RESOLUTION NO. 18 - 11 - 15 - 13

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF CORINTH, TEXAS APPROVING AN ECONOMIC DEVELOPMENT INCENTIVE AGREEMENT BETWEEN THE CORINTH ECONOMIC DEVELOPMENT CORPORATION AND UTTER PROPERTIES, L.L.C. (DOING BUSINESS AS BILL UTTER FORD), PROVIDING AN INCENTIVE IN THE FORM OF A REIMBURSEMENT IN THE AMOUNT OF \$24,790.00 FOR THE EXPANSION OF BILL UTTER FORD; AUTHORIZING THE PRESIDENT TO EXECUTE SAID AGREEMENT ON THE BEHALF OF THE CORINTH ECONOMIC DEVELOPMENT CORPORATION; PROVIDING FOR TWO READINGS; AND DECLARING AN EFFECTIVE DATE.

WHEREAS, the Corinth Economic Development Corporation ("CEDC") is a Type B Economic Development Corporation created pursuant to Chapters 501 and 505 of the Texas Local Government Code, as amended (the "CODE");

WHEREAS, the City Council finds and determines that the expenditure by the CEDC as specified in the attached Economic Development Incentive Agreement (the "AGREEMENT") will promote new or expanded business development in the City, and otherwise meets the definition of a "PROJECT", as that term is defined by Sections 501.101, 501.103 and 505.158 of the Code;

WHEREAS, Section 505.158 of the Code requires Type B Economic Development Corporations authorized by cities with a population of 20,000 or less and approving a project requiring an expenditure of \$10,000.00 or more may not undertake such project until the governing body of the city adopts a resolution authorizing the project after giving the resolution two separate readings;

WHEREAS, the City Council determines that this Resolution and the attached Agreement comply with and are authorized by the ballot proposition submitted to the voters of the City of Corinth, Texas in connection with the obligation of Type B sales and use tax; <u>AND</u>

WHEREAS, the City Council hereby determines it is in the best interest of the City of Corinth to adopt this Resolution approving the attached Agreement.

BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF CORINTH, TEXAS:

- **PART 1.** The attached Agreement between the CEDC and Utter Properties, L.L.C. is hereby approved.
- **PART 2.** The CEDC President is authorized to execute this Agreement on the behalf of the CEDC.
- **PART 3.** If any provision of this Resolution is held to be illegal, invalid or unenforceable by a court of competent jurisdiction, such holding shall not affect the validity of the remaining portions of this Resolution; and the City Council hereby declares that it would have passed such remaining portions of this Resolution despite such illegality, invalidity or unenforceability, which remaining portions shall remain in full force and effect.
 - **PART 4.** This Resolution shall be in full force and effect from and after its second reading.

READ AND APPROVED by the City Council of the City of Corinth, Texas at first reading on the 15th day of NOVEMBER, 2018.

EXHIBIT "A"

ECONOMIC DEVELOPMENT INCENTIVE AGREEMENT

As of the 15th day of NOVEMBER, 2018 (the "EFFECTIVE DATE") this Economic Development Incentive Agreement (the "AGREEMENT") is entered into the Corinth Economic Development Corporation, a non-profit corporation organized under the Development Corporation Act of 1979 (the "CEDC"), and Utter Properties, L.L.C., a Texas limited liability company doing business as Bill Utter Ford (the "COMPANY"). The CEDC and the Company are collectively referred to as the "PARTIES" or individually as a "PARTY". Capitalized terms not otherwise defined have the meaning given them in Article II.

ARTICLE I.

RECITALS

PARAGRAPH 1.01. Commencing on or before the Effective Date, the Company expanded its automotive retail sales operations by making improvements upon its property to expand its facilities in in the City of Corinth to enhance its sales of automobiles and to improve its delivery of related services.

PARAGRAPH 1.02. The CEDC has determined and found that the expansion of the automotive retail sales operations and facilities will create Jobs, and that the expenditure of the CEDC as set forth in this Agreement is suitable or required for the development of business enterprise and falls within the definition of a "PROJECT" as defined in the Development Corporation Act of 1979.

PARAGRAPH 1.03. The CEDC has determined and found the substantial economic benefit and the creation of new opportunities of employment will accrue to the City as a direct result of the Company's expansion of its facilities to enlarge its automotive retail sales and service operations. The value of the

economic benefit of the expansion will outweigh the amount of expenditures required of the CEDC under this Agreement.

PARAGRAPH 1.04. For the reasons stated in these Recitals, which are incorporated into and made a part of this Agreement, and in consideration of the mutual benefits and obligations set forth herein, the Parties enter into this Agreement and agree to the terms and conditions set forth in this Agreement.

ARTICLE II.

DEFINITIONS

PARAGRAPH 2.01. "BUSINESS" means the business activities of the Company's automotive retail sales and services operations conducted in the City of Corinth, Texas on the Site (defined below).

PARAGRAPH 2.02. A "FORCE MAJEURE EVENT" means an event beyond the reasonable control of a Party obligated to perform an act or take some action under this Agreement including, but not limited to: acts of God; earthquake; fire; explosion; war; civil insurrection; acts of the public enemy; act of civil or military authority; sabotage; terrorism; floods; lightning; hurricanes; tornadoes; severe snow storms; utility disruption; strikes; lockouts; major equipment failure; or the failure of any major supplier to perform its obligations. A Force Majeure Event pauses a Party's performance obligation for the duration of the event but does not excuse it. If a Force Majeure Event occurs and such event prevents a Party from fulfilling its obligations hereunder, the applicable time period for performing such obligations shall be extended by the period of delay resulting from the Force Majeure Event.

PARAGRAPH 2.03. "JOB" means a full-time employment position at the Site, resulting from the Business, which position:

- A. Is not seasonal; AND
- **B.** Is provided with at least 30 hours of employment per week.

Any position not meeting such criteria does not qualify as a "JOB" for purposes of this Agreement.

PARAGRAPH 2.04. "PERSONAL PROPERTY" means all equipment, materials, supplies or other personal property used in connection with the construction, equipping or maintenance of the Business on the Site subject to sales and use tax imposed by Texas Tax Code, but does not include personal property held for resale by the Business or acquired by the Business for the purpose of transfer to another party.

PARAGRAPH 2.05. "SITE" means the real property within the corporate limits of the City of Corinth, Texas upon which the activities of the Company's automotive retail sales and services operations are located, the legal description of which is shown in Exhibit "A.1.", attached hereto and made a part of this Agreement for all purposes.

PARAGRAPH 2.06. The "TERM" of this Agreement will commence on the Effective Date and continue until the 31st day of DECEMBER, 2022, unless terminated sooner, as provided in this Agreement (the "TERMINATION DATE"), except that the Company's obligation to comply with Paragraph 6.02. below by submitting a certified Compliance Certificate in the year 2023 demonstrating compliance with its obligations under this Agreement during the calendar year 2022, shall survive the Termination Date.

ARTICLE III.

OBLIGATIONS OF THE COMPANY

PARAGRAPH 3.01. The Company shall continuously operate the Business as an automotive retail sales and service establishment of a quality and character equal to or superior to that existing on the Site as of the Effective Date for the duration of the Term, unless the Company determines that continued operation of the Business is not commercially reasonable.

PARAGRAPH 3.02. The Company shall employ at least 157 persons in Jobs on or before the 31st day of AUGUST, 2019, and maintain such level of employment during the Term (the "MINIMUM JOBS REQUIREMENT").

PARAGRAPH 3.03. The Company agrees to adopt and follow employment policies, rules and procedures intended to ensure that no discrimination will occur in the creation of Jobs on the basis of race,

creed, color, national origin, sex or disability or other characteristics for which protection is available under applicable local, state and federal anti-discrimination laws.

PARAGRAPH 3.04. In performing its obligations under this Article, the Company shall comply with all applicable laws, regulations and ordinances.

ARTICLE IV.

ECONOMIC DEVELOPMENT INCENTIVE PROVIDED BY THE CEDC

PARAGRAPH 4.01. Subject to the requirements and limitations of this Article, other terms and conditions of this Agreement, and State law, the CEDC will reimburse the Company on or before the 31st day of DECEMBER, 2018 for the addition of Personal Property and the creation of new Jobs on the Site identified in Paragraph 4.02. (the "GRANT PAYMENT").

PARAGRAPH 4.02. The CEDC will make the Grant Payment to the Company in a total amount of Twenty-Four Thousand Seven Hundred and Ninety and No/100 Dollars (\$24,790.00).

ARTICLE V.

DEFAULT, TERMINATION AND REMEDIES

PARAGRAPH 5.01. At any time during the Term that the Company determines that continued operation of the Business on the Site is not commercially reasonable and ceases its operations, the Company shall repay to the CEDC, within 120 days from the date the Company ceases to operate, the portion of the Grant Payment due in accordance with the following schedule:

A.	YEAR 1	 \$24,790.00
в.	YEAR 2	 \$18,592.50
C.	YEAR 3	 \$12,395.00
D.	YEAR 4	 \$6,197.50

For example, if the Company ceases to operate the Business on the Site in Year 2, then the Company would repay to the CEDC an amount of \$18,592.50. For the purpose of clarity, each "YEAR" within the Term of this Agreement shall commence on JANUARY 1 and end on DECEMBER 31 of each calendar year following the Effective Date of this Agreement.

PARAGRAPH 5.02. The Company hereby consents to and the CEDC shall be hereby entitled to record a lien against the Site to secure the applicable amount of the Grant Payment due under Paragraph 5.01. if such amount becomes due and the Company fails to timely make payment.

PARAGRAPH 5.03. At any time during the Term of this Agreement that the Company is not in compliance with its obligations under this Agreement, the CEDC may send written notice of such non-compliance to the Company. If such non-compliance is not cured within 120 days after the Company's receipt of such written notice or, if non-compliance is not reasonably susceptible to cure within 120 days and a cure is not begun within such 30-day period and, thereafter, continuously and diligently pursued to completion on a schedule approved by the CEDC (in either event, a "CURE PERIOD"), then the CEDC may, at its sole discretion and option, terminate this Agreement and the Company shall repay all or a portion of the Grant Payment in accordance with the schedule provided in Paragraph 5.01.

A. Except as to circumstances arising from a Force Majeure Event, the Term shall not be extended as a result of any Cure Period agreed to by the CEDC under this Paragraph.

PARAGRAPH 5.04. Upon breach of any obligation under this Agreement, in addition to any other remedies expressly set forth in this Agreement with respect to such breach, the CEDC may pursue such remedies as are available at law or in equity for breach of this Agreement.

PARAGRAPH 5.05. The CEDC shall not be obligated to pay any indebtedness or obligations of the Company. The Company hereby agrees to release, defend, indemnify and hold the CEDC, and the CEDC's officers, agents and employees, from and against:

A. Any indebtedness or obligations of the Company; OR

- B. Any other loss, claim, demand, lawsuit, liability or damages arising from the negligence or intentional misconduct of the Company in the performance of its obligations under this Agreement; OR
- C. Breach of any representation, warranty, covenant or agreement of the Company contained in this Agreement, without regard to any notice or Cure Period provisions.

The Company's indemnification obligation hereunder shall include payment of the CEDC's reasonable attorneys' fees, costs and expenses with respect thereto.

PARAGRAPH 5.06. The Company may terminate this Agreement at any time for convenience with at least 30 days' prior written notice, provided that the Company makes payment to the CEDC in the full amount of the Grant Payment regardless of the year of termination. Repayment of the Grant Payment pursuant to this Paragraph shall not be subject to the provisions of Paragraph 5.01., but shall instead require that the Company repay the full amount of the Grant Payment plus interest from the date the Grant Payment was paid to the Company, at the rate of five (5) percent per annum. Such interest shall accrue from the date that the Grant Payment was paid to the Company until the date of the notice of termination by the Company, and the Grant Payment shall be paid in full within ten (10) days of the date of the Company's notice of termination to the CEDC. The Company's failure to pay the full Grant Payment shall result in a lien being placed upon the Site in accordance with Paragraph 5.02. above.

ARTICLE VI.

INFORMATION

PARAGRAPH 6.01. Subject to this Article, the Company shall, at such times and in such form as the CEDC may reasonably request from the Company, provide information concerning the performance of the Company's obligations under this Agreement.

PARAGRAPH 6.02. Beginning in calendar year 2019 and continuing each calendar year thereafter during the Term, the Company shall submit to the CEDC, on or before JANUARY 31 of each

such year, a certified Compliance Certificate, acceptable to the CEDC and signed by an authorized officer or employee of the Company, certifying that the Company is in full compliance with its obligations under this Agreement or, if not in full compliance, a statement disclosing the nature of any non-compliance and any reasons therefor. Beginning in calendar year 2020, each certified Compliance Certificate shall also include information regarding the Company's satisfaction of the Minimum Jobs Requirement as of the end of the preceding calendar year, in accordance with Paragraph 3.02. hereof. After receiving a timely submitted certified Compliance Certificate, the CEDC shall have 30 days to notify the Company of any questions that the CEDC may have concerning any of the information in the certified Compliance Certificate, and the Company shall diligently work in good faith to respond to such questions to the CEDC's reasonable satisfaction.

PARAGRAPH 6.03. The Company agrees that the CEDC, or its authorized representative, shall have the right to review the business records of the Company that relate to its performance under this Agreement in order to determine the Company's compliance with the terms of this Agreement, subject to the Company's obligations of confidentiality and pursuant to applicable state and federal laws. Such review shall occur at any reasonable time, upon at least five (5) days' prior written notice to the Company, and may occur a maximum of one (1) time each month. To the extent reasonably possible, the Company shall make all such records available in electronic form or otherwise available to be accessed through the internet.

PARAGRAPH 6.04. Subject to the requirements of the Texas Public Information Act, or order of a court of appropriate jurisdiction, the Company may be required to disclose or make available to the CEDC any information relating to this Agreement. The Company agrees to cooperate with the CEDC in response to any request for information under the Texas Public Information Act or court order. The CEDC will endeavor to provide the Company with advance written notice of any such request for information or court order so that the Company may seek any relief to which the Company believes it is entitled. The CEDC's obligations under this Paragraph do not impose a duty upon the CEDC to challenge any court order or ruling of the Texas Attorney General to release information in response to a specific request for information under the Texas Public Information Act.

ARTICLE VII.

REPRESENTATIONS AND WARRANTIES OF THE COMPANY

As of the Effective Date, the Company represents and warrants to the CEDC, as follows:

PARAGRAPH 7.01. The Company is a duly organized, validly existing limited liability company, in good standing under the laws of the State of Texas and is authorized to conduct business and own real property in the State of Texas. The activities that Company proposes to carry on at the Site may lawfully be conducted by Company.

PARAGRAPH 7.02. The execution, delivery and performance by the Company of this Agreement are within the Company's powers and have been duly authorized.

PARAGRAPH 7.03. This Agreement is the legal, valid and binding obligation of the Company, and is enforceable against the Company in accordance with its terms except as limited by applicable relief, liquidation, conservatorship, bankruptcy, moratorium, rearrangement, insolvency, reorganization or similar laws affecting the rights or remedies of creditors generally, as in effect from time to time.

PARAGRAPH 7.04. The Company is not in default in the performance, observance or fulfillment of any of the obligations, covenants or conditions contained in any agreement or instrument to which they are parties or by which they or any of their property is bound that would have any material adverse effect on the Company's ability to perform under this Agreement.

PARAGRAPH 7.05. Neither this Agreement nor any Exhibit attached hereto in connection with the negotiation of this Agreement contains any untrue statement of a material fact or omits to state any material fact necessary to keep the statements contained herein or therein, in the light of the circumstances in which they were made, from being misleading.

ARTICLE VIII.

MISCELLANEOUS

PARAGRAPH 8.01. This Agreement, including the Recitals and the Exhibits hereto, contains the entire agreement between the Parties with respect to the transactions contemplated herein and supersedes any prior understandings or written or oral agreements between the Parties.

PARAGRAPH 8.02. This Agreement may only be amended, altered or terminated by written instrument signed by all Parties.

PARAGRAPH 8.03. All notices required by this Agreement will be delivered to the following by certified mail or electronic mail transmission:

THE CEDC:

Executive Director

Corinth Economic Development Corporation

3300 Corinth Parkway

Corinth, Texas 76208

E-mail: jason.alexander@cityofcorinth.com

With a copy to:

City Manager

City of Corinth

3300 Corinth Parkway

Corinth, Texas 76208

E-mail: bob.hart@cityofcorinth.com

THE COMPANY:

Monica Utter

Bill Utter Ford

4901 South Interstate 35E

Denton, Texas 76210

E-mail: mutter@billutterford.com

With a copy to:

Craig Bowen

Bill Utter Ford

4901 South Interstate 35E

Denton, Texas 76210

E-mail: cbowen@billutterford.com

Each Party will notify the other Party in writing of any change in information required for notice under this Paragraph within ten (10) days of such change.

PARAGRAPH 8.04. This Agreement is made and shall be construed and interpreted under the laws of the State of Texas. Mandatory venue for any legal proceedings shall lie in state court of appropriate jurisdiction for the action located in Denton County, Texas. Mandatory venue for any matters in federal court will be in the United States District Court for the Eastern District of Texas, Sherman Division.

PARAGRAPH 8.05. The Company agrees that neither the City of Corinth, Texas (the "CITY"), nor the CEDC assume any liability or responsibility by approving plans, issuing permits or approvals or making inspections related to any matter arising under this Agreement.

PARAGRAPH 8.06. If any provision of this Agreement is held to be illegal, invalid or unenforceable under present or future laws effective while this Agreement is in effect, such provision shall be automatically deleted from this Agreement and the legality, validity and enforceability of the remaining provisions of this Agreement shall not be affected thereby, and in lieu of such deleted provision, there shall be added as part of this Agreement, a provision that is legal, valid and enforceable and that is as similar as possible in terms and substance as possible to the deleted provision.

PARAGRAPH 8.07. In the event litigation is commenced under the terms of this Agreement, the prevailing Party shall be entitled to recover from the other reasonable attorney fees and costs.

PARAGRAPH 8.08. It is understood and agreed between the Parties that the CEDC and the Company, in executing this Agreement, and in performing their respective obligations, are acting independently, and not in any form of partnership or joint venture, and any implication to the contrary is

hereby expressly disclaimed. The CEDC assumes no responsibilities to any third parties in connection with this Agreement, and the Company agrees to indemnify, defend and hold the CEDC, its officers, representatives, agents and employees, harmless from any such liabilities.

PARAGRAPH 8.09. This Agreement is for the exclusive benefit of the Parties and no third party may claim any right, title or interest in any benefit arising under this Agreement. The Company may not assign any of its rights, or delegate or sub-contract any of its duties under this Agreement, in whole or in part, without the prior written consent of the CEDC.

PARAGRAPH 8.10. Nothing in this Agreement, and no action of the CEDC under this Agreement, will constitute a waiver of any immunity of the CEDC to suit or to liability or of any limitations on liability granted by applicable law, including without limitation, the Texas Constitution.

PARAGRAPH 8.11. The Company shall not and does hereby agree not to knowingly employ an "UNDOCUMENTED WORKER" as defined in Texas Government Code Section 2264.001. If convicted of a violation under 8 U.S.C. Section 1324a(f), the Company shall repay the full amount of the Grant Payment received by the Company from the CEDC as of the date of such violation not later than 120 days after the date the Company is notified by the CEDC of a violation of this Paragraph, plus interest from the date the Grant Payment was paid to the Company, at the rate of five (5) percent per annum. Said interest shall accrue from the date the Grant Payment was paid to the Company until the date that the payment is fully repaid to the CEDC. The CEDC shall be entitled to recover from the Company other reasonable attorney fees and costs incurred from an action to recover the Grant Payment subject to repayment under this Paragraph. However, the Company will not be liable for a violation by its subsidiary, affiliate or person which whom the Company contracts.

PARAGRAPH 8.12. Subject to the requirements of Texas Government Code Chapter 2270, the Company certifies that it does not boycott Israel, and it will not boycott Israel during the Term. Pursuant to Texas Government Code Chapter 2252, Subchapter F, the Company affirms that is it not identified on a list created by the Texas Comptroller of Public Accounts as a company known to have contracts with or provide supplies or services to a foreign terrorist organization.

PARAGRAPH 8.13. No term or condition of this Agreement shall be deemed to have been waived, nor shall there be any estoppel to enforce any provision of this Agreement, except by written instrument of the Party charged with such waiver or estoppel.

EXECUTED to be effective as of the Effective Date.

THE CORINTH ECONOMIC DEVELOPMENT CORPORATION

By:		~
2).		

President

THE COMPANY

By:

Name:

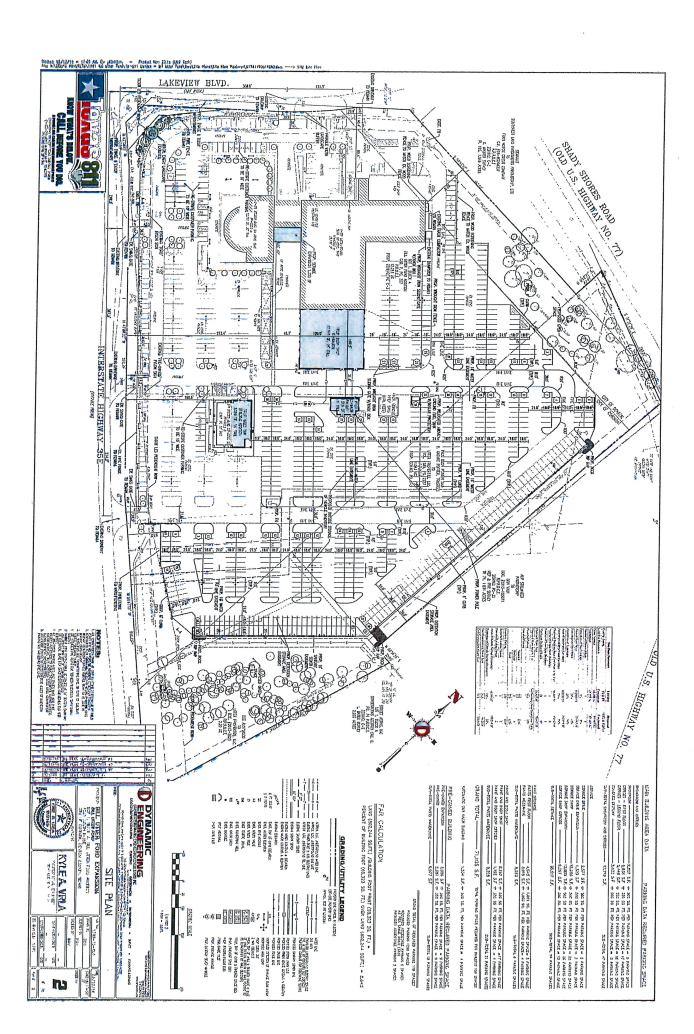
Title:

Monica D. Utter

Dealer Operations

EXHIBIT "A.1."

LEGAL DESCRIPTION OF THE SITE



READ AND ADOPTED by the City Council of the City of Corinth, Texas at second reading on the $15^{\rm th}$ day of NOVEMBER, 2018.

Sam Burke, Mayor Pro-Tem

ATTEST:

APPROVED AS TO FORM: