ORDINANCE NO. \_\_\_\_\_\_\_\_\_\_\_

ORDINANCE AUTHORIZING THE TOWN OF MCCORDSVILLE, INDIANA TO FUND ITS "TAXABLE ECONOMIC DEVELOPMENT REVENUE NOTES, SERIES 2021" AND APPROVING AND AUTHORIZING OTHER ACTIONS IN RESPECT THERETO

An ordinance of the Town Council of the Town of McCordsville, Indiana ("Council") authorizing the funding of its Town of McCordsville, Indiana ("Town") Taxable Economic Development Revenue Note, Series 2021 ("Series 2021 Note") in an estimated amount of Seven Hundred Fifty Thousand Dollars ($750,000.00), but in no event to exceed Nine Hundred Thousand Dollars ("Loan"), without further approvals, and approving and authorizing other actions in respect thereto.

WHEREAS, Indiana Code 36-7-11.9 and 12 (collectively, "Act") declares that the financing and refinancing of economic development facilities constitutes a public purpose; and

WHEREAS, pursuant to the Act, the Town is authorized to make loans for the purpose of financing, reimbursing or refinancing all or a portion of the costs of acquisition, construction, renovation, installation and equipping of economic development facilities in order to foster diversification of economic development and creation or retention of opportunities for gainful employment in or near the Town; and

WHEREAS, Al. Neyer, LLC, an Ohio limited liability company authorized to do business in Indiana ("Borrower") has informed the Town that it will be constructing certain economic development facilities consisting of the construction of an approximately one million square foot e-commerce facility to be used for distribution, warehousing, logistics and/or office space ("Facility") and the Town intends to make the Loan for the purpose of financing or reimbursing the Borrower for the costs of the construction and reconstruction of a portion of Aurora Way to meet highway standards in order to support vehicle and truck traffic in and out of the Facility, located in the Town, together with all necessary appurtenances, related improvements and equipment and incidental expenses in connection therewith ("Project"). Upon completion of the Project, the portion of the Project on Borrower’s property shall be dedicated to the Town. Acceptance and dedication by the Town shall not be unreasonably withheld, conditioned, or delayed; and

WHEREAS, the Project will be located in or physically connected to the McCordsville Mt. Comfort Corridor Economic Development Area ("Area") and Aurora Way Allocation Area ("Allocation Area") as established by the McCordsville Redevelopment Commission ("Redevelopment Commission"); and

WHEREAS, the McCordsville Economic Development Commission ("Commission") has rendered its Project Report regarding the issuance and funding of the Series 2021 Note from the Town to the Borrower to finance a portion of the Project and the Project Report has been or will be submitted to the McCordsville Plan Commission; and

WHEREAS, the Commission conducted a public hearing and adopted a resolution and Project Report,which resolution and Project Report have been transmitted hereto, finding that the financing of a portion of the Project complies with the purposes and provisions of IC 36‑7‑11.9 and ‑12 and that such financing will be of benefit to the health and welfare of the Town and its citizens; and

WHEREAS, the Commission has heretofore approved and recommended the adoption of this form of ordinance by this Council, has considered the issue of adverse competitive effect and has approved the forms of and has transmitted for approval by the Council the Loan Agreement between the Town and the Borrower (including the form of the Series 2021 Note); and

WHEREAS, pursuant to and in accordance with the Act, the Town desires to provide funds necessary to finance or reimburse a portion of the Project by issuing and funding the Series 2021 Note; and

WHEREAS, the Town intends to fund the Series 2021 Note and make the Loan consistent with the terms of this ordinance and pursuant to the Loan Agreement; and

WHEREAS, no member of the Council has any pecuniary interest in any employment, financing agreement or other contract made under the provisions of the Act and related to the Bonds authorized herein, which pecuniary interest has not been fully disclosed to the Council and no such member has voted on any such matter, all in accordance with the provisions of Indiana Code 36-7-12-16; and

WHEREAS, there has been submitted to the Commission for its approval forms of the the Series 2021 Note and the Loan Agreement (collectively, "Financing Documents") and a form of this proposed ordinance, which were incorporated by reference in the Commission's resolution adopted on September 7, 2021, which resolution has been transmitted to the Council;

WHEREAS, prior to the making of the Loan to be evidenced by the Borrower's Series 2021 Note, the Redevelopment Commission will pledge TIF Revenues to the funding of the Series 2021 Note pursuant to the Loan Agreement; and

WHEREAS, based upon the resolution adopted by the Commission pertaining to the Project, the Council hereby finds and determines that the financing and reimbursement approved by the Commission for the Project will be of benefit to the health and general welfare of the citizens of the Town, complies with the provisions of the Act and the amount necessary to finance and reimburse a portion of the costs of the Project will require making the Loan and delivering the Series 2021 Note.

NOW, THEREFORE, BE IT ORDAINED BY THE TOWN COUNCIL OF THE TOWN OF MCCORDSVILLE, INDIANA, THAT:

# It is hereby found, determined, ratified and confirmed that the financing and reimbursement of the Project, the making of the Loan to the Borrower to be evidenced by the Borrower's Series 2021 Note complies with the purposes and provisions of IC 36-7-11.9 and -12 (collectively, "Act") and: (i) will result in the diversification of industry, the creation of business opportunities and the creation of opportunities for gainful employment within the jurisdiction of the Town, (ii) will serve a public purpose, and will be of benefit to the health and general welfare of the Town, (iii) complies with the purposes and provisions of the Act and it is in the public interest that the Town take such lawful actions as determined to be necessary or desirable to encourage the diversification of industry, the creation or retention of business opportunities, and the creation or retention of opportunities for gainful employment within the jurisdiction of the Town, and (iv) will not have a material adverse competitive effect on any similar facilities already constructed or operating in or near the Town.

# The substantially final forms of the Financing Documents shall be incorporated herein by reference and shall be inserted in the minutes of the Council and kept on file by the Clerk-Treasurer. In accordance with the provisions of IC 36‑1‑5‑4, two (2) copies of the Financing Documents are on file in the office of the Clerk-Treasurer for public inspection.

# A portion of the Project will be funded from the Loan. The Town shall ultimately fund the Loan from TIF Revenues pledged by the Redevelopment Commission to the Town as reimbursement for Town funds expended to originally fund the Loan. The Council hereby pledges any legally available revenues as may be necessary, to the Borrower, in the estimated amount of Seven Hundred Fifty Thousand Dollars ($750,000.00), but in no event to exceed Nine Hundred Thousand Dollars ($900,000.00), without further approvals, with a final maturity no later than August 1, 2026 unless forgiven as provided in the Loan Agreement. Project funding is not limited to TIF funds solely applicable to the Project. The estimated cost of Seven Hundred Fifty Thousand Dollars ($750,000.00) is based upon current engineering estimates which include information about relevant similar and comparable construction. The "not to exceed" amount allows for unforeseen contingencies. In the event that the contingency ceiling is insufficient, approval of additional funding will be sought from legally available sources in keeping with the 1/3 – 2/3 agreed pro-rata sharing arrangement. To the extent the representation in Section 2.2(j) of the Loan Agreement is met, payment on the Loan shall be forgiven. If the representation in Section 2.2(j) is not met, the Loan shall not be funded by the Town and the Loan Agreement shall terminate and be of no further force and effect. The Series 2021 Note shall not accrue interest. The Series 2021 Note shall never constitute a general obligation of, an indebtedness of, or charge against the general credit of the Town. The Series 2021 Note shall not be subject to optional redemption prior to maturity.

# The Council and the Clerk-Treasurer are authorized and directed to execute the Financing Documents, such other documents approved or authorized herein and any other document which may be necessary, appropriate or desirable to consummate the transactions contemplated by the Financing Documents and this ordinance, and their execution is hereby confirmed on behalf of the Town. The Council and the Clerk-Treasurer are authorized to arrange for the delivery of such Series 2021 Note to the Borrower, payment for which will be made in the manner set forth in the respective Financing Documents. The Council and the Clerk-Treasurer may, by their execution of the Financing Documents requiring their signatures and imprinting of their facsimile signatures thereon, approve any and all such changes therein and also in those Financing Documents which do not require the signature of the Council and the Clerk-Treasurer without further approval of this Council or the Commission if such changes do not affect terms set forth in Sections 27(a)(1) through and including (a)(10) of the Act.

# The provisions of this ordinance and the Financing Documents shall constitute a contract binding between the Town and the Borrower.

# The Council and the Clerk-Treasurer or any other officer having responsibility with respect to the making of the Loan, evidenced by the Series 2021 Note, are authorized and directed, alone or in conjunction with any of the foregoing, or with any other officer, employee, consultant or agent of the Town, to deliver a certificate for inclusion in the transcript of proceedings for the Series 2021 Note, setting forth the facts, estimates and circumstances and reasonable expectations pertaining to the use of the Loan as of the funding date thereof.

# No recourse under or upon any obligation, covenant, acceptance or agreement contained in this ordinance, the Financing Documents or under any judgment obtained against the Town, including without limitation the Commission or Redevelopment Commission, or by the enforcement of any assessment or by any legal or equitable proceeding by virtue of any constitution or statute or otherwise, or under any circumstances, under or independent of the Financing Agreement, shall be had against any member, director, or officer or attorney, as such, past, present, or future, of the Town, including without limitation the Commission or Redevelopment Commission, either directly or through the Town, or otherwise, for the payment for or to the Town of any sum that may remain due and unpaid by the Town upon any of such Series 2021 Note. Any and all personal liability of every nature, whether at common law or in equity, or by statute or by constitution or otherwise, of any such member, director, or officer or attorney, as such, to respond by reason of any act or omission on his or her part or otherwise for, directly or indirectly, the payment for or to the Town or any receiver thereof, or for or to any owner or holder of any sum that may remain due and unpaid upon the Series 2021 Note hereby secured shall be expressly waived and released as a condition of and consideration for the execution and delivery of the Financing Documents and the issuance and funding of the Series 2021 Note.

# If any section, paragraph or provision of this ordinance shall be held to be invalid or unenforceable for any reason, the invalidity or unenforceability of such section, paragraph or provision shall not affect any of the remaining provisions of this ordinance.

# All ordinances, resolutions and orders, or parts thereof, in conflict with the provisions of this ordinance are, to the extent of such conflict, hereby repealed.

# It is hereby determined that all formal actions of the Council relating to the adoption of this ordinance were taken in one or more open meetings of the Council, that all deliberations of the Council and of its committees, if any, which resulted in formal action, were in meetings open to the public, and that all such meetings were convened, held and conducted in compliance with applicable legal requirements, including Indiana Code 5-14-1.5, as amended.

# The Council and the Clerk-Treasurer and any other officer of the Town are hereby authorized and directed, in the name and on behalf of the Town, to execute and deliver such further documents and to take such further actions as such person deems necessary or desirable to effect the purposes of this ordinance, and any such documents heretofore executed and delivered and any such actions heretofore taken, be, and hereby are, ratified and approved.

# This ordinance shall be in full force and effect from and after its passage.

Passed and adopted by the McCordsville Town Council this 14th day of September, 2021.

MCCORDSVILLE TOWN COUNCIL

Presiding Officer

Attest:

Clerk-Treasurer