

## MEMORANDUM OF UNDERSTANDING

THIS MEMORANDUM OF UNDERSTANDING (“**Agreement**”) is made and entered into this \_\_\_\_ day of \_\_\_\_\_, 2011, by and between NWD INVESTMENTS, LLC (“**NWD**”) and the CITY OF COLUMBUS, OHIO (“**City**”), collectively the “**Parties**”.

**WHEREAS**, the 1998 Riverfront Vision Plan that was adopted by City Council envisions a mixed use district in the Pen West area, including a continuous park area corridor that will follow the shoreline of the Olentangy River; and

**WHEREAS**, NWD desires to acquire certain real property located in the Pen West area known as the former Jaeger Commercial Park site; and

**WHEREAS**, the City and NWD believe this MOU will assist with the redevelopment and revitalization of the Pen West area and the shoreline along the Olentangy River; and

**WHEREAS**, the City and NWD in 2009 entered into an agreement regarding the Arena District TIF, the Pen TIF, the Pen West East TIF and the Pen West West TIF (collectively, the “4 TIFs”) and the allocation of the TIF moneys, which agreement the parties are contemplating amending (hereinafter, the “2009 TIF Reimbursement Agreement”); and

**WHEREAS**, the City desires to enter into a MOU with NWD to, among other things, outline the framework for and many of the major terms of a cooperation agreement for the development of the Pen West area and the shoreline adjacent thereto; and

**WHEREAS**, the Parties desire to memorialize their understanding and agreements with respect to such cooperation; and

**WHEREAS**, the cooperation agreement remains subject to authorization pursuant to the adoption of appropriate legislation by Columbus City Council; and

**WHEREAS**, The City Council of Columbus has approved, authorized and directed the Director of Development to enter into this MOU in accordance with Ordinance No. \_\_\_\_\_, enacted on July 25, 2011.

**NOW THEREFORE**, in exchange for the mutual commitments and obligations contained herein, the Parties agree as set forth below

**I. NWD Commitments to the City**

1.1 Acquisition of Jaeger Commercial Park Site. NWD intends to acquire the former Jaeger Commercial Park site, located at 560 West Nationwide Boulevard (the “Jaeger Property”). NWD intends to redevelop the Jaeger Property and the City Property (as defined herein, collectively the Jaeger Property and the City Property shall be referred to as the “Property”) as a residential use but reserves the right to convert all or a portion of the Property to a commercial use.

1.2 Acquisition of City Property.

- (a) Subject to the immediately succeeding paragraph, the City will sell to NWD fee simple title in and to approximately 4.5+ acres of City owned land (the “City Property”), free and clear of all liens and encumbrances, at a purchase price equal to fair market value (to be determined by an appraisal process acceptable to both Parties). The City Property is generally described as north of Nationwide Boulevard and approximately 100 feet east of the AEP transmission line. NWD shall pay for a survey to determine the exact location of the AEP transmission line and reserve area necessary per AEP requirements along with the legal descriptions and exhibits necessary to file new parcel descriptions or splits with the Franklin County Engineer’s Office. City utility easements will also be identified, surveyed, and reserved. NWD will be responsible for demolition of the buildings located on the City Property.
  
- (b) NWD will be responsible for performing a Phase I and, if necessary, a Phase II of the City Property. NWD shall provide the City with a copy of the Phase I and/or Phase II. The City and NWD recognize that the City property may need environmental remediation, the extent of which will be unknown until the Phase II is completed. When the Phase II is completed, NWD may decide to not purchase the City property, at its sole discretion. If NWD is going to go forward with the purchase, it will enter into a binding purchase agreement by no later than February 1, 2012 and will close on the purchase of the City property no later than July 1, 2014. The

parties acknowledge that the City will incur substantial costs in relocating its operations before the closing date. The binding purchase agreement will therefore include the following remedy to the City in the event NWD breaches the agreement by failing to close: the City will be entitled to pursue any remedies at law or in equity including without limitation, the right to seek specific performance or, in the alternative, liquidated damages in an amount equal to the City's actual expenses incurred in moving its operations, including the cost of the land needed for the move.

- (c) In addition, the purchase agreement shall provide for the environmental remediation as follows. The City and NWD will agree to work cooperatively to seek a grant from Clean Ohio or any other appropriate entity to pay for the costs of the remediation. If the parties are unsuccessful in obtaining a grant for the remediation, the parties agree that NWD may use the Environmental Remediation fund identified in Section 2.5(d) below. The parties acknowledge that the first priority for this fund is the land known as the former Pen Site, bounded on the north by railroad tracks, on the east by John H. McConnell Boulevard, on the west by Neil Avenue and the south by Spring Street. Remediation of the City Property will be the next priority. Remediation to the City Property from the Environmental Remediation Fund shall be limited to \$250,000 if the first priorities described above are not completed at the time NWD needs to remediate the City Property. To the extent that remediation costs exceed the amount of the Environmental Remediation fund, the City agrees to reimburse NWD for out-of-pocket expenses for the remediation incurred within two years after closing, up to the cost of the purchase price of the City Property. Without limiting the foregoing, if there are funds remaining in the Environmental Remediation fund after satisfaction of the Pen Site property and the City Property, the Parties agree that NWD will have the right to use any such remaining funds to pay for any unsuitable soils conditions existing on the Jaeger Property.

1.3 Maintenance Agreement. The Parties will enter into a contract that provides for NWD to be responsible for routine landscape maintenance of the park to be constructed pursuant to Section 2.2(b) below.

## **II. City Cooperation and Commitments to NWD**

2.1 Public Infrastructure Improvements to be paid for by the City.

(a) The City will enter into reimbursement agreements with NWD to complete certain public improvements in the Pen West area, which improvements will be completed on or before July 1, 2014. The improvements described in this Section 2.1 include the following:

Hocking St. Improvements	\$998,045
MELP duct bank in W. Nationwide	\$1,098,158
MELP duct in Hocking St.	\$359,830

(b) The City will replace watermains located in the area generally bounded by the Scioto River, Nationwide Boulevard, the railroad, and Spring Street, which work will be completed on or before July 1, 2014. The City will initiate design to determine sizing and location. The City will reline Franklin Main Sewer on or before July 1, 2014.

2.2 Public improvements to be paid for by the 4 TIFs.

(a) The City will enter into a reimbursement agreement with NWD whereby NWD will make improvements to West Nationwide Blvd including a traffic signal at Hanover/ Spring/Long (approximately \$3,595,995), which improvements will be completed on or before July 1, 2015 NWD will be reimbursed by TIF proceeds consistent with the 2009 TIF Reimbursement Agreement.

(b) The City will enter into a reimbursement agreement with NWD whereby NWD shall develop a park on the portion of the City-owned property located north of Nationwide Boulevard (which may include the City Property if NWD elects not to purchase such property as set forth in Section 1.2 above). The park improvements will be completed by July 1, 2015. NWD will have the right to determine the design of the park in its sole discretion; however, it will allow the City to have input into the planning process. NWD will be reimbursed by TIF proceeds from the 4 TIFs, to the extent available. In the event the City requests NWD to construct a boat launch in the park, the City shall pay for the cost to design and construct the boat launch.

(c) Additional public improvements (roads and utilities) will be necessary for the development of the Property. Pursuant to the 2009 TIF Agreement, NWD may propose additional public improvements necessary to develop the property. Subject to approval by the City, which will not be unreasonably withheld (provided the improvements are qualifying improvements), NWD and the City will enter into future reimbursement agreements for such improvements as set forth in the 2009 TIF Agreement.

2.3 Other improvements to City-owned property located in the Pen West area.

(a) The City agrees to vacate its buildings and operations located at 640-64 West Nationwide Boulevard (PID 010-008300) on or before July 1, 2014, to permit NWD to complete demolition, provided that NWD enters into a binding purchase agreement as set forth in paragraph 1.2. With regard to its operations located on the park and boat launch parcel (PID 010-238618), the City agrees to make reasonable accommodations regarding access so that NWD may construct the park.

(b) The City recognizes that it needs to improve or remove its buildings on the south side of Nationwide Boulevard and intends to do so. However, the City needs to evaluate the cost of the various options before it can commit to a specific solution. The City will complete the evaluation and the appropriate improvements or demolition on or before July 1, 2015.

(c) The City will demolish the old pump station at the end of Nationwide Boulevard, which demolition will be completed on or before July 1, 2014.

2.4 Property Tax Abatement. The City will provide NWD with a 10-year, 100% property tax abatement for the Property for residential use.

2.5 Other City Cooperation.

(a) The City will use its best efforts to obtain clean fill for the Jaeger Property, but at no cost to the City. It will encourage its contractor on the OARS project to provide fill, and will work with ODOT and Kokosing to have Kokosing provide 4 to 6 feet of fill to the site, compacted to ODOT standards. NWD and Kokosing and/or other contractors will need to enter into an agreement regarding

access, compaction, etc. The City is not responsible for providing this fill or providing any compaction of it.

(b) The City will designate the Pen West area as an underground utility district for future utilities, subject to City Council approval.

(c) NWD anticipates it may need variances from the City's stormwater drainage manual. The City agrees to work with NWD through its normal variance process. The City will meet with NWD as soon as NWD has sufficient information regarding the specifics of its variance request. The City will support NWD's request to Ohio EPA that, for purposes of calculating the amount of impervious surface, the original footprint of the Property should be considered.

(d) The City and NWD agree to amend the Environmental Remediation Fund established by the 1998 Arena District Development and Reimbursement Agreement to include the Property. This will allow NWD to use the fund to remediate the property, remove obstructions and/or correct any unsuitable soil conditions located on the Property.

### **III. Mutual Obligations**

3.1 City's Obligation. The City's commitments described in Sections 2.1 through 2.5 are conditioned on NWD acquiring the Jaeger Property. Further, the financial obligations of the City under this Agreement are expressly subject to Columbus City Council approving the financial obligations hereunder and the certification of the Columbus City Auditor under Section 159 of the Columbus City Charter and no parties shall have claims in law or equity to enforce the provisions of this Agreement requiring such expenditures until the aforesaid acts have occurred.

3.2 NWD's Obligation. NWD's commitment to acquire the Jaeger Property as described in Section 1.1 is conditioned on the City providing all of the incentives described in Sections 2.1 through 2.5.

### **IV. Miscellaneous**

4.1 Entire Agreement. This Agreement constitutes the entire agreement between the City and NWD concerning its subject matter, and there are no other agreements, promises, terms, conditions, or understandings, either oral or written,

between them concerning the matters addressed herein other than those herein set forth. No subsequent alteration or amendment to this Agreement shall be binding upon the City or NWD unless in writing and signed by both the City and NWD. The parties expressly contemplate that they will be required to enter into formal amendments to existing agreements and/or new agreements in order to effectuate their respective commitments.

4.2 Governing Law. This Agreement shall be construed under and in accordance with the laws of the State of Ohio.

[Signatures on next page]

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed effective as of the day and year last written below.

**NWD INVESTMENTS, LLC,**  
**By: Nationwide Realty Investors, Ltd.,**  
**its manager and member**

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

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

Its: \_\_\_\_\_

**CITY OF COLUMBUS, OHIO**

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

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

Its: \_\_\_\_\_