

## FIRST AMENDMENT TO CONSTRUCTION ADMINISTRATION AGREEMENT

This First Amendment to Construction Administration Agreement (this "Amendment") is made and entered into as of the 1st day of December, 2010 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, MERCHANDISE MART PROPERTIES, INC. ("MMPI"), a Delaware corporation, 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 Amendment for the limited purposes set forth below.

### RECITALS

A. The County, MMPI and Developer previously entered into that certain Construction Administration Agreement dated as of January 7, 2010 (the "Construction Administration Agreement") evidencing their agreements regarding the design, construction, furnishing, equipping and development of the integrated "Facility," including a "Medical Mart" and "Convention Facilities" (as such terms are defined therein). The design, construction, furnishing, equipping and development of the Facility through Final Completion are collectively referred to herein and in the Construction Administration Agreement as the "Project." Capitalized terms used herein and not otherwise defined shall have the same meaning herein as in the Construction Administration Agreement.

B. Operator executed the Joinder attached to the Construction Administration Agreement for the limited purpose of confirming its agreement to be bound by and to perform under certain specified provisions of the Construction Administration Agreement, and with reference thereto, Operator has joined in the execution of this Amendment for the limited purpose of indicating its consent to the execution and delivery of this Amendment and confirming its continuing obligation to be bound by and perform under said sections of the Construction Administration Agreement.

C. As provided in Section 18.14 of the Construction Administration Agreement, with respect to the design, construction, development, furnishing and equipping of the Facility, the provisions of the Construction Administration Agreement shall prevail in the event of a conflict between the Construction Administration Agreement and the Financing Agreements.

D. The County has issued its final Site Selection Notice for the Facility dated June 2, 2010 but with effect as of May 21, 2010.

E. The County and Developer have entered into that certain Agreement Regarding Final Project Finance Approval, dated as of December 1, 2010 (the "Final Project Finance Approval Agreement"), pursuant to which the County and Developer have memorialized their agreements as to the Final Project Finance Approval (as defined in the Construction Administration Agreement) and other documents relating to the funding, design, construction and development of the Facility.

F. The County, MMPI and Developer have advanced in their planning for the Project and desire to make certain modifications and amendments to the Construction Administration Agreement.

NOW, THEREFORE, in consideration of the foregoing premises and the mutual agreements contained herein, the Parties agree to amend the Construction Administration Agreement as set forth below.

## ARTICLE 1

### DEFINITIONS

1.1 Available Funds. The definition of Available Funds shall be deleted in its entirety and replaced with: "'Available Funds' shall have the meaning given to such term in the Project Funding Agreement."

1.2 Bonds. The definition of Bonds shall be deleted in its entirety and replaced with: "'Bonds' shall have the meaning given to such term in the Project Funding Agreement."

1.3 Bond Proceeds. The definition of Bond Proceeds shall be deleted in its entirety and replaced with: "'Bond Proceeds' shall have the meaning given to such term in the Project Funding Agreement."

1.4 County Project Costs. The definition of County Project Costs shall be deleted in its entirety and replaced with: "'County Project Costs' shall mean the following costs incurred by the County: (a) Site acquisition costs, (b) the County's costs incurred in its coordination and administration of the development and construction of the Project, and (c) Project related costs funded from the County Contingency Fund. The County Project Costs will be paid by, or reimbursed to, the County from funds other than the Available Funds. County Project Costs do not include costs and expenses incurred by the County in issuing the Bonds or otherwise providing funds for the Project (other than from the County Contingency Fund)".

1.5 Facility. The definition of Facility shall be revised to delete "and Public Auditorium".

1.6 IGMP. The definition of IGMP shall be deleted in its entirety. Wherever the term IGMP is used in the Construction Administration Agreement, it shall be deleted, including Sections 2.6.3 and 4.12.

1.7 IGMP Documents. The definition of IGMP Documents shall be deleted in its entirety. Wherever the term IGMP Documents is used in the Construction Administration Agreement, it shall be deleted, including Sections 2.6.3 and 4.12.

1.8 Land Lease. The definition of Land Lease shall be deleted in its entirety and replaced with: "'Land Lease' shall mean that certain Ground Lease between the County, as lessor, and Developer, as lessee, entered into contemporaneously with the Lease and dated as of December 1, 2010, relating to the Site and the improvements located thereon."

1.9 Lease. The definition of Lease shall be deleted in its entirety and replaced with: "Lease" shall mean that certain Lease Agreement between Developer, as lessor, and the County, as lessee, entered into contemporaneously with the Land Lease and dated as of December 1, 2010, relating to the Site and the improvements located thereon, including the Facility as completed.

1.10 Lease Commencement Date. The definition of Lease Commencement Date shall be deleted in its entirety and replaced with: "Lease Commencement Date" shall mean January 1, 2011."

1.11 Loan. The definition of Loan shall be deleted in its entirety and replaced with: "Project Funding" shall have the meaning given to such term in the Project Funding Agreement."

1.12 Loan Agreement. The definition of Loan Agreement shall be deleted in its entirety and replaced with: "Project Funding Agreement" shall mean that certain Project Funding Agreement, entered into contemporaneously with the Lease and dated as of December 1, 2010, between the County and Developer." Wherever the term "Loan Agreement" is used in the Construction Administration Agreement, it shall be replaced with the term "Project Funding Agreement".

1.13 Master Project Budget. The definition of Master Project Budget shall be deleted in its entirety and replaced with: "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 (but excluding 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 separate line items for Site acquisition costs, County Contingency Fund and County expenses) and Project Contingency Fund. 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. The expenditure of the MMPI Contribution shall be separately accounted for as provided in Section 8.5".

1.14 MMPI Contribution. The definition of MMPI Contribution shall be deleted in its entirety and replaced with: "MMPI Contribution" shall mean an amount equal to Eleven Million Five Hundred Thousand Dollars (\$11,500,000)."

1.15 Monthly Base Rental Payment. The definition of Monthly Base Rental Payments shall be deleted in its entirety and replaced with: "Monthly Base Rental Payment" shall have the meaning given to such term in the Lease."

1.16 Non-Bond Proceeds. The definition of Non-Bond Proceeds shall be deleted in its entirety and replaced with: "Non-Bond Proceeds" shall have the meaning given to such term in the Project Funding Agreement."

1.17 Nontax Revenues. The definition of Nontax Revenues shall be deleted in its entirety and replaced with: "Nontax Revenues' shall have the meaning given to such term in the Project Funding Agreement."

1.18 Operating Agreement. The definition of Operating Agreement shall be deleted in its entirety and replaced with: "Operating Agreement" shall mean that certain Sublease and Operating Agreement by and between the County and Operator, entered into contemporaneously with the Land Lease and dated as of December 1, 2010, setting forth certain agreements relating to the operation of the Facility.

1.19 Phase. The definition of Phase shall be deleted in its entirety. Wherever the terms Phase or Phasing are used in the Construction Administration Agreement, they shall be deleted, including Section 2.4.

1.20 Public Auditorium. The definition of Public Auditorium shall be deleted in its entirety and replaced with: "Public Auditorium' shall mean the Cleveland Public Auditorium, which building is adjacent to the Site."

1.21 Sublease. The definition of Sublease shall be deleted in its entirety. Wherever the term "Sublease" is used in the Construction Administration Agreement, it shall be deleted and, as appropriate, replaced with: "Operating Agreement".

1.22 Supplemental Payments. The definition of Supplemental Payments shall be deleted in its entirety and replaced with: "Supplemental Payments' shall have the meaning given to such term in the Operating Agreement."

1.23 Accounting Terms. Section 1.2 of the CAA is deleted and replaced with: "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 or International Financial Reporting Standards ("IFRS"), if and when adopted (collectively, "GAAP")."

## ARTICLE 2

### AGREEMENTS

2.1 County Requirements. The Parties acknowledge that, based on the planning performed to date, the goals, attributes and components of the Project have evolved from those initially set forth in the description of the County Requirements attached as Exhibit A to the Development Agreement and referred to in the Construction Administration Agreement. The key modifications to the County Requirements are identified in Exhibit H to the Final Project Finance Approval Agreement and the Parties hereby approve the modified County Requirements.

2.2 County Design Approval Procedures. In order to expedite the design and planning process, the forty-five (45) day approval period referred to in Section 4.9 (including subsection 4.9.5) of the Construction Administration Agreement for the County's review and approval of Design Documents is revised to be a thirty (30) day period, and the sixty (60) period

approval period referred to in Section 4.14 for the County's review and approval of the Construction Documents is also revised to be a thirty (30) day period.

2.3 Design Options. With regard to the requirement for three (3) Design Options for the exterior design theme of the Facility, the County acknowledges that in the iterative planning and design process undertaken to date, Developer has prepared and County has reviewed multiple alternative exterior design themes, and accordingly, notwithstanding the requirement in Section 4.12 or any other provision of the Construction Administration Agreement with regard to the preparation of distinct Design Options, Developer shall have no further obligation to prepare and present distinct Design Options as part of the Conceptual Plans or otherwise.

2.4 GMP Documents.

2.4.1 The Parties acknowledge and agree that they have approved the GMP Documents (which include the Design Development Documents), described in Exhibit D to the Final Project Finance Approval Agreement, which have been delivered to the Contractor (design-builder) under the Construction Agreement (a design-build agreement in a bridging design-build format). The Parties further acknowledge and agree that said GMP Documents are consistent with the modified County Requirements referenced in Section 2.1 above.

2.4.2 The Parties acknowledge and confirm that, in accordance with Section 4.9.4 of the Construction Administration Agreement, if and to the extent that any aspect or component of the GMP Documents conflicts with or otherwise materially modifies the County Requirements, 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 the Construction Administration Agreement.

2.5 Development Manager. If the County terminates the Construction Administration Agreement or otherwise terminates Developer for cause, the County may, in its sole and absolute discretion, elect to continue to contract with MMPI as the development manager for the Project, and MMPI shall have the same duties and responsibilities as "development manager", which duties and responsibilities shall be upon the same terms and conditions (including compensation) as are set forth in the Construction Administration Agreement, and specifically including Sections 2.3.1 and 8.1.

2.6 Bridging Consultant. The County consents to Developer's amending its agreement with the Bridging Consultant so as to delete from the Bridging Consultant's duties the requirement that it review and certify Contractor pay applications. Developer shall be responsible for the review and certification of Contractor pay applications.

2.7 Construction Cost Reserve Fund. The first sentence of Section 9.1.5 of the Construction Administration Agreement is hereby deleted and replaced with the following:

During the Construction Period, the County shall deposit into the Construction Cost Reserve Fund a portion of the Supplemental Payments otherwise payable to Operator pursuant to the Operating Agreement, up to a total of not more than Six Million Five Hundred Thousand Dollars (\$6,500,000), 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 One Hundred Thirty Three Thousand Three Hundred Thirty-Three and 33/100 Dollars (\$133,333.33) for the first thirty (30) months of the Construction Period and Four Hundred Sixteen Thousand Six Hundred Sixty-Seven and 00/100 Dollars (\$416,667.00) thereafter.

2.8 Public Auditorium. The Parties hereby acknowledge that Public Auditorium is not part of the Facility, but will require some renovation as set forth in the Separation Plan attached as **Exhibit L** to the Construction Contract. All references to construction and renovation of Public Auditorium in the Construction Administration Agreement are hereby deleted.

2.9 Developer Fee. The third and fourth sentences of the Section 8.1 are hereby deleted and replaced with the following:

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 period from said Lease execution date to the Substantial Completion Date. It is currently estimated that the Substantial Completion Date will be thirty-three (33) months following date Lease execution date, or thirty-two (32) months from the Lease Commencement Date, assuming that the notice to proceed is given to the Contractor not later than January 3, 2011. If mobilization or construction at the Site commences on or before December 15, 2010, then the monthly installments shall be prorated for the month of December.

2.10 Surety Bond. 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 Construction Administration Agreement, the County and Developer hereby accept a corporate guarantee by the parent of Contractor, as set forth in the Project Finance Approval Agreement.

2.11 Delivery of Site. The County shall deliver the entire Site, free of all possessory rights of third parties and without occupancy by any Person, ready for commencement of abatement, demolition and construction Work, not later than January 3, 2011. The County shall use all commercially reasonable efforts to deliver portions of the Site for commencement of such Work prior to January 3, 2011, and in that regard agrees to enter into a license agreement with Developer, on terms mutually and reasonably satisfactory to the Parties, to permit the commencement of Work on unoccupied portions of the Site prior to January 3, 2011. It is acknowledged that the GMP under the Construction Agreement is premised on Developer's delivering the final notice to proceed with all Work to Contractor not later than January 3, 2011. All costs incurred by the County in achieving the County's timely delivery of the Site as described above and all increased costs incurred by Developer under the Construction Agreement due to any failure of the County to deliver the Site within such time frame and in such condition shall be the responsibility of the County, whether paid from the County Budget Items (as defined in the Final Project Finance Approval Agreement) or from other funds of the

County. Notwithstanding the foregoing, however, any such claims by Developer for increased costs shall meet the requirements of Article 15 of the Construction Agreement to be eligible for reimbursement by the County.

2.12 No Personal Liability. Section 18.6.2 is hereby deleted in its entirety and replaced with the following:

No 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, and neither the members of the County Board of County Commissioners nor any County official executing this Agreement shall be liable personally for or by reason of the covenants, obligations or agreements of the County contained in this Agreement. No covenant, obligation or agreement under this Agreement shall be deemed to be a covenant, obligation or agreement of any member or manager of Developer other than in such capacity as member or manager, and neither any member, manager, Affiliate or agent of Developer (or any member, manager, partner, officer, director, employee or shareholder of any such member, manager, Affiliate or agent) nor any individual person executing this Agreement on behalf of Developer shall be liable for or by reason of the covenants, obligations or agreements of Developer contained in this Agreement. Section 18.6.1 shall not be a limitation on this Section 18.6.2.

2.13 Payment for Survey, Phase I Survey, the Title Commitment, and Title Policy. Section 3.3.2 is hereby deleted in its entirety and replaced with the following:

The County shall pay, or may reimburse itself or Developer and MMPI from Available Funds as a Project Cost, all costs reasonably incurred by it or Developer and MMPI in connection with the Survey (other than survey costs incurred in connection with the acquisition of the Site) and Phase I Survey and any costs incurred in connection with the Inspection. Reimbursements to Developer and MMPI shall be in accordance with Article 8. The County shall pay, as a County Project Cost, all costs of the Title Commitment, any title policy issued to the County in connection with the acquisition of the Site and survey costs incurred in connection with the acquisition of the Site (including costs of preparing legal descriptions, lot splits and separations/consolidations).

2.14 County Reimbursement. The last sentence of Section 8.4 is hereby deleted in its entirety and replaced with the following: "The County shall also be entitled to pay or be reimbursed for County Project Costs from funds other than the Available Funds".

### ARTICLE 3

#### MISCELLANEOUS

3.1 Continuation. All terms, conditions and provisions of the Construction Administration Agreement, as expressly amended by this Amendment, are hereby ratified and confirmed and shall continue to apply with full force and effect. In the event of any ambiguity or inconsistency between this Amendment and the Construction Administration Agreement, this Amendment shall control.

3.2 Counterparts. This Amendment 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.

3.3 Binding Effect. This Amendment shall be binding upon and shall inure to the benefit of the Parties and their respective heirs, legal representatives, successors and assigns.

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

3.5 Amendment. No alteration, amendment or modification of this Amendment shall be valid unless set forth in an instrument in writing executed by the Parties.

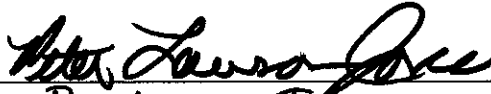
3.6 This Amendment. The words "herein," "hereof," "hereunder," "hereby," "this Amendment" and other similar references shall be construed to mean and include this Amendment and all amendments hereof and supplements hereto unless the context clearly indicates or requires otherwise.

3.7 Language. The language used in this Amendment shall be deemed to be the language chosen by the Parties to express their mutual intent, and no rule of strict construction shall be applied against any Party. This Amendment 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 Amendment 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 Amendment.

[Signature page follows]

IN WITNESS WHEREOF, the County, MMPI, Developer and Operator have each caused their duly authorized representatives to execute this Amendment as of the date aforesaid.

THE COUNTY OF CUYAHOGA, OHIO

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

MERCHANDISE MART PROPERTIES, INC.

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

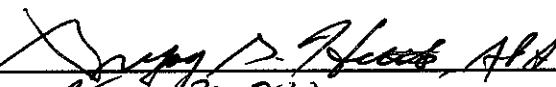
MMPI CLEVELAND DEVELOPMENT LLC

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

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

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

The legal form of the within instrument is hereby approved.

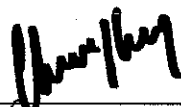
By:   
Date: Nov 29 2010

IN WITNESS WHEREOF, the County, MMPI, Developer and Operator have each caused their duly authorized representatives to execute this Amendment as of the date aforesaid.


THE COUNTY OF CUYAHOGA, OHIO

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


MERCHANDISE MART PROPERTIES, INC.

By:   
Name: Christopher G. Kennedy  
Title: PRESIDENT

MMPI CLEVELAND DEVELOPMENT LLC

By:   
Name: Christopher G. Kennedy  
Title: PRESIDENT

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

By:   
Name: Christopher G. Kennedy  
Title: PRESIDENT

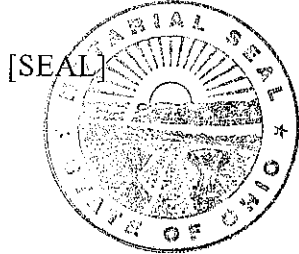
The legal form of the within instrument is hereby approved.

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

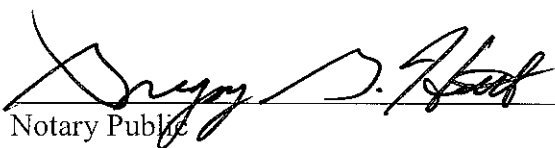
STATE OF OHIO                    )  
  ) SS:  
COUNTY OF CUYAHOGA        )

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.



GREGORY G.  
HUTH  
Attorney At Law  
NOTARY PUBLIC  
STATE OF OHIO  
My Commission  
Has No Expiration Date  
Section 147.03 O.R.C.

  
\_\_\_\_\_  
Notary Public

STATE OF Illinois )  
 ) SS:  
COUNTY OF Cook )

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



R F Clark  
Notary Public

STATE OF Illinois )  
COUNTY OF Cook ) SS:

On this 17 day of <sup>Nov</sup> ~~January~~, 2010, before me, a Notary Public in and for said County and State, personally appeared Christopher G. Kinney, 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.



R F Clark  
Notary Public

STATE OF Illinois )  
COUNTY OF Cook ) SS:

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