

---

COUNTY OF CUYAHOGA, OHIO  
CONVENTION CENTER/EXHIBITION CENTER

PROJECT FUNDING AGREEMENT

by and between

COUNTY OF CUYAHOGA, OHIO

and

MMPI CLEVELAND DEVELOPMENT LLC

Dated as of December 1, 2010

---

TABLE OF CONTENTS

	<u>Page</u>
ARTICLE I. RECITALS.....	1
ARTICLE II. DEFINITIONS .....	3
ARTICLE III. PROJECT FUNDING .....	6
Section 3.1 Provision of Funds.....	6
Section 3.2 Payments by Developer .....	6
Section 3.3 Condition Precedent to Developer Monthly Payments .....	7
Section 3.4 Netting of Payments .....	7
Section 3.5 Non-Recourse .....	7
Section 3.6 Mortgage; Security Interest of County .....	8
ARTICLE IV. ASSIGNABILITY AND TRANSFERABILITY OF AGREEMENT .....	8
ARTICLE V. MISCELLANEOUS.....	9
Section 5.1. Representations of Authority.....	9
Section 5.2 Entire Agreement.....	9
Section 5.3 No Personal Liability.....	9
Section 5.4 Counterparts.....	10
Section 5.5 Captions .....	10
Section 5.6 Governing Law; Venue .....	10
Section 5.7 Amendment, Modification or Alteration .....	10
Section 5.8 Waiver .....	10
Section 5.9 Binding Effect.....	10

## **PROJECT FUNDING AGREEMENT**

This Project Funding Agreement (this "Agreement") is made and entered into as of December 1, 2010 by and between the COUNTY OF CUYAHOGA, OHIO, a county and political subdivision duly organized and validly existing under the Constitution and laws of the State of Ohio ("County") and MMPI CLEVELAND DEVELOPMENT LLC, a limited liability company organized and existing under the laws of the State of Delaware ("Developer") (Developer and the County shall be referred to herein collectively as the "Parties," or singularly as a "Party").

### **ARTICLE I.**

#### **RECITALS**

1. The County and Merchandise Mart Properties, Inc. ("MMPI") previously agreed to cooperate in planning, designing, financing, constructing and operating an integrated facility for (i) exhibition space and showrooms for medical devices and equipment and related functions (the "Medical Mart"), and (ii) exhibition, tradeshow and conference facilities, meetings rooms and related functions (the "Convention Facilities"; and collectively with the Medical Mart, the "Facility"). The construction and development of the Facility, the securing of medical device and equipment manufacturers as tenants for the Medical Mart, the securing of trade shows, conferences and conventions for the Convention Facilities, and the operation of the Facility are collectively referred to herein as the "Project."

2. The County, MMPI, Developer and Cleveland MMCC LLC (the "Operator") entered into a Development Agreement, dated April 16, 2009 (the "Development Agreement") to evidence their agreements regarding the construction of the Facility and the undertaking of the

Project. By its terms, the Development Agreement remains in effect until the execution of this Agreement and the other Project Agreements.

3. Pursuant to the Development Agreement, the County agreed, subject to certain conditions, to use its best efforts to issue one or more series of Bonds that will generate Bond Proceeds, together with Non-Bond Proceeds, to provide funds sufficient to fund the development, acquisition, equipping and construction of the Facility and funds sufficient for the County's costs of the acquisition of the Site.

4. Although the Development Agreement does not specify the amount of funds to be made available by the County for the Project, the timing of the County's provision of funds for the Project, or the commencement date or length of the terms of the Project Leases, the Development Agreement provides that, in consideration of the County making funds available for the Project and conditioned upon the County making certain rent payments to Developer, Developer will make the Developer Monthly Payments to the County in the specified amount of \$3,000,000 per month, without regard to the amount of Project Funding at any time made available to Developer, until the expiration or termination of the Lease.

5. The Parties are entering into this Agreement to evidence the County's agreement to provide funds for the Project and the payment obligations of Developer to the County in respect of such funding.

6. Capitalized terms used in this Agreement without definition shall have the respective meanings given to such terms in Article II.

NOW, THEREFORE, for and in consideration of the mutual covenants and promises contained herein, and for other good and valuable consideration, the receipt of which is mutually acknowledged, the County and Developer agree as follows:

## ARTICLE II.

### **DEFINITIONS**

In addition to the words defined elsewhere in this Agreement, the following words and terms as used in this Agreement shall have the following meanings unless the context or use indicates another or different meaning or intents. Definitions shall be applicable to both the singular and plural forms of any of the words and terms herein defined.

“Affiliate” means, in respect of any person or entity, any other person or entity Controlling, Controlled by or under Common Control with the first person or entity.

“Available Funds” means, in the aggregate, the Bond Proceeds and the Non-Bond Proceeds to be made available to the Developer pursuant to this Agreement, provided that Available Funds shall not exceed \$418,174,565.

“Bonds” means the bonds issued by the County, in one or more series, to be used to fund a portion of the costs of the acquisition of the Site and the development, acquisition, equipping and construction of the Facility. Neither any interest in the Facility nor any revenues from the Project will be pledged as security for the Bonds; however, the Developer Monthly Payment will constitute Nontax Revenues. The County’s Nontax Revenues will be pledged as security for the Bonds.

“Bond Proceeds” means the proceeds of the Bonds net of any portion thereof used for the payment of costs of issuance of the Bonds or for the funding of debt service reserves required by the Project Agreements.

“Construction Administration Agreement” means that certain Construction Administration Agreement dated as of January 7, 2010 among the County, MMPI and Developer, as the same may be amended or supplemented.

“Control” means (i) the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of a person or entity, whether through ownership of voting securities, by contract or otherwise and (ii) the ownership, direct or indirect, of no less than 51% of the voting securities of such person or entity, and the terms Controlled, Controlling and Common Control shall have correlative meanings.

“County Payments” means, collectively, the Monthly Base Rental Payment and the Supplemental Payment (as that term is defined in the Operating Lease) payable by the County to the Operator, solely from Nontax Revenues and in the manner and at the times set forth in the Operating Lease.

“Developer Monthly Payment” means the amount of \$3,000,000 payable by Developer to the County each month until expiration or termination of the Lease, subject to and in accordance with the terms of this Agreement.

“Land Lease” means the Ground Lease between the County and Developer pursuant to which the County will lease the Site and all existing improvements thereon to Developer.

“Lease” means the Lease Agreement between Developer and the County pursuant to which Developer will lease the Site and the Facility to the County.

“Monthly Base Rental Payment” means the monthly rental payment of Three Million Three Hundred Thirty-Three Thousand Three Hundred Thirty-Three and 34/100 Dollars (\$3,333,333.34) payable by the County to Developer under the Lease, solely from Nontax Revenues and in the manner and at the times set forth in the Lease.

“Non-Bond Proceeds” means an amount of Nontax Revenues of the County (i) that does not exceed the aggregate amount of Sales Tax Proceeds collected by the County prior to the

issuance of the Bonds and (ii) that the County has determined to use to fund a portion of the Project Funding under this Agreement or otherwise to pay costs of the Project.

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

“Operating Lease” means the Sublease and Operating Agreement between the County and Operator pursuant to which the County will sublease the Facility to Operator.

“Pledged Revenues” means, collectively, all rents and revenues of Developer derived from the Facility and all County Payments payable to Operator.

“Project Agreements” means a trust indenture, land lease, lease, sublease, operating agreement, construction management agreement and other bond-financing and operating agreements (as determined by the County to be reasonably necessary) entered into in connection with the issuance of the Bonds, the funding of the Project, or the construction and operation of the Facility by Developer.

“Project Leases” means, collectively, the Land Lease, the Lease and the Operating Lease. Pursuant to the terms of the Project Leases, in the event any one of the Project Leases is terminated for any reason, the other Project Leases are terminated as of the same date.

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

“Site” means the parcel or parcels comprising the site where the Facility will be located.

### **ARTICLE III.**

#### **PROJECT FUNDING**

Section 3.1. Provision of Funds. Upon the terms and conditions of this Agreement, the County will provide Available Funds to Developer (the “Project Funding”) to be used by Developer to pay costs of the Project. For the purpose of tracking the flow of funds and verifying appropriate expenditures, the Project Funding, including both Bond Proceeds and Non-Bond Proceeds, shall be deposited in a trust fund controlled by the trustee for the Bonds, or any other fiduciary acceptable to the Parties to serve as custodian of such funds, and used to pay costs of the Facility. The Project Funding will be provided to Developer, as needed for the development and construction of the Facility, in accordance with the procedures set out in the Construction Administration Agreement.

Section 3.2. Payments by Developer. In consideration of the Project Funding made available by the County, Developer shall, subject to Section 3.3, make the Developer Monthly Payment to the County each month; such Developer Monthly Payments to commence upon the first payment of the Monthly Base Rental Payment by the County and to continue during the



term of the Lease (or until the earlier termination of the Lease), with each Developer Monthly Payment to be paid on the same date that the Monthly Base Rental Payment is paid.

Section 3.3. Condition Precedent to Developer Monthly Payments. If for any reason whatsoever (and without regard to any default or alleged default by Developer under any Project Lease or any other agreement with the County), the County fails to pay to Developer for any month at least Three Million Dollars (\$3,000,000.00) of the Monthly Base Rental Payment, then the Developer Monthly Payment for such month shall automatically be reduced to the same amount paid by the County in respect of the Monthly Base Rental Payment under the Lease for such month. In accordance with the foregoing, the liability of Developer to make the Developer Monthly Payment (or portion thereof) for any month shall arise only if and to the extent that the County makes the Monthly Base Rental Payment (or portion thereof) for such month.

Section 3.4. Netting of Payments. The Parties hereby agree that each month the County shall withhold the amount of the Developer Monthly Payment from the Monthly Base Rental Payment, and on behalf of the Developer and as its agent, the County shall pay an amount equal to the Developer Monthly Payment to such escrow or trust fund established by or for the benefit of the County as may be determined by the County. Nothing in this Section 3.4 shall be interpreted as inconsistent with the right of the Developer to receive the entirety of the Monthly Base Rental Payment or the obligation of the Developer to pay the Developer Monthly Payment, all subject to the terms and conditions of this Agreement.

Section 3.5. Non-Recourse. The obligation of Developer to make the Developer Monthly Payments shall be non-recourse to Developer but shall be secured by all rents and revenues of Developer derived from the Facility. The Developer shall have no liability, recourse or non-recourse, to the County in respect of the Project Funding except for the payment of the

Developer Monthly Payments subject to and in accordance with the terms of Sections 3.2, 3.3 and 3.4.

Section 3.6. Mortgage; Security Interest of County. The Developer shall grant a mortgage in favor of the County in its leasehold interest in the Site and its interest in the Facility. As security for Developer's obligations under this Agreement, Developer and Operator shall grant to the County a security interest in all Pledged Revenue, provided that any pledge, security or control agreement that provides the County with a security interest in such Pledged Revenue shall permit, in the absence of an existing default by Developer or Operator under the Project Leases, the immediate disbursement of Pledged Revenue to Developer and Operator upon their direction, except for such portions of the Pledged Revenue which, by the express terms of the Project Leases, are to be deposited into escrows, reserves or designated funds.

#### ARTICLE IV.

### **ASSIGNABILITY AND TRANSFERABILITY** **OF AGREEMENT**

The rights and obligations created by this Agreement are exclusive and shall not be transferred or assigned except by written agreement by both Developer and the County. Developer covenants and agrees that it will not assign, transfer, or sublet this Agreement without the prior written consent of the County. Notwithstanding the above, the County may assign this Agreement to an authority or authorities created or to be created under Ohio law or to another political subdivision of the State of Ohio.

The transfer of this Agreement to an Affiliate of Developer or an Affiliate of MMPI, or to a transferee to whom the Developer's interests under the Land Lease and Lease are transferred as permitted thereunder (whether without the consent of the County or with the consent of the

County, as may be provided therein), shall not be deemed an assignment or transfer requiring the County's consent and is excepted from this Article IV, provided, however, that any Affiliate of Developer or of MMPI or any such other permitted transferee shall be bound by the limitations set forth in the preceding paragraph.

## ARTICLE V.

### MISCELLANEOUS

Section 5.1. Representations of Authority. Developer and the County, respectively, each represent that the individuals acting as signatories to this Agreement have the authority to bind Developer and the County and that this Agreement, when properly executed by both Parties, will constitute a valid and binding agreement, enforceable in accordance with these terms.

Section 5.2. Entire Agreement. This Agreement constitutes the final, complete and exclusive written expression of the intent of the Parties with respect to the subject matter contained in this Agreement.

Section 5.3. No Personal Liability. 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 agreement 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 the Developer other than in such capacity as a 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 the Developer contained in this Agreement.

Section 5.4. Counterparts. This Agreement may be executed in any number of counterparts, each of which shall be deemed an original, but all such counterparts together shall constitute but one and the same instrument.

Section 5.5. Captions. The captions and headings in this Agreement are for reference purposes only and shall be of no binding effect.

Section 5.6. Governing Law; Venue. 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. Each party hereto (i) irrevocably consents to the exclusive jurisdiction of any state court located within Cuyahoga County, Ohio, in connection with any matter based upon or arising out of this Agreement, (ii) agrees that process may be served upon it in any manner authorized by the laws of the State of Ohio and (iii) waives and covenants not to assert or plead any objection that it might otherwise have under such jurisdiction or such process.

Section 5.7. Amendment, Modification or Alteration. No amendment, modification or alteration of the terms of this Agreement shall be binding unless in writing, dated subsequent to the date hereon and duly executed by the Parties herein.

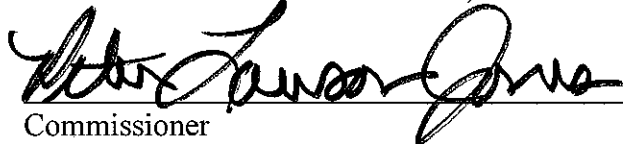
Section 5.8. Waiver. The waiver by either Developer or the County of any default or breach by the other Party of any of the provisions of this Agreement shall not be deemed a continuing waiver or waiver of any other breach by the other Party of the same or another provision of this Agreement.

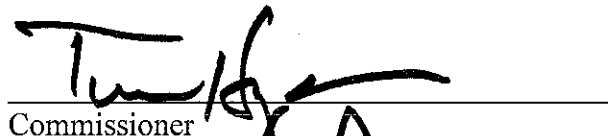
Section 5.9. Binding Effect. This Agreement shall be binding upon and shall inure to the benefit of the Parties hereto and their respective successors and assigns.

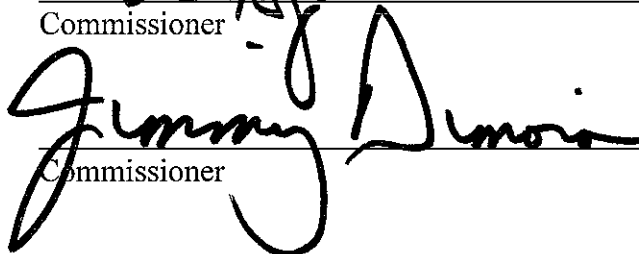
[Signature Page Follows]

IN WITNESS WHEREOF, the parties have caused this Project Funding Agreement to be executed by duly authorized officers as of the day and year first above written.

THE COUNTY OF CUYAHOGA, OHIO

  
Commissioner

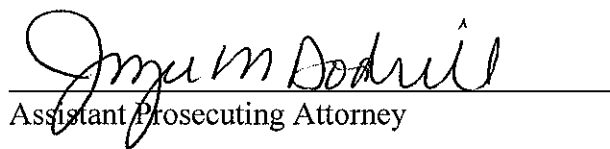
  
Commissioner

  
Commissioner

MMPI CLEVELAND DEVELOPMENT LLC

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

APPROVED AS TO FORM

  
Assistant Prosecuting Attorney

IN WITNESS WHEREOF, the parties have caused this Project Funding Agreement to be executed by duly authorized officers as of the day and year first above written.


THE COUNTY OF CUYAHOGA, OHIO

\_\_\_\_\_  
Commissioner

\_\_\_\_\_  
Commissioner

\_\_\_\_\_  
Commissioner

MMPI CLEVELAND DEVELOPMENT LLC

By:   
\_\_\_\_\_  
CHRISTOPHER G. KENNEDY, PRESIDENT

APPROVED AS TO FORM

\_\_\_\_\_  
Assistant Prosecuting Attorney

CERTIFICATE

The undersigned fiscal officer of the County hereby certifies that the money required to meet the obligations of the County under the foregoing Project Funding Agreement in 2010 has been lawfully appropriated for those purposes and is in the treasury of the County or in the process of collection to the credit of an appropriate fund, free from any previous encumbrances. This certificate is given in compliance with Section 5705.41 of the Revised Code.

David R. Reines  
Acting County Auditor