

## ECONOMIC DEVELOPMENT AGREEMENT

### Al. Neyer, LLC—Vail Property

THIS ECONOMIC DEVELOPMENT AGREEMENT (the “Agreement”) is made and entered into effective this 10<sup>th</sup> day of August, 2021, by and between the Town of McCordsville (the “Town” or “McCordsville”), acting by and through its Town Council (the “Town Council”); by and through the McCordsville’s Redevelopment Commission (the “RDC”) and Al. Neyer, LLC (“Developer”), an Ohio limited liability company, registered in Indiana.

#### WITNESSETH:

**WHEREAS**, the Developer is engaged in commercial real estate development and proposes to construct an approximately 1 million square foot e-commerce facility on land proposed to be annexed into the Town of McCordsville, Indiana (the “Project”); and

**WHEREAS**, the Town of McCordsville is charged with supporting and incentivizing economic development and redevelopment opportunities within the Town of McCordsville; and

**WHEREAS**, Developer has agreed, subject to the terms hereof, to participate with the Town in making a certain infrastructure improvement known as Aurora Way; and

**WHEREAS**, Developer has agreed, subject to the terms hereof, to incur costs to implement certain other site plan improvements in the interest of diverting truck traffic away from County Road 600 N. and residential uses within McCordsville; and

**WHEREAS**, Developer has requested financial assistance from the Town and the RDC to undertake the Project; and

**WHEREAS**, Town Bodies (as defined herein) have determined that the completion of the project is in the best interest of the citizens of the Town, and therefore, Town Bodies desire to induce the company to undertake and complete the Project.

**NOW, THEREFORE**, in consideration of the foregoing and of the mutual covenants and agreements herein contained, and other good and valuable consideration, the receipt and sufficiency of which are acknowledged, the parties agree as follows:

## **Agreement**

### **Article I. Definitions**

Section 1.01 **Definitions.** As used in this agreement, the following capitalized terms are used with the meanings provided in this Article 1.

**Abatement** means the real property tax abatement in the proportional amounts and per the schedule which is attached hereto as Exhibit A.

**Annexation** means the annexation of approximately 62 acres into the Town per the Application for Voluntary Annexation filed by Developer and approved by the Council.

**Aurora Way** means a public thoroughfare proposed by McCordsville with the objective of alleviating truck traffic from County Road 600 N. and allowing improved ingress, egress and traffic flow to County Road 600 W. (also known as Mount Comfort Road).

**Developer** means Al. Neyer, LLC and/or its related entities.

**Development Parcel** means the approximately 62-acre parcel of land described in the Voluntary Annexation Petition filed by Developer with the Town of McCordsville.

**Project** means the e-commerce facility comprised of an approximate 1 million square-foot logistical and office space building proposed by Developer and presented to the Town Council.

**Town Body or Town Bodies** means the Town Council of the Town of McCordsville, the Advisory Plan Commission, the McCordsville Redevelopment Commission, and the McCordsville Economic Development Commission collectively or individually as applicable to effectuate, approve and implement the terms of this Agreement.

**Town Permitting Fees** means Town – related fees (permitting and otherwise) applicable to construction and occupancy of projects of the nature proposed by developer.

### **Article II. Mutual Assistance**

Section 2.01 **Mutual Assistance.** Developer and Town Bodies, including the Town Council, Advisory Plan Commission, and RDC agree, subject to further proceedings

required by law with respect to Section 3.03, to take such actions, including the execution and delivery of such documents, instruments, petitions and certifications where necessary, copies of which will be provided to all parties as may be necessary or appropriate from time to time, to carry out the terms, provisions and intent of this Agreement and to aid and assist each other in carrying out said terms, provisions and intent.

### **Article III. Project Development**

Section 3.01 Developer intends to construct and lease an approximately 1 million square-foot e-commerce distribution/warehouse facility on land annexed into the Town. The land will not be annexed into the Town of McCordsville unless and until the following events and/or commitments in this Section 3 occur, or there is sufficient assurance in the sole discretion of Developer that such events and/or commitments are approved, are appropriately documented and will occur. In the event that annexation does occur and this Agreement and related documents are not approved by the Town bodies, the Town bodies consent to the de-annexation of the development parcel.

Section 3.02 **Tax Abatement.** The Town Council has approved and the Developer will receive tax abatement as set forth in the attached Exhibit A for the period and in the amounts specified therein.

Section 3.03. **Aurora Way.** Upon final approval of the Town Bodies, which approvals cannot be and are not hereby guaranteed, and the execution of Addendum No. 1 to this Agreement in the substantially final form set forth on Exhibit B attached hereto and incorporated herein, the Developer will contribute 33.3% of the complete construction costs of the portion of the proposed Aurora Way that is adjacent to the southern property boundary of the Development Parcel. Subject to the approval of Town Bodies, McCordsville agrees to use commercially reasonable efforts to contribute the remaining sum (66.7%) to the complete construction of the proposed Aurora Way currently estimated to cost \$750,000. Subject to the approval of Town Bodies and as an accommodation to McCordsville, Developer will finance and pay 100% of the complete construction costs of this portion of Aurora Way, including the above-referenced cost obligation of McCordsville, provided that McCordsville acquire and provide all necessary rights-of-way to the southern property boundary of the Development Parcel prior to the beginning of construction, and McCordsville agrees to reimburse Developer for its portion of the expenditure within thirty (30) days of Developer's completion of the section of road extension described above and acceptance of this section of Aurora Way by the Town, which acceptance and dedication shall not be unreasonably delayed. Construction shall commence as soon as reasonably possible upon the completion of annexation, the approval of tax abatement, and the issuance of such permits as are necessary to commence construction of both the project and Aurora Way. The parties to this agreement

recognize that the construction of Aurora Way is infrastructure necessary to facilitate the project and that Aurora Way is highly desired, and in the best interest of the citizens of McCordsville. Developer shall not be required by the Town Bodies to obtain any easement rights or other real estate outside the boundaries of the approximately 62 acre Development Parcel. Developer will not be responsible for any other improvements to roads or other infrastructure not within the boundaries of the Development Parcel. Aurora Way will be dedicated as a public thoroughfare. Construction cost shall include design, permitting, construction management, all work performed to prepare and install road to specifications agreed to by Town Bodies, and include any costs for mitigation of existing regulated environmental conditions such as wetlands.

Section 3.04 **Waiver of Fees.** The Town Bodies commit to and agree to waive all related fees for permitting and construction which could be assessed and collected by any Town Body except for fees associated with any variance requests, re-inspections, or additional inspections requested by the Developer. Developer will pay applicable permitting fees and costs imposed by Hancock County, utilities which will provide utility service to the Project and fees imposed by The State of Indiana, unless otherwise exempted from payment.

#### **Article IV. Economic Development Incentives**

Section 4.01 **Form of Incentives/Parties Rights and Duties.** The incentives offered by the Town Bodies as set forth in Article III, Sections 3.01 through 3.04 above (together, the “Economic Development Incentives”) and the parties’ rights and duties shall be subject to compliance with applicable statutory requirements.

Section 4.02 **Conditions to Annexation.** Annexation, by ordinance, duly passed by the Town Council is expressly conditioned upon the commitments for Economic Development Incentives in a form acceptable to Developer in its sole discretion. If annexation takes place prior to completion and implementation of the Economic Development Incentives package, Town Bodies agree, unconditionally to de-annex the Development Parcel and restore same to the exclusive jurisdiction of Hancock County and the State of Indiana.

Section 4.03 **Indemnity and Defense.** Except for the construction of Aurora Way, the work performed by Developer is at its risk, exclusively. To the fullest extent permitted by law, Developer will indemnify, defend (at its sole expense), and hold harmless the City Bodies, their members, officers, employees and agents (“Indemnified Parties”), from and against any and all claims for bodily injury, death or damage to property, demands, damages, actions, causes of actions, suits, losses, judgments, obligations and any liabilities, costs and expenses (including but not limited to investigative and repair costs, attorney’s fees and costs, and consultants fees and costs) collectively, “Claims,” which are in any way connected to the

Development Parcel, work performed, materials furnished, or services provided under this agreement, unless such Claims arise by reason of the negligence or omission of the Town of McCordsville, or any of the Town Bodies. The indemnity and defense obligations apply to any acts or omissions, negligence or willful misconduct of Developer, its employees, or agents, whether active or passive.

#### **Article V. Authority**

**Section 5.01 Actions.** The Town Council, RDC and all applicable Town Bodies represent and warrant that each has taken such actions as may be required and necessary to enable each to execute this Agreement and to carry out fully and perform the terms, covenants, duties, and obligations on the part of each with respect to annexation and real property tax abatement, to be kept and performed as provided by the terms and provisions hereof.

**Section 5.02 Powers.** The Town Council represents and warrants that it has full lawful right, power, and authority, under currently applicable law, to execute and deliver and perform their respective obligations under this Agreement with respect to annexation and real property tax abatement.

#### **Article VI. General Provisions**

**Section 6.01 Time of Essence.** Time is of the essence of this Agreement. The parties shall make every reasonable effort to expedite the subject matters hereof (subject to any time limitations described herein) and acknowledge that the successful performance of this Agreement requires their continued cooperation.

**Section 6.02 Breach.** Before any failure of any party to this Agreement to perform its obligations under this Agreement shall be deemed to be a breach of this Agreement, the party claiming such failure shall notify, in writing, the party alleged to have failed to perform such obligation and shall demand performance. No breach of this Agreement may be found to have occurred if performance has commenced to the reasonable satisfaction of the complaining party within thirty (30) days of the receipt of such notice. If, after said notice, the breaching party fails to cure the breach, the non-breaching party may seek any remedy available at law or equity, subject, however, to the compulsory non-binding mediation provided in Section 6.13, below. The Developer hereby acknowledges and agrees that failure by the Town Bodies to achieve final approval and execution of Addendum No. 1 to this Agreement shall not constitute a breach of this Agreement.

**Section 6.03 Amendment.** This Agreement, and any exhibits attached hereto, may be amended only by the mutual consent of the parties, by the adoption by law, and by the execution of the applicable Town Bodies approving said amendment, as provided

by law, and by the execution of said amendment by the parties or their successors in interest.

**Section 6.04 No Other Amendment.** Except as otherwise expressly provided herein, this Agreement supersedes all prior agreements, negotiations, and discussions relative to the subject matter hereof and is a full integration of the agreement of the parties.

**Section 6.05 Severability.** If any provision, covenant, agreement or portion of this Agreement or its application to any person, entity, or property, is held invalid, such invalidity shall not affect the application or validity of any other provisions, covenants, agreements or portions of this Agreement and, to that end, any provisions, covenants, agreements or portions of this Agreement are declared to be severable.

**Section 6.06 Construction and Interpretation of Agreement / Indiana Law.** This Agreement shall be construed in accordance with the laws of the State of Indiana. The parties agree that they and their attorneys have each reviewed this Agreement, and that the normal rules of construction to the effect that any ambiguities are to be resolved against the drafting party or parties shall not be employed in the interpretation of this Agreement.

**Section 6.07 Waiver Ineffective.** No waiver, modification or amendment of any term, condition or provision of this Agreement shall be valid or have any force or effect unless made in writing and signed by the parties.

**Section 6.08 Notices.** All notices and requests required pursuant to this Agreement shall be deemed sufficiently made if delivered, as follows:

To Developer: AL. NEYER, LLC  
\_\_\_\_\_  
\_\_\_\_\_  
Attn: \_\_\_\_\_

To the Town Council  
of McCordsville: \_\_\_\_\_  
\_\_\_\_\_  
Attn: \_\_\_\_\_

To the McCordsville  
Redevelopment  
Commission: \_\_\_\_\_  
\_\_\_\_\_

Attn: \_\_\_\_\_

or at such other addresses as the parties may indicate in writing to the other either by personal delivery, courier, or by registered mail, return receipt requested, with proof of delivery thereof. In the event notice delivered by registered mail is refused or otherwise undeliverable, said notice may be delivered by regular mail. Mailed notices shall be deemed effective on the third day after mailing; all other notices shall be effective when delivered.

**Section 6.09 Counterparts.** This Agreement may be executed in several counterparts, each of which shall be an original, and all of which shall constitute but one and the same Agreement.

**Section 6.10 No Third-Party Beneficiaries.** This Agreement shall be deemed to be for the benefit solely of the parties hereto and shall not be deemed to be for the benefit of any third party.

**Section 6.11 Effective Date.** Notwithstanding anything herein to the contrary, this Agreement shall not be effective until all parties hereto have executed this Agreement and the RDC has approved or ratified this Agreement at a public meeting.

**Section 6.12 Submission of Disagreements to Mediation.** In the event the parties disagree as to any material matter (such as, but not limited to, whether a default has occurred, whether one party has a duty to act or a duty to refrain from acting, or whether an ambiguity exists as to the scope and terms of the parties' agreements), the dispute will be submitted to non-binding mediation under the Indiana Rules of Alternative Dispute Resolution.

**Section 6.13 No Joint Venture or Partnership.** Nothing contained in this Agreement shall be construed as creating either a joint venture or partnership relationship between the Town of McCordsville, the McCordsville RDC and Developer, or any affiliates thereof. Neither RDC nor Developer is the agent of the other.

In Witness Whereof, the parties have duly executed this Agreement pursuant to all requisite authorizations as of the date first above written.

[signature pages to follow]

TOWN COUNCIL OF THE TOWN OF  
MCCORDSVILLE

BY: \_\_\_\_\_

Name: Barry Wood

Title: President



AL. NEYER, LLC, an Ohio limited liability company

BY: \_\_\_\_\_  
\_\_\_\_\_, Member

TOWN OF MCCORDSVILLE  
REDEVELOPMENT COMMISSION

BY: \_\_\_\_\_  
Brandy Stepan

BY: \_\_\_\_\_  
Shelley Haney

BY: \_\_\_\_\_  
Brian Hurley

BY: \_\_\_\_\_  
Donetta Gee-Weiler

BY: \_\_\_\_\_  
Alex Jordan

BY: \_\_\_\_\_  
Shannon Walls

EXHIBIT A

Real Property Tax Abatement Schedule

**EXHIBIT B**

**Addendum No. 1 to Economic Development Agreement**