

CAPITAL IMPROVEMENTS PROJECT
GUARANTEED MAXIMUM COST REIMBURSEMENT AGREEMENT
FOR
HUNTINGTON PARK STADIUM AND AREA INFRASTRUCTURE

CAPITAL IMPROVEMENTS PROJECT NO. ELC06796

This Guaranteed Maximum Cost Reimbursement Agreement (the "Agreement") is entered into to be effective the FIRST day of MARCH, 2007, and pursuant to the authority granted under Ordinance No. 1965-2006 by the Council of the City of Columbus, between the City of Columbus, an Ohio municipal corporation, by its Director of Public Service and Director of Public Utilities (the "City"); and Nationwide Realty Investors, Ltd., an Ohio limited liability company (the "Company").

WHEREAS, Columbus City Council passed Ordinance No. 1965-2006 on November 9, 2006 whereby the City agreed to enter into an Agreement providing for, among other things, the construction of certain necessary road improvements and other capital improvements in and around the new Huntington Park, a triple-A baseball stadium located in downtown Columbus (the "Ballpark"); and

WHEREAS, the City recognizes that during such construction of necessary road improvements, it is in the community's best interest to complete certain wet weather related improvements to the City's sanitary and storm sewer system; and

WHEREAS, the City recognizes the benefit that the road improvements and other capital improvements and sanitary and storm sewer projects will have on its citizens by alleviating existing traffic congestion in the general area, promoting the proper management of wet weather, as well as stimulating growth and development for the City, and that it is in its best interests of the City to enter into a Guaranteed Maximum Cost Reimbursement Agreement with the Company to construct such improvements.

NOW THEREFORE, in consideration of the mutual provisions set forth herein, the parties hereto agree as follows:

I. Planned Improvements

(A) The work to be performed under this Agreement (the "Work") consists of the construction of (i) a roadway and associated improvements; (ii) water and sewer line construction, extension, repair, replacement and associated improvements; and (iii) such other infrastructure improvements, including, without limitation, electrical, streetscape, traffic signaling or otherwise, all as set forth in this Agreement, and the Proposals, detailed engineering Plans and Drawings, Probable Project Cost Estimate as attached hereto Exhibit A and incorporated herein by reference for the Work described in this Section I(A) as approved by the City and referred to herein as the "Plans." The Plans are incorporated herein by reference.

(B) All Work and any changes to or modifications to the Work shall comply with plans approved by the City.

(C) All Work by Company and any entity with which Company contracts for materials or services shall conform to those sections of the most recent edition of the City of Columbus, Ohio Construction and Material Specification Manual ("CMSC"). In addition, Company shall be responsible for requiring the design engineer for the project drawings to prepare record plan drawings for the subject project in accordance with the guidelines established by the City. The terms of this Agreement shall govern any conflict with the provisions of CMSC. The parties acknowledge that the CMSC may have to be supplemented to the extent that the CMSC and the applicable City of Columbus Standard Drawings do not address portions of the Work.

II. Total Guaranteed Maximum Cost

(A) The City agrees to pay and/or reimburse to Company at the times and in the manner provided for herein, in consideration for the services rendered and Work performed pursuant to this Agreement, an amount equal to the Cost of the Work (as defined in Section II(B) up to but not exceeding the Total Guaranteed Maximum Cost which shall be Eleven Million Four Hundred Thirty-Nine Thousand Six Hundred Fifty-Six Dollars and 00/100 (\$11,439,656.00) for such Work.

- (i) Within the Total Guaranteed Maximum Cost the sum of One Million Three Hundred Sixty-Four Thousand Eight Hundred Four Dollars and 00/100 (\$1,364,804.00) has been appropriated and authorized to be expended by Ordinance No. 1965-2006, passed November 9, 2006 for portions of the Work related to design engineering, traffic study, acquisition of right-of-way, construction management, contract performance bond, and necessary and incidental related expenses.
- (ii) The balance of the Total Guaranteed Maximum Cost is subject to the passage of subsequent ordinances by Columbus City Council appropriating and authorizing the expenditure of such sums, and the certification by the City Auditor of the availability of funds for such purposes.
- (iii) Expenditure of the Total Guaranteed Maximum Cost, including the funds authorized to be expended by Ordinance No. 1965-2006 are further limited by the sums appropriated to the various internal City funds for various portions of the Work as set forth in the Probable Project Cost Estimate in Exhibit A attached hereto and incorporated herein by reference.

- (iv) The Total Guaranteed Maximum Cost shall be revised only upon the issuance of a properly authorized Change Order (as defined in Section VI).
- (v) The Total Guaranteed Maximum Cost shall contain a construction contingency in the amount of Nine Hundred Thousand Dollars (\$900,000.00) (the "Construction Contingency"). The Construction Contingency may only be utilized for unforeseen conditions; bid quantity overruns, or increases in the total price for subcontractors resulting from changes in the Work. Any unused portion of the contingency remaining after completion and acceptance of the Work by the City shall be retained by the City.
- (vi) Subject to the Change Order requirements set forth in Section VI, Company may expend any part of the Construction Contingency up to Four Hundred Fifty Thousand Dollars (\$450,000.00) without receiving prior approval of Public Service Director. No part of the remaining Four Hundred Fifty Thousand Dollars (\$450,000.00) Construction Contingency, however, shall be expended without prior written approval of the Public Service Director.
- (vii) From and after commencement of construction, Company shall provide progress reports to Director(s) not less than monthly, or upon his/her request, accounting for the current use of the Construction Contingency. Such progress reports shall be current to within ten (10) days of the date of the report.

(B) Cost of Work or reimbursable costs payable to Company by the City for the Work ("Cost of Work") shall include only those costs which are directly associated with the Work as follows:

- (i) Total contract price for subcontracts as awarded to successful bidder(s) for construction of the Work described in Section I(A).
- (ii) Total contract price for contracts with the Construction Project Manager plus any fee payable by Company to the Construction Project Manager.
- (iii) Engineering fees for design work related to the design and preparation of plans and specifications for the Work and engineering services during construction set forth in Section I(A) above less any engineering fees that relate to services that are outside the Scope of the Work or expenses that are reimbursable as

may be approved by the Directors of the Department of Public Service and Department of Public Utilities.

- (iv) Cost of all materials and supplies if contracted for separately from Section II(B)(i).
- (v) Construction inspection fees as charged by the City's Division of Transportation, together with any other permit fees, testing costs and licenses required to comply with all applicable legal and governmental requirements. The estimated amount of such fees shall be retained by the City in an account upon which the City shall draw for the benefit of the Division of Transportation for the payment of such fees based upon the actual work performed. The City will provide Company with a quarterly report summarizing the then current status of the account.
- (vi) Construction Contingency in the amount of Nine Hundred Thousand Dollars (\$900,000.00) as set forth in Section II(A)(v), subject to any remainder being retained by the City as set forth in II(A)(v) above.
- (vii) Costs of any environmental or geotechnical testing in connection with the Work.

(C) The City's obligation to reimburse Company for the Cost of Work pursuant to this Agreement is conditioned upon the City receiving an agreement for access to the site on which the Work is to be constructed. The City shall notify Company of such agreement as soon as reasonable, but in any event not later than three (3) days after receiving such agreement of access. Notwithstanding the foregoing, and regardless of whether the City receives such agreement for access, the City shall be obligated to reimburse Company, subject to the other provisions of the Agreement, for engineering expenses pursuant to Section II(B)(iii), for steel fabrication and steel purchasing costs.

III. Company's Obligations

(A) OHIO E.P.A. PERMITS: The Company is required to make application and secure a Permit To Install (PTI) and Notice of Intent (NOI) for the sanitary sewers improvements from the State of Ohio Environmental Protection Agency. The Company and its subcontractors shall comply with all conditions stated in each permit in the performance of the work.

(B) In consideration of the City's agreement to pay for the Work, Company shall act as contractor for the construction of the Work. The individuals from the Company authorized to act on its behalf are James Rost and Donald Montgomery or their

designee. Notwithstanding anything to the contrary set forth in this Agreement, Company and City acknowledge that the Scope of Work has not been finalized and the Work has not been bid as of the date of this Agreement. If at any time Company receives a bid or a Change Order (either individually or in the aggregate) that would cause the Cost of Work to exceed the Total Guaranteed Maximum Cost, and the City is unwilling or unable to increase the Total Guaranteed Maximum Cost, then Company will revise the Scope of Work to the extent necessary to cause the Cost of Work to be less than or equal to the Total Guaranteed Maximum Cost. City hereby acknowledges and agrees that Company shall have no obligation to complete any portion of the Work that would cause the Cost of Work to exceed the Total Guaranteed Maximum Cost. In any event, City's total obligation under all circumstances shall not exceed the Total Maximum Guaranteed Cost of Eleven Million Four Hundred Thirty-Nine Thousand Six Hundred Fifty-Six Dollars and 00/100 (\$11,439,656.00), of which Nine Million Three Hundred Thousand Dollars and 00/100 (\$9,300,000.00) shall be directly attributed to infrastructure which supports the construction of the baseball stadium with the balance of Two Million One Hundred Thirty-Nine Thousand Six Hundred Fifty-Six Dollars and 00/100 (\$2,139,656.00) being attributed to infrastructure improvements in the area of the baseball stadium, all of which is subject to the prior authorization and appropriation by the Columbus City Council and certification by the Columbus City Auditor.

(C) Company shall procure bids for and enter into all contracts and purchase orders necessary for construction of the Work. Company shall publicly advertise and solicit sealed bids for all contracts and purchase orders. The City's Directors of Public Service and Public Utilities shall review and approve all bids prior to award by Company. Company shall notify City as to the date of all bid openings. Representatives of the City's Public Service Director and/or Public Utilities Director, or both, shall be permitted to attend all bid openings. No contractor or supplier affiliated with Company or any of the members of the Company shall be permitted to bid, nor shall any bid submitted by such entities be accepted, nor shall Company award any subcontract for work or materials to any such entity. Company shall provide all bidders on construction or supply contracts with a minimum of ten days to prepare a bid proposal. Unless expressly waived in writing by the City's Directors of Public Service and Public Utilities and approved by City Council, Company shall award all contracts to the lowest, responsive and responsible bidder. If, in Company's opinion, the bids submitted are unresponsive or unacceptable, Company, upon presentation to the City's Directors of Public Service and Public Utilities of reasons supporting such action, may reject all bids and rebid. Company shall provide City a copy of all bid tabulations. Notwithstanding the foregoing, under this Agreement the Company may contract with the professional design engineers for the Work described in Section II(B)(iii) and a Construction Project Manager without procuring bids under this Section. Such professional design engineers and Construction Project Manager shall not in any manner be affiliated with Company or any of its members. Directors shall review, and approve or reject, all bids within seven (7) days of notification by Company of its intent to award each contract.

(D) Periodic payments to Company shall be made in accordance with applicable provisions of Subsection 109 of the General Provisions of the CMSC; as such terms may be supplemented or modified by agreement of Company and the City's Directors of Public Service and Public Utilities. Except as herein set forth, Subsection 109 of the CMSC controls the conduct of the Work. The Director of Public Utilities can increase the percentage retained or withhold the retainage payments if the Company fails to submit Record Drawings for the completed Work.

(E) Company shall keep complete and accurate books of account showing the Cost of Work which shall at all reasonable times be open for inspection by representatives of the City. Company shall provide to the Directors of Public Service and Public Utilities monthly reports of progress of the Work including, without limitation, all costs incurred and expenditures by fund source applicable to the Work.

(F) The following parts of the General Provisions of the CMSC are applicable and incorporated as if fully rewritten herein:

- (i) Subsection 101-Definitions and Terms
- (ii) Subsection 104-Scope of Work
- (iii) Subsection 105-Control of Work (excepting the fourth paragraph of 105.05, 105.06 and 105.07)
- (iv) Subsection 106-Control of Material
- (v) Subsection 107-Legal Relations and Responsibility to Public
- (vi) Subsection 108-Prosecution and Progress (excepting 108.01, 108.02, 108.03, 108.06, 108.07, 108.08 and 108.09)
- (vii) Subsection 109-The parties acknowledge that certain portions of the Work are based on lump sum pricing. For components of the Work based on lump sums, City shall provide a reasonable estimate of the portion of the Work completed as the basis for partial payment for the Work by the City.

Notwithstanding anything in the foregoing provisions of the CMSC to the contrary, it is the intent of the parties hereto that Company shall have complete control and discretion relative to the administration of the Company's subcontracts and the prosecution of the Work under such subcontracts, including, without limitation, any provision regarding equitable adjustments to the Cost of the Work for changes in the Work; so long as such adjustments do not, in the aggregate exceed the Total Guaranteed Maximum Cost as further limited by the funding sources set forth on the Probable Project

Cost Estimate in Exhibit A attached hereto and incorporated herein by reference. All such adjustments are subject to the prior approval of the Director of Public Service and Director of Utilities. The provisions of this section, or any other provisions herein contained shall not confer any right or claim upon or otherwise inure to the benefit of any third party having dealings with Company or to the benefit of any contractor or subcontractor performing the Work.

(G) Acceptance by the City of the Work, as complete, for purposes of this Agreement, shall not relieve Company of responsibility for defects in material or workmanship in the construction of said improvements as set forth in Section X herein.

(H) In all phases of the construction of the Work, each party shall fully cooperate with the other and shall follow and comply with all reasonable requests and instructions of the other, particularly dealing with the time, timing, and manner of doing the Work. The parties acknowledge the extreme time constraints in achieving the mutual goal of having the Work completed in a timely manner. It is the intent of this section that the parties will use their best efforts to cooperate with and assist the other in completing the Work including but not limited to, cooperation in obtaining any permits or other approvals necessary for the prosecution of the Work which are required by other governmental entities.

(I) Company shall submit to the City upon the execution of this Agreement a performance bond or shall require its subcontractors performing the Work to provide a surety bond, in the amount of One Hundred Percent (100%) of the estimated cost of construction of the improvements, which bond shall incorporate the terms and conditions and be in the form of the performance bond attached hereto as Exhibit B. Such bond shall inure to the benefit of the City and shall remain in full force and effect until the City has approved the Work and given final acceptance thereof and the improvements have been dedicated for the public use.

IV. Responsibility; Liability

Company warrants that it will exercise, in the performance of its duties and covenants set forth herein, the standard of care normally exercised by construction organizations engaged in performing comparable services. Company warrants that all construction work done by its own forces or by any of its subcontractors will be free from all defects in materials and workmanship (without regard to the standard of care exercised in its performance) for a period of ten (10) years after final written acceptance of the Work by the City. Company shall be liable to City for any loss, damages or costs incurred by City for the repair, replacement or correction of any part of the Work which is deficient or defective as a result of any failure of Company to comply with said warranty.

To the maximum extent permitted by law, Company shall indemnify and hold harmless the City and its agents and employees from and against all claims, damages, losses and expenses, including but not limited to attorney's fees, arising out of or resulting from its performance of this Agreement, to the extent that any such claim, damage, loss or expense (a) is attributable to bodily injury to or destruction of tangible property (other than the Work itself) including the loss of use resulting therefrom, and (b) is caused in whole or in part by any negligent act or omission of Company, and subcontractor, anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable. Such obligation shall not be construed to negate, abridge, or otherwise reduce any other right or obligation of indemnity which would otherwise exist as to any party, persons, or entities described in this section.

In any and all claims against the City or any of its agents or employees by any employee of Company, any subcontractor, anyone directly or indirectly employed by any of them, or anyone for whose acts any of them may be liable, the indemnification obligations under this section shall not be limited in any way by any limitation on the amount or type of damages, compensation or benefits payable by or for Company, or any subcontractor under worker's or workman's compensation acts, disability benefit acts or employee benefits acts, and any immunity, as a complying employee under Article II, Section 55 of the Ohio Construction and Worker Compensation Laws of the State of Ohio, is hereby expressly waived.

V. Insurance

Company shall take out or cause its subcontractors to take out and maintain during the term of this Agreement such Commercial General Liability (bodily injury and property damage) Insurance as shall protect Company and any subcontractor performing work covered by this Agreement and the City, as their respective interests may appear, from claims for damages for personal injury, including accidental death, as well as from claims for property damage which may arise from operations under this Agreement, whether such operations are conducted by the Company or by any subcontractor or by anyone directly or indirectly employed by them. SUCH INSURANCE POLICY SHALL INCLUDE THE CITY AS AN ADDITIONAL INSURED. The Company shall maintain coverage of the types and in the amounts specified below. An umbrella policy with the limits specified below may be submitted for this requirement, with the City as an additional insured. A copy of such insurance policy with the City named, as insured shall be delivered to the City's Director of Public Service at least ten days prior to commencement of the Work.

The amounts of such insurance shall be as follows:

Bodily Injury Liability

Each person \$500,000.00

Each accident \$1,000,000.00

Property Damage Liability

Each accident \$500,000.00

All accidents \$1,000,000.00

Such insurance shall remain in full force and effect during the term of this Agreement. Insurance may not be changed or cancelled unless the insured parties, including the City, are notified in writing not less than thirty (30) days prior to such change or cancellation. If any part of this Agreement is subcontracted, Company is responsible for the subcontracted part being adequately covered by insurance as described above. Cancellation or lapse of insurance coverage during the term of this Agreement shall be considered a default by Company sufficient to relieve the City of its obligations under this Agreement, including payment for any Work performed after cancellation or lapse of insurance coverage.

VI. Change Orders

Any changes in the Work to be performed pursuant to this Agreement, shall be pursuant to change orders signed by Company and City's Public Service and/or Public Utilities Directors ("Change Orders") depending on the source of funds for this particular Work. All Change Orders which increase the cost of the Work by the amount of Thirty Thousand Dollars (\$30,000) or more shall require prior approval by the Directors. Except for payment of such Change Orders, Company shall be entitled to expend for the Work from the Contingency hereinabove referred to, without prior approval of the Directors, sums which shall not exceed in the aggregate Four Hundred Fifty Thousand Dollars (\$450,000.00). Company shall not expend any additional sums from the remaining balance of the Contingency without prior approval of the Directors. Directors shall approve or deny any Change Order submitted to him/her within three (3) business days after receipt of the Change Order. If Directors do not respond to Company within such period, the Change Order submitted will be deemed approved.

Notwithstanding the foregoing, any changes in the Work that cause an increase in the Cost of Work in excess of the Total Guaranteed Maximum Cost shall not be binding on City unless the Change Order has: (a) been incorporated into an appropriate modification of this Agreement; (b) has been authorized and approved by Columbus City Council, and any additional cost associated with such change of Work has been certified by the City Auditor as being duly appropriated and available for expenditure in the fund to be charged for such cost.

VII. Required Documentation

Company shall secure the following documentation (or require its subcontractor(s) to secure same) and such documentation shall be attached to this Agreement and is hereby declared to be part hereto:

- (A) Policy of Insurance in compliance with Section V;
- (B) State of Ohio Industrial Commission and Bureau of Worker's Compensation Certificate of Premium Payment (or applicable self-insurance equivalent);
- (C) City of Columbus Delinquent Personal Property Tax Affidavit;
- (D) Certification of Compliance Equal Business Opportunity Office, City of Columbus, as required by Title 39 of Columbus City Codes;
- (E) Contract Affidavit (authority of contract signature to bind contracting entity).

VIII. Withholding from Payments

Any provision hereof to the contrary notwithstanding, City may withhold from any payment due or to become due to the Company amounts sufficient to reimburse City for its expenditures and to secure past due payments to materialmen and subcontractors. In no event shall any interest be due and payable to City, Company, any subcontractor, or any other party on any of the sums retained by City.

IX. City's Right to Inspect The Work and Company's Records

City shall at all times have access to the Work for inspection thereof by and through its agency, the Division of Transportation. Upon reasonable advance prior notice the City, through the City Auditor or his designee, shall have the right to inspect during regular business hours Company's books and records relating to the Work.

No inspection performed or failed to be performed by City hereunder shall be waiver of any of Company's obligations hereunder or be construed as an approval or acceptance of the Work or any part thereof.

X. Correction of Work

The Company shall (a) correct or re-execute any parts of the Work that fail to conform with the requirements of the contract documents and appear during the progress of the Work, (b) correct any defects in the Work due to faulty materials or workmanship which appear within such longer period of time as may be set forth in the plans,

specifications or design criteria, and (c) replace, repair, or restore any parts of the improvements, fixtures, equipment, or other items placed therein that are injured or damaged as a consequence of any such failure or defect, or as a consequence of corrective action taken pursuant hereto. Should Company fail to make the corrective action required by this section, City may do so at the expense and for the account of the Company.

XI. Utility Relocation

The City agrees to cooperate with Company and third parties regarding any non-City utility relocations. Company agrees to cooperate with City and third parties in connection with utility relocations.

XII. Site Information

The City agrees to provide Company with all data in its possession relating to the location or locations of the Work, including, without limitation, soil test reports and data, locations of adjacent structures and utilities, which may affect the prosecution and completion of the Work.

XIII. Traffic Control

Company shall be responsible for insuring the provision of all traffic control devices during the term of this Agreement. All traffic control devices shall be furnished, erected, maintained and removed in accordance with the State of Ohio Department of Transportation "Manual of Traffic Control for Construction and Maintenance Operations."

XIV. Equal Opportunity Clause

(A) Company and its subcontractors will not discriminate against any employee or applicant for employment because of race, color, religion, sex or national origin. Company and its subcontractors will take affirmative action to ensure that applicants are employed, and that employees are treated during employment without regard to their race, color, religion, sex, or national origin. Such action shall include, but not be limited to, the following: employment upgrading, demotion, or termination; rates of pay or other forms of compensation; and selection for training. Company agrees to post in conspicuous places, available to employees and applicants for employment, notices summarizing the provisions of this Equal Opportunity Clause.

(B) Company will state, in all solicitations or advertisements for employees placed by or on behalf of the Company, that the Company is an Equal Opportunity Employer. In addition, pursuant to Title 39 of the Columbus Code, Section 3907.06, where invitations for bids are advertised, the following notice shall be included in the

advertisement: " Each responsive bidder shall submit, with its bond, a contract compliance certification number or a completed application for certification."

(C) It is the policy of the City that business concerns owned and operated by minority and female persons shall have the maximum practicable opportunity to participate in the performance of contracts awarded by City. Company shall require that its Project Manager use good faith and commercially reasonable efforts to solicit the participating minority and female business enterprises and engage in such outreach activities, as it deems most effective to do so. To assist with such outreach Company shall obtain from the City's Equal Business Opportunity Office information identifying such enterprises as are registered with the City. Company shall endeavor to notify timely such registrants regarding the bidding process for the Work, including, without limitation, portions of the Work to be subcontracted, availability for review of Work plans, drawings, and specifications, and opportunities for partnering or joint venturing with other entities to perform the Work. Company shall provide to the City's Public Service Director upon request a verified report of such activities including a list of all minority and female business enterprises which Company were solicited or otherwise contacted about performing any part of the Work under this Agreement, and such other information regarding such activities as the Director may request.

(D) Company shall permit access to any relevant and pertinent reports and documents by the City's Equal Business Opportunity Commission Executive Director for the sole purpose of verifying compliance with this Article, and with the regulations of the Contract Compliance Office. All such materials provided to the Executive Director by the Company shall be considered confidential the extent permitted by law.

(E) Company will not obstruct or hinder the Executive Director or her deputies and assistants in the fulfillment of the duties and responsibilities imposed by Article I, Title 39 of the Columbus City Codes.

(F) Company and each subcontractor will include a summary of this Equal Opportunity Clause in every subcontract. Company will take such action with respect to any subcontractor as is necessary as a means of enforcing the provisions of the Equal Opportunity Clause.

(G) Company agrees to refrain from subcontracting any part of this Agreement to a contractor not holding a valid certification number as provided for in Article I, Title 39.

(H) Failure or refusal of a contractor or subcontractor to comply with the provisions of Article I, Title 39, may result in cancellation of this Agreement. (Ord. No. 2550-93.)

XV. Prevailing Wage

In connection with the Work, Company agrees to abide by the requirements of Ohio Revised Code Chapter 4115.

XVI. Termination

The following acts or omissions by Company shall constitute a default under the Agreement and shall entitle the City to take the actions hereinafter set forth. If Company shall commence the Work in accordance with the provisions of this Agreement or prosecute the Work to completion thereof in a diligent, efficient, workmanlike, skillful and careful manner and in strict accordance with the provisions of the contract documents, subject to force majeure or failure of any third party controlling access to the property to permit Company to perform its Work hereunder, fail to use an adequate amount for quality of personnel or equipment to complete the Work without undue delay, fail to perform any of its obligations hereunder, be adjudged bankrupt, make a general assignment for the benefit of its creditors, permit a receiver to be appointed on account of its insolvency, become insolvent or otherwise fail to make prompt payments to its subcontractors, materialmen or laborers.

In the event of such default City shall have the right, if Company shall not cure any such default within thirty (30) days from receipt of written notice thereof, from the City, the City shall have the right, to do any or all of the following: (a) terminate this Agreement, (b) take possession of and use all or any part of the contract or materials, equipment, supplies, and other property of every kind used by Company in the performance of the Work and to use such property in the completion of the Work, or (c) complete the Work in any manner it deems desirable, including engaging the services of other parties therefor. Any such act by City shall not be deemed a waiver of any other right or remedy of City.

The rights and remedies of City and Company under this section are non-exclusive and shall be in addition to all other remedies available to such parties at law or in equity.

XVII. City Income Taxes

Company hereby further agrees to withhold all City Income Taxes due or payable under the provisions of Chapter 361, Columbus City Code, for wages, salaries and commissions paid to its employees and further agrees that any of its subcontractors shall be required to agree to withhold any such City Income Taxes due under said Chapter for services performed under this Agreement.

XVIII. Choice of Law

This Agreement shall be construed in accordance with and governed by the laws of the State of Ohio, without regard to principles of conflict of laws, and any dispute

between the parties hereunder shall be resolved in the Court of Common Pleas of Franklin County, Ohio.

XIX. Waiver

No provision, requirement, default or breach of this Agreement may be waived by either party except by express statement in writing.

XX. City Representative; Addresses

The individuals from the City authorized to act on its behalf are the Director of Public Service and the Director or Public Utilities or their duly appointed designee(s). All communications and notices to City shall be addressed to City of Columbus, Department of Public Service, 90 West Broad Street, Columbus, OH 43215, to the attention of the Director of Public Service; to the City of Columbus, Department of Public Utilities, 910 Dublin Road, Columbus, OH 43215, to the attention of the Director of Public Utilities. Copies of such communications or notices also shall be sent to the City Attorney, to the attention of Daniel W. Drake, Chief Counsel at 90 West Broad Street, 2nd Floor, Columbus, OH 43215 and to the City Auditor at 90 West Broad Street, Columbus, OH 43215. City may substitute any other individual of its own choosing as City's representative by giving Company prior written notice thereof.

Company acknowledges that City's representative may not be continuously on-site or on-site on any particular schedule. Company will therefore transmit all notices and communications to City's representative at the above addresses early enough to permit timely response thereto.

All communications and notices to Company shall be addressed to Company at 375 North Front Street, Suite 200, Columbus, OH 43215 to the attention of Brian J. Ellis, with a copy to Nationwide Realty Investors, Ltd., 375 North Front Street, Suite 200, Columbus, OH 43215 to the attention of Legal Department.

XXI. Notices

All notice to be given under this Agreement shall be in writing, and all payments to be made hereunder shall be by warrant drawn on the City Treasury, and may be given, served or made by depositing the same in the United States mail addressed to the party to be notified at the address heretofore set forth, postage paid, or by delivering the same in person to such party. By giving the other party at least fifteen (15) days written notice thereof, either party hereto shall have the right to change its address and specify as its address for the purposes hereof any other address in the United States of America.

XXII. Assignment

EXHIBIT A
PRELIMINARY PROBABLE PROJECT
COST ESTIMATE
Huntington Park Stadium and Area Infrastructure

Component of Pen West Infrastructure Project	Estimated Costs Summarized	Estimated Costs Categorized Into Sources of Funds	
		Public Service	Public Utility
1. Nationwide			
General Roadway	\$858,425	\$858,425	
Storm Sewer	\$158,450		\$158,450
Sanitary Sewer	\$98,260	\$98,260	
Watermain (Including 24" W)	\$318,142		\$318,142
Erosion and Sedimentation Control	\$43,425	\$21,713	\$21,712
Lighting	\$111,050	\$111,050	
MELP	\$1,059,375	\$1,059,375	
Signal	\$35,000	\$35,000	
<i>Construction Cost Subtotal for Nationwide :</i>	\$2,682,127	\$2,183,823	\$498,304
2. Hanover			
General Roadway	\$378,363	\$378,363	
Storm Sewer	\$630,600		\$630,600
Sanitary Sewer	\$48,520	\$48,520	
Watermain	\$148,200		\$148,200
Erosion and Sedimentation Control	\$3,250	\$1,625	\$1,625
Lighting	\$46,625	\$46,625	
MELP	\$219,000	\$219,000	
Signal & Interconnect	\$232,000	\$232,000	
<i>Construction Cost Subtotal for Hanover :</i>	\$1,704,558	\$924,133	\$780,425
3. Brodbelt			
General Roadway	\$736,240	\$736,240	
Storm Sewer	\$84,250		\$84,250
Sanitary Sewer	\$66,250	\$66,250	
Watermain	\$154,800	\$154,800	
Erosion and Sedimentation Control	\$8,100	\$3,050	\$3,050
Lighting	\$92,265	\$92,265	
MELP	\$181,400	\$181,400	
Signal	\$35,000	\$35,000	
<i>Construction Cost Subtotal for Brodbelt :</i>	\$1,356,305	\$1,269,005	\$87,300
4. Cozzins			
General Roadway	\$194,089	\$194,089	
Storm Sewer	\$84,575		\$84,575
Sanitary Sewer	\$19,140	\$19,140	
Watermain	\$104,740		\$104,740
Erosion and Sedimentation Control	\$3,750	\$1,875	\$1,875
Lighting	\$45,300	\$45,300	
MELP	\$287,375	\$287,375	
Signal	\$0	\$0	
<i>Construction Cost Subtotal for Cozzins :</i>	\$738,969	\$547,779	\$191,190

EXHIBIT A (page 2 of 2)
 PRELIMINARY PROBABLE PROJECT
 COST ESTIMATE
 Huntington Park Stadium and Area Infrastructure

Component of Pen West Infrastructure Project	Estimated Costs Summarized	Estimated Costs Categorized Into Sources of Funds	
		Public Service	Public Utility
5. Sewer Rehabilitation			
48" Sewer Rehab C&O RR to Cozzins St - Part 1 (See Ref #3 in Memo 7/26/06)	\$512,000		\$512,000
48" Sewer Rehab Cozzins St to Nell Ave - Part 2 (See Ref #3 in Memo 7/26/06)	\$481,000		\$481,000
96" Storm Sewer Rehab (See Ref #4a in Memo 7/26/06)	\$600,000		\$600,000
Construction Cost Subtotal for Sewer Rehabilitation :	\$1,593,000	\$0	\$1,593,000
6. Misc. Project Costs			
Maintaining Traffic			
Dust Control	\$50,000	\$25,000	\$25,000
Field Offices, Type B	\$15,000	\$7,500	\$7,500
Construction Layout Stakes	\$40,000	\$20,000	\$20,000
Mobilization	\$125,000	\$62,500	\$62,500
Contract Performance/Pmt. Bond	\$150,000	\$75,000	\$75,000
Right-of-Way at Spring/Handover	\$50,000	\$25,000	\$25,000
	\$50,000		
Construction Cost Subtotal for Misc. Project :	\$480,000	\$265,000	\$215,000
7. Total Project Costs (1-6)			
A. Construction Costs Prior to Soft Costs	\$8,554,959	\$5,189,740	\$3,365,219
<i>Percentages of Project Shown for Each Category</i>		60.7%	39.3%
B. Contingency (10% of Const Cost - 7A + \$80,000 for Material Increase Costs)	\$935,496	\$587,846	\$367,650
C. Construction Costs (Including Contingency+Material Inc.)	\$9,490,455	\$5,767,586	\$3,732,869
D. Engineer & Architect Design	\$787,056	\$477,743	\$309,313
E. Construction Management (5%)	\$427,748	\$259,643	\$168,105
F. City Inspection (8% of 7A)	\$684,397	\$415,429	\$268,968
G. Soft Costs (Including Design+Construction Management+Inspection)	\$1,899,201	\$1,152,815	\$746,386
H. Traffic Study (Added 10/12/06)	\$50,000	\$50,000	\$0
PEN WEST TOTAL PROJECT COST :	\$11,439,856	\$6,960,401	\$4,479,255

EXHIBIT B

Bond No. _____

PERFORMANCE BOND

(Not to be filled out if a certified check or letter of credit is submitted.)

Do not remove any pages.

KNOW ALL MEN BY THESE PRESENTS: That we, the undersigned _____
(Company) _____ as Obligors (if more than one, add both names as "Co-
Obligors") and _____ (Bonding company, address, contact and phone no.)
_____, as Sureties are hereby held and firmly bound unto the City of Columbus, Ohio in
the sum of _____, for the payment of which well and truly to be
made, we hereby jointly and severally bind ourselves, our heirs, executors,
administrators, successors and assigns.

Bond issuance date:

Signed this _____ day of _____, 20____.

THE CONDITION OF THE ABOVE OBLIGATIONS IS SUCH, that whereas the above
named principal did on the _____ day of _____, 20____, enter into an
agreement with the City of Columbus, Ohio covering the construction of infrastructure
which supports the construction of a baseball stadium and infrastructure in the
surrounding area _____, and doing such other work as is necessary to complete the
improvement, which said agreement is made a part of this bond as though set forth
herein.

NOW, if the said Nationwide Realty Investors, Ltd. ("Company") shall well and
faithfully do and perform the things agreed by it to be done and performed according to
the terms of said agreement; and shall pay all lawful claims of subcontractors, material
men and laborers, for labor performed and materials furnished in the carrying forward,
performing or completing of said agreement; we agreeing and assenting that this
undertaking shall be for the benefit of any material man or laborer have a just claim, as
well as for the oblige herein; then this obligation shall be void; otherwise the same shall
remain in full force and effect; it being expressly understood and agreed that the liability
of the surety for any and all claims hereunder shall in no event exceed the amount of this
obligation as herein stated.

The said surety hereby stipulates and agrees that no modifications, omissions or
additions, in or to the terms of said agreement or in or to the plans or specifications
therefore shall in any way affect the obligation of said surety on its bond.

(Principal must indicate whether Corporation, Partnership, Company or Individual.)

Nationwide Realty Investors, Ltd.,
an Ohio Limited Liability Company
(Developer & Obligor)

By: _____

(Print Name)

Title _____

(Name of Sureties)

By: _____

(Print Name)

Title _____

(POA and Cert. of Auth of Attorney-in-Fact required for AIF)

The foregoing bond is
hereby approved, _____ (date)

Director of Public Service

I hereby approve the form and correctness
of the foregoing contract, _____ (date)

City Attorney

(Attach an Ohio Dept of Insurance Certificate of Compliance and Financial Statement for
Surety and Signature Authorization Affidavits for Developer and Co-Obligor.)