

**AGREEMENT REGARDING FINAL PROJECT FINANCE APPROVAL**

THIS AGREEMENT REGARDING FINAL PROJECT FINANCE APPROVAL (this "Agreement") is entered into as of this 1st day of December, 2010 (the "Effective Date"), by and between 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, and MMPI Cleveland Development LLC ("Developer"), a Delaware limited liability company. CLEVELAND MMCC LLC ("Operator"), a Delaware limited liability company, has joined in the execution of this Agreement for the limited purposes set forth in the CAA.

**WITNESSETH:**

WHEREAS, pursuant to that certain Construction Administration Agreement, dated as of January 7, 2010 (the "CAA"), as amended, by and between the County and Developer, Developer is to construct, furnish and equip, pursuant to construction drawings and specifications approved by the County, the Facility (as defined in the CAA);

WHEREAS, pursuant to the CAA, the County and Developer are to mutually agree upon various documents as part of the Final Project Finance Approval (as defined in the CAA).

WHEREAS, pursuant to that certain Ground Lease, entered into contemporaneously with this Agreement and dated as of the date hereof (the "Land Lease"), between the County and Developer, the County leased to Developer, and Developer leased from the County, the land and improvements thereon described on Exhibit A attached to the Land Lease;

WHEREAS, pursuant to that certain Project Funding Agreement, entered into contemporaneously with this Agreement and dated as of the date hereof (the "Project Funding Agreement"), between the County and Developer, the County shall provide to Developer funds for planning, designing, financing and constructing the Facility;

WHEREAS, pursuant to that certain Lease Agreement, entered into contemporaneously with this Agreement and dated as of the date hereof (the "Lease"), between Developer, as lessor, and the County, as lessee, the County shall lease from Developer the Site and all improvements to be constructed thereon, including the completed Facility, in accordance with the terms and conditions thereof;

WHEREAS, pursuant to that certain Sublease and Operating Agreement, entered into contemporaneously with this Agreement and dated as of the date hereof (the "Operating Agreement"), by and between the County and Operator, the County shall sublease the completed Facility to Operator for operation of the Facility in accordance with the terms and conditions thereof; and

WHEREAS, the County and Developer wish to memorialize their agreements as to the Final Project Finance Approval and other documents relating to the funding, design, construction 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**

**ACKNOWLEDGEMENTS AND APPROVALS RELATED TO  
FINAL PROJECT FINANCE APPROVAL**

1.1 Capitalized Terms. As used in this Agreement, the capitalized terms not otherwise defined in this Agreement shall have the meanings given to such terms in the CAA.

1.2 Final Project Finance Approval. The County and Developer have mutually agreed to and approve the following: (a) the final Master Project Schedule, a copy of which is attached hereto as Exhibit A; (b) the final Master Project Budget, a copy of which is attached hereto as Exhibit B; and (c) the Project Funding Agreement, Land Lease, Lease and Operating Agreement. The plan of finance for the development and construction of the Facility is set forth in the Project Funding Agreement, Land Lease, Lease and Operating Agreement and is approved by the County and Developer.

1.3 Budget Cap; County Budget Items. The Budget Cap, set forth in the Master Project Budget, shall be \$418,174,565. As shown in the Master Project Budget, the Budget Cap is the sum of the "Total Project Costs" less the sum of \$46,825,435 budgeted for the County Contingency, County Expenses and Site Acquisition (collectively, the "County Budget Items"). In accordance with Section 4.17 of the CAA, Developer is responsible for the categories of Project Costs included within the Budget Cap and for any cost overruns of such Project Costs in excess of the Budget Cap. The County shall be responsible for the categories of Project Costs included within the County Budget Items and for any cost overruns of such Project Costs in excess of said \$46,825,435.

1.4 County Contingency Fund. Pursuant to Section 4.16 of the CAA, the County Contingency Fund, equal to one percent (1%) of design costs and Construction Costs budgeted in the Master Project Budget, is hereby fixed at \$3,485,435, as identified in the Master Project Budget. Any unused funds in the County Contingency Fund shall revert to the County upon Substantial Completion of the Facility.

1.5 Project Contingency Fund. Pursuant to Section 4.16 of the CAA, the Project Contingency Fund, not to exceed four percent (4%) of the Project Costs budgeted in the Master Project Budget, is \$15,090,456 and is identified in the Master Project Budget.

1.6 Construction Contingency. Pursuant to Section 4.16 of the CAA, the Construction Contingency is \$19,631,454 and is identified in the GMP.

1.7 Project Funding. The County has determined that the annual debt service that would generate sufficient Bond Proceeds does not exceed Thirty-Six Million Dollars (\$36,000,000). The County hereby acknowledges that as such, its termination right pursuant to Section 9.1.2 is of no further force or effect.

1.8 Guaranteed Maximum Price. Pursuant to Section 2.6.4 of the CAA, the Parties hereby agree to the GMP in the amount of \$348,821,355.

1.9 GMP Documents. Pursuant to Section 2.6.4 of the CAA, the Parties hereby approve the Design Development Documents, the qualifications and assumptions relating to the GMP, the prose statement relating to the Design Development Documents, and the other design documents. All of the foregoing are listed or referenced in the attached Exhibit C.

1.10 Construction Guarantee. The Construction Guarantee, signed by Contractor and approved by the County, is set forth on Exhibit D.

1.11 Corporate Guarantee. In lieu of the commitment from the surety to supply the Surety Bond for the Project in an amount not less than the GMP in accordance with Sections 2.6.4 and 5.5 of the CAA, the County and Developer hereby accept a corporate guarantee by the parent of Contractor, which corporate guarantee is hereby approved by the County, and is set forth on Exhibit E.

1.12 Pollution Liability Insurance. Developer has delivered to the County, and the County has approved, the binder or insurance policy for the pollution liability insurance required by Section 11.1.4 of the CAA. Upon issuance of the pollution liability insurance policy, Developer shall provide a copy of it to the County for the County's review, comment and approval.

1.13 Builder's Risk Insurance. Developer has delivered to the County, and the County has approved, the binder or insurance policy for the builder's risk insurance required by Section 11.1.6 of the CAA. Upon issuance of the builder's risk policy, Developer shall provide a copy of it to the County for the County's review, comment and approval.

1.14 Other Insurance. Developer has provided to the County summaries of the other insurance coverages that it is providing, which summaries are set forth on Exhibit F hereof. Upon issuance of such policies, Developer shall provide a copy of them to the County for the County's review, comment and approval.

## **ARTICLE 2**

### **ACKNOWLEDGEMENTS, APPROVALS AND AGREEMENTS RELATED TO DESIGN AND CONSTRUCTION**

2.1 Contractor and Architects. Pursuant to Sections 2.5, 4.1 and 5.4, the County hereby approves (a) Turner Construction Company as Contractor (design-builder), (b) LMN Architects as Bridging Consultant, (c) URS Corporation as Architect, and (d) their respective agreements with Developer (other than the agreement between Contractor and URS Corporation, which Developer shall provide to the County as required by the CAA).

2.2 Termination Rights During Design Phases. Pursuant to Sections 2.6.4, 3.1 and 4.23 of the CAA, the Parties acknowledge that until the Final Project Finance Approval, both Parties had the right to deliver a Termination Notice . The Parties hereby acknowledge that such termination right has lapsed and is of no further force or effect.

2.3 Modifications to the County Requirements. Pursuant to Section 4.2 of the CAA, the Parties acknowledge that the County Requirements have been modified by mutual agreement of the Parties, and as agreed to by the County's convention center consultant, Conventional Wisdom. The key modifications to the County Requirements are identified on Exhibit G.

2.4 GMP Documents. The GMP Documents, including the Design Development Documents, approved by the County and Developer, are listed on Exhibit C. Developer shall cause the Facility to be constructed in accordance with such approved Design Development Documents.

2.5 Construction of the Facility. Pursuant to Section 5.1 of the CAA, Developer acknowledges that it 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. As described above in Section 1.3 above, Developer's responsibility with respect to the Master Project Budget extends to the Budget Cap, and the County shall be responsible for the County Budget Items.

### **ARTICLE 3**

#### **TERMINATION OF DEVELOPMENT AGREEMENT**

3.1 Termination of the Development Agreement. The Parties hereby agree that all of the Financing Documents have been executed and delivered, and, accordingly, pursuant to Section 8.1 of the Development Agreement, the Development Agreement is hereby terminated and is of no further force or effect.

### **ARTICLE 4**

#### **MISCELLANEOUS**

4.1 Exhibits. All exhibits (including all attachments to such exhibits) referenced in this Agreement are hereby incorporated into this Agreement by such reference as though fully rewritten and are deemed to be an integral part of this Agreement.

4.2 Amendment. No alteration, amendment or modification of this Agreement shall be valid unless set forth in an instrument in writing executed by the parties hereto.

4.3 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.

4.4 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.

4.5 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.

4.6 Further Assurances. The parties shall each execute, acknowledge and deliver, after the date hereof, 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 hereby.

4.7 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.

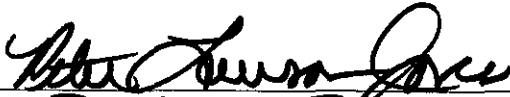
4.8 This Agreement. The words "herein," "hereof," "hereunder," "hereby," "this Agreement" and other similar references shall be construed to mean and include this Agreement and all amendments hereof and supplements hereto unless the context clearly indicates or requires otherwise.

4.9 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.

**[Signature page follows]**

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

THE COUNTY OF CUYAHOGA, OHIO

By:   
Name: Peter Lawson Jones  
Title: President of the Board


MMPI CLEVELAND DEVELOPMENT LLC

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

CLEVELAND MMCC LLC  
(For the limited purposes set forth in the Preamble)

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**The legal form for the within instruments is hereby approved.**

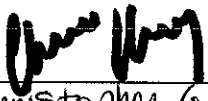
By:   
Date: Nov 16, 2010

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

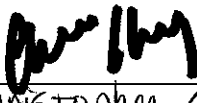
THE COUNTY OF CUYAHOGA, OHIO

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

MMPI CLEVELAND DEVELOPMENT LLC

By:  \_\_\_\_\_  
Name: Christopher G. Kennedy  
Title: PRESIDENT

CLEVELAND MMCC LLC  
(For the limited purposes set forth in the Preamble)

By:  \_\_\_\_\_  
Name: Christopher G. Kennedy  
Title: PRESIDENT

**The legal form for the within instruments is hereby approved.**

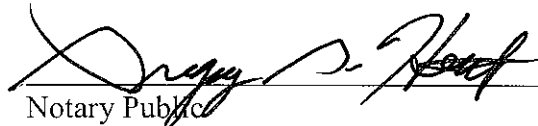
By: \_\_\_\_\_  
Date: \_\_\_\_\_

STATE OF OHIO                    )  
  ) SS:  
COUNTY OF CUYAHOGA        )

On this 29th day of Nov., 2010, before me a Notary Public in and for said County and State, personally appeared Peter Lawson Jones, President, Board of County Commissioners 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 Illinois )  
 ) SS:  
COUNTY OF Cook )

On this 17 day of November, 2010, before me a Notary Public in and for said County and State, personally appeared Christopher A. Kern, being the duly authorized executive of 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.



R F Clark  
Notary Public

STATE OF ~~OHIO~~ )  
 ) SS:  
COUNTY OF ~~CLYAHOGA~~ )  
                  Cosh

On this 17 day of Nov, 2010, before me a Notary Public in and for said County and State, personally appeared Christopher G. Henry, 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.



R F Clark  
Notary Public

CERTIFICATE OF FISCAL OFFICER

The undersigned fiscal officer of the County of Cuyahoga, Ohio ("County") hereby certifies that the money required to meet the obligations of the County under the foregoing AGREEMENT REGARDING FINAL PROJECT FINANCE APPROVAL for the fiscal year 2010 has been appropriated lawfully by the Board of Commissioners of Cuyahoga County, Ohio for that purpose and is in treasury of the County or is in the process of collection to the credit of an appropriate fund, free from any previous encumbrances, and is not appropriated for any other purpose. This certificate is given in compliance with Sections 5705.41 and 5705.44 of the Ohio Revised Code.

David Reines

David Reines, Acting Auditor, County of  
Cuyahoga, Ohio

EXHIBIT A

Master Project Schedule

The Master Project Schedule is that certain Cleveland Medical Mart and Convention Center Contract Schedule, prepared by Turner Construction Company, dated as of November 15, 2010, 12 pages, a copy of which the County and Developer have received and which is included in the GMP Documents.

EXHIBIT B

Master Project Budget

The Master Project Budget is that certain Cleveland Medical Mart & Convention Center Master Project Budget and the Cleveland Medical Mart & Convention Center Budget Cap, dated as of November 17, 2010, 2 pages, a copy of which is attached hereto.

## Cleveland Medical Mart &amp; Convention Center

11/17/2010

## Master Project Budget

(in '000's)

<u>Item</u>	<u>Budget</u>
<b>Subtotal Construction Costs</b>	<b>\$278,878,816</b>
Turner Pre-Construction Fee	1,999,000
General Conditions	9,500,000
Corporate Guarantee	2,068,523
Insurance - CCIP	8,539,848
Subguard Insurance	3,207,106
Tax	848,490
Permits	2,382,217
<b>Subtotal General Conditions / Requirements</b>	<b>28,545,184</b>
Construction / Design Contingency	19,631,454
<b>Subtotal Contingency / Escalation</b>	<b>19,631,454</b>
Contractor Fee	8,285,900
<b>Hard Cost Subtotal</b>	<b>335,341,354</b>
Architectural and Engineering - CD / CA	13,480,000
<b>Design / Build Total - Turner Contract Value</b>	<b>348,821,355</b>
Feasibility Design	2,444,000
Finishing Kitchen	200,000
Bridging Design & Design-Build Oversight	13,733,998
Utility Connection Charges	989,756
Utility Consumption During Construction	3,184,000
FF&E	10,000,000
Environmental Abatement	3,624,000
Blueprinting	600,000
Builders Risk	775,000
Owner's Protective Professional Indemnity	750,000
Pollution / Environmental Insurance	216,000
Reimbursable Expenses	3,246,000
Legal Costs	1,000,000
Marketing / Sales Costs	1,500,000
Developer Fee	12,000,000
Developer Contingency	15,090,456
<b>Developer Costs Total</b>	<b>69,353,210</b>
County Contingency Fund (1% per DA)	3,485,435
County Expenses	5,000,000
Site Acquisition	38,340,000
<b>County Costs Subtotal</b>	<b>46,825,435</b>
<b>Total Project Costs</b>	<b>\$465,000,000</b>

Cleveland Medical Mart & Convention Center

11/17/2010

Budget Cap  
(in '000's)

<u>Item</u>	<u>Budget</u>
<b>Subtotal Construction Costs</b>	<b>\$278,878,816</b>
Turner Pre-Construction Fee	1,999,000
General Conditions	9,500,000
Corporate Guarantee	2,068,523
Insurance - CCIP	8,539,848
Subguard Insurance	3,207,106
Tax	848,490
Permits	2,382,217
<b>Subtotal General Conditions / Requirements</b>	<b>28,545,184</b>
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Contractor Fee	8,285,900
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Feasibility Design	2,444,000
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Utility Connection Charges	989,756
Utility Consumption During Construction	3,184,000
FF&E	10,000,000
Environmental Abatement	3,624,000
Blueprinting	600,000
Builders Risk	775,000
Owner's Protective Professional Indemnity	750,000
Pollution / Environmental Insurance	216,000
Reimbursable Expenses	3,246,000
Legal Costs	1,000,000
Marketing / Sales Costs	1,500,000
Developer Fee	12,000,000
Developer Contingency	15,090,456
<b>Developer Costs Total</b>	<b>69,353,210</b>
<b>Total Budget Cap</b>	<b>\$418,174,565</b>

## EXHIBIT C

### GMP Documents

GMP Amendment to Design-Build Agreement, dated as of November 18, 2010, between MMPI Cleveland Development LLC and Turner Construction Company, including the following attachments attached thereto and incorporated therein:

- A. Attachment "A" Schedule of Values (including separate line items for the General Conditions Stipulated Sum and Construction Contingency for the Work), dated November 17, 2010, 1 page.
- B. Attachment "B" Allowance items, dated November 15, 2010, 2 pages.
- C. Attachment "C" List of GMP Documents (including the drawings and specifications and a list of qualifications and assumptions, if any) dated November 15, 2010, 65 pages.
- D. Attachment "D" Construction Schedule, dated November 15, 2010, 12 pages.
- E. Attachment "E" List of Alternates, dated November 15, 2010, 1 page.
- F. Attachment "F" Unit Prices (none), dated November 15, 2010, 1 page.
- G. Attachment "G" QM/QA Plan, referencing Policy & Procedure Manual dated 10/13/2010, 1 page.
- H. Attachment "H" Qualifications and Assumptions, dated November 17, 2010, 15 pages, plus additional attachments as described therein.

EXHIBIT D

Completion Guarantee

Completion Guaranty, dated as of November 18, 2010, by Turner Construction Company, signed by Mark Dent, Vice-President, General Manager, 9 pages, a copy of which is attached hereto.

**EXHIBIT J**

**Form of Completion Guaranty**

**COMPLETION GUARANTY**

**THIS COMPLETION GUARANTY** ("Completion Guaranty") made as of this \_\_\_\_\_ day of 11-18 2010 (the "Effective Date"), by TURNER CONSTRUCTION COMPANY, a New York corporation ("**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 Agreement dated 11-18, 2010 (the "**Design-Build Agreement**") for the design and construction of Work (as defined therein) relating to a medical mart and convention center in Cleveland, Ohio (the "**Project**") on an assembled site owned by the County, including the properties commonly known as Malls B and C and the improvements thereunder, 113 St. Clair Avenue and adjacent property (collectively, the "**Site**"). Prior to commencement of construction under the Design-Build Agreement, the Site will be leased by the County to Developer pursuant to a Land Lease (the "**Land Lease**"). Capitalized terms used herein and not otherwise defined shall have the same meaning herein as in the Design-Build Agreement.

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 7, 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 Agreement, 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 Agreement 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 Agreement and herein collectively as the "**Design Documents**."

C. Pursuant to the terms of the Land Lease and the CAA, it is a condition to Developer's award of the design-build agreement 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 Work will be Substantially Complete on or before the Guaranteed Substantial Completion Date (as the same may be adjusted in accordance with the terms of the Design-Build Agreement) and will thereafter be Finally Complete in accordance with the Design-Build Agreement and that the foregoing will be accomplished (i) in compliance with the terms and provisions of the Design-Build Agreement, including, without limitation, the Design Documents (subject to such changes therein as may be approved by Developer, the County and Guarantor pursuant to the terms of the Design-Build Agreement); (ii) in accordance with Applicable Law; (iii) free of any claim for mechanics', materialmen's or any other liens by Guarantor or any affiliate of Guarantor, or by any subcontractor (of any tier) or consultant of Guarantor or any affiliate of Guarantor; and (iv) in accordance with the guaranteed maximum price as set forth in the Design-Build Agreement and as the same may be adjusted in accordance with the terms thereof (the "GMP").

(b) Guarantor's guarantee under this Section 1 includes, without limitation, assurance that the Work 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 Design Documents; (iii) errors and omissions of any architect, engineer, consultant, contractor or subcontractor engaged for performance of work under the Design-Build Agreement; and (iv) costs of completing the Work following the default or bankruptcy of any architect, engineer, consultant, contractor or subcontractor engaged for performance of work under the Design-Build Agreement.

(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 Agreement 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); and "Force Majeure Event" shall not include Guarantor's inability to pay debts or other monetary obligations in a timely manner. 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 of the year on which commercial banks are not required or authorized to be closed for business in Cleveland, Ohio.

(d) As used herein, "Hazardous Materials" shall have the same meaning as ascribed to such term in the Design-Build Agreement.

(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 Agreement), whether foreseen or unforeseen, in excess of the GMP as may be necessary to complete the Work in compliance with the requirements, and subject to the conditions of this Section 1 (including, without limitation, the "Payment Condition" as defined in paragraph (f) below and the "Required Performance Condition" as defined in paragraph (g) below.

(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 AGREEMENT, FUNDS FOR THE WORK 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 WORK IS DUE TO A FAILURE IN PERFORMANCE BY GUARANTOR UNDER THE DESIGN-BUILD AGREEMENT 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 AGREEMENT 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 AGREEMENT, ANY UNDISPUTED AMOUNTS THEN DUE AND OWING UNDER THE DESIGN-BUILD AGREEMENT 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 WORK 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 WORK, AND THAT THE COUNTY'S AGREEMENTS AND UNDERTAKING WITH REGARD TO THE ADVANCE OF FUNDS FOR THE WORK ARE MADE SOLELY WITH AND FOR THE BENEFIT OF DEVELOPER.

(g) The performance by Guarantor of its obligations under this Completion Guaranty is subject to the performance (but not the assumption by the County or any other person or entity) of Developer's responsibilities under the Design-Build Agreement to the extent practically necessary for Guarantor's performance of the Work; provided, however, it is expressly

acknowledged and agreed that neither the County nor any other person or entity shall have any obligation to assume the obligations or liabilities of Developer under the Design-Build Agreement. (The condition to Guarantor's performance, as described in the preceding sentence, is referred to herein as the "Required Performance Condition.")

(h) It is acknowledged and agreed that Guarantor's obligations under this Completion Guaranty are separate and independent of the obligations of Guarantor, in its capacity as Design-Builder, under the Design-Build Agreement. However, notwithstanding anything to the contrary contained in this Completion Guaranty, the obligations and liabilities of Guarantor under this Completion Guaranty with respect to the completion of the Work shall not exceed the obligations and liabilities of Design-Builder under the Design-Build Agreement; and accordingly: (1) if and to the extent that the obligations of Design-Builder under the Design Build Agreement have been performed, or the remedy for breach of or deficient performance under the Design-Build Agreement has been provided by Design Builder or Guarantor, the obligations of Guarantor under this Completion Guaranty shall be deemed satisfied and discharged; and (2) Guarantor shall be entitled to extensions of time for performance of the Work on account of excusable delays to the same extent permitted to Design-Builder under the terms of the Design-Build Agreement.

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 and the Required Performance Condition):

- (i) Guarantor's rights and obligations as Design-Builder under the Design-Build Agreement;
- (ii) Any modification or amendment of the Design-Build Agreement;
- (iii) The exercise by Developer of any and all rights and remedies against Design-Builder under the Design-Build Agreement or against any architect, engineer, consultant, contractor or subcontractor thereunder (subject, however, to Sections 5(b) and 5(c) below);
- (iv) The existence of any default or failure to perform by Developer under the Design-Build Agreement or any claims of Guarantor against Developer under the Design-Build Agreement;
- (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 Agreement, provided that the Design-Build Agreement 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 Delaware 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 shall terminate upon the completion of all Work, and the satisfaction of all obligations and liabilities of Design-Builder in respect of the Work under the Design-Build Agreement, through Final Completion (as defined in the Design-Build Agreement).

(b) Guarantor's obligations under this Completion Guaranty shall also terminate upon: (i) the termination of the Design-Build Agreement pursuant to Section 12.3 thereof (relating to termination for convenience); or (ii) the termination of Developer's interest in the Project, unless Developer's interest in the Design-Build Agreement 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 Agreement.

(c) If the Design-Build Agreement is terminated pursuant to Section 12.2.2 thereof (relating to termination for default) and Developer or the County (or the permitted assign of either) takes possession of the Site for purposes of completing the Work, then Guarantor shall be relieved of its obligation under this Guaranty to complete the Work but shall have all obligations and liabilities of Design-Builder under Section 12.2.3 thereof (relating to obligation to pay/make whole and other remedies).

**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 Agreement). 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, demand, offer or other written instrument required or permitted to be given pursuant to this Agreement shall be in writing signed by the party giving such notice and shall be hand delivered or sent by overnight courier, messenger or registered letter or fax, to the other parties at the address set forth below. Any notice given hereunder by either party shall be given simultaneously to the Developer as well.

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

Turner Construction Company  
The Hanna Building  
1422 Euclid Avenue, Suite 1400  
Cleveland, OH 44155  
Attention: Mark Dent, Vice President

With a copy to:

Turner Construction Company  
250 West Court Street, Suite 300  
Cincinnati, OH 45202  
Attention: David M. Spaulding, Esq.

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

Cuyahoga County Administrator  
1219 Ontario Street, 4<sup>th</sup> Floor  
Cleveland, OH 44113  
Facsimile:

With a copies to:

Cuyahoga County Prosecutor's Office  
Chief of the Civil Division  
1200 Ontario Street, 8<sup>th</sup> Floor  
Cleveland, OH 44113  
Facsimile:

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

- (d) 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  
Facsimile:  
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  
Facsimile:

And with a copy to:

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

Each party shall have the right to change the place to which notice shall be sent or delivered by sending a similar notice to the others in like manner. The effective date of any notice issued pursuant to this Agreement shall be as of the addressee's receipt of such notice. Any notice given by fax shall also be deposited in regular U.S. mail (or more expedient delivery) no later than the next business day after the fax was sent.

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.

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

**GUARANTOR**

**Turner Construction Company**

By: Mark L. Dent

Name: Mark Dent

Title: Vice-President, General Manager

EXHIBIT E

Corporate Guarantee

Parent Company Guaranty, dated as of November 23, 2010, by the Turner Corporation, signed by Christopher Beck and Stephen M. Christo, Vice President and Senior Vice President, respectively, 8 pages, a copy of which is attached hereto.

## ***PARENT COMPANY GUARANTY***

THIS GUARANTY (this "Guaranty") is made as of the 23 day of November, 2010, by The Turner Corporation, a Delaware corporation, with offices at 901 Main Street, Dallas, Texas 75202 ("Guarantor") in favor of MMPI Cleveland Development, LLC, a Delaware limited liability company (the "Developer"), and the County of Cuyahoga, Ohio, a governmental subdivision of the State of Ohio (the "County").

### RECITALS

The Guarantor is the parent corporation of Turner Construction Company.

The Developer has entered into a Design Build Agreement dated as of the 16 day of November, 2010 (which Contract, as modified and changed in accordance with the provisions of such Contract, shall be referred to herein as the "Design Build Agreement") with Turner Construction Company ("Design Builder") for the Design Builder to design and construct a medical mart and convention center and related improvements (the "Improvements") to be located at Cleveland Medical Mart and Convention Center, 1 St. Clair Avenue, Cleveland, Ohio 44114, and properties commonly known as Malls B and C and the improvements thereunder, 113 St. Clair Avenue, Cleveland, Ohio 44114 (the "Project"). As used herein the term "Improvements" shall include all work and improvements (including all grading, site development improvements and infrastructure improvements) to be constructed by the Design Builder pursuant to the Design Build Agreement.

The Design Build Agreement requires that the Design Builder make arrangements to have Guarantor provide its corporate guarantee as an alternative to Design Builder providing payment and performance bonds for the Project, to guaranty the performance of the Design Builder's obligations under the Design Build Agreement and payment of architect, engineers, consultants, laborers' and material men providing services or supplying labor and materials for use in the design and construction of the Improvements.

The Guarantor has agreed to provide this Guaranty for the payment of a fee by the Developer. The Developer confirms that it would have not entered into the Design Build Agreement with the Design Builder without the Guarantor's execution of this Guaranty.

NOW, THEREFORE, in consideration of the fee paid by the Developer receipt of which is hereby acknowledged by the Guarantor, the Guarantor's interest in the Design Builder and the Guarantor's desire that the Developer execute the Design Build Agreement with the Design Builder, the Guarantor hereby covenants and obligates itself for the benefit of the Developer and the County as follows:

1. DEFINED TERMS. Capitalized terms not otherwise defined in this Guaranty shall have the definitions ascribed to such terms in the Design Build Agreement.

2. GUARANTY. Upon the terms and conditions hereafter following, the Guarantor guarantees full, faithful and timely performance of all obligations of the Design Builder in respect of the design and construction of the Project as set forth in the Design Build Agreement. The obligations of the Design Builder to be performed pursuant to the Design Build Agreement are sometimes collectively referred to herein as the "Guaranteed Obligations". This Guaranty is conditioned upon the fulfillment of all the obligations of the Developer (whether performed by Developer, the County or another person) under the terms of the Design Build Agreement and all terms and conditions of this Guaranty shall expire at final completion of the Work required of Design Builder under the Design Build Agreement (final completion shall be defined as provided in the Design Build Agreement if a definition is provided therein).

3. OBLIGATIONS OF GUARANTOR UPON DEFAULT BY THE DESIGN BUILDER. If the Design Builder defaults in performance of any of the Design Builder's obligations under the Design Build Agreement, the Guarantor shall, to the extent required by Paragraph 2 above, promptly upon demand of the Developer: (a) diligently proceed to commence and complete the design, installation and construction of the Improvements in accordance with the Design Build Agreement; and (b) fully pay and perform the Design Builder's obligations under the Design Build Agreement, to the extent required of Design Builder under the Design Build Agreement. In no event shall the Guaranteed Obligations of the Guarantor be greater than the obligations of the Design Builder under the Design Build Agreement and all rights and defenses available to Design Builder under the Design Build Agreement shall be available to Guarantor. The liabilities and obligations of the Guarantor hereunder are expressly limited to the amount of the guaranteed maximum price set forth in the GMP Amendment to the Design Build Agreement signed by Developer and Design Builder, as same may be adjusted by Change Orders signed by Developer and Design Builder. Any limitation of liability provided for in the Design Build Agreement shall inure to the benefit of Guarantor.

4. REMEDIES OF THE OWNER. If the Guarantor fails to promptly perform its Guaranteed Obligations, the Developer and the County shall have the same remedies as against the Guarantor as the Design Build Agreement provides as against the Design Builder.

5. RIGHTS OF THE OWNER. Guarantor authorizes the Developer, without giving notice to the Guarantor or obtaining the Guarantor's consent and without affecting the liability of the Guarantor, from time to time to: (a) approve modifications to the Construction Documents as provided in the Design Build Agreement; (b) approve and sign Change Orders or other changes in the Improvements as provided in the Design Build Agreement, or (c) assign the Guaranty in whole or in part in connection

with any assignment of the Design Build Agreement if an assignment of the Design Build Agreement is permitted under the terms of the Design Build Agreement.

6. **GUARANTOR'S WAIVERS.** Notwithstanding anything to the contrary contained herein, the Guarantor waives: (a) any defense based upon any lack of authority of the officers, directors, partners or agents acting or purporting to act on behalf of Design Builder or any principal of Design Builder; (b) any defense based upon the Developer's failure to disclose to the Guarantor any information concerning the Design Builder's financial condition or any other circumstances bearing on the Design Builder's ability to pay and perform its obligations under the Design Build Agreement and (c) any defense based upon any election by the Developer, in any proceeding as to the Design Builder instituted under the United States Federal Bankruptcy Code, or any successor statute. The performance of any act or any payment that tolls any statute of limitations shall similarly operate to toll the statute of limitations applicable to the Guarantor's liability hereunder.

7. **GUARANTOR'S REPRESENTATIONS AND WARRANTIES.** The Guarantor represents and warrants to Developer and the County that: (a) the Guarantor has reviewed the Design Build Agreement and understands the obligations of the Design Builder thereunder; (b) other than Developer's delivery to Design Builder of the Notice to Proceed as provided under the Design Build Agreement, there are no conditions precedent to the effectiveness of this Guaranty; and (c) the Guarantor has established adequate means of obtaining from sources other than the Developer, on a continuing basis, financial and other information pertaining to the Design Builder's financial condition, the progress of the development, installation and construction of the Improvement, and the status of the Design Builder's performance of its obligations under the Design Build Agreement, and the Developer has made no representation to the Guarantor as to any such matters.

8. **INDEPENDENT AND UNSECURED OBLIGATIONS.** This Guaranty is independent of the obligations of the Design Builder under the Design Build Agreement. The Developer or the County may bring an action to enforce the provisions hereof against the Guarantor without taking action against the Design Builder or any other party. Except as otherwise provided in this Guaranty, this Guaranty is not secured and shall not be deemed to be secured by any security instrument.

9. **RULES OF CONSTRUCTION.** The term "person" as used herein shall include any individual, company, trust or other legal entity of any kind whatsoever. When the context and construction so require, all words used in the singular herein shall be deemed to have been used in the plural and vice versa. All headings appearing in this Guaranty are for convenience only and shall be disregarded in construing this Guaranty.

10. CREDIT REPORTS. Guarantor hereby authorizes the Developer and the County to order and obtain, from one or more credit reporting agencies of the Developer's or the County's choice, third-party credit reports of Guarantor.

11. GOVERNING LAW. This Guaranty shall be governed by and construed in accordance with, the laws of the State of Ohio, except to the extent preempted by federal laws. 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 Guaranty and also consents to service of process by any means authorized by Ohio or federal law.

12. MISCELLANEOUS. The provisions of this Guaranty will bind and benefit the heirs, executors, administrators, legal representatives, nominees, successors and assigns of the Guarantor, the Developer and the County. If any provision of this Guaranty shall be determined by a court of competent jurisdiction to be invalid, illegal or unenforceable that portion shall be deemed severed from this Guaranty and the remaining parts shall remain in full force as though the invalid, illegal or unenforceable portion had never been part of this Guaranty.

13. ENFORCEABILITY. The Guarantor hereby acknowledges that: (a) the obligations undertaken by the Guarantor in this Guaranty are complex in nature, and (b) numerous possible defenses to the enforceability of these obligations may presently exist and/or may arise hereafter, and (c) as part of the Developer's consideration for agreeing to enter into the Design Build Agreement with Design Builder, the Developer has specifically bargained for the waiver and relinquishment by the Guarantor of all such defenses, except such rights and defenses as are provided for the benefit of Guarantor hereunder or are otherwise available to Design Builder under the Design Build Agreement and (d) the Guarantor has had the opportunity to seek and receive legal advice from skilled legal counsel in the area of financial transactions of the type contemplated herein. Given all of above, the Guarantor does hereby represent and confirm to the Developer that the Guarantor is fully informed regarding and that the Guarantor does thoroughly understand; (i) the nature of all such possible defenses, and (ii) the circumstances under which such defenses may arise, and (iii) the benefits which such defenses might confer upon Guarantor, and (iv) the legal consequences to the Guarantor of waiving such defenses. The Guarantor acknowledges that Guarantor makes this Guaranty with the intent that this Guaranty and all of the informed waivers herein shall each and all be fully enforceable by the Developer, and that the Developer executed the Design Build Agreement in material reliance upon the presumed full enforceability thereof.

14. REPRESENTATIONS AND WARRANTIES. In addition to the representations and warranties set forth in Section 7 above, the Guarantor represents and warrants to Developer as of the date hereof as follows:

- (a) The Guarantor is a corporation duly incorporated, validly existing and in good standing under the laws of Delaware;
- (b) The Guarantor has the corporate power to own its assets and to carry on its business as it is now being conducted;
- (c) The Guarantor has full power and authority to enter into and perform its obligations under this Guaranty;
- (d) The Guarantor has taken all necessary corporate action to authorize the execution, delivery and performance of this Guaranty in accordance with its terms;
- (e) This Guaranty constitutes the Guarantor's legal, valid and binding obligations and is enforceable against the Guarantor in accordance with its terms subject to the affect of insolvency laws and laws generally affecting creditors' rights;
- (f) The execution, delivery and performance by the Guarantor of this Guaranty does not and will not (i) violate, breach, or contravene (A) any law, regulation or authorization to which the Guarantor or its assets is subject or (B) the Guarantor's constitution or any encumbrance or agreement which is binding upon the Guarantor or any of its assets or (ii) result in the creation or imposition of any encumbrance on the Guarantor or any of the Guarantor's assets other than pursuant to this Guaranty or (iii) result in the acceleration of the date of payment of any obligation existing under any encumbrance or agreement which is binding upon the Guarantor or any of the Guarantor's assets;
- (g) The Guarantor does not and its assets do not enjoy immunity from any civil proceeding, lawsuit or enforcement of judgments obtained against the Guarantor;
- (h) The Guarantor's obligations under this Guaranty rank at least equally and ratably with all other unsecured obligations of the Guarantor except for obligations preemptively preferred by law or arising in equity;
- (i) The Guarantor is not insolvent and giving effect to the obligations of this Guaranty will not render Guarantor insolvent; and

- (j) Entry into and performance by the Guarantor of its obligations under this Guaranty is for the Guarantor's commercial benefit and is in the Guarantor's commercial interests.

16. The Guarantor agrees that, prior to expiration of this Guaranty, it will, at any time and from time to time but in no event more than once per calendar year, within fifteen (15) days following a written request by Developer, execute and deliver to Developer a statement certifying and reaffirming that this Guaranty is unmodified and in full force and effect (or if modified, that the same is in full force and effect as modified and stating such modifications).

17. All notices, demands (including a Demand Notice) and other communications (collectively, "Notices") to or by a party under this Guaranty must be in legible writing and in English addressed as shown below:

If to the Guarantor:

Turner Construction Company  
50 Tice Boulevard, 3<sup>rd</sup> Floor  
Woodcliff Lake, NJ 07677  
Attention: Chris Beck

With a copy to:

Turner Corporation  
375 Hudson Street  
New York, NY 10014  
Attention: Steve Christo

If to Developer:

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

with copies to:

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

- a. All Notices will be deemed delivered by the sender and received by the addressee (i) if delivered in person, when delivered to the addressee at its address listed above; (ii) if delivered by First Class United States Mail (or its equivalent), on delivery to the addressee; or (iii) if delivered by facsimile transmission, when received by the addressee in legible form, but if the delivery or receipt is on a day which is not a Business Day or is after 4:00 pm (addressee's time) it is deemed to be delivered and received on the succeeding Business Day.
- b. All Notices can be relied upon by the addressee and the addressee is not liable to any other person for any consequences of that reliance if the addressee believes it to be genuine, correct and authorized by the sender.
- c. A reference to an addressee includes a reference to an addressee's officers, agents or employees or any Person reasonably believed by the sender to be an officer, agent or employee of the addressee.
- d. Any party may change the address to which any Notice is to be delivered by furnishing ten (10) days written notice of such change to the other parties in accordance with the provisions of this Section. Notice for the Developer or the Guarantor may be given by their respective counsel.

18. This Guaranty may be executed in any number of counterparts, each of which shall constitute an original and which, when taken together, shall constitute but one instrument. All such counterparts will be deemed to be originals and will together constitute but one and the same instrument.

19. This Guaranty represents the entire agreement between the Developer and the Guarantor relating to the subject matter of this Guaranty.

20. The fee to be paid by Developer for this Guaranty shall be an amount equal to 0.60% of the GMP as set forth in the GMP Amendment signed by Developer and Design Builder pursuant to the Design Build Agreement plus 0.60% of any increases in the GMP per Change Orders signed by Developer and Design-Builder (but

excluding in either case the Preconstruction Services Compensation and the cost of the Corporate Guarantee) and shall be paid as provided under the Design Build Agreement.

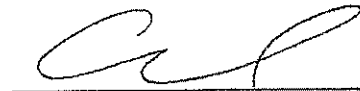
IN WITNESS WHEREOF, the Guarantor has executed this Guaranty as of the date appearing on the first page of this Guaranty.

GUARANTOR:

*THE TURNER CORPORATION*

DATED: 11/23/10

BY:



Christopher Beck  
Vice President

DATED: 11-30-10

BY:



Stephen M. Christo  
Senior Vice President

(Impress here with Corporate Seal)

EXHIBIT F

Insurance Summaries

**Insurance Coverages for the Cleveland Medical Mart and  
Convention**

**Coverage for Merchandise Mart Properties, Inc., Cleveland MMCC  
LLC and MMPI Cleveland Development LLC for exposures outside  
construction operations**

**General Liability**

**Term:** May 30, 2010 to May 30, 2011

**Carrier:** Chubb (Federal Insurance Company)

**Policy Numbers:** 7350-83-13

**Named Insured:** Vornado Realty Trust

**Additional Insureds:** The County of Cuyahoga, Ohio, and its respective elected officials, appointed officials, board members, officers, directors, employees and agents.

**Other Named Insureds:**

Vornado Realty Trust and any subsidiary company or corporation (including partnerships, limited liability partnerships, limited liability companies or joint ventures) of which Vornado Realty Trust or Vornado Realty L.P.:

- has more than 50% of the interests entitled to vote generally in the election of the governing body of such organization; or
- exercises management control as evidenced in a written contract.

<b><u>Limits:</u></b>	General Aggregate (per location BI/PD)	\$2,000,000	limit
limit	Products/Completed Operations	\$2,000,000	aggregate
limit	Advertising Injury & Personal Injury	\$1,000,000	aggregate
	Each Occurrence	\$1,000,000	limit
	Damage to Premises Rented to You	\$1,000,000	limit
	Medical Expenses	Not Covered	

Employee Benefits Errors or Omission Liability (Claims-Made)

Each Claim/Aggregate Limit	\$1,000,000
Each Claim Limit	\$1,000,000
Deductible - Each Claim	\$ 1,000
Retroactive Dates:	5/30/1996

Garage Keeper Legal Liability

Comprehensive Limit	\$1,000,000
Collision Limit	\$1,000,000
Comprehensive Deductible - Each Auto	\$ 1,000
Comprehensive Maximum Deductible	\$ 1,000
Collision Deductible - Each Auto	\$ 1,000

Liquor Liability

Each Common Clause Limit	\$1,000,000
Aggregate Limit	\$1,000,000

**Deductible:**

Nil (Guaranteed Cost)

**Coverage:**

Provides coverage when negligent acts/or omissions result in bodily injury and/or property damage on the covered premises, when someone is injured as a result of using the Named Insured's product or when someone is injured in the general operations of the business. In addition coverage is provided for advertising injury and personal injury claims as defined in the policy, claims resulting from errors or omissions from administering your employee benefits program, liquor liability claims, garage keepers' legal liability losses and security guard operations hazard.

**Umbrella and Excess Liability**

**Term:**

May 30, 2010 to May 30, 2011

**Umbrella Carrier Lead:**

National Union Fire Insurance Co.: # BE16019142

**Umbrella / Excess Carrier:**

Endurance American Insurance Co.: #EXC10002108900  
Liberty International Insurance Co.: # LQ1B71198564056  
Liberty International Insurance Co.: # LQ1B71215106100  
Ace American Insurance Co.: # XCPG24907430  
Zurich American Insurance Co.: # AEC654261701  
Chartis Excess Limited: #25413446  
Navigators Insurance Co.: #NY10EXR710681IV  
Ohio Casualty: # ECO1152539591

**Named Insured:** Vornado Realty Trust

**Other Named Insureds:**

Vornado Realty Trust, and any subsidiary company or corporation (including partnerships, limited liability partnerships, limited liability companies or joint ventures) of which Vornado Realty Trust or Vornado Realty L.P.:

- has more than 50% of the interests entitled to vote generally in the election of the governing body of such organization; or
- exercises management control as evidenced in a written contract

**Additional Insureds:** The County of Cuyahoga, Ohio, and its respective elected officials, appointed officials, board members, officers, directors, employees and agents.

**Limits:**

National Union	\$50 Million Excess of Primary
Endurance	\$50 Million Excess \$50 Million
Liberty	\$25 Million Excess of \$100 Million
Liberty	\$25 Million part of \$75 Million Excess \$125 Million
ACE	\$25 Million part of \$75 Million Excess \$125 Million
Zurich	\$25 Million part of \$75 Million Excess \$125 Million
Chartis	\$50 Million Excess \$200 Million
Navigators	\$25 Million part of \$50 Million Excess \$250 Million
Ohio Casualty	\$25 Million part of \$50 Million Excess \$250 Million
Total Limits	\$300 Million per location

**Retained Limit (Lead Umbrella Only):** \$25,000 Each Occurrence

**Coverage:**

Subject to the policy's terms and conditions, cover is provided for the Named Insured when negligent acts and/or omissions for risks in excess of the Schedule of Underlying Insurance and as per the terms and conditions as provided by these policies.

**Schedule of Underlying:**

General Liability – Chubb

**Commercial Automobile Liability**

**Term:** December 31, 2010 to December 31, 2011

**Carrier:** Chubb (Federal Insurance Company)

**Policy Number:** 7536-0243

**Named Insured:** Vornado Realty Trust

**Additional Insureds:** The County of Cuyahoga, Ohio, and its respective elected officials, appointed officials, board members, officers, directors, employees and agents.

**Other Named Insureds:**

Vornado Realty Trust and any subsidiary company or corporation (including partnerships, limited liability partnerships, limited liability companies or joint ventures) of which Vornado Realty Trust or Vornado Realty L.P.:

- has more than 50% of the interests entitled to vote generally in the election of the governing body of such organization; or
- exercises management control as evidenced in a written contract.

**Limits:**

<u>Coverage</u>	<u>Limits of Insurance</u>	<u>Symbol</u>
Liability	\$1,000,000	1
Personal Injury Protection	Statutory	5
Auto Medical Payments	\$10,000	2
Uninsured/Underinsured Motorist Coverage	\$1,000,000	2

**Coverages:**

- Business Auto Coverage Form
- Additional Insured Lessor
- Employee as Insureds

## **Pollution Legal Liability**

**Term:** January 1, 2011 to January 1, 2021

**Carrier:** Illinois Union Insurance Company (ACE)

**Policy Number:** PPLG24540637001

**Named Insured:** Cleveland MMCC LLC  
MMPI Cleveland Development LLC

**Other Named Insureds:** Merchandise Mart Properties, Inc. Vornado Realty Trust, and Vornado Realty L.P.

**Additional Insureds:** The County of Cuyahoga, Ohio, and its respective elected officials, appointed officials, board members, officers, directors, employees and agents.

**Coverage and Limits::**

Coverage A: ON-SITE CLEAN-UP OF PRE-EXISTING CONDITIONS  
Deductible Each Incident \$50,000  
Each Incident Limit \$10,000,000  
Coverage Section Aggregate Limit \$10,000,000

Coverage B: ON-SITE CLEAN-UP OF NEW CONDITIONS  
Deductible Each Incident \$50,000  
Each Incident Limit \$10,000,000  
Coverage Section Aggregate Limit \$10,000,000

Coverage C: THIRD-PARTY CLAIMS FOR ON-SITE BODILY INJURY  
AND PROPERTY DAMAGE  
Deductible Each Incident \$50,000  
Each Incident Limit \$10,000,000  
Coverage Section Aggregate Limit \$10,000,000

Coverage D: THIRD PARTY CLAIMS FOR OFF-SITE CLEAN-UP  
RESULTING FROM PRE-EXISTING CONDITIONS  
Deductible Each Incident \$50,000  
Each Incident Limit \$10,000,000  
Coverage Section Aggregate Limit \$10,000,000

Coverage E: THIRD PARTY CLAIMS FOR OFF-SITE CLEAN-UP  
RESULTING FROM NEW CONDITIONS  
Deductible Each Incident \$50,000  
Each Incident Limit \$10,000,000  
Coverage Section Aggregate Limit \$10,000,000

Coverage F: THIRD-PARTY CLAIMS FOR OFF-SITE BODILY INJURY  
AND PROPERTY DAMAGE  
Deductible Each Incident \$50,000  
Each Incident Limit \$10,000,000  
Coverage Section Aggregate Limit \$10,000,000

Coverage J: BUSINESS INTERRUPTION COVERAGE – ACTUAL LOSS  
OR RENTAL VALUE  
Business Interruption (Days) Limit: 999  
Business Interruption (\$) Limit \$10,000,000  
Business Interruption Deductible: 7 days  
Policy Aggregate Limit: \$10,000,000

**Limits of Coverage:**

The limit of liability stated above is shared over the policy term indicated. The limit of liability is not an annual limit of liability and is therefore not reinstated each year within the policy term.

**Microbial Matter Coverage:**

\$5,000,000 sub-limit

**Pre-existing Condition Coverage:**

PF-26203 (01/09) - Schedule of Known Conditions (Documents) Endorsement will apply listing the following:

- Phase I Environmental Site Assessment, St. Clair & Ontario Properties, 101 & 113 St. Clair Avenue, 1275 & 1307 Ontario Street and 112 Hamilton Street, Cleveland, Ohio prepared by EA Group and dated March 2010
- Pre-Demolition Hazardous Materials Surveys, St. Clair & Ontario Properties, 101 & 113 St. Clair Avenue, 1275 & 1307 Ontario Street and 112 Hamilton Street, Cleveland, Ohio prepared by EA Group and dated July 2010
- Cuyahoga County Building Inspection, Asbestos Survey for Chicago Title Building, 1275 Ontario Street, Cleveland, Ohio 44113 prepared by URS and dated 2001
- Cuyahoga County Building Inspection, Asbestos Survey for Administration Annex, 112 Hamilton Avenue, Cleveland, Ohio 44113 prepared by URS and dated 2001

PF-27676 (06/09) - Specific Activities Exclusionary Endorsement will apply, excluding the following:

- "Pollution conditions" in soil associated with the fluorescent lamps stored in the basement of the 113 St. Clair Building as referenced in the EA Group Phase I dated March 2010.
- "Pollution conditions" in soil or groundwater associated with the two historic 500-gallon gasoline underground storage tanks located south of the 1275 Ontario Street building as referenced in the EA Group Phase I dated March 2010

**Owner Project Specific Coverages**

The following coverages apply to the construction of the Medical Mart and Convention Center.

**Builder's Risk**

**Term:** 01/01/2011 to 11/01/2013

**Carrier:** Travelers Insurance Company

**Policy Number:** QT-6604286B121-TIL-10

**Named Insured:** MMPI Cleveland Development LLC  
Cleveland MMCC LLC  
Turner Construction Company and its subcontractors

**Additional Insured:** The County of Cuyahoga, Ohio.

**Location:** 1 St. Clair Avenue  
Cleveland, OH 44113

<u>Coverage</u>	<u>Limits</u>	<u>Notes</u>
Physical Damage to Property	\$368,000,000	
Property in Transit	\$10,000,000	
Property – Off Site Storage	\$10,000,000	
Ordinance of Law/ICC/Demo	\$50,000,000	
Expediting Expense	\$10,000,000	
Claims Adjusting Expense	\$500,000	
Plans, Blueprints, Valuable Papers	\$2,500,000	
Fire Dept. Service Charge	\$250,000	
Trees, Shrubs	\$250,000	
Debris Removal	25% of Loss	Maximum - \$90,000,000
Pollution Cleanup	\$1,000,000	
Damage to Existing Property	\$5,000,000	
A and E Fees	\$15,000,000	
Emergency Property Protection Expense	\$25,000	
Better Green Coverage	\$250,000	
Delay in Construction	\$7,500,000	
Earthquake	\$250,000,000	Annual Aggregate
Flood	\$250,000,000	Annual Aggregate
Named Windstorm	\$368,000,000	Annual Aggregate
Terrorism	\$368,000,000	Policy Aggregate
Deductible	\$50,000	Basic Deductible
	\$100,000	Water Damage, Water Intrusion

## **Owner's Protective Professional Indemnity**

**Named Insured:** Turner Construction Company

**Additional Insureds:**

**Coverage A:** MMPI Cleveland Development LLC (Project Owner) and the County of Cuyahoga, Ohio.

**Indemnified Parties:**

**Coverage B:** MMPI Cleveland Development LLC and the County of Cuyahoga, Ohio

**Location:** 1 St. Clair Avenue  
Cleveland, OH 44113

**Insurance Carriers:** Catlin Specialty Insurance Company, Inc.

**Coverage Period:** 01/01/2011 to 10/31/2013

**Retro Date:** Date of first professional services for specified project

**Extended Reporting Period:** 10 years commencing upon policy inception

**Limits of Liability**

Each Claim	\$10,000,000
Aggregate Limit	\$10,000,000

Defense Expenses are Inside the Policy Limit

**Design Professional's Professional Liability Insurance:**

Architect-of-Record shall maintain annual practice limits of \$5,000,000 each claim / \$5,000,000 aggregate; Design Architect shall maintain annual practice limits of \$2,000,000 each claim / \$2,000,000 aggregate; sub-consultants to project architect for the major engineering disciplines (e.g., mechanical, electrical, plumbing and structural engineers) or professional consultants hired directly by named insured(s) shall maintain annual practice limits of \$1,000,000 each claim / \$1,000,000 aggregate

**Coverages:** Coverage A: Protective Errors and Omissions  
Coverage B: Protective Liability

**Terms & Conditions:**

- Contractor's Protective, Professional and Pollution Legal Liability Policy – PPCL050 0509
- Amend Definition of Design Professional to include Consultants hired by Named Insured
- Amend Definition of Professional Services to include Services performed by Consultants hired by Named Insured

- Vicarious Indemnity Endorsement – Professional Liability only; Project Owner will be scheduled providing coverage under Coverage B of Policy
- Amend Exclusion B
- Limitation of Liability Endorsement
- Material Variation Endorsement
- Patrol Access Endorsement
- Amendment of Insured v. Insured exclusion provision; endorsement will exclude any coverage for claims by Turner Construction against Project Owner and affirm coverage for claims by Project Owner against Turner Construction

**Exclusion Of Coverage**

- Coverage Territory Limitation Endorsement
- Terrorism Exclusion
- Coverage C – Pollution Legal Liability Endorsement

**Contractor Controlled Insurance Program**

**Workers' Compensation & Employer's Liability**

**Insurance Carrier:** Liberty Mutual Insurance Company

**Coverage Period** To be Determined

Coverage A	Statutory	
Coverage B	Bodily Injury by Accident	\$2,000,000 each accident
	Bodily Injury by Disease	\$2,000,000 policy limit
	Bodily Injury by Disease	\$2,000,000 each empl.

**Covered Locations :** All insured locations except those in state fund states.  
Employer's Liability coverage is provided for states in which coverage is purchased from a monopolistic state fund.

**Endorsements added to policy:**

- Maritime Coverage Endorsement
 

Bodily Injury by Accident	\$2,000,000 Each accident
Bodily Injury by Disease	\$2,000,000 Aggregate
- Amendment - Unintentional Errors and Omissions
- Amendment - Notice and Knowledge of Occurrence by Insurance Manager of Turner Construction Services
- Amendment - Notice of Cancellation or Non-renewal 90 days except 10 days for

- nonpayment of premium
- Designated Workplace Wording.
- Assignment Consent Premium Determination Endorsement
- Blanket Waiver of Subrogation - where required by written contract.
- Alternate Employer Endorsement
- Stop Gap Employers Liability
- State specific endorsements
- Longshore and Harbor Workers' Compensation Act Coverage Endorsement
- Voluntary Compensation Endorsement

## General Liability

**Insurance Carrier:** Liberty Mutual Insurance Company

**Coverage Period:** To Be Determined

<b><u>Limits of liability*</u></b>	All limits apply to each project	
Each Occurrence		\$2,000,000
General Aggregate Limit		\$4,000,000
Products-Completed Operations Aggregate Limit		\$4,000,000
Damages to Premises Rented to You limit		\$100,000
Medical Expense limit		\$5,000

\*Limits are reinstated annually except for the Products Completed Operations Aggregate Limit which extends the last policy year completed operations aggregate for an additional three years.

### ISO Coverage Highlights:

- Absolute Pollution Exclusion:
  - Products/Completed Operations silent
  - Smoke Damage (Hostile Fire) covered.
- Property Damage Exclusion - Broad Form:
  - Property (both real and personal)
  - Owned by
  - In Care, Custody or Control
  - Insured's product
  - Work by Insured excluded
  - Course of Construction excludes "that particular part" only
  - Exception for Completed Ops.
- Punitive Damage:
  - Silent
- Workers's Compensation Exclusion:
  - Standard Exclusion

### Endorsements Added to Policy:

- Amendment - Notice and Knowledge of Occurrence by Insurance Manager of TCS
- Amendment - Notice of Cancellation or Non-renewal 90 days except 10 days for nonpayment of premium
- Exclusion - Employment- Related Practices
- Exclusion - Asbestos
- Exclusion - Fungi or Bacteria
- Exclusion - Nuclear Energy liability (Broad Form)
- Exclusion - Professional liability - CG 22 79 - Coverage for Means and Methods.
- Liquor Liability - Deletes the liquor Law liability exclusion.
- Excess Employer's liability Coverage
- Exclusion - Discrimination
- Blanket Waiver - Where required by written contract
- Property Damage to Insured's work - "Property Damage" to that particular part of "your work" that is defective or actively malfunctions is excluded. This exclusion applies only to the "products-completed operations" hazard. It does not apply if the damaged work or the work out of which the damage arises was performed on your behalf by a subcontractor.
- Broad Form Named Insured - Broadens Coverage by deleting the 90 day notice requirement for organizations acquired (more than 50% ownership) during the policy period.
- Reasonable Force - Broadens the exception to exclusion a. to include "property damage" along with "bodily injury" resulting from the use of reasonable force to protect persons or property.
- Insured Contract Redefined - The definition of "insured contract" is expanded to include any easement agreement and work done within 50ft of a railroad.
- Bodily Injury To Co-Employees Coverage-Expands the "Who is an Insured" definition by granting coverage for "bodily injury" to co-employees and "volunteer workers".
- Professional Health Care Services By Co- Employees Coverage - - Expands the "Who is an Insured" definition by granting coverage for "bodily injury" and "personal and advertising injury" to certain employees who provide professional health care services; with defined limits and is excess of any Other Insurance.
- Blanket Additional Insured - WHO IS AN INSURED is amended to include anyone for whom you have agreed in writing to provide liability insurance.
- Non-Cumulation of liability - If an "occurrence" spans multi policy periods that include a CGLform issued to the policyholder by us, then this policy's "Each Occurrence Limit" will be reduced by the amount of each payment made under such policies.
- Foreign Coverage - Amends the definition of "coverage territory" to all parts of the world except for "foreign based operations" which are defined. Any country or jurisdiction which is subject to trade or other economic sanctions or embargo by the United States of America is excluded. This is an Excess form of coverage.
- Notice of Occurrence - Clarifies the intent of the notice condition to apply

when an executive officer of the Named Insured or a designated employee has knowledge of an "occurrence".

- Alienated Premises Coverage - Amends the Damage to Property exclusion to only exclude alienated premises if the hazard was known or should have reasonably been known by the named insured. The ISO form applies to for all property damage to premises you sell, give away, or abandon.
- Boat - For exclusion g. - Aircraft, Auto or Watercraft, the exception for non-owned watercraft is broadened to cover less than 50 feet long instead of 26 feet long as stated in the ISO form.
- Broadened Damage to Premises - Coverage for property damage by fire to premises while rented or temporarily occupied by a named insured is broadened to include property damage resulting from fire, lightning and explosion. A maximum limit of \$2,000,000 is provided.

## **Umbrella Liability**

**Insurance Carrier:** Various

**Coverage Period:** To Be Determined

**Coverage:** Policy follows underlying Commercial General Liability and Employer's Liability policy wording.

**Limits of Liability\***

Each Occurrence	\$200,000,000
General Aggregate Limit	\$200,000,000/ per project
Products-Completed Ops Aggregate Limit	\$200,000,000/ per project

\*Limits are reinstated annually except for the Products Completed Operations Aggregate Limit which extends the last policy year completed operations aggregate for an additional three years.

## **Contractors Pollution Liability**

**Insurance Carriers:** Various

**Coverage Period:** December 31, 2009 - December 31, 2010

**Limits of Liability:** Occurrence Form

Each Occurrence	\$200,000,000
Aggregate Limit	\$200,000,000

**Coverage:**

- MOLD is not excluded
- All operations and project sites are covered

- All professional services are covered
- Owners are considered third parties and can trigger coverage
- Owners are additional insured where required by written contract
- Owners have waiver of subrogation afforded where required by written contract
- Coverage is excess of project policies
- Defense cost from third party claims
- Third party claims for bodily injury protection afforded
- Third party clean up of pollution conditions
- Third party claims for pollution conditions during transportation
- Third party claims for Non-owned disposal site coverage (for clean up or liability stemming from a disposal sites/Superfund type claims)
- Completed Operations for pollution conditions is afforded within the policy
- Coverage provides the financial assurance mechanism for project owners
- Definitions of pollutants is broadly defined to wrap around general liability type exclusions

## EXHIBIT G

### Key Modifications to County Requirements

The County Requirements prepared by Conventional Wisdom Corp. and attached to that certain Development Agreement, dated as of April 16, 2009, by and between the County, Developer and Merchandise Mart Properties, Inc. ("MMPI") and referenced in the CAA are modified as follows:

1. Elements depicted or described in the accepted GMP Design Documents, including drawings, the Prose Statement, meeting minutes and the Guaranteed Maximum Price exhibits prepared by Turner Construction Company, dated November 15, 2010, take precedence and supersede comparable elements set forth in the County Requirements. Attached hereto as Exhibit G-1 is a Space Program Tabulation depicting modifications to programmatic spaces. Attached hereto as Exhibit G-2 is the letter of Conventional Wisdom dated November 15, 2010 confirming its approval of programmatic modifications as required by the CAA.

2. It is understood and agreed that the following components of County Requirements are not addressed in the GMP Documents but may be subject to modification based upon the approval of Developer and the County, which approval will not be unreasonably withheld by either party:

- Furniture, Fixtures and Equipment;
- Audio/Visual Equipment;
- Telecommunications and Data Systems (loose equipment, including Voice Over IP);
- Final Design Development of Food Service Equipment; and
- Signage and Graphics.

With respect to the foregoing elements, it is the mutual intention of Developer and the County to provide for a first-class, state-of-the-art facility but at a cost that is within the Budget Cap. Developer understands that the County will, in granting its approval under this Section 2, rely upon the recommendations of Conventional Wisdom.

3. Certain aspects of County Requirements relating to final selection of room finishes and the Entrance Canopy for the West Block are addressed in the GMP Documents as allowances. In addition to the foregoing, it is understood that certain unresolved design development items remain that the County has yet to approve but are addressed in the GMP Documents as an allowance. They include the following:

- Final design development of the pixilated West Block facades; and
- Treatment of the stair towers adjacent to East Mall Drive and Mall C.

It is understood and agreed that Developer and the County will continue to discuss selections and design resolutions relating to all allowance items and that the final selection and resolutions shall be subject to the approval of Developer and the County, which shall not be unreasonably withheld by either party. It is the intention of Developer and the County that the final selection and resolutions of the allowances shall be consistent with a first-class, state-of-the-art facility but at a cost that is within the Budget Cap. Developer understands that the County, in granting its approval under this paragraph, will rely upon the recommendations of Conventional Wisdom.

EXHIBIT G-1

Space Program Tabulation

17-Nov-10

Program Component	10/14/2010	10/14-CW	
		CW Program	Delta
Lobby/Concourse	103,176	130,200	-27,024
Exhibition	227,322	232,000	-4,678
Meeting Room / Ballroom	92,389	92,000	389
Front of House Support	15,405	27,450	-12,045
Back of House Support	234,340	183,250	51,090
Food Service	25,524	21,950	3,574
Vertical Circulation	63,305	56,400	6,905
Administration	10,050	11,650	-1,600
Subtotal Convention Center	771,511	754,900	16,611
Medical Mart	174,866		
TOTAL AREA	946,377		
TOTAL AREA PER LMN	946,377		

EXHIBIT G-2

Conventional Wisdom Letter

See attached letter from David P. O'Neal to Barbara Shergalis, dated as of November 15, 2010, 2 pages.

November 15, 2010



Barbara Shergalis, Project Director  
**Cuyahoga County**  
New Administrative Complex Project Office  
First Floor  
1275 Ontario Street  
Cleveland, OH 44113

RE: Cleveland Medical Mart and Convention Center  
Design Review and Program Compliance

Dear Ms. Shergalis:

As Cuyahoga County's programming and operations consultant for the new Cleveland Medical Mart and Convention Center, Conventional Wisdom Corp. (CW) has recently participated in a number of activities related to finalizing the project scope, detailed design and cost. These included:

- Reviewing the September progress printing of the design development plans and specifications, then provided written commentary of our initial findings
- Meeting in Cleveland with representatives of the County, design team and MMPI to review our comments in detail and to address, as quickly as possible, many of the issues that were raised during our review
- Conducting a design workshop with LMN Architects at their Seattle studio to confirm CW's operational and marketing concerns, explore multiple configurations and determine cost-effective alternatives to the layouts presented earlier in the project
- Reviewing the October progress printing of the design development plans and specifications, then provided additional written commentary of our findings
- Attending a joint design review meeting in Cleveland with the County, LMN and other design team members, MMPI and Turner/URS to again explore options and to finalize recommendations in support of the ongoing pricing efforts (GMP)
- Participating in a detailed trade-by-trade review of work scope, cost and value management opportunities to assure that the final result will meet the County's original goals for the joint development project

As the County's consultant, CW's reviews, comments and scope/cost advice have been primarily focused on the convention center and joint-use elements of the medical mart complex.

It is our professional opinion that the current design for the convention center complies with the initial County Requirements as adjusted to reflect the reasonable development capacity of the Mall Site and project funding parameters while providing the high quality

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Ms. Barbara Shergalis  
November 15, 2010  
Page 2

space necessary to be marketable to the intended audiences. The size and configuration of meeting, exhibition and banquet space is flexible to accommodate a wide range of conventions, conferences and trade shows; the mix of function spaces is balanced relative to the most common event profiles; and the amount of circulation, service and support areas is appropriate to having a first-class convention center.

Additional features include the ability to host multiple concurrent events while maintaining separate identities and adequate security for each event. The technology infrastructure is planned to accommodate current state-of-the-art voice, video and data services while preserving options to easily adapt to new systems yet to be developed. Improvements to Mall B and Mall C will enhance the public realm while respecting the stately presence of the Public Auditorium.

The teamwork that was demonstrated over these past two months speaks highly to the exceptional quality and professionalism of the members representing all of the parties. The result of these efforts can only reinforce the belief that this team can satisfy the County's expectations for future performance on the project.

Conventional Wisdom Corp (CW)

Sincerely,



David P. O'Neal  
Chairman