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October 2, 2018

Via Certified Mail

The City of Scottsdale
3939 Drinkwater Boulevard
Scottsdale, Arizona 85251
Attn: Planning and Development Services Director

Dear Sirs:

On behalf of Nationwide Realty Investors, Ltd., I am hereby submitting the attached document for approval as the "ECR" referred to in Sections 6.1 and 8 of the Crossroads East Planning Unit V Development Agreement.

Very truly yours,



James R. Huntwork

JRH/eh
enclosure:
cc: City Attorney via certified
cc: Mr. Joseph Padilla, Esq. via email

**MASTER DECLARATION OF EASEMENTS, COVENANTS,
CONDITIONS AND RESTRICTIONS**

THIS MASTER DECLARATION OF EASEMENTS, COVENANTS, CONDITIONS AND RESTRICTIONS (this "Agreement") is made and entered into this ____ day of _____, 2018 by NWGH, LLC, a Delaware limited liability company ("Master Developer") and NATIONWIDE REALTY INVESTORS, LTD., an Ohio limited liability company ("NRI").

RECITALS

A. Master Developer is the owner of fee title to and/or the holder of a certificate of purchase for the real property situated in the City of Scottsdale, Maricopa County, Arizona, being legally described on Exhibit "A" attached hereto (the "Master Developer Parcel"). NRI is the owner of fee title to and/or the holder of a certificate of purchase for the real property situated in the City of Scottsdale, Maricopa County, Arizona, being legally described on Exhibit "B" attached hereto (the "NRI Parcel"). The Master Developer Parcel and the NRI Parcel are collectively referred to herein as the "Development"). Any current and future portion of the Development which constitutes a separate tax parcel (including, but not limited to, the Master Developer Parcel and the NRI Parcel) shall be referred to herein as a "Parcel".

B. It is intended that each Parcel shall operate in conjunction with each other Parcel as integral parts of an integrated commercial development.

C. In order to facilitate the commercial development of the Development, it is necessary to create certain covenants, agreements and easements in, to, over and across the Development.

D. Master Developer and NRI desire to provide for (i) the use of the Development as an integrated commercial development, (ii) the creation of necessary easements, covenants and restrictions and (iii) the imposition of certain rights, privileges, obligations and duties with respect to the Development.

NOW, THEREFORE, in consideration of the above premises and of the easements, covenants, conditions and restrictions herein contained, each of Master Developer and NRI hereby declares, reserves, grants, covenants and agrees that the Development and all present and future Owners of any Parcels within the Development or any part(s) thereof shall be subject to the following declarations, easements, covenants, conditions and restrictions set forth in this Agreement:

1. **Definitions.** For purposes hereof:

- (a) "ASLD" shall mean the Arizona State Land Department.
- (b) "Building Owner" shall mean an Owner of a Building Parcel.
- (c) "Building Parcel" shall mean a Parcel other than (i) a Residential Parcel, (ii) an Undeveloped Parcel, or (iii) a Parcel used primarily for parking (e.g. a structured parking facility or a surface parking lot).
- (d) "City" shall mean the City of Scottsdale, Arizona.
- (e) "Crossroads East Agreement" shall mean that certain Third Amended and Restated Development Agreement between ASLD and the City, dated as of _____, designated as Contract No. 2002-141-COS-A#, which is of record at _____, in the records of Maricopa County, Arizona, as the same may be amended and modified from time to time.
- (f) "Default Interest" shall mean the "prime" or "base lending rate" announced from time to time by Huntington National Bank, Columbus, Ohio or its successor, plus three percent (3%).
- (g) "Development Acreage" shall mean the sum of (i) the total acreage of all Building Parcels in the Development; plus (ii) 50% of the total acreage of all Residential Parcels in the Development; plus (iii) 20% of the total acreage of all Undeveloped Parcels in the Development. Any surface parking lots located on a Building Parcel or a Residential Parcel shall be included in the acreage calculation for such parcel. The area of any structured parking facility located on a Building Parcel or a Residential Parcel shall not however be included in the acreage calculation for such parcel.
- (h) "Development Agreements" shall mean the Crossroads East Agreement and the PUV Agreement.
- (i) "Development Plan" shall mean the Development Plan and Stipulations for Planning Unit V adopted in the Zoning Case and Ordinance No. 4347.
- (j) "Legal Requirements" shall mean all laws, ordinances, codes, rules and regulations of all applicable public and quasi-public authorities, including, but not limited to, the City. Until the Zoning End Date, the term Legal Requirements shall also be defined to include all requirements of Master Developer contained within the Development Agreements.
- (k) "Owner" shall mean Master Developer, NRI and each future holder (as well as any successor, assign or grantee thereof) of (i) fee title whether by sale, assignment, inheritance, operation of law, trustee's sale, foreclosure, or otherwise to any Parcel that has been patented, or (ii) a certificate of purchase for any Parcel that has not been patented, but not including the holder of any lien or encumbrance on any Parcel.

(l) "Master Developer" shall mean NWGH, LLC. Master Developer shall retain the rights and obligations of Master Developer under this Declaration until such time as Master Developer shall, subject to the terms below, have conveyed all of its interest in the Development to other unaffiliated-owners or upon the designation of a successor, assign, or grantee as the "Successor Developer" in an instrument recorded in the records of Maricopa County, Arizona. In the event that Master Developer conveys all of its interest in the Development to other unaffiliated-owners but fails to contemporaneously assign its rights as "Master Developer" under this Agreement, then, subject to the terms below, a successor-Master Developer may be appointed by a writing executed by Owners holding not less than fifty (50%) of the Development Acreage of the Development, which instrument shall be recorded in the land records of Maricopa County, Arizona.

(m) "Parcel Common Areas" shall mean all roads, drives, parking areas, greenspace and/or landscaped areas and sidewalks located on a Parcel and that either exclusively or primarily serve such Parcel. The term Parcel Common Areas shall not include any Shared Facilities.

(n) "Permittees" shall mean the tenant(s) or occupant(s) of a Parcel, and the respective employees, agents, contractors, customers, invitees and licensees of (i) the Owner of such Parcel, and/or (ii) such tenant(s) or occupant(s).

(o) "Proportionate Share" of a Building Owner shall mean an amount equal to the total acreage of such Owner's Parcel, divided by an amount equal to the Development Acreage. "Proportionate Share" of a Residential Owner shall mean an amount equal to fifty percent (50%) of the total acreage of such Residential Parcel, divided by an amount equal to the Development Acreage. "Proportionate Share" of an Undeveloped Owner shall mean an amount equal to twenty percent (20%) of the total acreage of such Undeveloped Parcel, divided by an amount equal to the Development Acreage.

(p) "PUV Agreement" shall mean that certain Crossroads East Planning Unit V Development Agreement, dated as of _____, 2018 designated as Contract No. 2018-062-COS, which is of record at _____ in the records of Maricopa County, Arizona, as the same may be amended and modified from time to time.

(q) "Residential Parcel" shall mean a Parcel that consists of real property and improvements used primarily for residential purposes (for-rent or for sale) as well as any surface parking lots located on such Residential Parcel; provided however, a Residential Parcel shall not include a Parcel where the improvements consist of a hotel, motel, extended stay hotel, or short-term or extended-stay medical recovery facility.

(r) "Residential Owner" shall mean an Owner of a Residential Parcel.

(s) "Shared Facilities" shall mean all roads, drives, sidewalks, green space, landscaped areas (including irrigation facilities), open spaces, Development entry features and any such other similar areas located within the Development and designated from time to time as

a Shared Facility by Master Developer. The term Shared Facilities shall not include any Parcel Common Areas.

(t) "Shared Facilities Expenses" shall mean all reasonable costs and expenses to own, operate, manage, repair and maintain the Shared Facilities, including, without limitation: (i) utility charges; (ii) the cost of all gardening and landscaping; (iii) irrigation charges; (iv) the cost of equipment furnishing lighting; (v) the cost to repair and maintain perimeter walls or decorative fencing; (vi) the cost to provide security; (vii) fire, casualty and liability insurance, workers' compensation insurance costs, and other insurance costs covering the Shared Facilities (to the extent not otherwise covered by an Owner); (viii) the cost of day porter services; (ix) management and administration costs; (x) the cost to repair and maintain Development signage; (xi) reasonable reserves; (xii) the costs to maintain, repair and replace benches, trash cans and other fixtures located in the Shared Facilities; (xiii) amounts paid to discharge any lien or encumbrances levied against the Shared Facilities, or portions thereof; and (xiv) the cost of any other item or items incurred for any reason whatsoever in connection with the Shared Facilities or for the benefit of the Owners.

(u) "Undeveloped Owner" shall mean an Owner of an Undeveloped Parcel.

(v) "Undeveloped Parcel" shall mean a Parcel that consists of real property which has not received a certificate of occupancy or temporary certificate of occupancy and is not otherwise occupied as a residence or operating for business. An Undeveloped Parcel shall automatically be deemed a Building Parcel or Residential Parcel, as applicable, on the date on which a certificate of occupancy or temporary certificate of occupancy is issued for the improvements on such Parcel.

(w) "Zoning End Date" shall mean the day following which the Development Plan and Stipulations for Planning Unit V, approved by the City on _____, 2018 as Ordinance No. 4347 is no longer in effect.

2. Access, Signage, Maintenance, Irrigation Easements and Covenants.

(a) Access Easement. Each of Master Developer and NRI hereby declares, reserves and grants, in common with others entitled to use the same, perpetual non-exclusive easements for the passage of vehicles over and across the Parcel Common Areas of the Development, as the same may from time to time be constructed, maintained, modified, removed and relocated for such use, and for the passage and accommodation of pedestrians over and across the parking areas, private roads, driveways, and sidewalk areas of the Development, as the same may be constructed, maintained, modified, removed and relocated for such use, such easements to be for the benefit of each Owner and its Permittees. Notwithstanding the foregoing, if a Residential Parcel has gated areas which are only accessible to Residential Owners or lessees and their invitees, then no such vehicular or pedestrian access easement shall exist with respect to the restricted parking areas, driveways and sidewalk areas within such Residential Parcel(s) of the Development.

(b) Signage Easement. Each of NRI and Master Developer hereby declare, reserve and grant a non-exclusive perpetual easement to Master Developer in, over and through the Parcels for the purposes of installing, repairing, maintaining and replacing entry features, directional and way-finding signage, and such other signs for the Development as Master Developer deems necessary or appropriate in its sole discretion and utilities serving all such signage. Notwithstanding the foregoing, the access easement granted in this Section 2(b) shall be located only over those roads, driveways, sidewalks and related areas of the applicable portion of the Development necessary to access such entry features, directional and way-finding signage and such other signs.

(c) Maintenance Easement. Each of NRI and Master Developer hereby declare, reserve and grant a non-exclusive perpetual easement to Master Developer in, over and through the Parcels for the purposes of operating, managing, repairing and maintaining, or providing for the operation, management, repair and maintenance of all of the Shared Facilities of the Development. Notwithstanding the foregoing, the access easement granted in this Section 2(c) shall be located only over those roads, driveways, sidewalks and related areas of the applicable portion of the Development necessary to access such Shared Facilities.

(d) Parcel. Each Owner shall or shall cause its Parcel, including, but not limited to, all Parcel Common Areas located thereon, and the exterior of any buildings and all exterior improvements located on its Parcel to be operated, maintained, repaired and replaced in good condition and repair in a manner consistent with a first-class mixed-use commercial development and in compliance with all applicable Legal Requirements. Each Owner shall further cause the interior of any building located on its Parcel to be maintained in compliance with all applicable Legal Requirements.

(e) Damage or Destruction. In the event any building or other exterior improvement shall be damaged or destroyed by fire or other casualty (whether insured or not), the Owner upon whose Parcel such building or exterior improvement shall have been located shall promptly remove the debris resulting from such fire or other casualty and provide a sightly barrier, and within a reasonable time thereafter either (i) restore the building or exterior improvement so damaged to a condition consistent with the original plans and specifications for such buildings and other improvements with such changes as may be required by applicable laws or ordinances, (ii) erect other buildings or improvements in such location that are consistent with the original plans and specifications for the building or improvement so damaged with such changes as may be required by applicable laws or ordinances, or (iii) demolish the damaged portion and/or balance of the building or improvement and restore the cleared area to either a hard surface condition or a landscaped condition, in which event the area shall be maintained by the Owner of the respective Parcel in accordance with the standards set forth in Section 2(d) above.

(f) Irrigation. Each of Master Developer and NRI hereby declares, reserves, and grants, in common with others entitled to use the same, perpetual non-exclusive easements for the installation, maintenance, repair, replacement and relocation of landscape irrigation systems for the Shared Facilities of the Development, over, across and under each Parcel of the Development. Such irrigation systems shall be owned and maintained by Master Developer, its

successors, assigns or designees. Each Owner hereby covenants and agrees that it shall utilize such irrigation systems for such Owner's Parcel, and shall, at Master Developer's option, either be separately metered for each Parcel, or charged by proportionate share of the acreage of the Development served by such irrigation system. Notwithstanding the foregoing, the access easement granted in this Section 2(f) shall be located only over those roads, driveways, sidewalks and related areas of the applicable portion of the Development necessary to access such irrigation systems.

(g) Self Help. In the event an Owner or Permittee of an Owner (the "Defaulting Owner") fails to cure any default of its covenants and obligations set forth in this Agreement, including but not limited to, its obligations with respect to its Parcel and/or Parcel Common Areas, within thirty (30) days after receipt of notice from the Master Developer or another Owner within the Development (the "Aggrieved Owner"), or such longer period (not to exceed ninety (90) days) if such cure is promptly commenced and diligently prosecuted but cannot reasonably be cured within such thirty (30) day period, then the Aggrieved Owner and/or the Master Developer shall have the right to enter upon the Defaulting Owner's Parcel to cure such default and shall be entitled to reimbursement from the Defaulting Owner within thirty (30) days after receipt of an invoice for its reasonable costs incurred therewith, together with interest at the Default Rate.

(h) Compliance with Development Agreements. Each and every Parcel shall be transferred subject to the obligation that each Owner and the Permittee of such Owner shall comply with all requirements of the Development Agreements (including, but not limited to, compliance with the Development Plan), which requirements may be enforced directly by the City and ASLD against each Owner with respect to the Parcel(s) owned by such Owner and/or against each Permittee with respect to the Parcel(s) leased by such Permittee. The terms of this Section 2(h) shall not be applicable following the Zoning End Date.

(i) Standard. Without limiting the generality of the covenants contained in this Section 2, to the extent Master Developer, or any entity that controls, is controlled by or is under common control with Master Developer ("Master Developer Affiliate"), owns any portion of the Development, Master Developer shall determine whether any Parcel Common Areas and/or any Parcel (including, but not limited to, the exterior of any building within the Development) is being maintained in a manner consistent with the terms of this Agreement.

3. Maintenance of Shared Facilities.

(a) Maintenance. Master Developer shall maintain, repair and replace the Shared Facilities in a timely and professional manner so as to keep the Shared Facilities in good condition and repair in a manner consistent with a first-class mixed-use commercial development and in compliance with all applicable Legal Requirements.

(b) Payment of Expenses. Each Owner, including Master Developer, as applicable, shall pay to Master Developer its Proportionate Share of the Shared Facilities Expenses. Notwithstanding anything to the contrary set forth herein, the Building Owners, the Residential Owners and the Undeveloped Owners (collectively, the "Responsible Parties") shall

be responsible for paying all Shared Facilities Expenses. On or before December 1 of each year, Master Developer will provide each Responsible Party with an estimate of its Proportionate Share of the Shared Facilities Expenses for the next succeeding calendar year, including an estimate of the Shared Facilities Expenses for the Development. Each Responsible Party shall pay one-twelfth (1/12) of such estimated annual obligation on the first day of each calendar month thereafter.

(c) Reconciliation. Within ninety (90) days after the end of each calendar year, Master Developer shall provide each Responsible Party a written summary of the actual Shared Facilities Expenses for the calendar year, determined on an accrual basis by Master Developer and broken down by principal categories of expense. The statement shall also set forth all amounts paid by each Responsible Party on account during such calendar year. In the event a Responsible Party paid less than such Responsible Party's Proportionate Share for such calendar year, that Responsible Party shall remit payment of the difference to Master Developer within thirty (30) days after the statement is provided. In the event a Responsible Party paid more than such Responsible Party's Proportionate Share for such calendar year, Master Developer shall apply the difference as a credit to the next payment of Shared Facilities Expenses due from such Responsible Party. Later delivery of the annual summary of Shared Facilities Expenses shall not relieve a Responsible Party of any obligation with respect to payment of its Proportionate Share thereof.

(d) Records. Master Developer shall keep its Shared Facilities Expenses records for the Development at its business offices and shall make such records available for inspection or audit by any Responsible Party, at such Responsible Party's sole cost and expense, at such offices upon written notice from such Responsible Party. At no time may a Responsible Party inspect or audit such records during Master Developer's annual corporate audit periods. A Responsible Party may inspect or audit Master Developer's records only for the Shared Facilities Expenses for the calendar year prior to such Responsible Party's notice. In the event the inspection or audit shall reveal that a Responsible Party paid an amount in excess of its Proportionate Share of the Shared Facilities Expenses for the applicable calendar year, then Master Developer will apply the difference as a credit to the next payment of Shared Facilities Expenses due from such Responsible Party. In the event such inspection or audit shall reveal that a Responsible Party paid an amount less than its Proportionate Share of the Shared Facilities Expenses, then that Responsible Party shall pay such difference to Master Developer immediately. In the event such inspection or audit shall reveal that a Responsible Party paid an amount in excess of its Proportionate Share of the Shared Facilities Expenses by more than five percent (5%), then Master Developer shall pay to the applicable Responsible Party the reasonable cost of said inspection or audit.

(e) Parking. Shared Facilities Expenses attributable to a Parcel used primarily for parking (e.g., a structured parking facility or a surface parking lot) shall be equitably allocated among the Building Parcel(s) and/or Residential Parcel(s) benefitting from such parking facility or lot; provided, however, any surface parking lot(s) located on either a Building Parcel and/or a Residential Parcel shall be maintained by the Owner of such Building Parcel or Residential Parcel, as applicable, at such Owner's expense.

4. Use.

No use or operation will be made, conducted or permitted on or with respect to all or any part of the Development, which use or operation is (i) not permitted by the Development Agreements, or (ii) listed as one of the General Prohibited Uses set forth on Exhibit "C". The terms of this Section 4 shall not be applicable following the Zoning End Date.

5. Improvements and Signage.

(a) Intentionally Deleted.

(b) Review of Plans. Prior to constructing, reconstructing, remodeling or improving any buildings, landscaping, lighting, signage (building or otherwise) or other improvements on a Parcel (collectively, the "Work"), the Owner of such Parcel shall submit to the Master Developer for approval, detailed exterior elevations, including materials and colors, footprint and site plan for all aspects of the Work ("Plans") depicting the Work in detail at least 30 days prior to the commencement of the Work. Master Developer shall review the Plans for compatibility and harmony of the Work with the other improvements in the Development, and may grant or withhold its approval in its sole discretion. No Work shall be performed except in strict accordance with the Plans that have been approved by Master Developer provided, however, any modifications, alterations or changes to the Plans that arise during the course of construction of the original improvements shall only be required to be approved if they are material in nature. Master Developer shall either approve the Plans or give its objections thereto along with a reasonably detailed explanation of such objections in writing within 30 days after receipt thereof. If no approval or objection is given in writing within said 30 day period, the person submitting such Plans may give a second written notice, and if such second written notice expressly calls attention to the automatic approval process of this section, and if no written response is provided within five (5) days after receipt of the second written notice, the Plans will be deemed approved as submitted. If Master Developer rejects the Plans, the person submitting the Plans and Master Developer may mutually consult and the person submitting the Plans shall revise the same in accordance with the requirements of the Master Developer. Approval of Plans by Master Developer shall not constitute assumption of responsibility for the accuracy, sufficiency, or propriety thereof, nor shall such approval constitute a representation or warranty that the Plans comply with applicable Legal Requirements.

(c) Encroachment Easement. In connection with any construction or repair work to be performed on the Development, Owners hereby grant Master Developer the right to grant temporary easements for incidental encroachments upon a Parcel of another Owner which may occur as a result of the use of ladders, scaffolding, and similar facilities resulting in temporary obstructions of portions of the Parcel Common Areas, so long as their use is kept within the reasonable requirements of the construction or repair work being expeditiously pursued.

(d) Rooftop Equipment. Each Owner shall cause all rooftop equipment located on any building on its Parcel, and all dumpsters and refuse collectors located on its Parcel, to be screened in a manner reasonably satisfactory to Master Developer.

6. **Indemnification and Insurance.**

(a) **Indemnification.** Each Owner or its designated Permittee shall indemnify and hold each other Owner and their Permittees harmless (except for loss or damage resulting from the tortious acts of such other Owner or its Permittees, or their respective agents, employees or contractors) from and against any and all claims, judgments, damages, losses, liabilities and expenses, including reasonable attorneys' fees and court costs, in connection with loss of life, bodily injury and/or damage to property arising from or out of any occurrence on or about the Parcel(s) being maintained by such Owner or its Permittee, or occasioned in whole or in part by its gross negligence or intentional misconduct, or those of its agents, contractors, employees, tenants or licensees.

(b) **Insurance.** Each Owner or its designated Permittee shall obtain and maintain or cause to be maintained at all times commercial general liability insurance (or its equivalent) against claims on account of death, bodily injury or property damage that may arise from or be occasioned by the condition, use, operation, repair or maintenance of the Parcel Common Areas located on such Owner's Parcel, together with a contractual liability endorsement. Said insurance shall be maintained by a reputable insurance company or companies qualified and admitted in the State of Arizona. Such policy shall be for single minimum limits of not less than Three Million Dollars (\$3,000,000.00), subject to reasonable increases by Master Developer, consistent with then current industry standards. Such insurance with respect to the Parcel Common Areas of a Parcel shall name as additional insureds thereunder all of the other Owners and their respective first mortgagees and lessees, of whom shall have been notified in writing. Such insurance shall provide that the insurance may not be canceled without at least ten (10) days prior written notice being given by the insurer to each person or entity listed as an additional insured. Each Owner or Permittee of an Owner shall, upon written request from the other Owner or a Permittee, furnish to the Owner making such request certificates of insurance evidencing the existence of the insurance required to be carried pursuant to this Section. Notwithstanding the foregoing, each Owner of a Residential Parcel shall not be required to maintain liability insurance as required under this subsection (b) provided that the applicable condominium, homeowners or similar association for such Residential Parcel(s) maintains such insurance coverage.

7. **Real Estate Taxes and Assessments.**

Each Owner shall pay or cause to be paid directly to the applicable taxing authority the real estate taxes and assessments applicable to its Parcel prior to delinquency.

8. **Term.**

This Agreement shall be effective as of the date first written above and shall continue in full force and effect until the later of (i) the day that is eighty (80) years after the date first above written, and (ii) the Zoning End Date; provided, however, that the easements referred to in Section 2(a), (b) and (f) shall continue in full force and effect.

9. **Excused Postponement and Delays.**

An Owner shall be excused from performing any obligation or undertaking provided in this Agreement in the event and so long as the performance of any such obligation is prevented or delayed, retarded or hindered by Act of God, fire, earthquake, flood, explosion, actions of the elements, war, invasion, insurrection, riot, mob violence, sabotage, inability to procure or general shortage of labor, equipment, facilities, materials or supplies in the open market, failure of transportation, strikes, lockouts, action of labor unions, condemnation, requisition, laws, orders of governmental or civil or military or naval authorities, unusual weather conditions, or any other cause, whether similar or dissimilar to the foregoing, not within the reasonable control of such Owner.

10. **Covenants Running With the Land.**

(a) Each and every agreement, declaration, covenant, promise, undertaking, condition, easement, right, privilege, option and restriction made, declared, granted or assumed in this Agreement shall be an equitable servitude on the Development and shall run with the land and shall be binding upon and inure to the benefit of each Owner and such Owner's successors, assigns and grantees.

(b) All Permittees shall be subject to this Agreement. Except as expressly stated to the contrary herein, this Agreement shall confer no rights on any Permittees other than the Owner of the Parcels.

(c) The Parcels may be further subdivided from time to time by any of the respective Owners with the prior written consent of the Master Developer, which consent shall not be unreasonably withheld, conditioned or delayed. If any additional Parcels are so created, the provisions of this Agreement shall bind and burden such new Parcel(s) as if originally one of the Parcels contemplated hereby.

11. **Defaults.**

(a) **Notice of Default.** If any Owner shall default in the full, faithful and punctual performance of any obligation hereunder to be performed by such Owner, then the other Owners shall have all remedies available at law or in equity, provided that the defaulting Owner and its mortgagee (if the other Owner shall have been informed of the identity and mailing address of such mortgagee) shall have been given written notice of such default and (except in an emergency) such default shall have not been cured within thirty (30) days following receipt of such notice, as said thirty (30) day period may be reasonably extended for non-monetary defaults if necessary to cure such default, provided the defaulting Owner promptly commences such cure and thereafter diligently prosecutes same to completion.

(b) **Rights Cumulative.** All rights and remedies set forth in this Agreement shall be in addition to all rights and remedies available in law or in equity. All such rights and remedies may be exercised at one time or at different times and the exercise of one such right or remedy shall not preclude the exercise of any other. In addition to all other remedies it may have

at law or in equity, any non-defaulting Owner shall have (i) the right to have the actual or threatened violation of any provision hereof restrained by any court of competent jurisdiction, (ii) the right, but not the obligation, to perform such obligation on behalf of such defaulting party (including, but not limited to, the rights under Section 2(g)) and, (iii) the right, immediately upon written demand therefor, to be reimbursed by such defaulting party for the cost thereof, together with Default Interest, not to exceed the maximum rate permitted by law in the State of Arizona, and (iv) the right to seek specific performance. Any such claim for reimbursement, together with interest as aforesaid, shall be a secured right, and a lien therefor shall attach to the portion of the Parcel at issue and improvements thereon, if any, owned by the defaulting party effective upon recording of a notice thereof in the Maricopa County Recorder's office or in such other office as may from time to time by law be charged with maintaining the public records for recording purposes. However, such lien shall be subject and subordinate to the lien or charge of any bona fide mortgage upon the Parcel or any part thereof at any time given or made, as well as to any lease of the fee interest of the party in default entered into prior to the date of recordation of such notice. Upon the request of any bona fide mortgagee, any such lien holder shall execute and deliver reasonable documentation confirming or otherwise evidencing such subordination.

(c) Waiver. No delay or omission of any Owner in the exercise of any right accruing under any default of any other Owner shall impair any such right or be construed to be a waiver thereof. A waiver by any Owner of a breach or a default of any of the terms and conditions of this Agreement by any other Owner shall not be construed to be a waiver of any subsequent breach or default of the same or any other provisions hereof.

(d) No Right to Terminate Agreement. It is expressly agreed that no breach of the provisions of this Agreement shall entitle an Owner to cancel, rescind or otherwise terminate this Agreement, but such limitation shall not affect, in any manner, any other rights or remedies which an Owner may have hereunder by reason of any breach of the provisions of this Agreement. No breach of the provisions hereof shall defeat or render invalid the lien of any mortgage made in good faith and for value covering any portion of the Development and any improvements thereon, but the provisions of this Agreement shall be binding upon and effective against any Owner whose title is acquired by foreclosure, tax sale, or deed in lieu of foreclosure.

(e) Exculpation. If any Owner shall be an individual, joint venture, trust, tenancy-in-common, limited liability company, or partnership, general or limited, it is specifically understood and agreed that there shall be no personal liability on such individual, joint venture, trust, tenant-in-common, limited liability company, or partnership, or upon the venturers, members, trustees or beneficiaries of a trust, tenants-in-common, or partners (general or limited) of a partnership, in respect of any of the covenants or conditions of this Agreement or with respect to any negligent or tortious acts or omissions; and an Owner or Permittee shall look solely to the defaulting Owner's interest in the Development for the satisfaction of any judgments rendered against such Owner.

(f) Attorneys' Fees. If any person commences an action to enforce any provision of this Agreement, the prevailing party in any such action shall be entitled to collect from the other party reasonable attorneys' fees, costs and expenses incurred in connection with the prosecution or defense of such action.

12. **No Partnership.**

Each Owner shall conduct and operate its business in and upon the Development independently and nothing herein contained shall be construed as a partnership agreement or as to constitute the Owners as partners with respect to the conduct and operation of the Development or to establish a principal and agent relationship between the Owners or to constitute or be a joint venture.

13. **Notices.**

(a) All notices and demands herein required shall be in writing and shall be deemed properly given if sent by registered or certified mail, return receipt requested, or by a national or regional delivery service, such as FedEx, addressed to the Owners at the following notice addresses:

Master Developer: NWGH, LLC
c/o Nationwide Realty Investors, Ltd.
375 N. Front Street, Suite 200
Columbus, OH 43215
Attn: President and Chief Operating Officer

with a copy to:

Nationwide Realty Investors, Ltd.
375 N. Front Street, Suite 200
Columbus, OH 43215
Attn: Legal Department

NRI: 375 N. Front Street, Suite 200
Columbus, OH 43215
Attn: President and Chief Operating Officer

with a copy to:

Nationwide Realty Investors, Ltd.
375 N. Front Street, Suite 200
Columbus, OH 43215
Attn: Legal Department

(b) An Owner may designate or change the address to which notices to it are to be sent by written notice to the other Owner(s) of such change.

(c) All notices given hereunder must be in writing and shall be deemed to have been given, delivered or made, as the case may be, (i) when delivered by personal delivery, (ii) three (3) business days after having been deposited in the United States mail, certified or registered, return receipt requested, sufficient postage affixed and prepaid, or (iii) one (1) business day after having been deposited with an overnight courier service, addressed to the party to whom notice is intended to be given at the address set forth above (or such other address as such party has designated in writing).

14. **Estoppel Certificates.**

Within twenty (20) days following receipt of written request therefor, each Owner shall deliver to the requesting Owner, or to any mortgagee or prospective mortgagee or purchaser of an Owner or lessee of an entire Parcel, an estoppel certificate stating as of the date of such certificate whether the Owner to whom request has been directed has knowledge (a) of any default (following the expiration of all applicable notice and cure periods) under this Agreement (and if there are any defaults, specifying the nature thereof and the date thereof); (b) of any assignment, modification or amendment in any way of this Agreement (and if it has, then stating the date and nature thereof); (c) that this Agreement is in full force and effect; and (d) such other matters as may be reasonably requested. Such statement may be relied upon by the addressee of the estoppel certificate.

15. **Removal of Additional Property.** Notwithstanding the terms of Section 16 below, Master Developer hereby reserves the exclusive right to remove any property from the Development at any time during the Term of this Agreement as Master Developer desires.

16. **Amendments.** This Agreement may be amended, modified, terminated or waived (in whole or in part) by all of the affected Owners, provided Master Developer shall have approved such amendments, modifications, termination or waivers in writing. An amendment shall be effective when it is duly recorded in the office of the Recorder of Maricopa County, Arizona. Notwithstanding anything herein to the contrary, Master Developer may amend this Agreement in its sole discretion without the need for any approval or consent from the Owner of any Parcel; provided, however, any amendment to this Agreement that materially adversely impacts the rights or obligations of any Parcel hereunder shall not be binding on that Parcel without the consent of the Owner of such Parcel to the amendment. The term "materially" as used in this provision shall include, but not be limited to, any material increase in monetary obligations to an Owner. Notwithstanding the foregoing, prior to the Zoning End Date, this Agreement may not be amended, modified, terminated or waived (in whole or in part) to alter the provisions of Section 3 requiring Master Developer to retain ultimate responsibility for maintaining and repairing the Shared Facilities or any provisions requiring compliance by Master Developer, any Parcel, any Owner and/or any Permittee with the terms of the Development Agreements without the prior written consent of the City and ASLD.

17. **Rights of City.** Each and every Parcel shall be transferred subject to the condition that the Master Developer has full power and responsibility for (i) managing the development and maintenance of the Development in accordance with the terms of the Development Agreements, (ii) being the primary point of contact with the City and ASLD

(subject to the Master Developer's right to appoint a successor point of contact under the Development Agreements), and (iii) requiring compliance with the approved zoning and the Development Agreements. In addition, each and every Parcel shall be transferred subject to the obligation under the Development Agreements for the Master Developer to timely and completely do, perform and observe each material provision of the Development Agreements and this Agreement, including, but not limited to, notifying any Owner in violation of the requirements of the Development Agreements and undertaking and commencing to exercise and duly prosecute all appropriate remedies. Each Parcel is transferred subject to the restriction that following any material Event of Default under the Development Agreements by Master Developer or any Owner (which default continues beyond the expiration of any applicable notice and cure periods contained therein), the City shall have all rights and remedies available to it under such Development Agreements, including, but not limited to its rights under Section 12.2 of the PUV Agreement, which includes the right to issue a stop work order and/or refuse to issue any permits or process development applications for all or any portion of a Parcel(s) that is owned by an Owner or the Master Developer which is so in default. The terms of this Section 17 shall not be applicable following the Zoning End Date.

18. **Miscellaneous.**

The Section headings are included only for convenience and shall be disregarded in the construction and interpretation of this Agreement. The validation of any of the provisions contained in this Agreement, or of the application thereof to any person by judgment or court order, shall in no way affect any of the other provisions hereof or the application thereof to any other person; and the same shall remain in full force and effect. All Exhibits attached to this Agreement are hereby made a part hereof.

[End of text; signatures follow on next page]

IN WITNESS WHEREOF, each of the Master Developer and NRI has executed this Agreement as of the date first written above.

Master Developer:

NWGH, LLC, an Ohio limited liability company

By: Nationwide Realty Investors, Ltd.,
an Ohio limited liability company, its member
and manager

By: _____
Name: _____
Title: _____

STATE OF OHIO)
) ss:
COUNTY OF)

On the ____ day of _____, 2018, before me, the undersigned, a Notary Public, personally appeared Brian J. Ellis, to me personally known, who by me duly sworn, did say that he is the President and Chief Operating Officer of Nationwide Realty Investors, Ltd., an Ohio limited liability company and member and manager of NWGH, LLC, a Delaware limited liability company, and that said instrument was signed by him on behalf of the company, and as the free act and deed of said company.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed by official seal in said County and the day and year in which this certificate first above written.

Notary Public

[NOTARY SEAL]

My commission expires: _____

NRI:

Nationwide Realty Investors, Ltd.,
an Ohio limited liability company

By: _____

Name: _____

Title: _____

STATE OF OHIO)
) ss:
COUNTY OF)

On the ____ day of _____, 2018, before me, the undersigned, a Notary Public, personally appeared Brian J. Ellis, to me personally known, who by me duly sworn, did say that he is the President and Chief Operating Officer of Nationwide Realty Investors, Ltd., an Ohio limited liability company, and that said instrument was signed by him on behalf of the company, and as the free act and deed of said company.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed by official seal in said County and the day and year in which this certificate first above written.

Notary Public

[NOTARY SEAL]

My commission expires: _____

Pursuant to Section 6.1 of the PUV Agreement, the City of Scottsdale, Arizona hereby confirms that this Agreement constitutes the ECR, as such term is defined in the PUV Agreement, and satisfies all applicable requirements of the PUV Agreement with respect thereto.

CITY OF SCOTTSDALE, ARIZONA,
a municipal corporation

By: _____
W. J. "Jim" Lane, Mayor

ATTEST:

Carolyn Jagger, City Clerk

APPROVED AS TO FORM:

OFFICE OF THE CITY ATTORNEY

Bruce Washburn, City Attorney

Prepared by and after recordation return to:

Nationwide Realty Investors, Ltd.
325 N. Front Street, Suite 200
Columbus, Ohio 43215
Attention: Janice L. Gresko, Esq.
Document Number: 389225

Version: 1

EXHIBIT A

Legal Description of Master Developer Parcel

EXHIBIT B

Legal Description of NRI Parcel

EXHIBIT C

General Prohibited Uses

1. Any public or private nuisance.
2. Any noise or sound that is objectionable due to intermittence, beat, frequency, shrillness or loudness.
3. Any obnoxious odor.
4. Any noxious, toxic, caustic or corrosive fuel or gas.
5. Any dust, dirt or fly ash in excessive quantities.
6. Any fire, explosion or other damaging or dangerous hazard, including the storage, display or sale of explosives or fireworks.
7. Any warehouse (but any area for storage related to any use which is not prohibited, and any area for the storage of goods intended to be sold at any retail establishment on the Parcels, shall not be deemed to be a warehouse), assembly, manufacture, distillation, refining, smelting, agriculture or mining operations; provided that the foregoing shall not apply to manufacture, brewing and/or distillation of malt beverages, alcoholic beverages and/or other spirits.
8. Any mobile home or trailer court, labor camp, junk yard, stock yard or animal raising (excluding domestic animals that are typically kept indoors as pets (i.e., dogs, cats, fish) and that are not being bred or raised for commercial purposes).
9. Any drilling for and/or removal of sub-surface substances.
10. Any dumping of garbage or refuse.
11. Any funeral establishment, mortuary or similar service.
12. Any automobile body and fender repair work; provided that the foregoing shall not apply to body and repair work being performed in conjunction with the operation of a new or used car dealership.
13. Any shooting gallery, gun range or target range.
14. Any prostitution or "adult" peep shows, pornographic book stores or pornographic novelty shops.
15. Any abortion clinic.
16. The cultivation, processing, warehousing, distribution or dispensing of marijuana, including for medicinal purposes.

17. Any massage parlor (except for massage services by an operator of the type that is typically found in first class shopping centers or offered in connection with the operation of a beauty salon, health club, fitness center, medical office or day spa), topless bar, off-track betting or other gambling establishment (provided that the foregoing shall not prohibit the incidental sale of State of Arizona lottery tickets).