

## MOBILITY DEALER CONSIGNMENT AGREEMENT

This Agreement (this "Agreement") made and entered into as of this \_\_\_\_ day of \_\_\_\_\_, 20\_\_ is by and among \_\_\_\_\_, a(n) \_\_\_\_\_, having its principal office at \_\_\_\_\_ (hereinafter referred to as "Mobility Dealer"), and **WJK TEMPE AUTOMOTIVE, INC.**, an Arizona corporation, f/k/a **BILL KAY'S TEMPE DODGE, INC.**, having its principal office at 7975 Auto Plex Loop, Tempe, Arizona 85284 ("Tempe Dodge"), **BILL KAY FORD, INC.**, an Illinois corporation, having its principal office at 14633 South Cicero Avenue, Midlothian, Illinois 60445 ("Bill Kay Ford"), **BILL KAY OLDSMOBILE, INC.**, an Illinois corporation, d/b/a **BILL KAY HONDA, INC.**, having its principal office at 1360 Locke Drive, Bradley, Illinois 60914 ("Bill Kay Honda"), and **LIBERTY CHEVROLET, INC.**, a Delaware corporation, d/b/a **BILL KAY CHEVROLET**, having its principal office at 601 Ogden Avenue, Lisle, Illinois 60532 ("Bill Kay Chevrolet", and together with Tempe Dodge, Bill Kay Ford and Bill Kay Honda, collectively, the "Consigning Companies" and each a "Consigning Company").

WHEREAS, Mobility Dealer is engaged in the business of selling and servicing vans, wagons, truck, and/or truck chassis with specialized bodies, modifications, conversion equipment and/or accessories installed thereon; and

WHEREAS, the Consigning Companies are engaged in the business of buying and selling new and used motor vehicles, vans, wagons and/or trucks built on truck chassis; and

WHEREAS, the Consigning Companies (or any one or more of them) have entered into those certain Converter Consignment Agreements with certain Converters (as hereinafter defined), each of which provides that the Consigning Companies shall provide and deliver to Converter truck chassis for its use in manufacturing and/or modification with the ultimate objective being to thereafter sell such completed units to customers of Mobility Dealer (each, as it may be amended, restated, modified or supplemented and in effect from time to time, a "Converter Consignment Agreement"); and

WHEREAS, the Consigning Companies desire to consign certain Completed Units to Mobility Dealer for sale by Mobility Dealer to its customers and Mobility Dealer desires to sell such Completed Units to its customers.

NOW, THEREFORE, in consideration of the premises and mutual covenants herein contained, it is agreed as follows:

1. Definitions. The following words and terms shall have the meanings set forth below when used in this Agreement:

- (a) "Body" shall mean specialized bodies, modifications, conversion equipment and/or accessories manufactured by Converter or others and installed by Converter onto Trucks consigned to Converter by the Consigning Companies pursuant to the Converter Consignment Agreement.
- (b) "Completed Unit" shall mean the combination of a Truck and Body.
- (c) "Converter" shall mean a company authorized by the Consigning Companies to manufacture and install Bodies to a Truck and/or modify or convert Trucks for specialized use.
- (d) "Truck" shall mean any new or used truck chassis, wagon or van, or other vehicle consigned by the Consigning Companies to Converter under a Converter Consignment Agreement.

Terms used herein and not otherwise defined herein that are defined in the Uniform Commercial Code of Illinois have such defined meanings herein, unless the context otherwise indicates or requires.

2. Consignment.

(a) Mobility Dealer hereby acknowledges and agrees that all Completed Units delivered to Mobility Dealer whether by any Consigning Company or any Converter under this Agreement are on a consignment basis. Title to Completed Units shall at all times remain in such Consigning Company until they have been duly purchased and such Consigning Company has effected collection therefor.

(b) Mobility Dealer shall not transfer any ownership interest in any Completed Unit to itself or any third party, or give or attempt to give a security interest in any Completed Unit to a third party while title to such Completed Unit remains in a Consigning Company.

(c) Mobility Dealer shall not make use of any Completed Unit for its personal purposes until such Completed Unit has been duly purchased by it and a Consigning Company has effected collection therefor. Completed Units may be used only for demonstration to customers with the consent of a Consigning Company and Converter.

3. Sale to Customers. It is the intention of the parties hereto that all Completed Units are consigned to Mobility Dealer hereunder for the sole purpose of sale to customers of Mobility Dealer. Completed Units will be available for sale only through Mobility Dealer's dealership. Mobility Dealer shall make Completed Units available for sale at all times and shall maintain Completed Units in a marketable condition at all times, which includes, but is not limited to, keeping the maximum mileage of each Completed Unit within five hundred (500) miles of the mileage of such Completed Unit at the time of delivery to Mobility Dealer.

4. Payment.

(a) When a Completed Unit is sold at retail, Mobility Dealer shall require the Customer to pay to the Consigning Company which provided such Truck directly an amount equal to the retail sale price for such Completed Unit simultaneous with delivery of the Completed Unit to the Customer. Upon receipt by such Consigning Company of payment in full for sale of the Completed Unit, after payment of the consignment price to such Consigning Company, such Consigning Company shall pay to Mobility Dealer an amount equal to Mobility Dealer's portion of the retail sale price, which such portion shall have been agreed upon by Mobility Dealer and the Consigning Companies.

(b) If Mobility Dealer shall not have sold any consigned Completed Unit to a retail customer on or before the full payment due date set forth in the applicable Consignment Unit Agreement executed by Mobility Dealer (each, a "Consignment Unit Agreement"), Mobility Dealer shall purchase said Completed Unit by paying the sale price listed on the Consignment Unit Agreement to Consigning Companies within five (5) days after said full payment due date.

5. Failure to Perform. In the event Mobility Dealer fails to perform any of its obligations hereunder, the Consigning Companies may, at their option and in their sole discretion, immediately and without notice, retake possession of any or all Completed Units. In the event the Consigning Companies exercise their option to retake possession of a Completed Unit, Mobility Dealer agrees that it shall fully cooperate with the Consigning Companies in selling or otherwise disposing of such Completed Unit.

6. Audit.

(a) Mobility Dealer shall permit the Consigning Companies or any of their agents, employees, representatives and their lenders at any reasonable time to enter its premises and to make physical audits of consigned Completed Units together with any and all records pertaining to the purchase, payment and shipment of Completed Units.

(b) In the event Mobility Dealer is unable at any time to properly account for any Completed Unit, Mobility Dealer shall immediately purchase such Completed Unit from the Consigning Companies at the sale price listed on the applicable Consignment Unit Agreement.

7. Storage and Inspection.

(a) Upon receipt of each Completed Unit, Mobility Dealer accepts custody of such Completed Unit and agrees that it shall at all times keep such Completed Unit properly stored and maintained and shall not remove any parts, accessories, or components therefrom without the prior consent of the Consigning Companies.

(b) Mobility Dealer shall maintain an accounting of Completed Units by model, serial number, truck control number and location and shall furnish such information to the Consigning Companies upon request.

(c) After delivery to Mobility Dealer of each Completed Unit, Mobility Dealer shall be responsible to the Consigning Company which provided the Truck of such Completed Unit and/or Completed Unit for any loss, damage, missing parts, accessories, components or diminution of value of such Completed Unit, whether or not covered by insurance, while title thereto remains in a Consigning Company.

(d) Mobility Dealer shall permit the Consigning Companies or any of their agents, employees, representatives and their lenders to enter its premises and to inspect Completed Units during its normal business hours.

(e) Mobility Dealer shall not transfer any Completed Unit to another location without first notifying the Consigning Companies of such transfer online via [www.tempe-mobility.com](http://www.tempe-mobility.com) and obtaining Consigning Companies' prior consent to such transfer.

8. Indemnification and Insurance.

(a) Mobility Dealer agrees to protect and indemnify the Consigning Companies against any and all claims for injury to persons or for loss of or damage to property in connection with the use, operation or storage of Completed Units. Mobility Dealer further agrees to indemnify and hold the Consigning Companies harmless from and against any and all claims, damages, suits or actions, including all costs and expenses and actual attorney fees, arising from or connected with Completed Units.

(b) Mobility Dealer agrees to maintain appropriate liability insurance and physical damage insurance, to the satisfaction of the Consigning Companies, on each Completed Unit delivered, and agrees to submit proof of such insurance to the Consigning Companies upon request. Such insurance shall be payable to the Consigning Companies and the Consigning Companies' lender as loss payee. In addition, such insurance shall not be altered or canceled without at least thirty (30) days' written notice to the Consigning Companies.

9. Security Interest/Financing Statements. Mobility Dealer hereby assigns to the Consigning Companies and grants to the Consigning Companies a first and continuing security interest in the following property, whether now or hereafter owned, existing, acquired or arising: all Completed Units, together with all accessories and/or equipment and all documents of title covering or relating to the aforesaid Completed Units, and all proceeds arising from the sale or other disposition thereof. Mobility Dealer shall execute such documents and do such other acts or things requested by the Consigning Companies to establish and maintain for the Consigning Companies a valid and perfected security interest in the above. Any of the Consigning

Companies or any agent of any Consigning Company is hereby authorized in its own name, and is also hereby irrevocably appointed (which appointment is coupled with an interest) the true and lawful attorney in fact for such Consigning Company (with full power of substitution) in the name and place of Mobility Dealer, to file such financing statements and to take such other actions as deemed necessary or desirable by the Consigning Companies to evidence, perfect or continue the security interests granted herein.

**10. Termination.**

(a) This Agreement may be terminated automatically, with or without cause at any time by either party by giving written notice thereof to the other, by personal delivery or by registered mail addressed to the last known address of the other party.

(b) In the event of termination of this Agreement by either party, none of the Consigning Companies shall be obligated to cause any additional Completed Unit to be delivered to Mobility Dealer. The Consigning Companies may immediately and without notice, retake possession of Completed Units and may sell Completed Units.

(c) This Agreement will terminate automatically without notice, upon (a) the attempted assignment of this Agreement by Mobility Dealer without the prior written consent of the Consigning Companies, (b) an assignment by Mobility Dealer for the benefit of creditors, or (c) the institution of voluntary or involuntary proceedings by or against Mobility Dealer in bankruptcy or under insolvency laws or for corporate reorganization, arrangement, receivership or dissolution. In such event the Consigning Companies may immediately and without notice, retake possession of Completed Units and may sell Completed Units.

**11. Confidentiality.** Consigning Companies and Mobility Dealer acknowledge and agree that the terms and conditions of this Agreement, and the transactions contemplated herein are confidential (the "Confidential Information"). The parties agree, however, that the existence of this Agreement and the consignment process is not Confidential Information. Each of the parties hereto agree and will cause its directors, officers, employees, agents and representatives to agree not to disclose, divulge, provide or make accessible any of the Confidential Information to any person or entity other than their responsible officers, employees, advisors, including financial advisers and lenders, or attorneys, or otherwise as required by law or regulation, nor shall the Confidential Information be used for any other purpose than is contemplated herein. In the event either party breaches or threatens to breach the terms of this paragraph 11, the non-breaching party shall have the right and remedy to obtain equitable relief which may then be available from any court having equity jurisdiction, all without the need to post a bond or other security or to prove any amount of actual damage or that money damages will not provide an adequate remedy, it being acknowledged and agreed that any such breach or threatened breach will cause irreparable injury to the non-breaching party, and that money damages will not provide an adequate remedy to the non-breaching party. Provisions of this paragraph 11 shall survive the termination of this Agreement.

**12. Conflict Resolution.** Except as otherwise provided in this Agreement, in the event that the Consigning Companies and Mobility Dealer are unable to resolve a material conflict regarding the Agreement, the parties agree to seek resolution through a traditional arbitration process. The matter shall be submitted to the American Arbitration Associates (the "AAA") for arbitration. The parties shall submit the dispute to a single arbitrator under the Commercial Arbitration Rules of the AAA, and said single arbitrator shall be appointed by the AAA in accordance with said Rules. This agreement to arbitrate shall not control any action for remedies pursuant to paragraph 11 above.

**13. General Provisions.**

(a) Section captions and headings used in this Agreement are for convenience only and are not part of and shall not affect the construction of this Agreement.

(b) No waiver of the terms and conditions of this Agreement or change or erasure of any printed parts shall be deemed to have been given to either party unless the same be given in writing. The failure by either party upon knowledge of any default or violation by the other party of any of the terms and conditions of this Agreement to enforce its rights or remedies shall not be construed as a waiver of any provision hereof, or of any of its rights or remedies.

(c) This Agreement does not create the relation of principal and agent between any of the Consigning Companies and Mobility Dealer, and under no circumstances is any Consigning Company and Mobility Dealer to be considered the agent of the other.

(d) This Agreement and all policies and procedures concerning the delivery of Completed Units to Mobility Dealer and all other attachments hereto constitute the entire agreement between the parties relative to the consignment of Completed Units between the Consigning Companies and Mobility Dealer, and it cancels and supersedes all earlier agreements, written or oral, between any of the Consigning Companies and Mobility Dealer relating thereto.

(e) This Agreement shall bind and inure to the benefit of the parties, their representatives, heirs, devisees, successors and assigns. Notwithstanding the above, Mobility Dealer has no right of assignment absent prior written consent of the Consigning Companies' lender. Mobility Dealer hereby acknowledges the Consigning Companies' right to assign this Agreement to its current or future lender.

(f) This Agreement shall be a contract made under and governed by the laws of the State of Illinois, without regard to conflict of laws principles. Whenever possible, each provision of this Agreement shall be interpreted in such a manner as to be effective and valid under applicable law, but if any provision of this Agreement shall be prohibited by or invalid under such law, such provision shall be ineffective to the extent of such prohibition or invalidity, without invalidating the remainder of such provision or the remaining provisions of this Agreement.

(g) Unless otherwise specified in this Agreement, notice will be sufficient (i) if mailed by first class mail, postage prepaid to the party at the address set forth on the first page of this Agreement, or to such other address as the parties may designate, which notice will be effective upon mailing; or (ii) if delivered by recognized overnight delivery service to the party at the address set forth on the first page of this Agreement, or to such other address as the party may designate, which notice shall be effective on the first business day after placement with the overnight delivery service.

(h) The meaning of defined terms are equally applicable to the singular and plural forms of the defined terms. Whenever the context so requires, the neuter gender includes the masculine and feminine, the single number includes the plural, and vice versa, and in particular the words "Consigning Company" and "Consigning Companies" shall be so construed.

(i) No amendment, modification or waiver of, or consent with respect to, any provision of this Agreement shall in any event be effective unless the same shall be in writing (including by facsimile or other electronic transmission, including email correspondence) and acknowledged to by a Consigning Company or one of its duly authorized representatives, and then any such amendment, modification, waiver or consent shall be effective only in the specific instance and for the specific purpose for which given.

(j) This Agreement may be executed in one or more counterparts, each of which shall be deemed to be an original, but all of which shall together constitute but one and the same document. The signature of any individual on a counterpart copy of this Agreement transmitted by facsimile or other electronic transmission shall for all purposes be deemed an original.

(k) If this Agreement contains the incorrect or is blank with respect to the legal entity name of Mobility Dealer when executed by any of the parties hereto, Consigning Companies are hereby authorized, without notice to Mobility Dealer, to correct or complete such information accordingly.

(l) If Mobility Dealer has heretofore entered into any Mobility Dealer Consignment Agreement with any one or more of the Consigning Companies prior to the date hereof, this Agreement shall be deemed to automatically replace such prior agreement.

IN WITNESS WHEREOF, the parties have caused their duly authorized representatives to sign this Agreement as of the date first set forth above.

**MOBILITY DEALER:**

\_\_\_\_\_  
By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**CONSIGNING COMPANIES:**

**WJK TEMPE AUTOMOTIVE, INC.**

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**BILL KAY FORD, INC.**

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**BILL KAY OLDSMOBILE, INC. d/b/a BILL KAY HONDA, INC.**

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**LIBERTY CHEVROLET, INC. d/b/a BILL KAY CHEVROLET**

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_