

MEMORANDUM OF UNDERSTANDING

This Memorandum of Understanding (the "Agreement") is made this ____ day of _____, 2005 ("Effective Date") by and between the CITY OF COLUMBUS, a municipal corporation (the "City"), and NWD INVESTMENTS, LLC, an Ohio limited liability company, having an office at 375 North Front Street, Suite 200, Columbus, Ohio 43215 ("NWD").

RECITALS:

WHEREAS, the City and NWD desire to create a pedestrian walkway within City right-of-way for Marconi Boulevard and across the Norfolk & Southern railroad line where it intersects Marconi Boulevard in downtown Columbus, Ohio ("Marconi Crossing") depicted in Exhibit A, attached hereto and incorporated herein; and

WHEREAS, the Ohio Railroad Development Commission ("ORDC") has agreed to cooperate in the construction of a pedestrian-only crossing to cross the railroad line at Marconi Crossing; and

WHEREAS, at the same time the City and NWD desire to relocate the existing entrance to an underground sewer facility located in the public right-of-way on Marconi Boulevard; and

WHEREAS, the City has agreed, subject to the terms and conditions set forth herein, to reimburse NWD up to \$400,000 for the cost of the Improvements (as defined herein) not paid for by the ORDC or Norfolk & Southern; and

WHEREAS, NWD has agreed to perform the work necessary to design and construct the Improvements, subject to the terms and conditions hereinafter set forth.

NOW, THEREFORE, in exchange for the mutual promises and covenants contained herein, the parties agree as set forth below.

1.0 NWD's Obligations. In exchange for the City's promises and obligations described in Section 2.0 below, NWD hereby agrees to the following:

(A) to cause the design and construction of a pedestrian crossing ("Crossing Improvements") within City right-of-way for Marconi Boulevard and across the rail line located at Marconi Crossing in accordance with a Guaranteed Maximum Reimbursement Contract, (the "Reimbursement Contract") in the form attached hereto as Exhibit B and set forth in Section 2.0 below; and

(B) to cause the design and construction of a new entrance to the underground sewer facility ("Sewer Improvements," the Crossing Improvements and Sewer Improvements collectively referred to herein as the "Improvements") currently located in the public right-of-way on Marconi Boulevard in accordance with the Reimbursement Contract; and

(C) if applicable, to provide a legal description for such permanent and/or temporary easements which are necessary to construct, operate and maintain the Improvements and which

lie outside of the City right-of-way for Marconi Boulevard; and

(D) NWD, as an inducement to the City to pay the full cost of the Improvements up to \$400,000 has represented to the City that it intends to construct within four (4) years of the date of execution of this Memorandum of Understanding, a class A building of approximately 130,000 square feet in the area known as the Arena District to be occupied by Nationwide Insurance or its affiliates. In the event NWD or its affiliate fails to construct such a building within the four year period then NWD shall reimburse the City for any costs expended by the City to construct the Crossing Improvements in excess of \$90,000 and for 100% of the costs expended by the City to construct the Sewer Improvements.

2.0 City's Obligations. In exchange for NWD's Obligations described in Section 1.0 above, the City hereby agrees to the following:

(A) to permit the Crossing Improvements to be constructed within the City right-of-way for Marconi Boulevard at Marconi Crossing; and

(B) to permit the Sewer Improvements to be constructed within the City right-of-way for Marconi Boulevard in a mutually agreed upon location so as not to interfere with the entrance to the building NWD intends to construct pursuant to Section 1.0(D) above; and

(C) subject to the passage of an ordinance authorizing the expenditure of funds and the certification of the Columbus City Auditor, to pay for the cost of the Improvements in an amount not to exceed Four Hundred Thousand U.S. Dollars (\$400,000) in accordance with the terms and conditions of the Reimbursement Agreement; and

(D) to apply for a "quiet zone" designation at Marconi Crossing pursuant to 49 C.F.R. Section 229.39 and O.R.C. 4955.41 through 4955.47, as applicable, and thereafter diligently pursue the such designation using good faith and best efforts to obtain the same; and

(E) to maintain and repair the Improvements located in the City right-of-way after completion and acceptance in a good and workmanlike condition (excepting, however, the maintenance of the crossing signals and improvements located within the railroad right-of-way which shall be the responsibility of Norfolk & Southern); and

(F) to use best efforts to cause Norfolk & Southern to complete the improvements located within the railroad right-of-way in a timely manner and thereafter maintain the same in a good an workmanlike condition.

3.0 ORDC Signaling. The City and NWD each acknowledge that ORDC has agreed to pay the cost to signal the Improvements at Marconi Crossing. The City and NWD agree to cooperate to cause ORDC to complete the signaling in a timely manner.

4.0 Directional Signage. The City acknowledges that NWD desires to install and maintain directional signage for the parking facility located at 245 Marconi Boulevard in the right-of-way of the eastern boundary of Marconi Boulevard. The City agrees to assist NWD with the submission and processing of a request for the use of the right-of-way in this location

for the desired directional signage.

5.0 NWD'S Representations and Warranties. NWD represents and warrants to the City the following statements are true on the Effective Date of this Agreement: (a) NWD and its representatives have all power and authority legally necessary to enter into this Agreement, execute and deliver any documents referenced herein and to cause the construction of the Improvements in accordance with this Agreement's terms; (b) NWD knows of no action, suit or proceeding, pending or threatened against NWD, which would, if determined against NWD, adversely and materially affect NWD's ability to perform its obligations under this Agreement. NWD's tender of performance of its obligations under this Agreement shall constitute NWD's confirmation that the above representations and warranties are then also true and correct.

6.0 City's Representations and Warranties. City represents and warrants to NWD the following statements are true on the Effective Date of this Agreement: (a) the City and its representatives have all power and authority legally necessary to enter into this Agreement, and to perform its obligations under this Agreement or any documents executed by the City pursuant to this Agreement; (b) the City knows of no action, suit or proceeding, pending or threatened against City which would, if determined against the City, adversely and materially affect the City's ability to perform its obligations under this Agreement. The City's tender of performance of its obligations under this Agreement shall constitute the City's confirmation that the above representations and warranties are then also true and correct.

7.0 Miscellaneous.

(A) NWD may not assign this Agreement without the City's prior written consent, provided, however, that NWD may assign this Agreement to an affiliate without the consent of the City. The City may not assign this Agreement.

(B) Any notice, approval, waiver, objection or other communication (for convenience "Notice") required or permitted to be given hereunder or given in regard to this Agreement by one party to the other shall be in writing and the same shall be given and be deemed to have been served and given (i) if hand delivered, when delivered in person to the address set forth hereinafter for the party to whom notice is given; (ii) if mailed, (except where actual receipt is specified in this Agreement) when placed in the United States mail, postage prepaid, by Certified Mail, Return Receipt Requested; addressed to the party at the address hereinafter specified; or (iii) if by overnight delivery, when received by the other party. Any party may change its address for notices by notice theretofore given in accordance with this Section 6.0.

If to the City: Director of Development
50 West Gay Street
Columbus, Ohio 43215

With copy to: Director of Public Service
90 West Broad Street
Columbus, Ohio 43215

If to NWD: Nationwide Realty Investors, Ltd.
375 North Front Street, Suite 200
Columbus, Ohio 43215

Attn: President and Chief Operating Officer

With copy to: Nationwide Realty Investors, Ltd.
375 North Front Street, Suite 200
Columbus, Ohio 43215
Attn: Legal Department

(C) This Agreement and the exhibits attached hereto constitute the entire agreement between the City and NWD, and there are no other covenants, agreements, promises, terms, provisions, conditions, undertakings, or understandings, either oral or written, between them concerning the Improvements other than those herein set forth. No subsequent alteration, amendment, change, deletion or addition to this Agreement shall be binding upon the City or NWD unless in writing and signed by both the City and NWD.

(D) Time is of the essence of this Agreement.

(E) If any provision hereof is for any reason unenforceable or inapplicable, the other provisions hereof will remain in full force and effect in the same manner as if such unenforceable or inapplicable provision had never been contained herein.

(F) This Agreement may be executed in any number of counterparts, each of which will for all purposes be deemed to be an original, and all of which are identical.

(G) This Agreement shall be construed under and in accordance with the laws of the State of Ohio.

(H) In addition to the acts recited herein and contemplated to be performed, the City and NWD agree to perform such other acts, and to execute and/or deliver such other instruments and documents as either the City or NWD, or their respective counsel, may reasonably require and both parties reasonably approve in order to effect the intents and purposes of this Agreement.

[Remainder of page intentionally left blank.]

DATED this _____ day of _____, 2005, which is the date this Agreement has been signed by whichever of NWD or the City is the last to sign this Agreement. All references to the “date of this Agreement” “Effective Date” or similar references shall mean this date.

CITY:

CITY OF COLUMBUS

By: _____
Its: Director of Development

By: _____
Its: Director of Public Service

NWD:

NWD INVESTMENTS, LLC, BY: NATIONWIDE REALTY INVESTORS, LTD., its manager and member, an Ohio limited liability company

By: _____
Name: _____
Its: _____

Approved as to form:

Richard C. Pfeiffer, Jr.
Columbus City Attorney

