

**REAL ESTATE PURCHASE AGREEMENT  
WITH REPURCHASE OBLIGATION AND PUT OPTION**

This Real Estate Purchase Agreement with Repurchase Obligation and Put Option (this "Contract") is entered into by and among the **CITY OF MASON, OHIO**, an Ohio municipal corporation which has a mailing address of 6000 Mason Montgomery Road, Mason, Ohio 45040 ("Mason"), **NEYER LAND HOLDINGS, I, LLC**, an Ohio limited liability company which has a mailing address of 302 West Third Street, Suite 800, Cincinnati, Ohio 45202 ("Neyer"), and **AL. NEYER, INC.**, an Ohio corporation with a mailing address of 302 West Third Street, Suite 800, Cincinnati, Ohio, 45202 with reference to the following:

**RECITALS:**

- A. Neyer owns certain real property consisting of approximately 47,754 acres of land (or that which is found to be the acreage by survey pursuant to Section 6(a)(ii)), which land shall not include any areas burdened by permanent right of way easement, nor any other areas located within any right of way, nor any paper street owned by Mason or Warren County, Ohio, or any other political subdivision, except as set forth in Exhibit C but shall, in no event, exceed 48 acres. The land consists of three tracts and is located at or near 3695 Western Row Road and Innovation Way, in Warren County, Ohio and as more particularly described collectively in Exhibit A attached hereto. Said land and all improvements thereon and all appurtenant rights, privileges, and easements thereto are hereinafter referred to as the "Property."
- B. Mason has determined to be a public purpose certain long-term strategic economic and development planning efforts related to the area known as OakPark, which includes a portion of the Property, and intends to make a good faith effort to create preserve or create jobs and employment opportunities within the City through the development of OakPark.
- C. Article VIII, Section 13 of the Ohio Constitution, in conjunction with Chapter 165 of the Ohio Revised Code grants municipalities the authority to give financial assistance to private industry in order to create new employment opportunities and to improve the economic welfare of the people of the state.
- D. Pursuant to said authority, Mason intends to issue debt securities pursuant to Chapter 165 of the Ohio Revised Code, in an amount not to exceed three million one-hundred thousand dollars (\$3,100,000) in furtherance of these long-term economic development goals.
- E. Mason has determined that providing financial assistance to Neyer through the transactions provided for in this Contract will facilitate positive long-term development planning and encourage the development of office, high-tech and commercial end-users that will benefit the people of the City of Mason by increasing opportunities for employment and strengthening the economic welfare of the City.
- F. Al Neyer, Inc is the manager of Neyer and owns a 100% interest in Neyer. Al Neyer, Inc. will guaranty Neyer's obligations as required under Section 21 hereof and is granting Mason the put options granted in Section 22 hereof, in order to induce Mason to purchase the Property from Neyer.

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which the parties hereby acknowledge, Mason, Neyer, and Al. Neyer, Inc. agree as follows:

1. PURCHASE AND SALE OF PROPERTY. Neyer agrees to sell to Mason, and Mason agrees to purchase from Neyer, the Property upon the terms and conditions set forth herein.

2. PURCHASE PRICE. The purchase price for the Property (the "Purchase Price") shall be \$62,500.00 per acre for an approximate total of \$2,984,625.00, based upon the approximate acreage total of 47.754, which purchase price shall be adjusted (increased or decreased) in accordance with the actual amount of acreage as finally determined by the survey to be obtained as provided for in Section 6(a)(ii) and shall be paid by Mason by bank or attorney's trust account check for the balance due at Closing (as defined in Section 7(a)). The parties acknowledge that Mason intends to pay the Purchase Price in cash and then subsequently issue debt securities (the "Financing Debt") to reimburse itself for the full purchase price.

3. ADDITIONAL PAYMENT OBLIGATIONS OF NEYER. The parties agree that the purchase of the Property by Mason and the repurchase obligation of Neyer in Section 16 hereof, are intended to provide financial assistance to Neyer with regard to the Property in order to provide Neyer time to commercially exploit the Property in ways that will encourage the development of office, high-tech and commercial end-users that will benefit the people of the City of Mason by increasing opportunities for employment and strengthening the economic welfare of the City. In return for said financial assistance Neyer hereby agrees to pay or reimburse Mason for the following costs and expenses of providing said financial assistance and carrying the Property until it is repurchased by Neyer:

(a) Neyer shall pay to Mason an amount equal to any and all interest payments on the Financing Debt, on any subsequent note, or on any other debt security issued by Mason relating to the reimbursement to Mason of the purchase price for the Property at least five (5) days before the due date for the payment of said interest; except that interest paid on the Financing Debt, any subsequent note or said other security for the first three years (from the issuance of the Financing Debt) shall not be reimbursed to Mason but an amount equal to said paid interest shall be added to the principal amount of the succeeding Financing Debt, subsequent note or other security.

(b) Neyer shall pay Mason interest at a rate of ten percent (10%) per annum on the Purchase Price for the period of time commencing on the date of Closing and ending upon Mason's receipt of proceeds from the sale of the Financing Debt (which is anticipated to be in January 2010) on a monthly basis, with the first payment due on January 7, 2010 and on the first of every calendar month thereafter.

(c) Neyer shall reimburse Mason for any reasonable market cost of issuance for the Financing Debt, for any subsequent note, or for any other debt security issued by Mason to reimburse Mason for the Purchase Price as reasonably determined by Mason and invoiced to Neyer after issuance of such debt instruments. Payment shall be made by Neyer within 15 days of receipt of said invoice.

(d) Neyer shall pay to Mason an amount equal to all real property taxes and assessments due on the Property or any portion thereof attributable to the periods that Neyer owned any of the Property prior to the Closing and to the period that Mason owned any of the Property. Mason shall send to Neyer all real estate tax bills sent to Mason on any of the Property; and Neyer shall send to Mason within thirty (30) days of the receipt of said tax bills the amount of real estate taxes and assessments on any of the Property indicated in said tax bills. Mason shall use said payments from Neyer to pay the real estate taxes and assessments on the Property as soon as practicable after receipt thereof from Neyer.

(e) During the term of this Agreement, Neyer shall be obligated to pay an annual financing fee to Mason for the debt facility provided for herein (the Financing Fee"). The Financing Fee shall be an amount equal to two percent (2.0%) of the outstanding amount of the Financing Debt, or any other debt security issued by Mason, as described in Section 3(a) hereof, on an annual basis upon the first issuance of that Financing Debt or said note and upon each anniversary thereof.

(f) Neyer shall pay all fees and costs for utilities relating to the existing residential house on the Property during the time that the Property is owned by Mason.

4. DELIVERY OF MATERIALS FOR REVIEW. Within seven (7) days after the Effective Date (as defined in Section 13), Neyer shall deliver to Mason for its review copies of the following materials, if available and not previously delivered, relating to the Property which are within Neyer's possession or reasonable control: (a) all written reports, tests and information regarding soil conditions, ground water, wetlands, underground tanks, subsurface conditions and/or other environmental conditions; (b) any environmental impact reports, licenses and permits required by any zoning or environmental laws; (c) any subdivision plans or plats and parcel maps; (d) the most recent owner's and lender's title insurance policies and commitments issued to Neyer and its mortgagee(s), with all subsequent or updated title commitments or reports surveyed after the issuance of such title policies and commitments, (e) the most recent property survey; (f) all leases or other agreements pursuant to which a person has a right of possession to all or a part of the Property, together with copies of any side letters, guaranties, notices, correspondence and other agreements relating thereto, and any amendments or modifications to any of the foregoing, and (g) all other information and legible copies of any documents that Mason requests.

5. WARRANTIES AND REPRESENTATIONS OF NEYER AND AL. NEYER, INC. As a material inducement to the execution and delivery of this Contract by Mason and the performance by Mason of its duties and obligations hereunder, each of Neyer and Al. Neyer, Inc. hereby makes the following representations, warranties and covenants as of the date of its execution of this Contract:

(a) Environmental Matters. To the best of its knowledge, (1) there has not been any release or unauthorized disposal, or any event at, on or in connection with the Property which would be deemed a release or unauthorized disposal, of any substance which is classified as a hazardous material, hazardous substance, toxic substance, solid or hazardous waste, pollutant or contaminant under any federal, state or local environmental law, ordinance, or

regulation ("Hazardous Material"), (2) the Property is not in violation of any federal, state or local environmental or health law, ordinance, regulation, order, no further action letter, covenant not to sue, or institutional control ("Environmental Law"), (3) the Property does not contain any petroleum products, asbestos, lead, PCBs or any other substance which is classified as Hazardous Materials, (4) no Hazardous Materials have been used, generated, stored, or disposed of on, under or about the Property, or transported to or from the Property in violation of applicable Environmental Laws, (5) there are no known underground storage tanks or associated piping systems at the Property, and (6) the Property does not include any significant amount of unsuitable earth "fill" or any area which is or has been used as a garbage or rubbish disposal site nor has it taken any action on, at or with respect to the Property which renders (1) through (6) above inaccurate. Neyer has received no verbal or written notice from any governmental agency of any investigation or proceeding by such agency concerning the presence or alleged presence of Hazardous Materials on the Property. In the event Mason incurs additional costs or expenses in connection with the removal of the improvements currently located on the Property as a result of the presence of asbestos, Neyer agrees to reimburse Mason for any reasonable actual costs or expenses incurred by Mason within thirty (30) days after receiving an invoice from Mason.

(b) Ownership of Property. Neyer has good title to the Property. Neyer, at its sole cost and expense, has obtained, or will obtain prior to Closing, all required consents, releases and permissions and will have complied with all applicable statutes, laws, ordinances and regulations of every kind and nature, to the extent necessary and/or required, in order to convey to Mason title to the Property free and clear of all easements, restrictions, agreements and liens set forth in Exhibit C.

(c) Tenants. No person other than Neyer has a right of possession to all or any part of the Property.

(d) Due Authorization; Enforceability; No Conflict. It has full power and authority to execute, deliver and carry out the terms and provisions of this Contract and has taken all necessary action to authorize the execution, delivery and performance of this Contract. The individual(s) executing this Contract on its behalf has/have the authority to bind it to the terms and conditions of this Contract. This Contract and all documents required hereby to be executed by it, when so executed, shall be legal, valid, and binding obligations of it enforceable against it in accordance with their respective terms. The execution and delivery of, and consummation of the transactions contemplated by, this Contract is not prohibited by, and will not conflict with, constitute grounds for termination for, or result in the breach of any agreement or instrument to which it is now a party or otherwise subject.

Each of Neyer and Al. Neyer, Inc. shall be deemed to have made the representations and warranties contained in this Section 5 again as of the time and date of the Closing, except that neither shall be in default hereof if any representation or warranty contained herein cannot be made at the Closing because of acts or fault of Mason.

6. CONTINGENCIES. Mason's obligation to purchase the Property is contingent, at the option of Mason, on the satisfaction or waiver by Mason of the contingencies described below ("Contingencies"). With respect to any Contingency, the satisfaction of which requires Mason's approval or determination, such matter shall be within Mason's sole discretion. All



Contingencies are solely for Mason's benefit, and may be waived only by Mason in writing. Neyer shall cooperate with Mason to allow Mason to satisfy or waive all Contingencies.

(a) Initial Contingency Period. Mason shall have until December 21, 2009, (the "Initial Contingency Period") within which to waive or satisfy the following contingencies:

(i.) Title. Mason shall use reasonable efforts to obtain, on or before December 21, 2009 (i) a commitment by or on behalf of the Chicago Title Insurance Company (the "Title Company") to issue an owner's policy of title insurance (the "Title Commitment") on the Property, together with legible copies of all documents underlying or relating to any exceptions to coverage shown on the Title Commitment. Mason shall be satisfied with the condition of title to the Property (including, without limitation, approval of all covenants, easements, restrictions, agreements and other matters of record relating to or which affect the Property), the assessments against and the zoning of the Property, and all other restrictions and conditions on the development and use of the Property.

(ii.) Survey. Mason shall have the right to obtain an A.L.T.A. survey of the Property (the "Survey") (i) sufficient to enable the Title Company to issue the Title Policy without exception for survey matters and otherwise acceptable to the Title Company and certified to Mason and Neyer. The Survey shall show the acreage and boundary lines of the Property and all improvements located thereon, the location of any and all easements and encroachments affecting the Property and the location of all curb cuts, public ways, streets and roads serving the Property and shall include the new legal description for the Property. Mason shall be satisfied with any matters revealed by the Survey as affecting the Property.

(iii.) Inspections, Property Condition. Mason may perform, at its option and expense, any and all inspections of the Property Mason deems necessary. Mason shall be satisfied with (i) the physical condition of the Property, including without limitation the access to the Property and soil conditions, (ii) the availability of utilities to the boundary of the Property for water, sewerage, and storm drain, (iii) the suitability of such utilities for the intended use of the Property, (iv) the cost of such utilities, (v) the drainage of the Property, and (vi) the zoning of and all other governmental laws and regulations applicable to the Property.

(iv.) Environmental Condition. Neyer acknowledges that Mason has hired or shall hire an environmental consulting firm ("Environmental Consultant") to conduct an environmental audit of the Property. If, in connection with such audit, the Environmental Consultant determines that the Property has been used for the storage or disposal of any materials which violate federal, state, local or regional statutes, ordinances, orders, judgments, rulings, or regulations relating to pollution or environmental matters and that such materials are present on, at or under the Property and either (A) further testing and investigation is necessary prior to the preparation by the Environmental Consultant of a remediation plan, or (B) the Environmental Consultant prepares a remediation plan and delivers same to Neyer, but Neyer does not agree in writing to perform all recommended work under such remediation plan, then this Contract shall be null and void and terminated.

(v.) City Council Authorization and Ordinance. Mason shall have obtained the authorization of the Mason City Council by duly executed Ordinance for the purchase of the property.

(b) Additional Contingency Period. Mason shall have until December 31, 2009, within which to waive or satisfy the following contingencies or give written notice as to why it is necessary to extend the date as it relates to any of the following contingencies. Said written notice shall include what needs to be done by whom, to resolve any issues:

(i.) Representations and Warranties. All representations and warranties of Neyer and Al. Neyer, Inc., set forth in this Contract being true and correct when made and at all times thereafter to and through the date of Closing.

(ii.) Title, Zoning, Environmental and Other Conditions. Any matters approved by Mason relating to title, zoning, environmental and the other contingencies set forth in Section 6(a) shall not have changed or been altered after the Approval Period (defined below) and prior to Closing, unless approved by Mason.

(iii.) Neyer's Obligations. Neyer having performed all of its obligations under this Contract required to be performed prior to or at Closing.

(c) Extension of Initial Contingency Period. If the Contingencies set forth in Section 6(a) above have not been waived or satisfied on or before the expiration of the Initial Contingency Period, the Initial Contingency Period may be extended by Mason until December 31, 2009, or until such Contingencies have been waived or satisfied by delivering written notice to Neyer on or prior to the expiration of the Initial Contingency Period.

(d) Termination or Satisfaction. If the Contingencies described in Section 6(a) have been satisfied or waived by Mason within the Initial Contingency Period (as may be extended pursuant to Section 6(c) above, Mason shall give Neyer notice thereof ("Issue Notice") within 3 days after the expiration of the Initial Contingency Period or the extended period (the "Approval Period"). If Mason does not provide Neyer with an Issue Notice within the Approval Period or the Contingencies set forth in Section 6(a) are not satisfied on or prior to the Closing, then the Contingencies described in Section 6(a) shall be deemed not satisfied and unless waived by Mason in writing, this Contract shall automatically terminate, and upon such termination the parties shall have no further rights or obligations whatsoever hereunder.

## 7. CLOSING; POSSESSION; FEES AND COSTS AND POST-CLOSING REQUIREMENTS.

(a) Closing. Mason's obligation to pay Neyer is contingent on satisfaction of the condition precedent that Neyer convey to Mason marketable title to the Property by general warranty deed (the "Closing"), free, clear and unencumbered except for easements and restrictions of record approved by Mason in writing as set forth in Section 6(a), tenants approved by Mason and real property taxes, if any, not delinquent on the date of the Closing (collectively, the "Permitted Exceptions/Encumbrances"). The Closing shall take place on or about December 31, 2009 unless both parties agree in writing to any such earlier date. (the "Closing Date") at the Mason Municipal Building, 6000 Mason Montgomery Road, Mason, Ohio, 45040 or at the offices of Wood & Lamping LLP, Suite 2500, 600 Vine Street, Cincinnati, Ohio 45202.

(b) Possession. Neyer shall deliver occupancy and possession of the Property to Mason at Closing, subject to Neyer's access to the Property as provided in Section 7(c).

(c) Neyer's Access to the Property Post-Closing. Neyer shall have access to the Property post-closing in order to maintain and market the Property. Neyer shall maintain the Property and shall pay all operating expenses associated with the maintenance and upkeep of the Property. Neyer shall pay all hazard, property, liability and casualty insurance, all utilities, and property taxes and assessments on the Property. In the event that Neyer fails to perform any of its obligations set forth in this Section 7(c), in addition to Mason's other remedies, Mason shall have the right to perform any such obligation on behalf of Neyer and Neyer shall reimburse Mason immediately upon demand for any lost or expense incurred by Mason in connection with such performance.

(d) Fees and Costs. Neyer shall pay (i) any and all conveyance fees required to be paid prior to or at the recording of the deed to be executed in favor of Mason, (ii) all deed preparation and title correction expenses, (iii) the cost of removing all encumbrances, except Permitted Exceptions/Encumbrances on the Property, (iv) the cost of Mason's owner's title insurance policy; (v) any fees for recording the general warranty deed, (vi) all closing costs, and (vii) any escrow fees to Escrow Agent.

(e) Hold Harmless/Insurance. After Closing and while Neyer has access to the Property, Neyer shall indemnify and hold Mason harmless against any liability for damage to the Property or injuries occurring on the Property. Neyer shall be responsible for the payment of all utility costs associated with the property. Neyer shall maintain liability/casualty insurance coverage in an amount not less than \$6,000,000.00, as well as coverage in the amount of \$10,000 for medical payments, and Neyer shall provide evidence of such insurance to Mason. Said insurance policies shall name Mason as an additional insured on these insurance policies and shall include a mechanism to provide Mason with notice of any nonpayment of premiums for these insurance policies and the ability to make said payments on Neyer's behalf.

8. REPURCHASE/BUY BACK ACCELERATION. Notwithstanding the provisions of the agreement to repurchase as set forth herein, Neyer shall repurchase and buy back the Property from Mason within one hundred twenty (120) days from the date of Closing, in the event that Mason is unable to place the initial Financing Debt in the market in order to reimburse Mason for the acquisition cost of the Property. The parties acknowledge and agree that initially the Financing Debt shall be a one-year note and will require annual reissuance.

9. CASUALTY & CONDEMNATION. If the Property or any material part thereof (i) is damaged by casualty or (ii) is taken or is the subject of a notice of a material taking by eminent domain prior to the Closing Date, Neyer shall promptly notify Mason. For the purpose of this Contract, a material casualty or taking is a casualty to or taking of a portion of the Property having a fair market value in excess of \$50,000. Within ten (10) days after such notice, Mason shall give notice that it elects to (a) terminate this Contract, in which event the parties shall have no further obligations hereunder, except those which expressly survive a termination, or (b) proceed to Closing, in which event Neyer shall pay over, to the extent already received, or

assign, to the extent not received, to Mason its rights to all insurance proceeds attributable to the Property arising from the casualty, together with a credit against the Purchase Price equal to the deductible amount and/or co-insurance amount under the applicable insurance policy, or pay over to the extent already received, or assign, to the extent not already received, to Mason all awards recovered or recoverable on account of such taking, as the case may be. If Mason elects to proceed under clause (b) above, Neyer shall not compromise, settle, or adjust any claims to such proceeds, or awards without Mason's prior written consent. If Neyer's notice is given within ten (10) business days prior to the Closing Date, the Closing Date shall be extended to a date three (3) business days after the expiration of Mason's ten business day period.

10. BROKERS' COMMISSIONS. Neyer shall protect and save harmless Mason against the claim of any broker allegedly hired by Neyer with respect to this Contract or the purchase and sale of any of the Property. Mason represents that it has not entered into an agreement with any broker with respect to this Contract or the purchase and sale of the Property.

11. ASSIGNMENT. None of Mason, Neyer, or A.I. Neyer, Inc. shall have the right to assign any of their respective right, title and interest under this Contract without the prior written consent of the other. In the event of an assignment as permitted hereunder, the assigning party shall immediately notify the other parties in writing, of the name and address of the Assignee. Further, the assigning party shall not be relieved of any of the duties or obligations imposed upon it by the terms of this Contract.

12. NOTICES. All notices required or permitted to be given under this Contract shall be in writing and shall be delivered either by telecopy, with confirmation of receipt, hand delivery, by an overnight courier which in the ordinary course of business keeps records and receipts of each of its deliveries, or mailed by United States certified mail, postage prepaid, return receipt requested, to the parties at their addresses or telecopy number set forth above. Either party may change the address or telecopy number at which it receives notices under this Contract by giving written notice thereof to the other party. Notices shall be deemed received upon delivery if telecopied, hand delivered or delivered by overnight courier, or three (3) business days after being mailed by certified mailed (unless a signed receipt evidences earlier delivery).

13. EFFECTIVE DATE. The date upon which the last to execute this Contract has done so (as evidenced by the dates set forth on the signature page of this Contract) is the "Effective Date."

14. INDEMNIFICATION BY NEYER. Neyer shall indemnify and hold harmless Mason from and against, and shall reimburse Mason for, any and all losses, liabilities, costs, expenses, damages, penalties, fine, liens, claims (including, without limitation consultant's and attorney's fees), actions and causes of action arising directly or indirectly from, relating to or in connection with any inaccuracy in or breach of any of the representations and warranties of Neyer in this Contract or any failure by Neyer to perform or comply with any agreement in this Contract. The obligations of Neyer under and pursuant to this Section 14 shall survive the Closing.



15. MISCELLANEOUS.

(a) Entire Agreement. This Contract shall constitute the entire agreement between Mason and Neyer as to the terms it contains and no oral or verbal or implied agreement or understanding shall cancel or vary the terms of this Contract.

(b) Successors and Assigns. This Contract shall be binding upon the heirs, executors, administrators, successors and assigns of the Mason and Neyer.

(c) Time. Time is of the essence of each and every provision of this Contract.

(d) No Merger With Deed. The terms of this Contract shall not be merged with the deed to be conveyed by Neyer to Mason and shall survive the Closing.

16. AGREEMENT OF REPURCHASE

(a) Basic Terms. The following constitute the "Basic Terms" of this Section 16 (Agreement of Repurchase) between Neyer and Mason.

(i) Property: The Property shall be reduced in size at such time as any portion of the Property is dedicated as public Right of Way by the City of Mason, Warren County, or other agency having authority over said Right of Way.

(ii) Purchase and Repurchase. Mason has agreed to purchase the Property pursuant to the terms of this Contract. Neyer agrees to repurchase the Property pursuant to the terms of this Section 16.

(iii) Mason's Cooperation Regarding Zoning. Pursuant to the OakPark Development Agreement (attached hereto as Exhibit "B"), Mason agrees to cooperate with Neyer to re-zone the OakPark portion of the Property to permit the uses for the Property set forth in the Master Plan as provided in the Development Agreement. However, nothing in this Agreement or the Development Agreement guarantees that Neyer's and/or Mason's request(s) for zoning changes, variances, or the like shall be granted by virtue of either agreement.

(iv) Closing Date for the Repurchase of the Property. Repurchase of the Property by Neyer shall occur pursuant to the schedule provided for in Section 16(b); provided, however, that all of the Property shall be acquired no later than the eighth (8<sup>th</sup>) anniversary of the Effective Date. (v) Merger of Easements. Neyer shall convey to Mason any and all easements that have merged as the result of the transfer of the Property from Neyer to Mason. The Easements that shall be conveyed shall be those Easements to Mason that are shown on the Permitted Exceptions/Encumbrances.

(vi) Brokers:

Mason's Broker: None

Neyer's Broker: None

(vii) Addresses for Notice:

Neyer: Mr. James T. Neyer  
 302 West Third Street  
 Al Neyer, LLC  
 Suite 800  
 Cincinnati, Ohio 45202  
 Telephone: 513.527.6400  
 Facsimile: 513.271.1350  
 E-Mail: jtneyer@neyer.com

Copy to: Mr. Paul Muething  
 Keating, Muething & Klekamp, PLL  
 One East Fourth Street #1400  
 Cincinnati, Ohio 45202  
 Telephone: 513.579.6517  
 Facsimile: 513.579.6986  
 E-Mail: pmuething@kmklaw.com

Mason: Mr. Eric Hansen  
 City Manager  
 City of Mason  
 6000 Mason-Montgomery Road  
 Mason, Ohio 45404  
 Telephone: 513.229.8500  
 Facsimile: 513.229.8511  
 E-Mail: ehansen@masonoh.org

Copy to: Mr. Kenneth J. Schneider  
 Wood & Lamping, LLP  
 600 Vine Street, Suite 2500  
 Cincinnati, Ohio 45202  
 Telephone: 513.852.6000  
 Facsimile: 513.852.6087  
 E-Mail: kjschneider@woodlamping.com

(b) Agreement of Repurchase and Sale. Pursuant to the OakPark Development Agreement between Mason and Al Neyer, LLC, an affiliate of Neyer, dated ~~DECEMBER 23, 2009~~ ("Development Agreement"), a copy of which is attached hereto as Exhibit B, Mason hereby agrees under this exclusive agreement to sell, assign, and convey to only Neyer and Neyer agrees to repurchase the Property in installments, for the price, and subject to the Basic Terms, and in accordance with the terms and subject to the warranties, covenants and conditions contained herein. On or before the anniversary date of the Effective Date of this Contract each year, commencing 2013, through and including 2017, Neyer shall designate parcels of the Property, in Neyer's sole discretion, from time to time to be acquired consisting of not less than twenty percent of the Property acreage originally purchased by Mason (the "Take

Down Parcel(s)'' (which notice for each Take Down Parcel shall be in writing and shall include a scheduled closing date for such Take Down Parcel); provided, however, that all of the Property shall be acquired no later than the eighth (8<sup>th</sup>) anniversary of the Effective Date.

(i.) On or before the anniversary date of the Effective Date in 2013, Neyer shall have repurchased not less than twenty percent (20%) of the original acreage of the Property. On or before the anniversary date of the Effective Date in 2014, Neyer shall have repurchased not less than forty percent (40%) of the original acreage of the Property. On or before the anniversary date of the Effective Date in 2015, Neyer shall have repurchased not less than sixty percent (60%) of the original acreage of the Property. On or before the anniversary date of the Effective Date in 2016, Neyer shall have repurchased not less than eighty percent (80%) of the original acreage of the Property. On or before the anniversary date of the Effective Date in 2017, Neyer shall have repurchased not less than one hundred percent (100%) of the original acreage of the Property.

(ii.) Any year in which Neyer fails to meet its repurchase obligation shall be considered a default. Mason shall have the right, in its sole discretion, to waive any such default, provided that any waiver of this default shall not constitute any future waiver of Mason's right to enforce this provision.

(iii.) Any Take Down proposed prior to the anniversary date of the Effective Date in 2013 (an "Early Take Down") shall only be completed with the consent of Mason as it pertains to the proposed end user. Mason shall not unreasonably withhold such consent if the proposed end use is consistent with the Mason Comprehensive Plan in place at the time of the proposed Early Take Down.

(iv.) During the term of this Contract, Mason shall not knowingly permit or suffer any activity upon the Property that would be detrimental to the development activities as described in the Development Agreement. In addition, Mason agrees that while it owns the Property, Mason shall not encumber the Property, impose any restrictions on the Property, make any improvements or alterations to the Property, or grant any easements on the Property. In addition to Mason's other remedies, Mason shall have the right to perform any such obligation on behalf of Neyer and Neyer shall reimburse Mason immediately upon demand for any lost or expense incurred by Mason in connection with such performance.

(v.) During the four years after each Take Down but ending on December 31, 2019, any Net Land Profit, as hereinafter defined, realized from the sale of any of the Property in said Take Down from Neyer to a third party shall be split 30% to Mason and 70% to Neyer. Net Land Profit shall equal the total sale price of the property sold minus reasonable sale costs (including but not limited to commissions, transfer fees, etc) minus all reasonable Neyer costs associated with the property being sold including Neyer's original purchase price from L3 Communications on December 21, 2007, which amount is recognized to be \$75,000.00 per acre, all capital improvements (including but not limited to utilities, excavation, infrastructure, etc.), all carrying costs (specifically including but not limited to interest, financing fees, real estate taxes, maintenance costs), master planning costs, marketing costs, etc., but not including any internal administrative charges or internal overhead charges (including, but not limited to, accounting

expenses, office space rent or charges, and payroll charges). The terms of this subsection shall not be merged with the deed to be conveyed by Neyer to Mason and shall not terminate until December 31, 2019.

(c) Repurchase Price

(i) The repurchase price per acre which Neyer agrees to pay, and Mason agrees to accept, for the Property shall be an amount equal to the greater of (a) the Purchase Price per acre plus \$1,000.00 or (b) the largest principal amount of the Financing Debt (or such other debt instrument issued by Mason to cover or reimburse it for the costs of financing the Purchase Price) including any capitalized interest, divided by the number of acres purchased by Mason under Section 1 hereof. The total amount of repurchase price that Neyer pays at any Take Down is hereinafter referred to as the "Repurchase Price". Neyer agrees to continue reimbursing Mason the interest paid on the Financing Debt, or subsequent note or other debt security in accordance with Section 3(a) and all payments due pursuant to this Contract (collectively, the "Carrying Costs"). Mason agrees to reduce the principal amount of the next Financing Debt renewal (or subsequent note or other debt instrument renewal) to an amount equal to the principal amount of the prior Financing Debt (or subsequent note or other debt security) less the aggregate amount of all Repurchase Prices received by Mason at the closings of the repurchases of Property by Neyer under this Section 16 which have not previously reduced (or been used in the determination of) the principal amount of the Financing Debt (or any subsequent note or debt instrument). The Repurchase Price is payable in full on the date of Repurchase Closing (hereinafter defined) of each Take Down Parcel by Federal wire transfer of immediately available funds to the Title Company for disbursement to Mason at Repurchase Closing.

(ii) Mason and Neyer agree that the Repurchase Price shall be determined by reference to the Survey obtained pursuant to Section 6(a)(ii) hereof and that the price per acre shall be net of any acreage which is dedicated or to be dedicated as a public roadway and net of any acreage encumbered by easement to Mason which would render such acreage undevelopable or unbuildable by virtue of such Mason retained easements.

17. FAILURE TO PERFORM. If Neyer fails to meet any of its obligations under this Contract, including but not limited to its repurchase obligations pursuant to the Take Down Schedule set forth in Section 16(b)(i), or if any Repurchase Closing is not concluded at no fault of Mason, Mason, at its option, (a) may elect to enforce the terms hereof by action for specific performance, and/or exercise any other right or remedy available to it at law or in equity, or (b) may terminate this Agreement by notice to Neyer. Neyer's failure to obtain financing shall not be considered a "no fault" event for purposes of this section.

18. REPURCHASE CLOSING AND TRANSFER OF TITLE

(a) Repurchase Closing. The parties hereto agree to purchase and sale of each Take Down Parcel at a closing (a "Repurchase Closing"): (a) within ninety (90) days after Mason's acceptance of Neyer's written notification of Neyer's intent to purchase a Take Down Parcel (the "Satisfaction Date"), in the Neyer's offices or at Mason's municipal offices, as agreed by Neyer and Mason, at such exact date and time as may be agreed upon by the parties hereto.



Notwithstanding the foregoing, Neyer shall have the right for causes beyond its reasonable control to adjourn a Repurchase Closing from time to time by notice to Mason, but no such adjournment or adjournments shall extend the Repurchase Closing to a date later than 60 days from the date first set for the Take Down Parcel Closing.

The Repurchase Closings for all subsequent Take Down Parcels shall occur on or about the date set forth for such Repurchase Closing in Neyer's written notice to Mason that it shall purchase such Take Down Parcel subject, however, to the same flexibility and extensions as are set forth herein.

The Repurchase Closing on the final Take Down Parcel of the Property shall occur no later than the eighth (8<sup>th</sup>) anniversary date of the Effective Date ("Final Closing").

(b) Mason's Documents; Other Deliveries. At each Repurchase Closing, Mason shall execute and deliver to Neyer the following documents, and shall also make the other deliveries provided for hereinafter, all as follows:

(i) A Quit Claim Deed to the Take Down Parcel, proper for recording, conveying fee simple, marketable title in the respective Take Down Parcel of the Property to Neyer free, clear, and unencumbered both of record and in fact, subject, however, to the Permitted Exceptions;

(ii) An Assignment of all warranties, guarantees, permits, and licenses;

(iii) All consents which may be required from any third person or entity in connection with the sale of the respective Take Down Parcel of the Property;

(iv) Copies of all certificates of occupancy, licenses, permits, authorizations, and approvals, if any, required by law and issued by all governmental authorities having jurisdiction over the respective Take Down Parcel of the Property;

(v) A certified copy of Mason's ordinance evidencing authorization of the appropriate municipal officers acting for Mason and authorization and approval of this Agreement and the transactions contemplated herein;

(vi) Such other documents or instruments as may be reasonably required by Neyer, the Title Company, or required by other provisions of this Agreement, or reasonably necessary to effectuate the Repurchase Closing. All of the documents and instruments to be delivered by Mason hereunder shall be in form and substance reasonably satisfactory to counsel for Neyer.

19. POSSESSION. Mason shall deliver possession of each respective Take Down Parcel of the Property to Neyer at each Repurchase Closing.

20. NEYER'S CONDITIONS. The obligation of Neyer to close the purchase of each Take Down Parcel is subject to the following conditions, inserted for Neyer's sole benefit and which may be waived by Neyer at its sole option only by notice to Mason by an instrument in writing:

(i.) Representations and Warranties True at Closing. The representations and warranties of Mason contained in this Agreement shall be true, to the best of Mason's knowledge, on and as of the date of each Repurchase Closing in all material respects as though such representations and warranties were made on and as of such date.

(ii.) Performance of Mason's Covenants. Mason shall not have breached any material affirmative covenant contained in this Agreement to be performed by Mason on or prior to each Repurchase Closing.

(iii.) Delivery of Mason's Repurchase Closing Documents. Mason shall have timely delivered to Neyer in satisfactory form the documents and all other items required by this Agreement.

(iv.) Title Policy. The Title Company shall at each respective Repurchase Closing have delivered or irrevocably committed itself in writing to deliver the Title Policy.

(v.) There shall, at the time of Repurchase Closing, be no moratorium in effect that would materially inhibit Neyer's ability to commence development of the Property for Neyer's Use.

21. GUARANTY. Al. Neyer, Inc. (i) hereby irrevocably and unconditionally guarantees payment when due, whether by acceleration or otherwise, of all payments due from Neyer under this Contract and the performance of any and all obligations of Neyer when due under this Contract and (ii) hereby agrees to reimburse Mason for all reasonable attorneys' fees, costs, and expenses of collection incurred by Mason in enforcing such payments and obligations. Al. Neyer, Inc. hereby waives (i) notice of acceptance of this guaranty by Mason and (ii) any presentment, demand, protest, or notice of dishonor, nonpayment, or other default by Neyer and any right it may have thereto. Guarantor agrees with Mason that Mason is not required as a condition to the enforcement of its rights under this guaranty to make any demand on, or pursue or exhaust any of its rights or remedies against, Neyer or others. Al. Neyer, Inc. hereby waives and releases any rights of exoneration and any equity or right or marshaling that it might otherwise have.

No invalidity, irregularity, or unenforceability of all or any part of the obligations and liabilities hereby guaranteed or of any security therefor shall affect, impair, or be a defense to this guaranty. This guaranty is a primary obligation of Al. Neyer, Inc. The terms of this Section 21 shall not be merged with the deed to be conveyed by Neyer to Mason and shall survive the Closing.

## 22. PUT OPTIONS AND RIGHT OF FIRST REFUSAL.

(a) Put Options. Al. Neyer, Inc. hereby grants to Mason the right to put to Al. Neyer, Inc. the number of acres of the Property which Neyer fails to purchase from Mason pursuant to its obligations under Section 16 of this Contract. The purchase price Al. Neyer, Inc. shall pay for any acres it is to purchase upon exercise of the put right granted hereunder shall be \$90,000.00 per acre. Said put right is to be exercised by Mason by delivering to Al. Neyer, Inc. a written notice that Mason is exercising its right to require Al. Neyer, Inc. to purchase acres of the Property pursuant to this Section 22.

which notice shall contain the number of acres Al. Neyer, Inc. is being required to purchase under said exercise. The closing of said purchase shall occur on the twenty-first business day after Al. Neyer, Inc.'s receipt of said notice. Al. Neyer, Inc. shall be entitled to choose the acres it shall purchase, provided that said acres are contiguous, provided that Al. Neyer, Inc. delivers to Mason a written legal description of the acres it will purchase within fifteen (15) days of receipt of Mason's notice; otherwise Mason shall choose the acres Al. Neyer, Inc. is to purchase. Mason's rights under this Section 22 shall be exercisable from time to time and on more than one occasion and shall continue until Mason no longer owns any of the Property or until the only party of the Property which Mason owns has been dedicated to public usage.

(b) First Right of Refusal. During the term of this Contract, Neyer grants to Mason a Right of First Refusal ("ROFR") on the ROFR Parcels. ROFR Parcels are defined as the following parcels currently owned by Neyer - 6.46+/- acres at the northeast corner of the intersection of Cintas Boulevard and Western Row Road and the 2.21+/- acres at the southwest corner of the intersection of Old Western Row Road and Tylersville Road and the 9.34+/- acres on Innovation Way immediately north of Intelligrated, Inc (the ROFR on this parcel is subordinate to existing purchase/lease rights that may exist).

(i.) If at any time during the term of this Contract, Neyer receives a bona fide offer by a third party to purchase a portion of or all of the ROFR Parcels (the "Offer") acceptable to Neyer (Third Party Offer), Neyer shall notify Mason of the Third Party Offer received on the ROFR Parcels. Mason shall have the right to purchase the ROFR Parcels from Neyer on the same terms conditions as the Third Party Offer, however due diligence for governmental approval and contingencies in the Third Party Offer, if any, shall not apply to Mason. In the event Mason does not accept ROFR Notice from Neyer by providing written notice to Neyer within five (5) business days of its receipt of ROFR Notice, Mason shall be deemed to have waived this ROFR on said offer.

23. ASSIGNMENT. This Agreement and all the terms and conditions hereof shall be binding upon and shall inure to the benefit of the parties and their respective successors and assigns.

24. NOTICES. All notices, demands, consents, statements, requests, or other communications hereunder, or required by law, shall be in writing, and shall be deemed properly delivered when and if (a) personally delivered, (b) sent to the telecopier number listed herein, (c) delivered by overnight private courier service which in the ordinary course of its business maintains a record of receipt of each of its deliveries, or (d) mailed United States, mail, postage prepaid, certified or registered mail, return receipt requested, addressed to the parties hereto and other persons, at their respective addresses set forth in the Basic Terms or as they may hereafter specify by written notice delivered in accordance herewith.

Notices shall be deemed to have been given at the time of delivery if hand delivered (or if delivery is refused or cannot be effected during normal business hours); date of record of receipt if deposited with any private courier service or if sent via telecopier, or date of postmark if sent by United States mail.

A person receiving a notice which does not comply with the technical requirements for notice under this section may elect to waive any deficiencies and treat the notice as having been properly given.

25. EXPENSES. Neyer shall pay (i) any and all conveyance fees required to be paid prior to or at the recording of the deed to be executed in favor of Neyer, (ii) all deed preparation and title correction expenses, (iii) the cost of removing all encumbrances on the Property, if any, (iv) the cost of Neyer's owner's title insurance policy if Neyer elects to purchase such insurance; (v) any fees for recording the deed, (vi) all closing costs, and (vii) any escrow fees to Escrow Agent.

26. MISCELLANEOUS.

(a) Press Release. Both parties agree not to issue or make any public announcement, whether oral or written, of the sale of the Property without first giving the other party the opportunity to review and comment upon the contents of the notice or other statement.

(b) Gender. Words of any gender used in this Contract shall be held and construed to include any other gender, any words in the singular number shall be held to include the plural, and vice versa, unless the context requires otherwise.

(c) Captions. The captions in this Contract are inserted only for the purpose of convenient reference and in no way define, limit, or prescribe the scope or intent of this Agreement or any part hereof.

(d) Construction. No provisions of this Contract shall be construed by any court or other judicial authority against any party hereto by reason of such party's being deemed to have drafted or structured such provisions.

(e) Entire Agreement. This Contract, and the Development Agreement (as set forth in Exhibit B) constitute the entire contract between the parties hereto and supersede all prior understandings, if any, there being no other oral or written promises, conditions, representations, understandings or terms of any kind as conditions or inducements to the execution hereof and none have been relied upon by either party. Any subsequent conditions, representations, warranties, or agreements shall not be valid and binding upon the parties unless in writing and signed by both parties.

(f) Time of Essence. Time is of the essence in this transaction.

(g) Original Document. This Contract shall be executed by both parties in counterparts, each of which shall be deemed an original, but all of such counterparts taken together shall constitute one and the same Agreement.

(h) Governing Law. This Contract shall be construed, and the rights and obligations of Mason and Neyer hereunder shall be determined, in accordance with the laws of the State of Ohio.



(f) Non-Merger. In addition to the specific language of non-merger found in certain sections of this Contract, any provision hereof which by its terms would be performed after the Closing shall survive the Closing and shall not merge in the Closing or in the deed, except as specifically provided to the contrary herein.

(j) Memorandum. Mason and Neyer agree to record a Memorandum of this Contract in the real estate records of Warren County, Ohio to evidence Neyer's right and obligation to acquire all of the Property.

(k) Acceptance: Effective Date. This document shall constitute an obligation to repurchase the Property by Neyer that shall be open for acceptance by Mason until closing of the first Take Down Parcel. Acceptance by Mason shall be deemed to occur only if and when Neyer shall have received actual delivery of at least two signed counterparts of this Contract properly executed by or on behalf of Mason.

The parties have executed this Contract through the authorized representatives as of the respective dates set forth below.

CITY OF MASON, OHIO:

By: [Signature]  
Eric Hansen, City Manager

Date: DECEMBER 23, 2009

NEYER LAND HOLDINGS, I, LLC

By: [Signature]  
James T. Neyer

By: [Signature]  
Exec. Vice President

Date: DECEMBER 23, 2009

CPD

AL. NEYER, INC.


By: [Signature]  
James T. Neyer

[Signature]  
Exec. Vice President  
Print name and position

Date: DECEMBER 23, 2009

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

APPROVED AS TO FROM FOR CITY BY:

  
Name: Jeffrey D. Forbes  
Title: Assistant Law Director

691371.1

EXHIBIT A

Legal Description

ATTACHED

EXHIBIT B

OakPark Development Agreement

ATTACHED

EXHIBIT C

Permitted Exceptions/Encumbrances

ATTACHED