule, Master Project Budget and Budget Cap for each of the Public Auditorium, Convention Center and Medical Mart.
8. Dates of Developer's submission to the County of the proposed GMP, the GMP Document (including qualifications and assumptions) and Construction Guarantee for each of the Public Auditorium, Convention Center and Medical Mart.
9. Time period for the facilitated GMP review process in which County, Developer, Bridging Consultant, Contractor and Architect meet to reconcile any questions, discrepancies or disagreements relating to the proposed the GMP Documents or GMP for each of the Public Auditorium, Convention Center and Medical Mart.
10. Dates for County's acceptance or rejection of the GMP for each of the Public Auditorium, Convention Center and Medical Mart.

11. Dates of County and Developer's CD Review Session for approximately 75% complete Construction Documents for each of the Public Auditorium, Convention Center and Medical Mart.
12. Dates of Developer's submission to the County of the Construction Documents for each of the Public Auditorium, Convention Center and Medical Mart.
13. County's review period for acceptance or rejection of the Construction Documents for each of the Public Auditorium, Convention Center and Medical Mart.
14. Dates on which County must issue the Bonds.
15. Construction start dates for each of the Public Auditorium, Convention Center and Medical Mart.
16. **[Other critical construction milestones to be agreed to by the Parties.]**
17. Substantial Completion dates for each of the Public Auditorium, Convention Center and Medical Mart.
18. Final Completion dates for each of the Public Auditorium, Convention Center and Medical Mart.

[Other critical dates to be included]: Proposed outside dates for the execution of the Construction Contract and the Architect Agreements. In addition, to the extent that any of the other Financing Agreements are not executed simultaneously with the CAA, then the Master Project Schedule must list the dates by which those documents are expected to be executed (e.g., Land Lease, Lease, Sublease, Operating Agreement, Loan Agreement and related documents.)

**Preliminary Master Project Schedule
Attachment to Exhibit A**

December 17, 2009
(In Calendar Days)

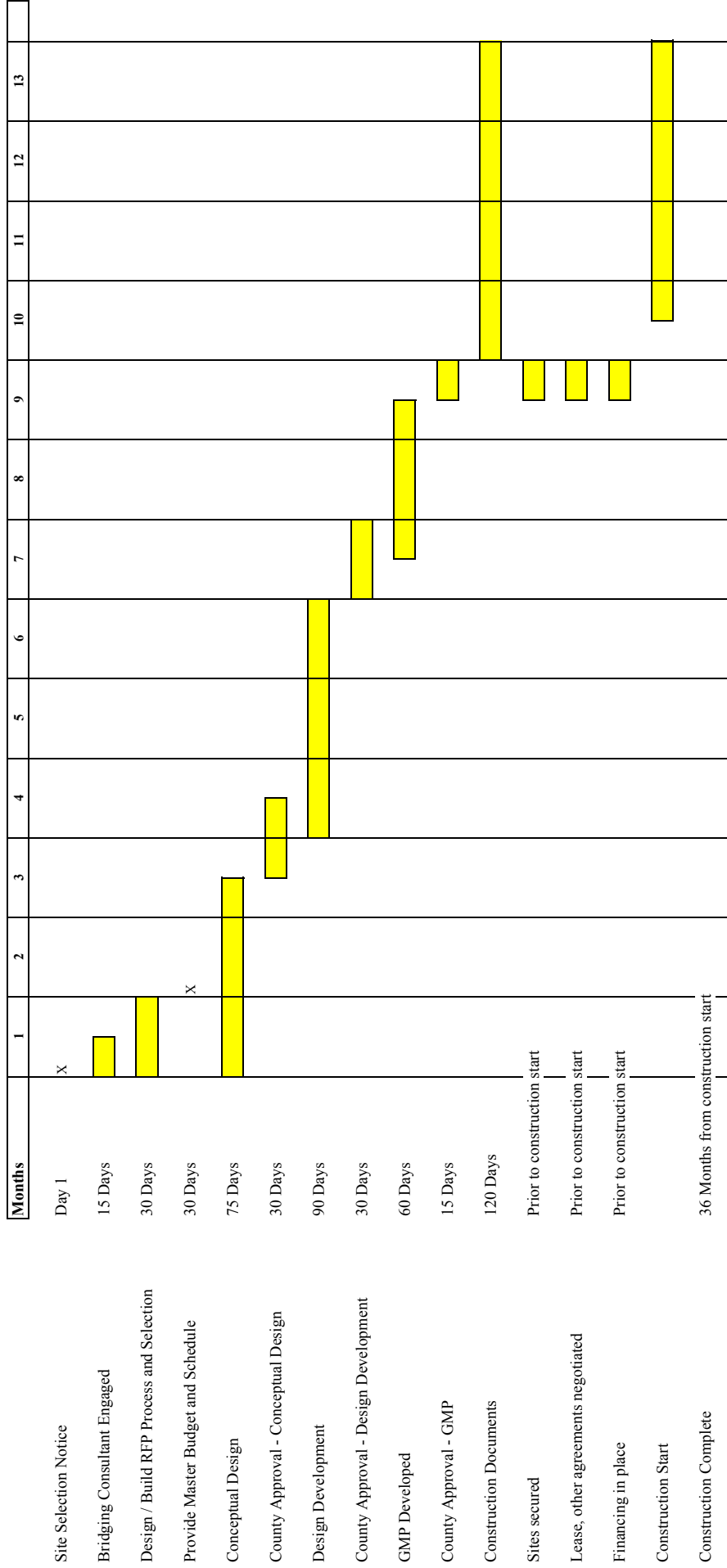


EXHIBIT B

Insurance Requirements

I. CONTRACTOR-PROVIDED INSURANCE

Contractor and Subcontractors shall maintain the insurance coverages set forth below.

A. Limits

1. **Commercial General Liability**
\$1,000,000 Each Occurrence
\$1,000,000 General Aggregate – Per Project Aggregate
\$1,000,000 Products/Completed Operations Aggregate
\$1,000,000 Personal Injury

2. **Business Automobile**
\$1,000,000 Combined Single Limit

3. **Workers' Compensation/Employers' Liability (Stop Gap)**
Statutory Workers' Compensation – Coverage A
\$1,000,000 Each Accident
\$1,000,000 Disease – Policy Limits
\$1,000,000 Disease – Each Employee

4. **Pollution Liability (to be procured by Contractor only)**
\$10,000,000 Each Occurrence and General Aggregate

5. **Excess Umbrella Liability:**
 - a. For the Contractor, \$50,000,000 Each Occurrence/Annual Aggregate

 - b. For Subcontractors:

Where the Subcontract amount is \$500,000 or less, \$500,000 Each Occurrence/Annual Aggregate

Where the Subcontract amount is over \$500,000 but not more than \$2,000,000, \$2,000,000 Each Occurrence/Annual Aggregate

Where the Subcontract amount is over \$2,000,000 but not more than \$5,000,000, \$5,000,000 Each Occurrence/Annual Aggregate

Where the Subcontract amount is over \$5,000,000 but not more than \$10,000,000, \$10,000,000 Each Occurrence/Annual Aggregate

Where the Subcontract amount is over \$10,000,000, then \$15,000,000
Each Occurrence/Annual Aggregate unless a higher limit is set in the
Construction Contract

6. **Professional Liability (to be provided by Architect)**
\$5,000,000 Each Claim
\$5,000,000 Annual Aggregate
7. **Professional Liability (to be provided by Bridging Consultant)**
\$5,000,000 Each Claim
\$5,000,000 Annual Aggregate

B. Other Requirements

1. **Commercial General and Excess Umbrella Liability Insurance.**
 - (a) CGL insurance shall be written on ISO occurrence for CG 00 01 or its equivalent (or a substitute form providing equivalent coverage) and shall cover liability arising from premises, operations, independent contractors, products-completed operations, personal injury and advertising injury and liability assumed under an insured contract (including the tort liability of another assumed in a business contract).
 - (b) Cuyahoga County, City of Cleveland, Developer, officers, board members, shareholders, members, partners and employees (collectively, the "Additional Insureds") shall be included as additional insureds under the CGL, excess umbrella liability, if any, and contractors pollution liability coverages. The Additional Insured coverage under the CGL will be on ISO additional insured endorsements CG 20 10 (07 04) and CG 20 37 (07 04) or substitutes providing equivalent coverage for ongoing and completed operations. Such insurance afforded to the Additional Insureds shall apply as primary insurance with respect to any other insurance or self-insurance programs carried by the Additional Insureds. If any Additional Insured has other insurance that is applicable to the loss such other insurance shall be on an excess or contingent basis.
 - (c) If the Work involves construction or demolition operations at or near railroad property (i.e., within 50 feet of such property) then the CGL policy shall contain ISO Form Endorsement Liability—Railroad CG 24 17 01 96 (or substitute form providing equivalent coverage).
2. **Completed Operations Liability Insurance.** Contractor and Subcontractors shall maintain the completed operations coverage for at least five (5) years following final completion of the Work.
3. **Business Auto and Umbrella Liability Insurance.**

- (a) Such insurance shall cover liability arising out of any auto (including owned, hired and non-owned autos).
 - (b) Business auto coverage shall be written on ISO form CA 00 01, CA 00 05, CA 00 12, CA 00 20, or substitute form providing equivalent liability coverage. If necessary, the policy shall be endorsed to provide contractual liability coverage equivalent to that provided in the 1990 and later editions of CA 00 01.
- 4. **Railroad Protective Liability.** Where required by the railroad for construction or demolition activities at or near railroad property, Contractor and Subcontractors shall procure and maintain Railroad Protective Liability per the requirements of the railroad.
- 5. **Professional Liability Insurance.** Bridging Consultant and Architect shall maintain professional liability insurance to protect against claims arising out of the performance of its professional services. Such professional liability insurance shall have minimum limits set forth above, and Bridging Consultant and Architect shall maintain such insurance throughout the duration of the Project and for a period of not less than five (5) years after the date of Substantial Completion. Such insurance shall have a retroactive date no later than the date of this Agreement or the date when Bridging Consultant or Architect (as applicable) first performed professional services for the Project, whichever date is later. With respect to any other professional consultant or subcontractor that Developer or Contractor engages to provide design or engineering services to the Project, each of them shall be required to maintain separate professional liability insurance with such limits of liability as are customary for the services to be performed.
- 6. **General/Certificates of Insurance.**
 - (a) All policies shall: (1) be written by insurance companies authorized to do business in the State of Ohio and having a financial size of VII or higher and a rating of not less than "A-" in the latest version of Best's Insurance Guide, published by A.M. Best & Company; and (2) provide that coverage shall not be suspended, voided, canceled, non-renewed, reduced in scope or limits except after thirty (30) days' prior written notice by certified mail, return receipt requested, has been given to the County.

- (b) Prior to the commencement of the Work, Contractor and Subcontractors shall file with the County and Developer valid Certificates of Insurance evidencing that the above required insurance has been obtained. The Certificates of Insurance shall be in a form and substance satisfactory to the County and Developer and shall affirmatively list the entities referred to in Section B(1)(b) above as being additional insureds to the CGL, excess umbrella liability and contractor's pollution liability policies required above. At either Developer's or the County's request, Contractor shall deliver to the County and Developer the actual insurance policies and any endorsements or riders thereto. The endorsements or amendatory riders shall include cross-claim and severability of interests endorsements.

EXHIBIT C

Environmental and Geotechnical Reports

NO	REPORT	LOCATION	COMPANY	YEAR	INCLUDED IN FEASIBILITY STUDY
1	Hazardous Material & Asbestos Survey	Annex Building	URS	2001	Yes
2	Hazardous Material & Asbestos Survey	Chicago Title Building	URS	2001	Yes
3	Phase II Environmental Study	Cleveland Convention Center & PA	EA Group	2009	Yes
4	Finite Element Analysis of Existing Mat Foundation	Convention Center Floor	Osborn	2009	Yes
5	Design and Construction Techniques at Willard Park Garage	Willard Park Garage	Osborn / PSI	Mid 1990's	No

EXHIBIT D

Construction Agreement (Required Provisions)

The provisions listed in this Exhibit D shall be incorporated into the Construction Agreement in manner reasonably acceptable to the County. Prior to execution of the Construction Agreement, the proposed final language shall be submitted to the County for approval.

1. Third Party Beneficiary. The Construction Agreement shall state that the County is an express third party beneficiary to the Construction Agreement.
2. Assignment to the County. The Construction Agreement shall provide that Developer may assign the Construction Agreement (along with all Subcontracts) to the County without the consent of Contractor.
3. Cooperation. The Construction Agreement shall require Contractor to make available to the County, through Developer, any and all information, documents and reports (including the Significant Events Report) that may be reasonably required or requested by the County and to otherwise cooperate with the County to meet any applicable deadlines or milestone dates set forth in this Agreement. The Construction Agreement shall require Contractor to grant the County access to the Site while construction is in process, subject to reasonable safety rules and regulations applicable to non-construction personnel.
4. Schedules and Budget. The Construction Agreement shall require Contractor to deliver to the County each month an updated construction schedule, an updated construction budget, a monthly progress report and, upon establishment of the GMP, an updated schedule of values allocating the GMP over the various subcontracts and showing expenditures to date thereunder.
5. Phasing. The Construction Agreement shall have a clear description of the phasing of the design, construction, furnishing and equipping of the Facility consistent with the phasing contemplated by this Agreement.
6. Compliance with County Requirements and Applicable Law. The Construction Agreement shall require Contractor to construct the Facility in compliance with the County Requirements, the Construction Documents approved by the County (which, to the extent applicable, are deemed to modify the County Requirements) and all Applicable Laws.
7. IGMP and GMP Process. The Construction Agreement shall include a description of the services to be performed by Contractor during the IGMP and GMP process and such description shall be consistent with the facilitated GMP process contemplated by this Agreement. Compensation under the Construction Agreement shall be based on an "open book" guaranteed maximum price agreement whereby Contractor's applications for payment shall set forth the detailed listing of all construction costs incurred in connection with performing the Work, together with reasonable documentation to establish that such costs were actually incurred for the Project.

8. Construction Contingency. The Construction Agreement shall require the construction contingency to be used for costs of the work under the Construction Agreement unless such use is disapproved by the County as set forth in Section 4.16 of this Agreement.
9. Add Alternates. The Construction Agreement shall contain a list of add alternates approved by the County, which may be implemented by Developer.
10. Surety Bond and Construction Guarantee. The Construction Agreement shall require Contractor to provide a Surety Bond and Construction Guarantee as required by this Agreement.
11. Competitive Bids. The Construction Agreement shall require that all Subcontracts with an estimated contract sum greater than \$100,000 be awarded to reputable subcontractors based on competitive bids or proposals solicited from at least three (3) qualified firms.
12. Self-Performed Work. The Construction Agreement shall identify any actual construction work to be performed with Contractor's own forces, and shall contain procedures whereby such work may be permitted so long as bids for such work are also solicited from at least two (2) other qualified subcontractors.
13. Key Personnel. Contractor shall employ a sufficient number of employees, personnel and consultants to perform Contractor's duties under the Construction Agreement in accordance with the Master Project Schedule and Master Project Budget. Contractor shall dedicate the key personnel (named in the Construction Agreement) to this Project and shall not, so long as they are in the employ of Contractor, remove them from the Project without the prior written consent of Developer. The Construction Agreement shall contain a staff chart detailing the personnel committed to the Project.
14. SBE, Prevailing Wage and Local Workforce Goals. Contractor shall comply with the SBE Program goals, prevailing wage, local workforce goals, "drug-free" policy, and other programs established by the County for the Project, as set forth in this Agreement.
15. Anti-Kickback. The Construction Agreement shall contain an anti-kickback covenant from Contractor substantially similar to that contained in Section 2.8 of this Agreement.
16. Standard of Care. The Construction Agreement shall obligate Contractor to a standard of professional care equal to that which prevails among national construction firms (or in the case of design-build, design-build firms) engaged in the planning, construction and management of large scale and complex projects of similar scope, function, size, quality, complexity and detail as the Facility.
17. Design-Build Contract. If a bridging design-build project delivery method is employed for any Phase, then the Construction Agreement shall be incorporate the provisions of Exhibit E hereof, with such modifications as necessary to reflect the design-build relationship, as direct covenants of Contractor to Developer. In addition, the Construction Agreement shall provide that Developer and the County shall have the right to approve the principal design architect hired by Contractor, such approval of either party not to be unreasonably withheld, conditioned or delayed.

18. Pay Applications. The Construction Agreement shall contain pay application procedures, including the provision of lien waivers, as are consistent with the procedures contemplated by this Agreement.
19. Retainage. The Construction Agreement shall require retainage on all pay applications equal to 10% until at least 50% of the Project is completed, at which point, retainage shall be reduced to 5% or less, upon the County's reasonable approval, at various points during the remainder of the Project. The Construction Agreement shall permit Developer, upon the County's reasonable approval, to reduce or release retainage for Subcontractors that have fully performed their work.
20. Workmanship. The Construction Agreement shall require Contractor to construct the Facility in a good and workmanlike manner and in compliance with the Construction Documents approved by the County.
21. Sustainable Design. The Construction Agreement shall require Contractor to comply with all LEED or other sustainable design criteria established for the Facility.
22. Shop Drawings; As-Built Drawings. Contractor shall deliver to the County all shop drawings and a reproducible set of the Construction Documents revised to show all material deviations between the Work as completed and the original construction drawings and specifications, including those deviations resulting from Change Orders. The As-Built Drawings shall also be provided in an electronic format in such version of CADD as agreed to by Developer, Architect and Contractor.
23. Ownership of Documents. The Construction Agreement shall recognize the County as a joint owner, along with Developer, of all documents produced by Contractor (or its Subcontractors) in connection with its services provided under the Construction Agreement, and shall grant to the County an irrevocable, royalty-free license to use the copyright and other intellectual property rights relating to such documents.
24. Termination Rights. The Construction Agreement shall include a termination for convenience clause in favor of Developer and shall not permit the recovery of lost profit or the portion of Contractor's fee that was unearned at the time of termination.
25. Audit Rights. The Construction Agreement shall require Contractor to maintain all Auditable Records pertaining to its services and shall permit the County to audit such records as is required by this Agreement.
26. Insurance. The Construction Agreement shall require Contractor to purchase and maintain the applicable insurance conforming to the requirements set forth in this Agreement.
27. Indemnification. The Construction Agreement shall contain an indemnification provision in favor of the County.
28. Dispute Resolution. The Construction Agreement shall include dispute resolution provisions consistent with those set forth in this Agreement.

29. Payment to Consultants. The Construction Agreement shall require Contractor to pay its Consultants within 10 days after receiving payment from Developer.
30. Contractor Compensation. Contractor's compensation shall separately specify Contractor's fee, incentives and general conditions items.

EXHIBIT E

Architect Agreements (Required Provisions)

The provisions listed in this Exhibit E shall be incorporated into the Architect Agreements in a manner reasonably acceptable to the County. If a bridging design-build project delivery method is employed for any Phase, then these provisions shall be incorporated into the contracts or agreements between (a) Developer and Bridging Consultant, and (b) Contractor and the architect-of-record for such Phase, with such modifications as necessary to reflect the bridging design-build relationship, but all in a manner reasonably acceptable to the County. Prior to execution of the Architect Agreements, the proposed final language shall be submitted to the County for approval.

1. Third Party Beneficiary. The Architect Agreements shall state that the County is an express third party beneficiary to the Architect Agreements.
2. Assignment to the County. The Architect Agreements shall provide that they may be assigned to the County without the consent of Bridging Consultant or Architect (as applicable).
3. Cooperation. The Architect Agreements shall require Bridging Consultant and Architect to make available to the County, through Developer, any and all information, documents and reports that may be reasonably required or requested by the County and to otherwise cooperate with the County to meet any applicable design deadlines or milestone dates set forth in this Agreement.
4. Phasing. The Architect Agreements shall have a clear description of the phasing of the design, construction, furnishing and equipping of the Facility consistent with the phasing contemplated by this Agreement.
5. Design. The Architect Agreements shall require Bridging Consultant and Architect to design the Facility in compliance with the County Requirements and all Applicable Laws and to submit Design Documents to the Developer within the time periods set forth in this Agreement. The Architect Agreements shall acknowledge the County's approval rights under this Agreement with respect to the Design Documents.
6. IGMP and GMP Process. The Architect Agreements shall include a description of the services to be performed by Bridging Consultant and Architect during the IGMP and GMP process and such description shall be consistent with the facilitated GMP process contemplated by this Agreement.
7. Key Personnel. Bridging Consultant and Architect shall employ a sufficient number of employees, personnel and consultants to perform Bridging Consultant's or Architect's (as applicable) duties under the respective Architect Agreement in accordance with the Master Project Schedule and Master Project Budget. Bridging Consultant and Architect shall dedicate the key personnel (named in the respective Architect Agreement) and consultants to this Project and shall not, so long as they are in the employ of Bridging Consultant or

Architect (as applicable), remove them from the Project without the prior written consent of Developer.

8. Standard of Care. The Architect Agreements shall obligate Bridging Consultant and Architect to a standard of professional care equal to that which prevails among national design firms engaged in the planning, design, construction, furnishing, equipping and administration of large scale and complex projects of similar scope, function, size, quality, complexity and detail as the Facility.
9. Sustainable Design. The Architect Agreements shall require Bridging Consultant and Architect to design the Facility to meet LEED or other sustainable design criteria, as mutually agreed to by the County and Developer.
10. Record Drawings. The Architect Agreement for the Architect shall require it to furnish record drawings. Such drawings shall be provided in both hard copy and one electronic version of the drawing files, and shall be based on marked-up prints, drawings and other data furnished by Contractor to Architect and revisions and updated information produced by Architect and Architect's Consultants during the Construction Document and construction phases.
11. Ownership of Documents. The Architect Agreements shall recognize the County as a joint owner, along with Developer, of all Design Documents, and shall grant to the County an irrevocable, royalty-free license to use the copyright and other intellectual property rights relating to the Design Documents (and the design concepts contained therein).
12. Termination Rights. The Architect Agreements shall include a termination for convenience clause in favor of Developer and shall not permit the recovery of lost profit or the portion of Bridging Consultant's or Architect's (as applicable) fee that was unearned at the time of termination.
13. Audit Rights. The Architect Agreement shall require Architect to maintain all Auditable Records pertaining to its services and shall permit the County to audit such records as is required by this Agreement.
14. Insurance. The Architect Agreements shall require Bridging Consultant and Architect to purchase and maintain the applicable insurance conforming to the requirements set forth in this Agreement.
15. Anti-Kickback. The Architect Agreements shall contain an anti-kickback covenant from Architect substantially similar to that contained in Section 2.8 of this Agreement.
16. Indemnification. The Architect Agreements shall contain an indemnification provision in favor of the County.
17. Dispute Resolution. The Architect Agreements shall include dispute resolution provisions consistent with those set forth in this Agreement.

18. Payment to Consultants. The Architect Agreements shall require Bridging Consultant and Architect to pay their respective Consultants within ten (10) days after receiving payment from Developer.

EXHIBIT F

Reimbursable Expense Policy and Budget

A. Reimbursable Expense Policy. Except as may be approved in writing in advance by the County for good cause shown, the following policy shall apply to reimbursement requests from Developer, MMPI, Operator, their respective Affiliates, Contractor, Bridging Consultant, Architect, Consultants and Subcontractors.

1. The County (as related to Developer's Reimbursable Expenses) and Developer (as related to Reimbursable Expenses for Contractor, Bridging Consultant, Architect, Consultants and Subcontractors) shall approve Reimbursable Expenses that meet the following requirements:
 - (a) are reasonable and necessary, (b) are for the Project, and (c) are properly documented and supported.
2. All requests for reimbursement must be supported by a source document, such as a receipt or invoice, and include a brief explanation of the Project-related business purpose for the expenditure.
3. Expense limits.
 - a) The maximum lodging expense (excluding taxes) shall not exceed \$200 per night.
 - b) The maximum meals and incidental expenses shall not exceed \$55 per day. There shall be no reimbursement for alcoholic beverages or entertainment. Examples of entertainment expenditures include movies, sporting events, theatrical productions, concerts or similar activities.
 - c) For private automobile expenses, reimbursement per mile shall be made at the rate set forth by the IRS, plus tolls and parking. Fines for traffic violations shall not be reimbursed.
 - d) Travelers shall select the most cost effective means of ground and air transportation as needed to travel between business locations. First class air travel shall not be reimbursed. Car rentals should be small or mid-sized cars. If 3 or more people will be sharing a car, a full-size car rental will be allowed.
 - e) Reasonable relocation expenses to Cleveland shall be reimbursed with the prior written approval of the County and Developer, which relocation expenses shall not exceed \$30,000 for any single person.
4. The maximum limits set forth above shall be increased annually on August 1 of each year during the term of this Agreement, commencing August 1, 2010, by an amount equal to the corresponding increase (if any) in the Local Consumer Price Index for the relevant period. "Local Consumer Price Index" shall mean the Consumer Price Index For All Urban Consumers - Cleveland-Akron, OH area (Base Year 1982-4 = 100) for the month last published prior to the date of such determination, as published by the Bureau of Labor

Statistics of the United States Department of Labor or, if such index is no longer available, a substitute index selected by the County that is available to the general public and is intended and commonly used to measure or reflect relative increases and decreases in consumer prices over time. .

5. The County shall not reimburse Developer, and Developer shall not reimburse Contractor, Bridging Consultant, Architect, Consultants and Subcontractors, for ordinary living expenses of people living in Cleveland or for travel to (or lodging in) Chicago for non-Project related business.

B. Reimbursable Expense Budget.

<u>Category</u>	<u>Estimated Amt.</u>
For the Period - April 16, 2009 to December 31, 2013	
Cleveland office rent	\$350,000
Office equipment & supplies for Cleveland office	\$825,000
Travel / meals/ lodging	\$1,530,000
Contingency 20%	\$541,000
Total	\$3,246,000

Please note outside legal counsel, marketing/sales support costs (except as expressly set forth in the definition of Reimbursable Expenses), and overall project costs are not included.

EXHIBIT G

Form of Funding Request

[To be typed on Developer or MMPI Letterhead]

Developer Requisition Certificate

Payment No. _____

[Name and address of County Representative]

[Name and address of Trustee under Trust Indenture, if applicable]

Ladies and Gentlemen:

This Requisition Certificate is delivered by Merchandise Mart Properties, Inc., a Delaware corporation ("MMPI"), pursuant to the provisions of the Construction Administration Agreement, dated January ___, 2010 (the "CAA"), by and among The County of Cuyahoga Ohio (the "County"), MMPI Cleveland Development LLC, a Delaware limited liability company (the "Developer"), and MMPI. All capitalized terms not defined herein shall have the meaning ascribed to those terms in the CAA, as the same may amended from time to time.

MMPI hereby requests disbursement in the aggregate amount of: \$ _____ for Project Costs.

The disbursement(s) should be made to the payee(s) shown on **Schedule 1** attached hereto.

MMPI hereby certifies:

(1) Each item for which payment or reimbursement is herein requested was incurred in connection with the Project and are costs eligible for payment or reimbursement in accordance with the CAA;

(2) All amounts listed on MMPI's previous funding requisitions and approved by the County for payment have been paid, and MMPI has received evidence that all persons and entities listed on MMPI's previous funding requisitions (including the Contractor and its subcontractors, as applicable) have been paid the respective approved amounts listed on the previous funding requisitions; or (with respect only to the immediately preceding funding requisition), if any such approved amounts are not paid, such amounts shall be paid and MMPI shall receive evidence of such payment prior to disbursement to Developer of funds pursuant to the current funding requisition;

(3) Attached hereto as **Schedule 2** are copies of the following documents: (a) with respect to disbursement requests relating to work or services performed under the Construction Contract, (i) the Application for Payment of the Contractor and (ii) all documentation required by the Construction Contract to accompany the Application for Payment; and (b) with respect to

disbursement requests relating to any other Project Costs, (i) the invoice or payment application of the payee for whom payment is being requested and (ii) all documentation required by the payee's contract to accompany the invoice or payment application; and

(5) Attached hereto as **Schedule 3** is a Summary of Costs and Disbursements setting forth budgeted amounts, previous draw requests made and current draw requests for the Project Costs.

Signature page to Developer Requisition Certificate

Payment No. _____

Dated this ____ day of _____, 20__.

MERCHANDISE MART PROPERTIES, INC.

By: _____

Name: _____

Title: _____

SCHEDULE 1 TO DEVELOPER REQUISITION CERTIFICATE

Schedule of Amounts Due and Payable

<u>Name and Address of Payee</u>	<u>Payment Requested</u>	<u>Work /Services Performed</u>
----------------------------------	--------------------------	---------------------------------

SCHEDULE 2 TO DEVELOPER REQUISITION CERTIFICATE

Attached are the pay applications, invoices and related backup documentation relating to work performed or services rendered in connection with the Project. Also attached is the affidavit of the Contractor certifying that it has paid in full all subcontractors, suppliers and vendors listed in its previous Application for Payment.

SCHEDULE 3 TO DEVELOPER REQUISITION CERTIFICATE

SUMMARY OF COSTS & DISBURSEMENTS

Budgeted Amounts	\$ _____
Net Change by Change Orders	\$ _____
Contract Sum	\$ _____
Adjusted Available Budgeted Amts	\$ _____
Total of Previous Draws	\$ _____
Total of Previous Retainage	\$ _____
Amount Available	\$ _____
Current Draw Request	\$ _____
Less: Retainage	\$ _____
Current Payment Due	\$ _____

EXHIBIT H

Key Personnel

The personnel indicated in the following list shall be committed to the Project and shall not be assigned any other responsibilities that in any way preempt their responsibilities for the Project, and shall not be replaced without the prior express written consent of the County (which shall not be unreasonably withheld), except for reason of death, or discharge or resignation from the employ of MMPI:

- | | | |
|----|---|---------------------------------------|
| 1. | Myron Maurer | Senior VP, Operations and Development |
| 2. | Lloyd Davidson | Vice President, Construction |
| 3. | To Be Determined
(and reasonably approved by the County) | On-Site Project Director |

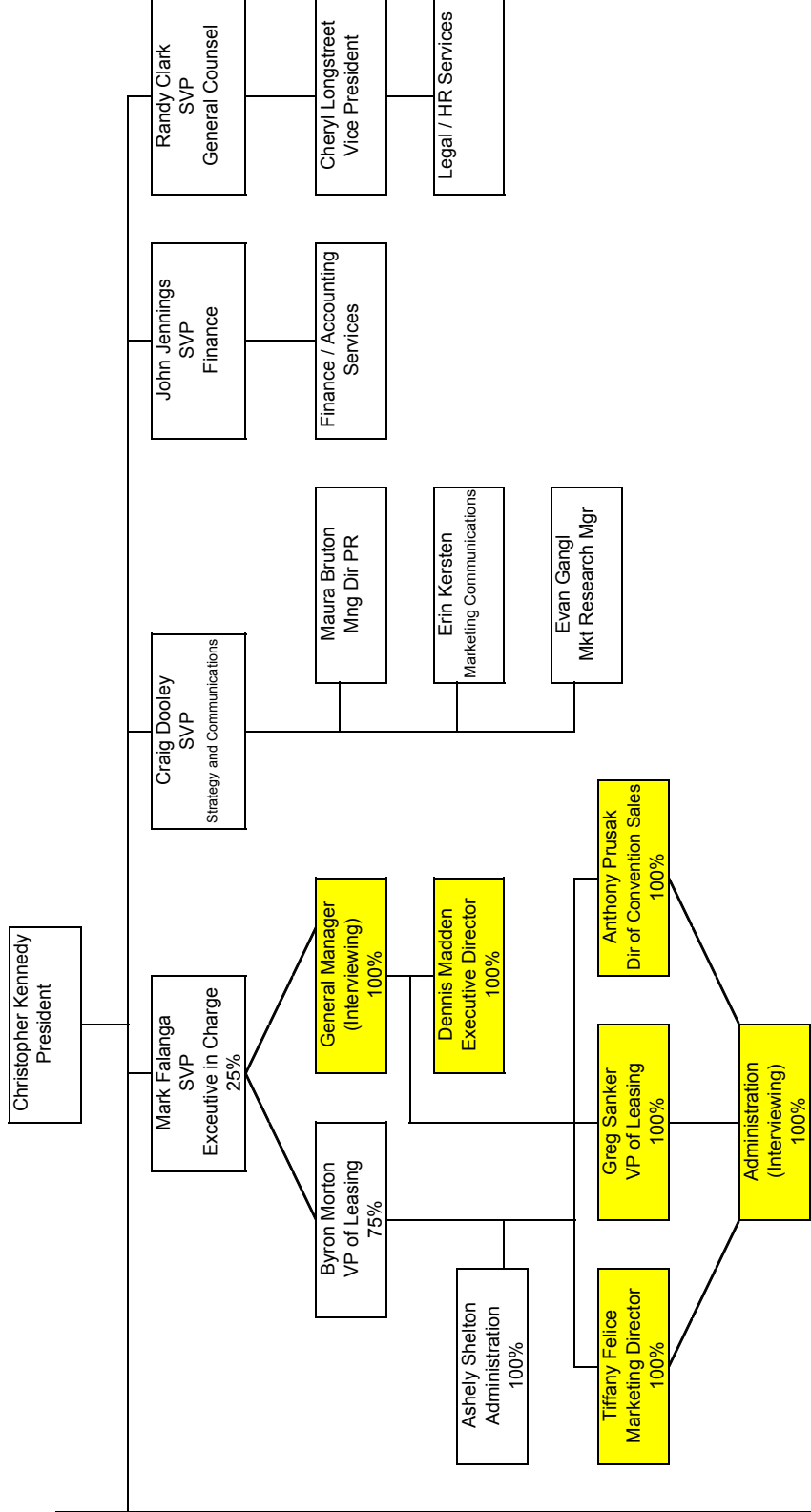
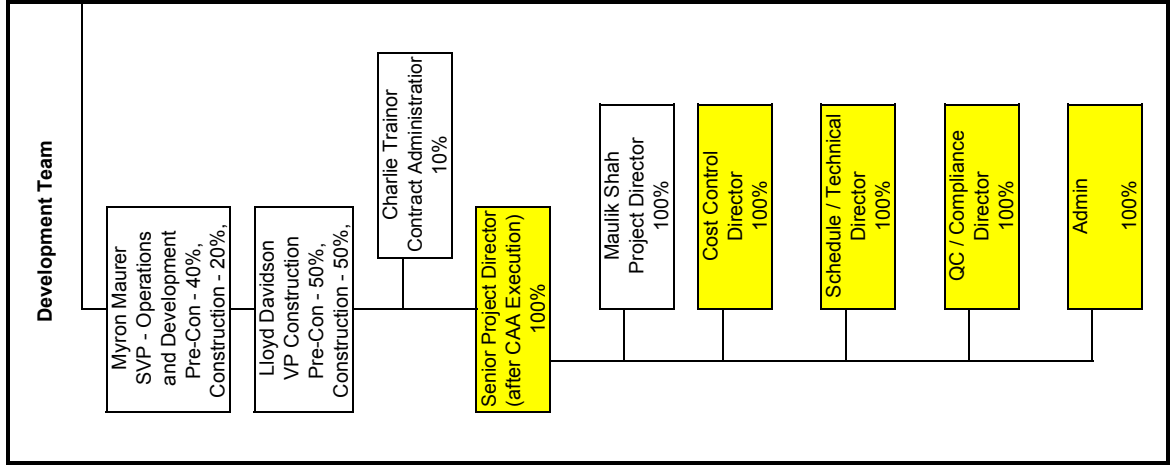
EXHIBIT I

Staffing Chart

[See attached]

Staffing Chart (Attachment to Exhibit I)

(As of December 2009)



Highlighted boxes indicate employee will be based in Cleveland

EXHIBIT J

Form of Construction Guarantee

The Construction Guaranty is Subject to Negotiation and Execution of the Construction Agreement, but shall nevertheless be in substantially the same format as this Exhibit J.

COMPLETION GUARANTY

THIS COMPLETION GUARANTY ("Completion Guaranty") made as of this ____ day of _____ 20__ (the "Effective Date"), by [NAME OF CONTRACTOR], a _____ ("Guarantor"), to and for the benefit of THE COUNTY OF CUYAHOGA, OHIO, a governmental subdivision of the State of Ohio (the "County").

RECITALS

A. MMPI Cleveland Development LLC, a Delaware limited liability company ("Developer") has engaged Guarantor as "Design-Builder" pursuant to a [**Design-Build Contract**] dated _____, 20__ (the "**Design-Build Contract**") for the design and construction of a medical mart and convention center (the "**Project**") in Cleveland, Ohio on an assembled site owned by the County, including the properties commonly known as the Public Auditorium at 500 Lakeside Avenue, Malls B and C and the improvements thereunder, and 113-____ St. Clair Avenue (collectively, the "**Site**"). The Site is leased by the County to Developer pursuant to a [**Land Lease**] dated _____, 20__ (the "**Land Lease**").

B. Pursuant to the terms of the Land Lease and other agreements between the County and Developer, including the Construction Administration Agreement between the County and the Developer, dated January ____, 2010 (the "CAA"), Developer is obligated to develop and cause to be constructed on the Site the Project. The Project is more fully described in the Design-Build Contract, which: (i) incorporates by reference a set of requirements, describing required components and characteristics of the Project, as agreed by Developer and the County, and referred to in the Design-Build Contract as the "County Requirements"; and (ii) provides for the development of a set of plans and specifications for the Project as approved by Developer, Guarantor and the County and referred to in the Design-Build Contract and herein collectively as the "**Plans and Specifications.**"

C. Pursuant to the terms of the Land Lease and the CAA, it is a condition to Developer's award of the design-build contract for the Project (and the County's approval of such contract) that the design-builder execute and deliver a satisfactory Completion Guaranty for the benefit of the County.

D. In order to be selected as the design-builder for the Project, Design-Builder has executed and delivered this Completion Guaranty for the benefit of the County.

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which hereby are acknowledged, Guarantor hereby agrees as follows

AGREEMENTS

1. Guaranty of Completion.

(a) Guarantor hereby unconditionally and irrevocably guarantees to the County that the Project will be fully completed: (i) in compliance with the terms and provisions of the Design-Build Contract, including, without limitation, the Plans and Specifications (subject to such changes therein as may be approved by Developer, the County and Guarantor pursuant to

the terms of the Design-Build Contract); (ii) in accordance with all applicable zoning, building, environmental, land use, and other applicable laws, statutes, orders, codes, ordinances, regulations and rules; (iii) free of any claim for mechanics', materialmen's or any other liens; and (iv) in accordance with (1) the guaranteed maximum price, as defined in the Design-Build Contract and as the same may be adjusted in accordance with the terms thereof (the "GMP"), and (2) the project schedule, as defined in the Design-Build Contract, and as the same may be adjusted in accordance with the terms thereof (the "Project Schedule"). Without limitation on Guarantor's obligation to assure completion of the Project in compliance with the foregoing provisions of this Section 1(a), for purposes of defining the scope of "completion" by reference to a time period, "completion" shall be deemed to occur upon the date ("Determination Date") that the final Certificate of Occupancy for the Project is issued; provided that, it is acknowledged and agreed that, in accordance with the terms of the Design-Build Contract, Developer may require that the Project be completed in different phases or components.

(b) Guarantor's guarantee under this Section 1 includes, without limitation, assurance that the Project will be completed within the requirements of preceding Section 1(a) notwithstanding the following, for which Guarantor expressly assumes the risk: (i) concealed, unknown, unforeseen, latent or differing conditions at the Site other than conditions resulting from Force Majeure Events (as defined below) and environmental conditions arising from the presence at the Site of Hazardous Materials (as defined below); (ii) incomplete or inaccurate drawings, plans or specifications including, without limitation, the approved Plans and Specifications; (iii) errors and omissions of any architect, engineer, consultant, contractor or subcontractor engaged for performance of work under the Design-Build Contract; and (iv) costs of completing the Project following the default or bankruptcy of any architect, engineer, consultant, contractor or subcontractor engaged for performance of work under the Design-Build Contract.

(c) As used herein, "**Force Majeure Event**" shall mean any of the following acts, events, conditions or occurrences that take place after the Effective Date and that has a material adverse effect on Guarantor's ability to perform its obligations as Design-Builder under the Design-Build Contract or as Guarantor hereunder, but only to the extent the same (i) are beyond Guarantor's reasonable control, (ii) are not caused by Guarantor or its architects, engineers, consultants, contractors and subcontractors and (iii) could not have been either foreseen or avoided by the exercise of due diligence and professional expertise: flood, earthquake, pestilence, epidemics (as declared by the Center for Disease Control and Prevention), extraordinary adverse weather conditions, or other natural catastrophe; war, act of terrorism, or civil commotion; multi-site or regional strikes; or acts or omissions of any governmental authority (but not including changes in laws, ordinances, rules and regulations to the extent that same could have been foreseen by Guarantor by the exercise of due diligence and professional expertise). Notwithstanding the foregoing, for purposes of this Section 1, a Force Majeure Event shall be deemed to have occurred only if Guarantor notifies Developer and County in writing not later than five (5) Business Days (hereinafter defined) following the date that Guarantor first has knowledge of the onset of such Force Majeure Event. For purposes of this Agreement, the term "**Business Day**" shall mean any day other than a Saturday, Sunday or federal holiday on which banks are open for business in Cleveland, Ohio.

(d) As used herein, "**Hazardous Materials**" shall have the same meaning as ascribed to such term in the CAA.

(e) Guarantor hereby agrees to pay for all costs and expenses (including, without limitation, any cost of the work as defined in the Design-Build Contract), whether foreseen or unforeseen, in excess of the GMP as may be necessary to complete the Project in compliance with the requirements, and subject to the conditions (including, without limitation, the "Payment Condition" as defined in paragraph (f) below), of this Section 1.

(f) The performance by Guarantor of its obligations under this Completion Guaranty is subject to Developer or the County continuing to cause to be made available to Design-Builder, in a timely manner as provided in the Design-Build Contract, funds for the Project in accordance with the GMP, whether through Developer's or the County's own funds, bond proceeds, construction loan proceeds or otherwise. Guarantor shall not be relieved of its performance obligations hereunder in the event, and to the extent, that any cessation of or interruption in the disbursement of funds for the Project is due to a failure in performance by Guarantor under the Design-Build Contract or any negligent or willful act of Guarantor, whether as Design-Builder, Guarantor or otherwise, but if there is a dispute or arbitration proceeding between Developer and Guarantor under the Design-Build Contract or otherwise, then performance by Guarantor of its obligations under this Completion Guaranty is subject to Guarantor being paid, in a timely manner as provided in the Design-Build Contract, any undisputed amounts then due and owing under the Design-Build Contract in accordance with the GMP. (The condition to Guarantor's performance, as described in the preceding sentences, that funds continue to be made available for the Project is referred to herein as the "Payment Condition.") Notwithstanding the foregoing, it is expressly acknowledged and agreed that the County has made no agreement and has given no undertaking with or for the benefit of Guarantor to advance any funds for the Project, and that the County's agreements and undertaking with regard to the advance of funds for the Project are made solely with and for the benefit of Developer.

2. Obligations of Guarantor Unaffected.

(a) The obligations of Guarantor hereunder shall remain fully effective without regard to, and shall not be affected or impaired by, any of the following (but in any event shall remain subject to the Payment Condition):

- (i) Guarantor's rights and obligations as Design-Builder under the Design-Build Contract;
- (ii) Any modification or amendment of the Design-Build Contract;
- (iii) The exercise by Developer of any and all rights and remedies against Guarantor under the Design-Build Contract or against any architect, engineer, consultant, contractor or subcontractor thereunder;

- (iv) The existence of any default or failure to perform by Developer under the Design-Build Contract or any claims of Guarantor against Developer under the Design-Build Contract;
- (v) Any default by Developer or its affiliates under the Land Lease or any other agreements entered into by Developer or its affiliates with the County with respect to the Project, or any termination by the County of the Land Lease or any such other agreements on account of any such default;
- (vi) Any exercise or non-exercise by the County of any right or privilege under this Completion Guaranty;
- (vii) Any bankruptcy, insolvency, reorganization, composition, adjustment, dissolution, liquidation or other like proceeding (each, an "Insolvency Proceeding") relating to Guarantor or any affiliate of Guarantor; and
- (viii) Any acceptance of partial performance of any obligations of Guarantor under this Completion Guaranty.

(b) Guarantor further acknowledges and agrees that the validity and enforceability of this Completion Guaranty in accordance with its terms (including, without limitation, the Payment Condition) shall not be affected by any Insolvency Proceeding relating to Developer or any affiliate of Developer.

3. Waivers. Guarantor unconditionally waives the following defenses to the enforcement of this Completion Guaranty:

(a) Except for notice provided under this Completion Guaranty, all presentments, demands for performance, notices of nonperformance, protests, notices of protest, notices of dishonor, and notices of acceptance of this Completion Guaranty;

(b) Any defense arising by reason of the unenforceability of any one or more of the provisions of the Design-Build Contract, provided that the Design-Build Contract is not invalid and unenforceable in its entirety;

(c) Any defense based on any action taken or omitted by the County in any Insolvency Proceeding involving Guarantor or Developer; and

(d) Any right Guarantor may have to require the County to proceed against the Developer before seeking to enforce County's rights against Guarantor hereunder.

4. Representations and Warranties. Guarantor makes the following representations and warranties which shall be continuing representations and warranties until this Completion Guaranty terminates in accordance with its terms:

(a) Existence and Rights. Guarantor is a corporation duly incorporated under the laws of the State of _____ without limitation as to the duration of its existence and is in good standing. Guarantor has corporate powers and adequate authority, rights and franchises to own

its property and to carry on its business as now owned and carried on. Guarantor is duly qualified and in good standing to conduct business in the State of Ohio. Guarantor has the corporate power and adequate authority to make and carry out this Completion Guaranty.

(b) Guaranty Authorized and Binding. The execution, delivery and performance of this Completion Guaranty by Guarantor are duly authorized and do not require the consent or approval of any governmental body or other regulatory authority; and are not in contravention of, or in conflict with, any law or regulation or any term or provision of the Articles of Incorporation or Bylaws of Guarantor. This Completion Guaranty is a valid and legally binding obligation of Guarantor enforceable in accordance with its terms, subject to any Insolvency Proceeding and any laws affecting the rights of creditors generally.

(c) Litigation. There is no litigation or other proceeding pending or, to the best of Guarantor's knowledge, threatened against, or affecting, Guarantor or Guarantor's properties which, if determined adversely to Guarantor, would have a materially adverse effect on the validity of this Completion Guaranty or the ability of Guarantor to enter into and perform its obligations under this Completion Guarantor.

5. Termination of Completion Guaranty.

(a) Guarantor's obligations under this Completion Guaranty relate to the completion of the Project through the Determination Date; and Guarantor's obligations under this Guaranty shall terminate twelve (12) months following the Determination Date unless the County, prior to the expiration of said twelve (12) month period, has delivered to Guarantor written notice, in reasonable detail, of a claim by the County under this Guaranty that arose prior to the Determination Date and which claim remains outstanding.

(b) Notwithstanding any other provision herein to the contrary, Guarantor's obligations under this Completion Guaranty shall terminate upon: (i) the termination of the Design-Build Contract, subject to the consent of the County, pursuant to Section [] thereof [**reference section for Developer's termination without cause**]; or (ii) the termination of Developer's interest in the Project, unless Developer's interest in the Design-Build Contract is assigned to (1) the County, (2) a permitted assign of the County under this Completion Guaranty as provided in Section 6 below, or (3) any other assignee permitted by the terms of the Design-Build Contract.

6. Benefitted Parties; Assignment. This Completion Guaranty is intended for and shall inure to the benefit of and may be enforced by the County and its permitted assigns. The County may assign any or all of its rights hereunder to: (i) any lender or financing source providing funds to the County for the Project, including, without limitation, an indenture trustee under a bond issue, whether collaterally or otherwise, pursuant to the requirements of any financing documents by which the County is bound or to which the County or the Project is subject; and (ii) any person or entity that has an interest as owner or lessee in the Site and/or the Project, subject to the consent of Design-Builder as to any such assignee other than Developer or an affiliate of Developer, which consent shall not be withheld except on the basis of demonstrated good and reasonable cause.

7. **Entire Agreement.** Guarantor acknowledges and agrees that this Completion Guaranty accurately represents and contains the entire agreement between Guarantor and the County with respect to the subject matter hereof (but, in accordance with Section 2 above, without limitation on or by the rights and obligations of Developer and Guarantor under the Design-Build Contract). This Completion Guaranty shall not be waived, altered, modified or amended as to any of its terms or provisions except in writing duly signed by the County and Guarantor.

8. **Governing Law; Jurisdiction.** This Completion Guaranty shall be governed by and construed in accordance with the laws of the State of Ohio. Guarantor hereby irrevocably submits itself to the original jurisdiction of those state and federal courts located within the County of Cuyahoga, Ohio, with regard to any controversy arising out of, relating to or in any way concerning this Completion Guaranty.

9. **Notices.** Any notice permitted or required herein shall be in writing and may be mailed, sent by overnight courier, or hand delivered, addressed to the parties as set forth below. Notices delivered by mail shall be deemed effective three (3) Business Days after mailing by Certified Mail, Return Receipt Requested, postage pre-paid. Notices delivered in person will be deemed effective upon receipt. Notice by overnight courier will be deemed effective one (1) Business Day after deposit with such courier. Any notice given hereunder by either party shall be given simultaneously to the Developer as well.

(a) Notices to Guarantor shall be sent as follows:

Attention: _____

With a copy to:

Attention: _____

(b) Notices to the County shall be sent as follows:

Cuyahoga County Administrator
1219 Ontario Street, 4th Floor
Cleveland, OH 44113

With a copy to:

Cuyahoga County Prosecutor's Office
Chief of the Civil Division
1200 Ontario Street, 8th Floor
Cleveland, OH 44113

(c) Copies of all notices hereunder shall also be sent to Developer as follows:

MMPI Cleveland Development LLC
c/o Merchandise Mart Properties, Inc.
222 Merchandise Mart Plaza, Suite 470
Chicago, IL 60654
Attention: Myron Maurer, Senior Vice President, and
Lloyd E. Davidson, Vice President/General Manager

With a copy to:

Merchandise Mart Properties, Inc.
222 Merchandise Mart Plaza, Suite 470
Chicago, IL 60654
Attention: Randall F. Clark, Senior Vice President and General Counsel

And with a copy to:

Drinker Biddle & Reath LLP
191 North Wacker Drive, Suite 3700
Chicago, IL 60606
Attention: Michael F. Csar

Changes in the above referenced addresses must be in writing and delivered in accordance with the provisions of this Section 9.

10. Severability. A determination that any provision of this Completion Guaranty is unenforceable or invalid shall not affect the enforceability or validity of any other provision.

11. Attorneys' Fees. Each party agrees to pay to the other party all costs and expenses, including reasonable attorneys' fees and disbursements as approved by the court, incurred by the prevailing party in connection with such other party's enforcement of this Completion Guaranty.

[Signature page follows]

IN WITNESS WHEREOF, Guarantor has delivered this Completion Guaranty as of the date first written above.

GUARANTOR

[NAME OF CONTRACTOR],

a _____

By: _____

Name: _____

Title: _____