

# County Council of Cuyahoga County, Ohio

## Resolution No. R2013-0244

<b>Sponsored by: County Executive FitzGerald/Department of Public Works</b>	<b>A Resolution</b> authorizing a Termination and Transfer Agreement with Merchandise Mart Properties, Inc., MMPI Cleveland Development LLC, and Cleveland MMCC LLC; authorizing other actions related to the agreement; authorizing the County Executive to execute the agreement and all other documents consistent with this Resolution; and declaring the necessity that this Resolution become immediately effective.
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WHEREAS, in December 2010, Merchandise Mart Properties, Inc., MMPI Cleveland Development LLC, and Cleveland MMCC LLC (together, the MMPI Parties”) and the Board of County Commissioners of Cuyahoga County, Ohio (the “County”) entered into various agreements (the “Project Agreements”) for the construction, development and operation of an integrated facility for (a) exhibition space and showrooms for medical devices and equipment and related functions (the “Global Center for Health Innovation”), and (b) exhibition, tradeshow and conference facilities, meeting rooms and related functions (the “Cleveland Convention Center,” and, together with the Global Center for Health Innovation, the “Facility”); and

WHEREAS, the County has determined that it is in its best interest to terminate its relationship with the MMPI Parties and to transition operation and management of the Global Center for Health Innovation and the Cleveland Convention Center to a new operator; and

WHEREAS, the County and the MMPI Parties entered into a letter of intent dated August 15, 2013 (the “LOI Date”) whereby the MMPI Parties agreed to cooperate with the County in the termination of its responsibilities under the Project Agreements and to negotiate the terms and conditions of a Termination and Transfer Agreement (the “Termination Agreement”), which terms and conditions would be subject to the approval of the Cuyahoga County Council; and

WHEREAS, under the Termination Agreement, the MMPI Parties agree to transfer all of their rights, title and interest in and to the Project Agreements, as well as, without limitation, the Management Agreement between Cleveland MMCC LLC and SMG, the Leases, Service Agreements, Advance Booking Agreements, Deposits, Personal Property, Intangible Property, and Licenses and Permits (all as defined in the Termination Agreement), to an Ohio nonprofit development corporation to be formed

to oversee management of the Facility (the “Operating Company”) which will be responsible for the operations and management of the Facility through the Management Agreement with SMG; and

WHEREAS, the interim board of the Operating Company shall consist of three directors, one of which to be appointed by the County Council President, one of which to be appointed by the County Executive, and one of which to be appointed jointly by the Greater Cleveland Partnership and Positively Cleveland, and the initial bylaws of the Operating Company shall require the consent of both County-appointed board members on issues related to reformation of the board of the Operating Company; and

WHEREAS, in addition, under the Termination Agreement, the MMPI Parties agree to not enter into or engage in convention center business the main purpose of which is the development, management and operation of facilities that primarily handle “medical merchandise” (as defined in the Termination Agreement) in Ohio, Indiana, Kentucky, Michigan, Pennsylvania, Tennessee, West Virginia, or Illinois (with the exception of an area within a 25-mile radius of the Merchandise Mart in Chicago) for a period of five years following closing on the Termination Agreement; and

WHEREAS, as of the LOI Date, all Base Rent the County would have paid the MMPI Parties under the Lease and Supplemental Payments the County would have paid to the MMPI Parties under the Sublease and Operating Agreement have been deposited into an escrow account controlled by the County (the “Operating Fund”) and used to reimburse the MMPI Parties for operating expenses of the Facility during the transition; and

WHEREAS, under the Termination Agreement, and as consideration for the above, the County agrees to pay the MMPI Parties, upon closing of the Termination Agreement an amount not to exceed \$3,000,000.00 as a Termination Payment; an amount not to exceed \$3,496,000.00 for certain pre-development costs, tenant lease-up costs, and other development costs; an amount not to exceed \$200,000.00 for software, software licenses, and related equipment; and an amount not to exceed \$500,000.00 for the MMPI Parties costs and expenses incurred with such termination and transition; and to pay the costs of operating expenses of the Facility for the period following the LOI Date through the closing date of the Termination Agreement in the event of insufficient funds in the Operating Fund; and

WHEREAS, under the Termination Agreement, the County agrees to release or otherwise limit certain liabilities of the MMPI Parties in relation to the development of the Facility; and

WHEREAS, under the Termination Agreement, the MMPI Parties have agreed to pay the costs and expenses incurred by the County in connection with the transition of marketing, sales, leasing, management and operation of the Facility.

**NOW, THEREFORE, BE IT RESOLVED BY THE COUNTY COUNCIL OF CUYAHOGA COUNTY, OHIO:**

**SECTION 1.** The County Council hereby authorizes the Termination and Transfer Agreement and the expenditure of funds as described in the Agreement.

**SECTION 2.** The interim board of the Operating Company shall consist of three directors, one of which to be appointed by the County Council President, one of which to be appointed by the County Executive, and one of which to be appointed jointly by the Greater Cleveland Partnership and Positively Cleveland, and the initial bylaws of the Operating Company shall require the consent of both County-appointed board members on issues related to reformation of the board of the Operating Company.

**The Articles of Incorporation of the Operating Company and any of its successors and assigns shall require its Board to operate in a manner that closely corresponds with the Cuyahoga County Code relating to open meetings and public records, except that these Articles may allow Board members to attend and participate by electronic means at a meeting properly noticed for a designated time and place.**

**SECTION 3.** The County Executive is authorized to execute the Agreement and all documents required in connection therewith.

**SECTION 4.** That the County Executive or his authorized designee is authorized to (a) take all actions, and to execute, acknowledge, deliver and/or file for record (as and where appropriate) (i) all documents and instruments necessary or desirable to facilitate and/or consummate the transactions contemplated hereby, including, but not limited to, the Termination and Transfer Agreement and all documents to be executed by the County thereunder, and all financing-related documents (including but not limited to subordination, non-disturbance and attornment agreements, pledges, and security agreements), (ii) all other and further documents, instruments, certificates, agreements, amendments, assignments, subleases, consents, affidavits, certifications, disbursement authorizations, settlement statements, closing statements, proration statements, escrow agreements, escrow instructions, and notices, and (iii) amendments, modifications and supplements to any of the foregoing, that the County Executive may deem necessary or advisable in connection with the consummation of the transactions contemplated hereby, in all cases containing such terms and conditions as may be approved by the County's Director of Law or his authorized designee, (b) agree to such payments, prorations, credits, deposits, holdbacks, escrows and other arrangements as may be necessary or advisable in connection therewith to facilitate and/or consummate such transactions, and (c) prosecute and/or defend any actions or proceedings that may be necessary or advisable relative to any of the foregoing matters.

**SECTION 5.** It is necessary that this Resolution become immediately effective for the usual daily operation of the County; the preservation of public peace, health, or safety in the County; and any additional reasons set forth in the preamble. Provided that this Resolution receives the affirmative vote of at least eight members of Council, it shall take effect and be in force immediately upon the earliest occurrence of any of the following: (i) its approval by the County Executive through signature, (ii) the expiration of the time during which it may be disapproved by the County Executive under Section 3.10(6) of the Charter, or (iii) its passage by at least eight members of Council after disapproval pursuant to Section 3.10(7) of the Charter. Otherwise, it shall take effect and be in force from and after the earliest period allowed by law.

**SECTION 6.** This Council finds and determines that all formal actions of this Council relating to the adoption of this Resolution were adopted in an open meeting of Council, and that all deliberations of this Council and of any of its committees that resulted in those formal actions were in meetings open to the public, in compliance with all legal requirements, including Ohio Revised Code Section 121.22.

On a motion by Mr. Schron, seconded by Ms. Conwell, the foregoing Resolution was duly adopted.

Yeas: Greenspan, Miller, Brady, Germana, Gallagher, Schron, Conwell, Jones, Simon and Connally

Nays: None

_____	_____
County Council President	Date
_____	_____
County Executive	Date
_____	_____
Clerk of Council	Date

First Reading/Referred to Committee: November 12, 2013

Committee(s) Assigned: Committee of the Whole

Legislation Amended on the Floor: December 10, 2013

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