

OAKPARK DEVELOPMENT AGREEMENT

23RD THIS DEVELOPMENT AGREEMENT (the "Agreement"), effective as of the day of December, 2009, by and between the City of Mason, an Ohio municipal corporation having an address of 6000 Mason-Montgomery Road, Mason, Ohio 45040 (the "City"), and Al. Neyer, LLC, an Ohio corporation, having as address of 302 W. Third Street, Suite 800, Cincinnati, Ohio 45202 (the "Developer"), under the following circumstances:

WHEREAS, the City has a desire to create or preserve jobs and employment opportunities in the City; and

WHEREAS, the City and the Developer have a mutual interest in the master planning and development of the area along Western Row Road between I-71 and Old Western Row Road consistent with the City's Comprehensive Plan. This area branded as OakPark has been envisioned to be a vibrant mixed-use district to attract high quality office, and include office related amenities such as service retail and residential components; and

WHEREAS, Developer is committed to the OakPark vision and intends to express such commitment in its related real property holdings; and

WHEREAS, Developer or one of its affiliates is currently the owner of several parcels in the OakPark district. These parcels include: a.) 6.46+/- acres at the intersection of Cintas Boulevard and Western Row Road; b.) 11.31+/- acres on Cintas Boulevard; c.) 31.68+/- acres at the intersection of Innovation Way and Western Row Road; d.) 16.05+/- acres on Innovation Way and; e.) 2.21+/- acres at the intersection of Old Western Row Road and Tylersville Road. This totals 67.71+/- acres (collectively known as the "Developer Controlled Parcels"); and

WHEREAS, the Developer will provide master planning services to cause the OakPark district to be developed.

NOW, THEREFORE, in consideration of the premises and mutual covenants and promises contained herein, the sufficiency of which is hereby acknowledged by the parties, the City and the Developer hereby agree as follows:

1. Development Site Property Acquisition. In order to create or preserve jobs and employment opportunities in the City, the City and Developer (and any affiliate of Developer which owns any part of the Development Site (as hereinafter defined)) agree to negotiate and enter into an Agreement of Purchase and Sale and Repurchase for the 31.68+/- acres at the intersection of Innovation Way and Western Row Road and the 16.05+/- acres on Innovation Way. This totals 47.74+/- acres ("Development Site"). This Real Estate Purchase Agreement with Repurchase Obligation and Put Option (the "Purchase Agreement") shall, at a minimum, include the following terms and conditions:

- a. The City will purchase from Developer and take title to the Development Site for the acquisition cost of \$62,500 per acre for a total of \$2,983,125 as adjusted based on the actual acreage of the Development Site.
 - b. The City will issue Financing Debt to provide the financing to acquire the Development Site. This financing will include 3 years of capitalized interest.
 - c. Developer will pay all maintenance costs (real estate taxes, legal fees, mowing, utilities to existing vacant residential home, etc.) associated with the Development Site during this 8 year period.
 - d. Developer will be required to repurchase the Development Site from the City over the 8 year period based upon a to-be-determined take-down schedule. The purchase price will be the original \$62,500 per acre acquisition cost of the City plus all associated carrying costs (legal fees, etc). The parties envision this take-down obligation to be scheduled in years 4 through 8 with any earlier purchases to offset the required scheduled purchases.
 - e. In the event that the Financing Debt contemplated by Section 3 of the Purchase Agreement cannot be sold in the commercial market within one hundred and twenty (120) days after the City closes on its purchase, Developer will agree to repurchase the entire Development Site for the original purchase price plus any demonstrated carrying costs of the City.
2. Master Planning Services. The Developer shall provide master planning services for the OakPark district, which includes approximately 200 acres of land, some of which is owned by Developer and some of which is owned by unrelated third-parties, but all of which shall be included in the master planning services and marketing efforts. Such master planning services shall, in general, include the following:
- a. Branding and identification of the Development Site and the City of Mason as the OakPark district.
 - b. The performance of master planning services more fully set forth in the Services Summary attached hereto as Exhibit A and incorporated herein by reference (the "Services Summary").
 - c. Developer shall initiate the master planning services within thirty (30) days of the execution of this Agreement and shall substantially complete the master planning services within eight months from the execution of this Agreement.
3. Cost and Expense of Master Planning Services. Developer shall be responsible for all master planning costs incurred in the performance of the services set forth in Section 2 hereto, including the Services Summary, which costs shall include all costs incurred by all consultants engaged in the performance of such services, including

entities affiliated with Developer and all other third party services providers. The City shall reimburse Developer for up to one-third of the costs and expenses of the master planning services, but in no event shall the City's reimbursement exceed \$70,000.

4. Ancillary Developer Services. In addition to the items set forth in Sections 1, 2, and 3 hereto, the Developer shall perform the following acts in connection with the development of OakPark:

a. Lead the OakPark master planning/visioning process. This will include creation of the proposed development plan for all Developer Controlled Parcels. The resulting marketing collateral for the project should be adequate enough to convey the vibrant office, mixed-use development and may require development plan scenarios on non-developer controlled properties within the district. The City shall be an active participant in this process and shall have final reasonable approval authority of the development plan prior to any implementation of the plan by Neyer.

b. Solicit market knowledge from the real estate brokerage community throughout the master planning process.

c. Lead the creation of the marketing plan/materials for OakPark. This will include a written marketing plan, OakPark branding, renderings, etc. The City shall be an active participant in this process and shall reasonably approve all marketing material prior to distribution.

d. Actively market OakPark utilizing the real estate brokerage community, City relationships and Developer relationships/reputation.

e. Develop the Developer Controlled parcels in a manner consistent with the City's Comprehensive Plan and more specifically consistent with the to-be-created development plan which will incorporate a design for ideal users, such as corporate, class A office, high-tech development, complimented with service retail and residential and that would serve as consistent companion development to the areas surrounding OakPark. Developer agrees to consult with the City and incorporate City input in this to-be-created development plan. The parties agree that 16.05 acre parcel on Innovation Way is not included in the OakPark plan and will continue to be marketed for high tech users such as Intelligrated, Fujitec, etc. within the current zoning on the property.

f. Assist the City in communication with surrounding property owners, businesses and residents on the vision for OakPark.

g. Developer further agrees to dedicate, by appropriate instrument or instruments, all real property as determined to be necessary as right of way for the proposed future construction of a full interchange at Western Row Road and I-71. Developer further agrees to grant an additional easement for the current access

road which may be required to be relocated as a result of any proposed future construction of a full interchange at Western Row Road and I-71. Said dedication shall be made at such time as determined by the City, by December 31, 2012 or prior to Developer transferring the property, whichever occurs at the earliest time.

5. Ancillary Obligations of the City. In addition to the City's obligations set forth in this Agreement, the City shall:

a. Support and continue to work with the Ohio Department of Transportation, Warren County, Deerfield Township and local businesses and residents in an effort to have the Ohio Department of Transportation and other applicable governmental entities construct a full north- and southbound interchange at I-71 and Western Row.

b. Assist Developer in the master planning and marketing processes as discussed above.

c. Cooperate with Developer in the zoning required to fulfill the OakPark vision. However, the parties acknowledge and agree that nothing in this Agreement shall guarantee any request(s) for zoning changes, variances, or related requests. Any master plan created for OakPark shall be consistent with the City's Comprehensive Plan and follow standard development procedures of Planning Commission and City Council review and approval.

d. Lead the effort to communicate the OakPark vision with surrounding property owners, businesses and residents.

e. Participate in the cost of the required public infrastructure (streets, utilities, traffic control, etc.) within OakPark where applicable utilizing TIF, grants, etc.

f. Work with the Developer to support and create a "City of Mason Gateway" at the Western Row and I-71 intersection.

6. Notices. Any notice or consent required or permitted to be given by or on behalf of either party to the other shall be given by mailing such notice or consent by United States certified or registered mail, postage prepaid and return receipt requested, or via a reputable express overnight mail service which provides proof of delivery addressed to the parties as set forth below or at such other address as may be specified from time to time in writing delivered to the other party. Notices shall be effective upon receipt or refusal, as the case may be.

If to the Developer: Al. Neyer, Inc.
302 West Third Street, Suite 800
Cincinnati, Ohio 45202
Attn: Mr. Christopher P. Dobrozsi

If to the City: City of Mason
 6000 Mason-Montgomery Road
 Mason, Ohio 45040
 Attn: Mr. Eric Hansen

7. Miscellaneous.

a. Conflict of Interest; Representatives of the City Not Individually Liable. No official or employee of the City shall have any personal interest, direct or indirect, in this Agreement, nor shall any such official or employee participate in any decision relating to this Agreement which affects his or her personal interests or the interest of any corporation, partnership, or association in which he or she is, directly or indirectly, interested. No official or employee of the City shall be personally liable to the Developer, or any successor in interest, in the event of any default or breach by the City or for any amount or amounts which may become due to the Developer or any successor to the Developer or on any obligations under the terms and conditions of this Agreement.

b. Non-Merger by Operation of Deed. None of the provisions of this Agreement are intended to or shall be merged by reason of any deed transferring title to the real property comprising the Development Site, and any such deed shall not be deemed to affect or impair the terms and conditions of this Agreement.

c. Severability. In the event that any portions, sections or subsections of this Agreement are rendered invalid by the decision of any court or by the enactment of any law, ordinance or regulation, such provision of this Agreement will be deemed to have never been included therein and the balance of the Agreement shall continue in full force and effect.

d. Duration. The term of this Agreement shall commence on the date set forth above and shall remain in effect and as a continuing obligation of the Parties until all parcels noted in Section 1 above have been transferred to Developer.

e. Waiver. No consent or waiver, expressed or implied, by either party to or of any breach of any covenant, condition, or duty of the other party shall be construed as a consent or waiver to or of any other breach of the same or any other covenant, condition or duty to be observed by the other party.

f. Authority. Each party to this Agreement hereby represents and warrants that it is executing this Agreement with the full and proper authority and that the parties whose names appear hereon are duly authorized and empowered to make and execute this Agreement.

g. Assignment. This Agreement shall be binding on the parties hereto and their respective successors and assigns. In the event the Developer assigns this Agreement, written notice of such assignment shall be provided to the City at least fifteen (15) business days in advance of such assignment. Any such assignment may only be made to a person or entity financially capable of completing the development plan described herein and shall expressly provide that the assignee shall comply with all the terms and requirements of this Agreement.

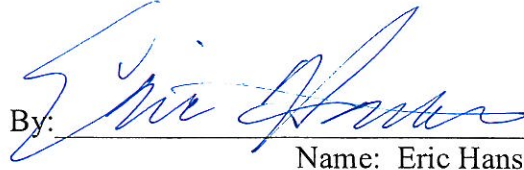
h. Merger and Amendment. This Agreement supersedes any and all other agreements, either oral or in writing, between the parties hereto with respect to the Development Site, and the development plan to be completed thereon, and contains all of the covenants, agreements, and other terms and conditions between the parties hereto with respect to the same. No waivers, alterations or modifications of this Agreement or any agreements in connection therewith shall be valid unless in writing and duly executed by all parties hereto. Any substantial waivers, alterations, or modifications of this Agreement will require the adoption of legislation by the Council of the City of Mason, which it exercises in its sole discretion and legislative prerogative.

i. Governing Law. This Agreement shall be governed by the laws of the State of Ohio.

j. Language. The language in all parts of this Agreement shall in all cases be construed as a whole according to its fair meaning and not strictly for nor against either the City or the Developer. Section headings in this Agreement are for convenience only and are not to be construed as a part of this Agreement or in any way defining, limiting or amplifying the provisions hereof. The City and the Developer agree that in the event any term, covenant, or condition herein contained is held to be invalid or void by any court of competent jurisdiction, the invalidity of such term, covenant, or condition shall in no way affect any other term, covenant, or condition herein contained. Terms used in this Agreement in capitalized form and not otherwise defined herein shall have the meanings given to such terms in the Purchase Agreement.

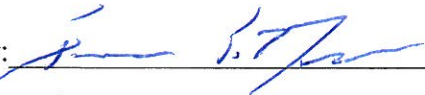
The Developer has caused this Agreement to be duly executed by JAMES T. NEYER its EXEC. VICE PRES., on the 23RD day of DECEMBER, 2009; and the City has caused this Agreement to be duly executed by Eric Hansen, its City Manager, on the 23RD day of DECEMBER, 2009, as authorized by Ordinance No. _____.

CITY OF MASON

By: 
Name: Eric Hansen

Title: City Manager

AL. NEYER, LLC


By: 
CPD

Name: **James T. Neyer**

Title: **Exec. Vice President**

STATE OF OHIO)
SS:
COUNTY OF HAMILTON)

The foregoing instrument was acknowledged before me this 23RD day of DECEMBER, 2009, by JAMES T. NEYER, EXEC. VICE PRESIDENT of Al. Neyer, LLC, an Ohio corporation.

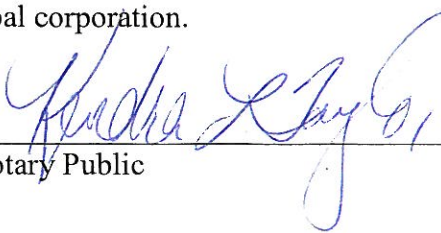

Notary Public



ANNE E. PIELAGE
NOTARY PUBLIC, STATE OF OHIO
MY COMMISSION EXPIRES 06-15-10

STATE OF OHIO)
SS:
COUNTY OF WARREN)


The foregoing instrument was acknowledged before me this 23RD day of December, 2009, by Eric Hansen, City Manager of the City of Mason, an Ohio municipal corporation, on behalf of the municipal corporation.


Notary Public



KENDRA L. TAYLOR
Notary Public, State of Ohio
WARREN COUNTY
My Comm. Expires June 30, 2010

APPROVED AS TO FROM FOR CITY BY:


Name: Jeffrey D. Forbes
Title: Assistant Law Director

691371.1

EXHIBIT A

SERVICES SUMMARY

Lead the OakPark Master Planning/Visioning Process.

Lead the creation of the OakPark Master Planning Team.

Interview and contract with third party master planning firm to assist in the process.

Lead the development of concepts for long term land use to optimize economic sustainability based upon (listed in no particular order):

- Market Study
- Transportation Improvements
- Land Parcel
 - Size
 - Visibility
 - Orientation
 - Drainage
 - Access
 - Circulation
 - Parking (and shared parking)
 - Services
- Combination and relationship between uses
- Zoning and regulatory factors
- Conjunction with Mason 2010 Comprehensive Plan

Lead the preparation of a final Master Plan that will include:

- Land Use diagram
- Pedestrian and Vehicular Circulation Plan
- Parking concepts
- Regulatory recommendations
- Infrastructure and service requirements
- Technical memorandum
- Conceptual building layouts
- Way finding signage concepts
- Architectural renderings of the final Master Plan including the Gateway.

Lead the creation of the OakPark logo.

Assist the City of Mason in the creation of the “City of Mason Gateway” at the I-71 and Western Row Road intersection.

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