

ORDINANCE NO. 2013 - 82

**AUTHORIZING THE CITY MANAGER TO EXECUTE A MUTUAL  
TERMINATION AGREEMENT AND DECLARING AN EMERGENCY**

WHEREAS, the City of Mason has previously entered into a Real Estate Purchase Agreement with a purchase obligation and PUT obligation, dated December 23, 2009, with Neyer Land Holdings I LLC and Al. Neyer, Inc.; and

WHEREAS, the parties have also previously entered into the Oakpark Development Agreement, dated December 23, 2009; and

WHEREAS, the parties mutually desire to terminate both Agreements.

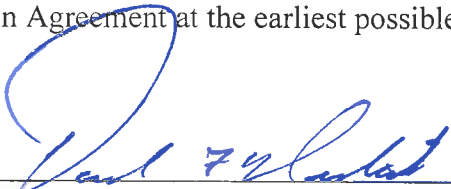
NOW, THEREFORE, BE IT ORDAINED by the Council of the City of Mason, Ohio, seven members elected thereto concurring:

Section 1. That the City Manager is hereby authorized to execute a Mutual Termination Agreement substantially in the form of the Agreement attached hereto as Exhibit "A" and incorporated herein by reference.

Section 2. That the City Manager is further authorized to execute any other necessary documents in order to effect the Mutual Termination Agreement.

Section 3. That this Ordinance is hereby declared to be an emergency measure necessary for the immediate preservation of the public peace, health, safety and general welfare and shall be effective immediately upon its passage. The reason for said declaration of emergency is the need to execute the Termination Agreement at the earliest possible date.

Passed this 14<sup>th</sup> day of October, 2013.

  
\_\_\_\_\_  
Mayor

Attest:

  
\_\_\_\_\_  
Clerk of Council

**AGREEMENT**

THIS AGREEMENT 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 (hereinafter “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 Land Holdings”), and Cathedral Holdings, Inc. (formerly known as Al. Neyer, Inc.), an Ohio corporation, with a mailing address of 302 West Third Street, Suite 800, Cincinnati, Ohio 45202 (“CHI”), and Al. Neyer, LLC, an Ohio limited liability company, with a mailing address of 302 West Third Street, Suite 800, Cincinnati, Ohio 45202 (“ANL”) (Neyer Land Holdings, CHI and ANL are collectively referred hereinafter as “Neyer”), with reference to the following:

WHEREAS, Mason, Neyer Land Holdings and CHI have previously entered into a Real Estate Purchase Agreement with Re-purchase Obligation and Put Option dated December 23, 2009 (the “Purchase Agreement”); and

WHEREAS, Mason and ANL have entered into the Oakpark Development Agreement also dated December 23, 2009 (the “Development Agreement”); and

WHEREAS, the parties mutually desire to

NOW, THEREFORE, FOR GOOD AND VALUABLE consideration, the receipt and sufficiency of which the parties hereby acknowledge, the parties agree as follows:

1. The Purchase Agreement, is hereby terminated as of the date indicated below. As of this effective date, the obligations of all parties under the Purchase Agreement shall be extinguished in their entirety.

*• exhibit "A" call already  
M. Blair on Tues Oct 22  
for signed copy  
• 2 certified copies to MB*



2. Mason shall hold fee simple title to the property that was the subject of the Purchase Agreement free and clear of any rights arising under the Purchase Agreement and shall have no further obligation to convey said property to Neyer or any of its affiliate entities.

3. Neyer shall have no further obligation to repurchase any portion of the land subject to the Purchase Agreement.

4. Except as set forth in paragraph 5 below, the Development Agreement, is hereby terminated as of the date indicated below. As of this effective date, the obligations of all parties under the Development Agreement shall be extinguished in their entirety.

5. The parties agree to discuss in good faith a new agreement wherein it is contemplated that ANL may engage in master planning services and other activities aimed at marketing and promoting the development of the Property as well as offering ANL's development and construction services to certain identified purchasers/users. Until March 31, 2014, Mason and ANL shall work cooperatively to promote the Property for the benefit of Mason and ANL to the following entities which ANL has previously introduced to the Property: Cavalier Distributing, Atricure, and a Cassidy Turley confidential client (relating to a call center) (collectively, "Protected Prospects"). As an example of cooperation between Mason and ANL, in the event that Mason sells any of the Property to any of the Protected Prospects, Mason may propose alternate land pricing depending on ANL's involvement in development or construction so as to encourage the Protected Prospect to utilize ANL for development and construction services.

6. The parties hereto acknowledge that ANL has previously executed separate listing agreements with two real estate brokerage firms (CBRE for the 16 acre Innovation Way Parcel; Cassidy Turley for the approximate 32 acre parcel) for the property. Coincident with the

execution of this Agreement, ANL shall terminate both listing agreements. ANL further acknowledges that with such termination, Mason shall have no obligation to pay any brokerage fees related to the subsequent sale of any of the Property by Mason.

7. The parties hereto acknowledge and agree that there are no outstanding claims or liabilities arising in favor of any party under the Purchase Agreement or the Development Agreement and each party hereby waives any claim which it may have had against any other party arising thereunder.


8. This Agreement constitutes the entire agreement between the parties hereto and shall 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 any 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.

9. This Agreement shall be binding upon the heirs, executors, administrators, successors and assigns of the parties.

10. The date upon which the last to execute this Agreement has done so as evidenced by the dates set forth on the signature page of this Agreement shall be the “effective” date.

*(Remainder of this page deliberately left blank.)*

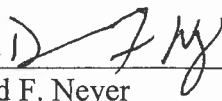
CITY OF MASON, OHIO, an Ohio municipal corporation

By:   
Eric Hansen  
Title: City Manager

Date: 10/16/2013

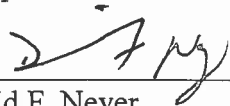
NEYER LAND HOLDINGS I LLC, an Ohio limited liability company

By: Cathedral Holdings, Inc., its Manager

By:   
David F. Neyer  
Title: Treasurer

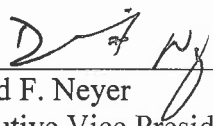
Date: 10/16/13

CATHEDRAL HOLDINGS, INC., an Ohio corporation

By:   
David F. Neyer  
Title: Treasurer

Date: 10/16/13

AL. NEYER, LLC

By:   
David F. Neyer  
Title: Executive Vice President

Date: 10/16/13