

**FIRST AMENDMENT TO DEVELOPMENT AGREEMENT**

**THIS FIRST AMENDMENT TO DEVELOPMENT AGREEMENT** (the “Amendment”) is made as of the \_\_\_\_ day of \_\_\_\_\_, 2022, between the **CITY OF LANSING, KANSAS**, a municipal corporation (the “City”), and **CDJ AUTOMOTIVE, LLC**, a Missouri limited liability company DBA Speedway of Lansing Chrysler Dodge Jeep Ram (“Developer,” and together with the City, the “Parties”).

A. Pursuant to a petition filed with the City Clerk on or about August 10, 2017 (the “Petition”) and other proceedings of the City duly held in accordance with K.S.A. 12-6a26 *et seq.* (the “Act”), the City Council of the City (the “Governing Body”) passed and published Ordinance No. 989 authorizing the projects described in the Petition, creating The 555 N. Main Street Community Improvement District on the property described therein (the “District”), and imposing a 1.0% community improvement district sales tax (the “CID Sales Tax”) within the District.

B. In conjunction with the establishment of the District, the City and Speedway Chrysler Dodge Jeep, Inc. (the “Original Developer”) entered into that certain Development Agreement dated as of November 1, 2017 (the “Development Agreement”), and the Original Developer later assigned its rights and obligations under the Development Agreement to CDJ Automotive, LLC, a Missouri limited liability company, DBA Speedway of Lansing Chrysler Dodge Jeep Ram (“CDJ Automotive”) pursuant to that certain Assignment and Assumption of Development Agreement for Implementation of the 555 N. Main Street Community Improvement District dated as of September 26, 2019.

C. The Governing Body has received from the sole property owner within the District an amended petition dated as of March 14, 2022 (the “Amended Petition”) requesting certain modifications to the District, and the City and CDJ Automotive now desire to enter into this Amendment.

**NOW, THEREFORE**, the Parties agree as follows:

1. Amendments.

a. **Legal Description.** Exhibit A to the Development Agreement is hereby amended and replaced as set forth in **Exhibit A** to this Amendment.

b. **Project Costs.** Exhibit B to the Development Agreement is hereby amended and replaced as set forth in **Exhibit B** to this Amendment, and Section 3 of the Development Agreement is hereby amended and replaced with the following:

**Section 3. Project Costs.**

The estimated costs of the Project (the “Project Costs”) is \$7,000,000 of which \$7,000,000, plus the City Administrative Fee (defined herein), is proposed to be funded by the CID Sales Tax (the “Reimbursable Project Costs”). The Reimbursable Project Costs shall be only those capital expenditures of the Developer related to the acquisition and construction of the Project within the District, including related architectural and engineering costs.

The estimated Project Costs and Reimbursable Project Costs, set forth on **Exhibit B**, attached hereto and incorporated herein, have been prepared by the Developer. The Parties agree that the amounts of the Reimbursable Project Costs may be adjusted among any of the stated categories, except as provided herein, or

to pay additional Reimbursable Project Costs not specifically listed on **Exhibit B**, but which are (1) capital expenditures, (2) related to real property improvements within the District, and (3) otherwise reimbursable under the Act.

The Developer agrees that, notwithstanding anything to the contrary in this Development Agreement, Reimbursable Project Costs shall not include any costs related to acquisition of property not within the boundaries of the District at the time of such acquisition. Furthermore, Reimbursable Project Costs shall not include any costs paid by Developer to any (a) partner, (b) member, (c) shareholder, (d) trustee, (e) beneficiary or (f) family member of such partner, member, shareholder, trustee, or beneficiary, of Developer.

The Project Costs will be privately financed. The Reimbursable Project Costs will be financed on a pay as you go basis, i.e., the Reimbursable Project Costs will be paid for by the Developer without the issuance of notes or bonds, and the Developer will be reimbursed for the Reimbursable Project Costs as moneys are deposited in the Fund (as defined herein) through the imposition of the CID Sales Tax, after payment of the City Administrative Fee, all in accordance with **Section 5** of this Agreement.

c. **Reimbursement Procedures.** Section 5 of the Development Agreement is hereby amended and replaced with the following:

**Section 5. Reimbursement Procedures.**

The City's agreement to fund Reimbursable Project Costs is conditioned upon the following:

(A) All costs submitted for reimbursement shall be identified by the City in its sole and reasonable discretion as Reimbursable Project Costs by this Agreement. All Reimbursable Project Costs must be related to labor, construction materials and real and personal property located within the District.

(B) The Developer shall submit to the City Administrator an invoice (in substantially the form attached to the Development Agreement as **Exhibit C**), signed by the Developer, with supporting documentation identifying the Reimbursable Project Costs for which the Developer seeks reimbursement.

The supporting documentation shall include copies of invoices reflecting amounts billed, copies of checks, evidence of wire transfer or other payment of cash by the Developer for the Reimbursable Project Costs, lien waivers or other evidence that no mechanic's liens exist with respect to the construction of the Project, and such other documentation as the City shall reasonably request.

The invoice shall contain a certification by the Developer that the costs submitted for reimbursement are for Reimbursable Project Costs under this Agreement, and that such expense has been incurred by the Developer and has not been previously submitted for reimbursement hereunder.

Invoices may be submitted to the City by the Developer no more often than monthly. If Developer submits invoices in violation of the provisions of this

paragraph, the City shall be under no obligation to respond to such invoices, nor shall Developer have any right to reimbursement from the Fund for such invoices.

The Developer agrees to allow representatives and agents of the City to inspect all books and records, invoices and other business and financial information related to costs submitted for reimbursement.

(C) The City Administrator shall determine whether the cost submitted is for a Reimbursable Project Cost within thirty (30) business days of the date the invoice is submitted by the Developer. If the City Administrator does not provide a response within thirty (30) business days of the date the invoice is submitted, the cost submitted on the invoice shall be deemed approved; provided said cost is permitted under the Act.

If the City Administrator determines that such cost is not a Reimbursable Project Cost under this Agreement, the City Administrator shall notify the Developer of such determination in writing, setting forth in detail the basis for such denial. In such event, the Developer shall have the right to revise and re-submit the costs to address the City's reason for disapproval, and the City will review and approve (or disapprove) the revised Certificate of CID Costs in accordance with this **Section 5**.

(D) If money is available in the Fund, after payment of the City Administrative Fee, the requested reimbursement shall be paid to the Developer within ten (10) days of the approval by the City Administrator.

(E) If the invoices for Reimbursable Project Costs submitted and approved exceed the amounts then available in the Fund after payment of the City Administrative Fee, such invoices shall be paid as CID Sales Tax Revenue becomes available within the Fund. Subject to the availability of moneys within the Fund, the City will make monthly payments on any outstanding Reimbursable Project Costs approved by the City for reimbursement, provided that the City shall have no obligation to make any payments under this Agreement so long as the Developer is in default of any provision of this Agreement.

(F) The Developer, at its discretion, may provide written instructions to the City to make payments of Reimbursable Project Costs approved by the City to Developer's lender (or another third party to which payment is not otherwise prohibited under this Agreement). Upon the City's receipt of such instructions, the City shall make future payments of Reimbursable Project Costs to such lender or third party, but only to the extent the City is otherwise obligated to make such payments pursuant to this Agreement, and such payments by the City to a lender or third party, as instructed by the Developer, shall satisfy the City's obligations to provide such payments under this Agreement.

(G) Notwithstanding the foregoing or anything in **Section 15** hereof, if Developer does not submit an invoice for reimbursement within 18 months from the later of the date of this Agreement or the date Developer last submitted an invoice for reimbursement pursuant to **Section 5** hereof, the City may provide written notice thereof to Developer. If Developer does not submit an invoice for reimbursement in accordance with this **Section 5** within 90 days of delivery of

such notice, Developer shall no longer be able to submit any further invoices for reimbursement pursuant to this Agreement.

2. Except as expressly amended herein, all remaining terms, provisions and conditions of the Agreement shall remain in full force and effect as modified hereby.

3. This Amendment may be executed in any number of counterparts, all of which shall be deemed an original and all of which shall be construed together as one document.

4. The invalidity or inability to enforce one or more phrases, sentences, clauses, or sections of this Amendment shall not affect the validity or enforceability of the remaining portions of this Amendment.

**[Remainder of page intentionally left blank.]**

**THIS FIRST AMENDMENT TO DEVELOPMENT AGREEMENT** has been executed as of the date first written above.

**CITY OF LANSING, KANSAS**

(SEAL)

By: \_\_\_\_\_  
Anthony R. McNeill, Mayor

ATTEST:

By: \_\_\_\_\_  
Tish Sims, CMC, City Clerk

**CDJ AUTOMOTIVE, LLC**

By: \_\_\_\_\_  
Printed Name: Douglas A. Kinney  
Title: Manager

**EXHIBIT A**

**DISTRICT LEGAL DESCRIPTION**

A tract of land in Lots 34 and 35, Block 2, HOLIDAY HILLS, City of Lansing, Leavenworth County, Kansas described as follows:

Beginning at a point 501.50 feet South and 53.38 feet West of the Northeast corner of Section 24, Township 9 South, Range 22 East of the 6<sup>th</sup> P.M., which point lies on the West right-of-way of U.S. Highway #73 and Kansas Highway #7; thence South 89 degrees 53 minutes 00 seconds West 653.57 feet; thence South 00 degrees 00 minutes 05 seconds East 239.15 feet; thence North 88 degrees 13 minutes 30 seconds East 654.84 feet to said West right-of-way and Southeast corner of Lot 35; thence North 00 degrees 16 minutes 00 seconds West 220.20 feet to the point of beginning, less any part thereof taken or used for road purposes.

AND

A TRACT OF LAND IN LOT 34, BLOCK 2, HOLIDAY HILLS ADDITION TO THE CITY OF LANSING, LEAVENWORTH COUNTY, KANSAS, MORE FULLY DESCRIBED AS FOLLOWS: BEGINNING AT A POINT 502.80 FEET SOUTH AND 706.87 FEET WEST OF THE NORTHEAST CORNER OF SECTION 24, TOWNSHIP 9 SOUTH, RANGE 22 EAST OF THE 6TH P.M., THENCE SOUTH 00°00'05" EAST FOR A DISTANCE OF 239.15 FEET; THENCE SOUTH 88°13'30" WEST FOR DISTANCE OF 75.04 FEET; THENCE NORTH 00°00'05" WEST FOR A DISTANCE OF 241.32 FEET TO THE SOUTH RIGHT-OF-WAY LINE OF PLAZA LANE, THENCE NORTH 89°53'00" EAST FOR A DISTANCE OF 75.00 FEET TO THE POINT OF BEGINNING.

ALSO INCLUDING:

All adjacent Right-of-Way.

**EXHIBIT B**

**Project Costs**

	<b><u>CID Reimbursable Cost</u></b>
LED Light Replacement	\$150,000
<sup>(1)</sup> Property Acquisition	\$1,500,000
Resurface Parking Lot	\$600,000
Roof Replacement or Repair	\$200,000
Facility Remodel/Renovation	\$1,000,000
HVAC Replacement	\$200,000
Various Building & Equipment Upgrades/Replacements	\$600,000
Compliance with Mandatory Manufacturer Building Upgrades	\$2,500,000
<sup>(2)</sup> Construction Loan Interest	<u>\$250,000</u>
<b>TOTAL</b>	<b>\$7,000,000</b>

<sup>(1)</sup> No Property Acquisition costs shall be reimbursed to the Developer unless the acquired property was included within the boundaries of the District as of the date of the acquisition.

<sup>(2)</sup> Construction Loan Interest will only be a reimbursable expense if such interest is accrued on a Reimbursable Project Cost during the construction period of the improvements and incurred prior to December 31, 2024.