

STATE OF TEXAS

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COUNTY OF LUBBOCK

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PERFORMANCE AGREEMENT

This Performance Agreement (the "Agreement") is made effective on August 2, 2007, by and between LUBBOCK ECONOMIC DEVELOPMENT ALLIANCE, INC., a Texas non-profit corporation (hereinafter referred to as "LEDA") and OZARK AUTOMOTIVE DISTRIBUTORS, INC., (hereinafter referred to as "Ozark"), by and through their duly authorized officers and affiliate organizations under the terms and conditions that follow.

1. **Applicable Law:** It is understood by and between the parties that the term "Act," as used herein, is intended to mean the Development Corporation Act of 1979, as amended. (Article 5190.6, Texas Revised Civil Statutes.) The parties hereto covenant and agree to comply with the terms of the Act applicable to this Agreement.

2. **Parties:**

- A. **LEDA**, a Texas non-profit corporation as well as a tax exempt 501(c) 4 entity, was created by the City of Lubbock, Texas, as an Industrial Development Corporation under the Act for the purpose of creating and retaining positions and encouraging new businesses to be established in Lubbock, Texas, to stimulate business and commercial activities, as well as all other purposes allowed by the Act.
- B. **Ozark**, a Missouri corporation, authorized to do business in Texas which is in the process of constructing a distribution facility in Lubbock Business Park (NAICS 42, 48 & 49) with projected employment of three hundred ninety five (395) employees. Its business project is anticipated to result in 100 new Primary Jobs for the City of Lubbock in year one (1) 125 new jobs in year two (2) and 170 additional qualifying primary jobs in year three (3).

3. **Purpose:** The purpose for this Agreement is to formalize the agreements between LEDA and Ozark for the payment of certain costs associated with Ozark's Project and specifically state the covenants, representations of the parties, and the incentives associated with Ozark's commitment to abide by the provisions of the Act and to abide by the terms of this Agreement which has been approved by the Board of Directors of LEDA as complying with the specific requirements of the Act. It is expressly agreed that this Agreement constitutes a single transaction; although, incentive payments thereunder are divided into multiple installments as annually earned. A failure to perform any obligation by Ozark may constitute a breach of the entire Agreement and terminate any further commitments by LEDA.

4. **Definitions:**

- A. The "Act" shall refer to the Development Corporation Act of 1979, as amended, as Article 5190.6, Texas Revised Civil Statutes.
- B. "LEDA" shall refer to Lubbock Economic Development Alliance, Inc., a Texas non-profit corporation, created by the City of Lubbock as an "Industrial Development Corporation," pursuant to the Act.
- C. "Ozark" shall refer to Ozark Automotive Distributors, Inc. a Missouri Corporation , and the recipient party to this Agreement.
- D. "Project" shall mean the project identified in Ozark's Request.
- E. "Ozark Request" may include the identification of the cost of the project by Ozark to the facility or other purpose within Section 2(4) of the Act.
- F. LEDA's Sliding Scale" shall mean the incentive allocation to be utilized in determining compliance with the incentive awarded for the cost of the project confirmed by the establishment of new Primary Jobs.
- G. "Full-Time Equivalent Employee" shall include individuals employed in "Primary Jobs" as defined by the Act, as well as contract or leased employees performing "Primary Jobs" in the City of Lubbock on behalf of Ozark.
- H. "Annual Compensation" shall mean the higher of actual compensation or annualized base pay or actual annualized payment as determined within the sole discretion of LEDA's auditor/representative.
- I. "Term," as used herein, shall begin with the Start Date of February 1, 2008, and end on July 31, 2015, (the "Termination Date") unless earlier breached by Ozark's failure to perform.
- J. "Payback Provisions" shall mean forfeiture of all unpaid incentives.
- K. "Baseline Employment Level" is defined to mean the employee census on the day preceding the term of the contract.
- L. "Baseline Measurement Date" shall mean the day preceding the Start Date of the contract.
- M. "Operations Arm" shall mean Ozark which shall be in charge of day to day operations and hiring decisions.

N. "Census" is defined as a compilation listing of the employee name, address, date of hire, date of termination, position, base pay, and indication of full-time or part-time status. (Such information is preferred to be presented in Excel format) which shall be made available to the Auditor in performing the audit.

O. "Measurement Date" shall mean the date upon which the determination is made as to whether Recipient is in compliance with creating and/or maintaining the Primary Job positions represented by Ozark. Measurement Dates shall be:

- (1) Year One: July 31, 2009, July 31, 2010, July 31, 2011, July 31, 2012 and July 31, 2013; Employment Level 100.
- (2) Year Two: August 1, 2010; August 1, 2011; August 1, 2012; August 1, 2013 and August 1, 2014; Additional 125.
- (3) Year Three: August 1, 2011; August 1, 2012; August 1, 2013; August 1, 2014 and August 1, 2015; Additional 170.

5. **Representations of Ozark:**

- A. Ozark represents that it will utilize the incentive provided towards construction of the project.
- B. Ozark represents that it is authorized to do business in Texas and has authorization to enter into this Agreement on its behalf.
- C. Ozark represents that it has sought from LEDA economic assistance pursuing Ozark's Project.
- D. Ozark represents that it has conferred with attorneys of its own choosing and is fully knowledgeable of the terms of the Act and commits Ozark to the reporting requirements of the Act, as well as all conditions precedent and subsequent as required to be eligible for the incentives offered by LEDA.
- E. Ozark represents that it acknowledges that its failure to perform any reporting requirements within a reasonable period of time after the request is made and/or its failure to maintain the Baseline Employment Level could result in the termination of this Agreement thereby relieving LEDA of any further duty to perform or pay further installments under this Agreement or a reduction in payment in cases where employment levels and categories are not met and maintained.
- F. Ozark understands and agrees that any variations as to any term of this Agreement or any terms or conditions of the incentives as stated must be mutually agreed to in written supplements or addenda since no oral agreements, amendments, or representations will be binding on either party.

6. **Representations by LEDA:**

A. LEDA represents that it is established as an Industrial Development Corporation under the Act and further represents that the costs applied toward Ozark's Project as stated in this Agreement have been found by the Board of Directors of LEDA to be in compliance with the requirements and purposes of the Act as well as for the benefit of the City of Lubbock, Lubbock County, Texas, and trade area.

B. LEDA represents that it has authority to enter into this Agreement. LEDA understands and agrees that any variation in terms of this Agreement or the incentives offered to Ozark or commitment by Ozark will only be binding if mutually agreed to in writing.

7. **Real Property** - LEDA shall convey surface only to approximately Twenty Five (25) acres of land in Lubbock Business Park as identified by Special Warranty Deed in the form attached as Exhibit A and pursuant to the terms and conditions as set forth in the "Real Estate Sales Contract" in form attached as Exhibit B. Such conveyance shall take place after Ozark has completed its due diligence to determine the Ozark Tract is acceptable for Ozark's intended use and development.

8. **Capital Incentive to be Awarded and Terms of Award.**

Initial Capital Investment:

LEDA hereby grants to Ozark a potential total incentive of \$1,346,500.00 with payments to be expressly made under the following terms and conditions:

A. LEDA agrees to pay Ozark the sum of \$300,000.00 upon Ozark's confirmation and written notice that business operations have begun at the Lubbock location.

In addition to the foregoing, LEDA agrees to pay up to \$1,046,500.00 of additional Project costs, payable over five (5) years, conditioned upon the creation of Primary Jobs as defined in the Act, by Ozark and under the following terms and conditions:

A. Ozark agrees to establish a Baseline Employment Level and Census (as defined herein) and shall timely provide such information to LEDA or its designated audit representative when requested. Ozark agrees to maintain the Baseline Employment Level through the term of this Agreement and create and maintain the additional full-time job positions intended to qualify for the additional Project cost incentive, as offered by LEDA. Ozark shall earn one-fifth (1/5) of the additional Project cost incentive at each Measurement Date. Such earned portion shall be paid within a reasonable time following the completion of a yearly audit by LEDA or its designated representative which payment shall be made within fifteen (15) days after LEDA's board review and approval of the audit. LEDA and its representative agree to maintain confidentiality of all of Ozark's records and to

return all such records unless other mutually agreeable arrangements are made regarding record retention by Ozark or inspection access to LEDA..

- B. Ozark understands and agrees that in the event, other than as a result of a force majeure (as defined in Section 14.F below) there is a failure to meet its Target Annual Compensation in the aggregate, then LEDA shall have the right to make all necessary adjustments according to LEDA's sliding scale, not to exceed the sums as approved by LEDA's Board of Directors.
- C. In evaluating Ozark's Request and pursuant to Section 40(b) of the Act, it is the intention of the parties that, assuming Ozark is successful in total completion of Ozark's Project, its total Target Job Positions of three hundred ninety five (395) in number would ultimately result in a Target Annual Compensation in the Operations Arm as estimated to be at least \$15,000,000.00 in three (3) years in the aggregate

Each annual incentive installment shall be considered as earned in one-fifth (1/5) increments as of each Measurement Date during the Agreement when, by audit, it is confirmed that the Ozark attained the Target Job Positions and the Target Annual Compensation. Unearned incentives will be subject to forfeiture.

9. **Conditions for Payment of Incentives:**

It is specifically agreed and understood by and between the parties that LEDA has agreed to make the project payments strictly upon the following terms and conditions:

A. Any use of LEDA's name for publicity in connection with Ozark's business or activities must be approved in advance by LEDA. It is understood that LEDA may make known its contributions to Ozark in whatever public manner mutually agreed upon and deemed appropriate.

B. Ozark shall have delivered to LEDA a certified copy of the authorization by the President of each, authorizing the execution and performance of this Agreement.

C. Ozark must maintain a business location in the City of Lubbock and remain qualified to do business in the State of Texas. If it fails to do so, Recipient must notify LEDA, which in its sole discretion, may terminate the Agreement and all unpaid installment payments and other obligations called for herein shall be terminated.

D. The operations or activities of Ozark and its employees shall be performed and conducted in a professional and businesslike manner and shall be in keeping with federal and state laws and regulations, and any ordinances of the City of Lubbock, and/or governmental entities (including Lubbock Business Park) which may have jurisdiction over operations and activities. If Ozark shall continue its operations and activities in violation of any such law, ordinance, or regulation, after thirty (30) days' written notice from LEDA of such violation without correcting or bringing such violation into compliance with such law, ordinance, or regulation within thirty (30) days unless such time is extended by written mutual agreement, LEDA, in its sole discretion, may terminate the Agreement and all contributions and other obligations called for herein.

E. Ozark agrees to, in good faith, engage in a confidential review of all material record examination by LEDA's auditors as mutually agreed as necessary to insure compliance with the conditions of the incentive payments (base salary, overtime, and fringe benefits) and Ozark shall provide a sworn and certified statement by its President that the information provided to LEDA is true and accurate as to Ozark's employment (base salary, overtime and fringe benefits) and entitlement as to any installment payment. Any error or false statement contained in such certification shall be grounds for termination of this Performance Agreement and forfeiture as to all remaining installments.

F. Any information obtained by LEDA or its agents or assigns during negotiations leading up to the execution of the Agreement or otherwise about the business, have or will be returned upon the execution of this Agreement, subject to a continuing examination right by LEDA in order to comply with LEDA's reporting obligations, if any. However, since Ozark is a public company and subject to certain confidentiality requirements as set forth by governing agencies, specifically the Securities and Exchange Commission, LEDA, will not release any information it has obtained without the written approval of Ozark.

G. The failure of Ozark to comply with any of the foregoing conditions shall be a breach of this Agreement and LEDA may, at its option, declare this Agreement terminated, unless such breach is corrected to the satisfaction of LEDA within thirty (30) days of written notice to Recipient of such breach.

10. Payback Provisions: Ozark acknowledges, covenants, and agrees that in the event there is a failure to achieve Target Job Positions or maintain its Baseline Employment Level for any reason other than force majeure, LEDA will be excused from payment of any future unpaid installments and Ozark hereby assigns all claims for non-payment to LEDA. Further, in the event Ozark should cease operation and vacate the facility before June 1, 2015, they collectively agree to reimburse LEDA for all incentives paid as well as reimbursing the fair market value of the real estate or re-conveying the property to LEDA.

11. **Assignment, Merger, and Termination Due to Merger, Etc.:** This Agreement shall not be assignable, either in whole or in part. In the event of a merger, consolidation, acquisition, sale, or purchase of Ozark by or with a third party or entity, this Agreement shall terminate. After such termination, all future unpaid installment payments and obligations called for herein shall be terminated. Termination as the result of assignment or merger or change in business form shall not disqualify the remaining or new entity from applying to LEDA for new incentive consideration. However, termination as the result of all forms and changes in ownership shall result in and require a new application process, project review, and formal approval by LEDA's Board of Directors.

12. **Insurance:** Ozark covenants and agrees to include LEDA as an additional named insured to all policies of liability insurance coverage and insurance policies regarding Ozark's ownership and operations in Lubbock Business Park whereby LEDA is provided insurance coverage against all liability for injury or damages caused by Ozark's employees, agents, officers, directors, customers, clients, patrons, visitors, or guests.

13. **No Privity of Endeavor or Joint Venture:** It is specifically agreed that there shall be no privity of endeavor or joint venture whatsoever between LEDA and Ozark and that the sole connection between the parties is the contribution of the economic assistance by LEDA under the restricted conditions as set forth herein and that such contributions as stated herein are for the sole purposes as set forth herein and it shall in no way be construed as a continuing basis of financial support by LEDA to Ozark. The parties hereto have entered into this Agreement in an arms-length transaction. No agency relationship or fiduciary relationship is intended to be created by this Agreement and no such relationship shall be determined to exist.

14. **Good Faith – Normal Business Operations:** The parties agree that this Agreement has been entered into in good faith and that each party shall act in good faith in complying with its provisions. The parties further agree to transact all their business under and that which relates to this Agreement in accordance with their normal business operations.

15. **Miscellaneous Provisions:**

A. **Notices:**

For the purposes of any notices to be given, pursuant to the terms of this Agreement, the parties shall use the following addresses or any other address as may be changed by the parties, upon written notice to the other party, as follows:

- (1) Gary C. Lawrence
CEO and President
LUBBOCK ECONOMIC DEVELOPMENT ALLIANCE, INC.
1500 Broadway, 6th Floor
Lubbock, TX 79401

(2) With a copy to:

William F. "Pete" Baker
MCCLESKEY, HARRIGER, BRAZILL & GRAF, L.L.P.
5010 University Avenue, 5th Floor
P. O. Box 6170
Lubbock, TX 79493

(3) Ed Randall
Director of Property Management
O'Reilly Automotive Inc.
233 S. Patterson
Springfield, MO 65802

(4) With a copy to:

Robert L. Greene
Director of Real Estate Legal Services
O'Reilly Automotive, Inc.
233 S. Patterson
Springfield, MO 65802


Notices shall be deemed to be given upon the placing in the United States Mail, Certified Mail, Return Receipt Requested, to the above-described addresses or as may be changed, pursuant to the terms and conditions hereof.

- B. Entire Agreement: This instrument constitutes the entire agreement between the parties hereto and neither this Agreement nor any of the Exhibits attached hereto, if any, can be altered, changed, or amended in any respect except by an instrument in writing duly executed by both parties.
- C. Governing Law and Performance: This Agreement shall be governed by the laws of the State of Texas and shall be deemed to be executed in and performance called for in Lubbock, Lubbock County, Texas.
- D. Partial Invalidity: In the event that any portion of this Agreement should be found or declared to be invalid for any reason, the remaining provisions of this Agreement shall remain in full force and effect and shall be binding upon the parties. The parties agree that it is their intent for this Agreement to be determined as being an indivisible obligation of the parties.

- E. Binding Effect: This Agreement shall be binding upon the undersigned, their successors and assigns, subject to the express terms of this Agreement concerning assignment.
- F. Force Majeure: If any default or performance of any other covenant or term of this Agreement is delayed by reason of strike, riots, shortages of labor, materials, supplies, or transportation, war, civil commotion, act of God, governmental restrictions, regulations, or interference, fire, or other casualty, or any other circumstances beyond a signatory party's control, then the duty to do or perform the term or covenant, regardless of whether the circumstance is similar to any of those enumerated above or not, is excused during the delay period.
- G. Time is of the Essence: The parties agree that time is of the essence in the execution of this Agreement.

EXECUTED in multiple counterparts, each of which is an original, on this 2ND day of August, 2007.

LUBBOCK ECONOMIC DEVELOPMENT ALLIANCE, INC.



 Gary C. Lawrence, CEO and President

ATTEST:



EXECUTED in multiple counterparts, each of which is an original, on this 2TH day of July, 2007.

OZARK AUTOMOTIVE DISTRIBUTORS, INC.

By: 
 Its: President

ATTEST: