HYPOTHEC ON MOVABLES



This Hypothec on Movables (the “Agreement”) is effective [DATE],

**BETWEEN: [YOUR COMPANY NAME]** (the "Partnership"), a company organised and existing under the laws of the [COUNTRY], with its head office located at:

[YOUR COMPLETE ADDRESS]

**AND [FIRST GRANTOR NAME]** (the "First Grantor"), an individual with his main address located at:

[COMPLETE ADDRESS]

**AND: [SECOND GRANTOR NAME]** (the "Second Grantor"), an individual with his main address located at:

[COMPLETE ADDRESS]

**AND: [CREDITOR NAME]** (the "Creditor"), a company organised and existing under the laws of the [COUNTRY], with its head office located at:

[COMPLETE ADDRESS]

WHICH PARTIES AGREE WITH EACH OTHER AS FOLLOWS:

1. **INTERPRETATION**
   1. **Definitions**

The capitalised words and expressions used in this Deed or in any deed, document or agreement supplemental or ancillary hereto, unless there be something in the subject or the context inconsistent therewith, shall have the following meanings:

“Claims” shall have the meaning ascribed to it in subsection 2.1.2;

“Creditor” means [CREDITOR NAME]. And includes any successor or assignee thereof;

“Deed of Hypothec”, “this Deed”, “this Deed of Hypothec”, “these presents”, “herein”, “hereby”, “hereunder” and other similar expressions refer collectively to this Deed of Hypothec, its accompanying schedules as well as any and every deed or another instrument which is supplementary or ancillary hereto or in implementation hereof, the whole as same may be amended, supplemented or restated from time to time;

“Default” means any one of the events specified in Section 7.1, the occurrence or failure to occur of which constitutes, or with the passage of time or the giving of notice or both, would constitute an Event of Default;

“Event of Default” shall have the meaning ascribed to it in Section 7.1;

“Governmental Authority” means any nation or government, any state or other political subdivision thereof and any entity exercising executive, legislative, judicial, regulatory or administrative functions of or pertaining to the government;

“Grantors” refers collectively to the Partnership and the Partners;

“Hypothecated Property” shall have the meaning ascribed to it in Section 2.1;

“Inventory” shall have the meaning ascribed to it in subsection 2.1.1;

“Law” means all applicable provisions of statutes, ordinances, decrees, orders in council, rules, regulations, treaties and all applicable determinations, rulings, orders and decrees of Governmental Authorities and arbitrators;

“Lien” means any interest in property or the income or profits therefrom securing an obligation owed to, or a claim by, a Person other than the owner (which for the purposes hereof shall include a possessor under a title retention agreement and a lessee under a lease herein below described) of such property, or claim whether such interest is based on common [YOUR COUNTRY LAW], civil [YOUR COUNTRY LAW], statute or contract, and including, but not limited to, any security interest, hypothec, prior claim, mortgage, pledge, lien, claim, charge, cession, transfer, assignment, encumbrance, title retention agreement, lessor’s interest under a lease which would be capitalized on a balance sheet of the owner of such property or analogous instrument in, of, or on any property or the income or profits therefrom of a Person, other than Liens incurred in the ordinary course of business and for the purpose of carrying on same not in connection with the borrowing of money or the obtaining of credit and which do not in the aggregate materially impair the use, the income or profits therefrom, of the property covered thereby in the operation of such Person’s business;

“Obligations” is the collective reference to all the obligations, present and future, direct and indirect, absolute and contingent, presently owing and due or hereafter to become owing and due to the Creditor by the Grantors from time to time, including, without limiting the generality of the foregoing, all their obligations to pay to the Creditor all amounts owing to the Creditor *in re*spect of sales of tyre inventory made by it to the Partnership from time to time;

“Partners” refers collectively to [NAME], born on [DATE] in [COUNTRY] and residing at [FULL ADDRESS], [STATE/PROVINCE], and [NAME], born on [DATE] in [COUNTRY], and residing at [FULL ADDRESS], [COUNTRY], in their capacity as partners of the Partnership, and includes any heirs and successors respectively thereof;

“Partnership” refers to [COMPANY NAME], a general partnership duly constituted under the [YOUR COUNTRY LAW], and includes any successor thereto;

“Person” means any legal or natural person, company, joint venture, partnership, whether general, limited or undeclared, trust, association, unincorporated company, Governmental Authority or other entity of whatever nature.

* 1. **Plural and Masculine**

Unless there be something in the subject or the context inconsistent therewith, words importing the singular only shall include the plural and *vice versa* and words importing the masculine gender shall include the feminine gender and *vice versa*, and any reference to [AMOUNT] shall mean [COUNTRY] [AMOUNT].

* 1. **Division in Articles.**

The division of this Deed into Articles, Sections, subsections and paragraphs and the insertion of titles are for convenience of reference only and do not affect the meaning or the interpretation of the present Deed.

1. **HYPOTHECS**
   1. **Principal Hypothec**

As a general and continuing collateral security for the performance by the Grantors of the Obligations, each of the Grantors hereby hypothecates to and in favour of the Creditor the following property and its respective rights, titles and interests in and to such property (collectively referred to herein as the “Hypothecated Property”) to the extent of the sum of [AMOUNT], with interest thereon at the rate of [PERCENTAGE %] per annum:

* + 1. the universality of all the present and future tires, of whatever make and model, of which the Partnership is now or hereafter may be a wholesale or retail purchaser or shipper or in which it is now or may hereafter be a dealer or seller (collectively referred to herein as the “Inventory”) and all rights to the warehouse receipts, bills of lading and other title documents relating to the Inventory; and
    2. the universality of all claims, accounts receivable and book debts which now are or may at any time hereafter become vested in the Partnership, of any nature and kind arising pursuant to the sale, transfer, assignment or other disposition of any Inventory, whether or not such claims are certain and determinate, invoiced, liquid, eligible, litigious or constituted by a negotiable or other instrument or
    3. draft and including, without limiting the generality of the foregoing, the contracts, guarantees, bills of exchange, notes, Liens, suretyships and accessories connected in any manner whatsoever to or securing the said claims, accounts receivable and book debts, and all the books, accounts, invoices, letters and other documents evidencing the said claims, accounts receivable and book debts, in any manner whatsoever, which now are or may hereafter become vested in the Partnership (collectively referred to herein as the “Claims”).
  1. **Additional Hypothec**

As general and continuing collateral security for the performance by the Grantors of the Obligations not otherwise secured by the hypothecs created under the terms of Section 2.1, including, without limiting the generality of the foregoing, interest on all overdue interest, as well as the costs and expenses incurred by the Creditor in order to preserve or realise upon the Liens created and to be created from time to time under the terms hereof and all other costs and expenses related to the Obligations, each of the Grantors hereby hypothecates the Hypothecated Property to and in favour of the Creditor to the extent of an additional sum of [AMOUNT] with interest thereon at the rate of [PERCENTAGE %] per annum.

1. **SPECIAL PROVISIONS RELATING TO CLAIMS**
   1. **Authorization of the Creditor to permit the Grantors to Collect the Principal and Revenues of the Claims**

The Creditor expressly authorizes the Grantors to collect, when and as the same shall become due, the principal of and revenues payable from time to time pursuant to the Claims for so long as no Default hereunder shall have occurred and been continuing and the Creditor shall not have notified the Grantors of the withdrawal of the present authorization. The Grantors shall pay over to the Creditor, on demand, any amount paid to the Grantors *in re*spect of the Claims following the withdrawal of the present authorization.

* 1. **The exercise of Rights *in re*spect of the Claims**

Following the withdrawal of the authorization to collect the Claims, the Creditor may grant releases for all amounts collected by it and, without any obligation to do so, may proceed with the realization of the whole or any part of the Claims, grant extensions or postponements of the term of any Claim, accept the amount of any Claim, and any suretyship, or security accessory thereto and may take any action and exercise any right in order to preserve, protect or secure such Claims, the whole at such time and in such manner as the Creditor may deem appropriate, without any notice to or a consent from the Grantors.

Any action taken or not taken, as the case may be and any right exercised or, not, as the case may be shall be without any liability on the part of the Creditor, other than with respect to its gross negligence or willful misconduct, and without any obligation to render an accounting for any such action taken or omitted to be taken, any such right exercised or omitted to be exercised and any amount collected, save and except for the obligation to pay over to the Grantors at the end of the process of realization all amounts collected in excess of the then outstanding amount of the Obligations.

* 1. **The obligation of the Grantors to Provide Information relating to the Claims**

Upon demand of the Creditor following the occurrence of an Event of Default, the Grantors undertake to provide the Creditor with a list of all of their debtors and all their books, accounts, letters, invoices, papers, contracts, negotiable instruments, title documents, Liens and other documents attesting to the existence of the whole or any part of the Claims or relating thereto, and to permit the Creditor or its agents access to the Grantors’ premises in order to inspect and make copies of the aforementioned books and documents. The Grantors are also bound to assist the Creditor and provide it with all information, which it may find useful in the collection of the Claims.

* 1. **Guaranteed Claims**

The Grantors represent and warrant that none of the Claims which are presently vested in the Grantors is themselves secured by a Lien or by the suretyship of a third Person in favour of any one of the Grantors, and the Grantors undertake to notify the Creditor without delay of any Claim, which now is or may at any time hereafter become vested in the Grantors and which, following the date hereof, is or becomes secured by a Lien or by the suretyship of a third Person in favour of any one of the Grantors and to provide the Creditor with copies of the agreements or other documents evidencing such Liens or such suretyships.

1. **POSSESSION AND USE OF THE HYPOTHECATED PROPERTY**
   1. **Possession and Use**

Until the Grantors have surrendered or are bound to surrender the whole or any part of the Hypothecated Property under the terms of any Law, the Grantors subject, however, to the express terms hereof, shall be entitled and permitted to possess the Hypothecated Property and to manage, develop, operate, use and enjoy the same.

1. **APPLICATION OF MONEY RECEIVED BY THE CREDITOR**
   1. **Use of Money Not Otherwise Released**

All the sums of money collected by the Creditor pursuant to the provisions hereof and all the sums of money of which the Creditor is depositary in virtue of this Deed and *in re*spect of which no other specific provision regulates the use thereof are held by the Creditor as security for the payment of the Obligations. However, the Creditor, notwithstanding the provisions of Article [NUMBER] and the second paragraph of Article [NUMBER] of [ACT/LAW/RULE] of [COUNTRY] and every other legal rule concerning the imputation of payments, may apply such moneys to the full or partial reduction and to such of the indebtedness forming part of the Obligations as the Creditor may deem appropriate. In the absence of any such imputation on the part of the Creditor, such sums, at the request of the Partnership, may be invested, provided however that any such investment of the sums held by the Creditor be realizable upon demand.

1. **REPRESENTATIONS AND COVENANTS OF THE GRANTORS**

So long as any Obligation is outstanding and unpaid, the Grantors make the following representations, provide the following warranties and covenant and agree as follows:

* 1. **Title to Hypothecated Property**

That they alone are and shall be the lawful owners of the Hypothecated Property; that they have full, good and lawful authority to hypothecate the Hypothecated Property as provided in this Deed. The Hypothecated Property is free and clear of all Liens. They shall not create, assume, incur or permit the existence of any Lien on the Hypothecated Property other than Liens in favour of the Creditor.

* 1. **Payment of Taxes**

That they will pay or cause to be paid as and when due and payable all taxes, rates, charges, levies or assessments, ordinary or extraordinary, governmental or other charges of a like nature, assessed or payable upon the Hypothecated Property or any part thereof or upon the income and profits of the Grantors.

* 1. **Maintenance of Security.**

That they will fully and effectively maintain the Liens hereby constituted as valid and effective security, and that they will perform all acts and execute and publish all documents as may be necessary to ensure that the Liens hereof remain effective and at all times opposable to third Persons.

* 1. **Insurance**

That they will insure and maintain insured the Hypothecated Property against such risks and for such amounts as is customary for businesses of a like nature and that they shall duly and punctually pay or cause to be paid when due to the premiums and other money payable *in re*spect of such insurance policies.

* 1. **Restriction on Alienation of Hypothecated Property**

That, unless the Creditor otherwise consents to same in writing, the Grantors shall not sell, transfer or otherwise dispose of any of the Hypothecated Property save and except for the sale of Inventory in the ordinary course of their business and for the purpose of carrying on same, provided that no Default hereunder shall have occurred and been continuing at the time of any such sale, transfer or other disposition.

* 1. **No Inchoate Liens**

The Grantors represent and warrant that (y) they have not executed or agreed to execute any deed, document, contract or agreement with any Person whomsoever which would necessitate or result in the creation in favour of such Person of any Lien whatsoever on the Hypothecated Property and (SPECIFY) no creditor of the Grantors has, within the meaning of Articles [NUMBER] and [NUMBER] of the [ACT/LAW/RULE] of [COUNTRY], given value to the Grantors in the [NUMBER] days preceding the execution of this Deed.

1. **EVENTS OF DEFAULT**
   1. **Events of Default**

The occurrence of any one or more of the following events shall constitute an event of default (here*in re*ferred to as an “Event of Default”):

* 1. **Payment**

Should any one of the Grantors default in the payment or performance of any of the Obligations and such default continue beyond any applicable grace period; or

* 1. **Bankruptcy**

Should any one of the Grantors make an assignment for the benefit of creditors, or file or consent to the filing of a petition in bankruptcy, a proposal or a notice of intention under any bankruptcy [YOUR COUNTRY LAW] of any jurisdiction whatsoever or be adjusticated insolvent or bankrupt, or petition or apply to any tribunal to have any receiver, trustee, liquidator or sequestrate appointed for any substantial portion of its property, or if any one of the Grantors commences any proceeding *in re*spect of itself, its property or any substantial portion thereof under any reorganization, arrangement, readjustment of debt, composition or liquidation [YOUR COUNTRY LAW] of any jurisdiction whatsoever, whether now or hereafter in effect (any of which proceedings, including, without limitation, the making of an assignment for the benefit of creditors, or the filing or consenting to the filing of a petition in bankruptcy, a proposal or a notice of intention under any such bankruptcy [YOUR COUNTRY LAW] shall be referred to herein as a “Proceeding”); or if there is commenced against any one of the Grantors any Proceeding, and such Proceeding remains dismissed for a period of [NUMBER] days; or if any receiver, trustee, liquidator or sequestrate is appointed for any one of the Grantors or any substantial portion of its property or if any one of the Grantors consents to or approves or accepts any Proceeding or the appointment of any receiver, trustee, liquidator or sequestrate for itself or for any substantial portion of its property; or

* 1. **Seizure**

Should any process of execution be enforced or levied upon any of the Hypothecated Property and remain unsatisfied for a period of [NUMBER] days? However, an Event of Default shall only occur under this subsection if such process is not contested in good faith by or on behalf of any one of the Grantors and non-payment, in the opinion of the Creditor, shall jeopardise or impair the Liens created hereunder and the Grantors shall not have granted or caused to have been granted security which, in the discretion of the Creditor, shall be sufficient to pay in full the amount claimed in the event that it shall be held to be a valid claim; or

* 1. **Representations**

Should any representation which has been made by any one of the Grantors under, in connection with or pursuant to this Deed prove to be, at any time and from time to time, substantially false or inaccurate; or

* 1. **Observance of Covenants**

Should any one of the Grantors fail to perform or observe any one of the covenants or conditions which it is bound to perform or observe under this Deed and any such Default (excluding an Event of Default specifically provided for in this Article) continue for a period of [NUMBER] days following the receipt by the Grantor of a written notice from the Creditor specifying such Default and requiring the Grantor to rectify same; or

* 1. **Registrations affecting the Hypothecated Property**

Should any one of the Grantors fail to obtain the cancellation of any prior notice of exercise of a hypothenar right or any other entry affecting the Hypothecated Property in favour of any creditor of the Grantors other than the Creditor within [NUMBER] days of their respective publication or registration, as the case may be?

1. **REMEDIES**
   1. **Exercise of Rights**

If an Event of Default shall occur and be continuing, to the extent and in the manner permitted by [YOUR COUNTRY LAW] and subject to any preliminary measures thereby contemplated, but without in any way limiting any of the rights, remedies or recourses which the Creditor may otherwise have under any [YOUR COUNTRY LAW] or under any other deed or document, the Creditor may declare the whole or any part of the Obligations as being immediately due and payable, without presentment, demand, protest or other notice of any kind, all of which are hereby expressly waived by the Grantors, anything in this Deed to the contrary notwithstanding and the Creditor shall be entitled to exercise all recourses available to it under [YOUR COUNTRY LAW].

1. **MISCELLANEOUS**
   1. **Separate Security.**

The present Deed and the Liens created herein, are and shall be in addition to and not in substitution for any other security held by the Creditor for the fulfilment of the Obligations and shall thus not operate as a novation of any Obligation.

* 1. **Continuing Security**

The Liens created hereunder shall constitute continuing security which shall remain in full force and effect until the Obligations shall have been fulfilled in full and the Liens hereof shall have been cancelled. The Grantors expressly acknowledge, for the purpose of Article [NUMBER] of the Civil Code of [COUNTRY], that until they shall have received a written notice from the Creditor to the effect that the Obligations have been fulfilled in full, they bind and oblige themselves anew continuously under the Obligations.

* 1. **Notices**

Except as otherwise specified herein, all notices, requests, demands or other communications to or upon the respective parties hereto shall be deemed to have been duly given or made to the party to which such notice, request, demand or other communication is required or permitted to be given or made under this Deed when delivered to such party (by certified mail, postage prepaid, or by telegraph, telex, email or hand delivery) at its address set forth below:

**If to the Partnership:**

[COMPANY NAME]

[FULL ADDRESS]

[COUNTRY]

Attention:

Email:

**If to the Partners, at their respective residential addresses, namely:**

[INDIVIDUAL NAME]

[COMPANY NAME]

[FULL ADDRESS]

[COUNTRY]

[INDIVIDUAL NAME]

[FULL ADDRESS]

**If to the Creditor:**

[COMPANY NAME]

[FULL ADDRESS]

[COUNTRY]

Attention: [NAME]

[FULL ADDRESS]

Credit Manager

Email: [EMAIL ADDRESS]

Or at such other address as any of the [COMPANY NAME] may hereafter notify the others in writing. No other method of giving notice is hereby precluded.

* 1. **Severability**

Any provision of this Deed, which is prohibited or unenforceable in any jurisdiction, shall, as to such jurisdiction, be ineffective to the extent of such prohibition or unenforceability without invalidating the remaining provisions hereof in that jurisdiction or affecting the validity or enforceability of such provision in any other jurisdiction.

* 1. **Governing Law**

This Deed and the interpretation and enforcement thereof shall be governed by and in accordance with the [YOUR COUNTRY LAW]

[COMPANY NAME]

Per:

[NAME] AND [NAME] as partners carrying on business in partnership under the name and style of [COMPANY NAME]

[NAME]

[NAME]

And on the [DATE] day in [COUNTRY],of [COMPANY NAME].

Per:

IN WITNESS WHEREOF, each party to this agreement has caused it to be executed at [PLACE OF EXECUTION] on the date indicated above.

PARTNERSHIP FIRST GRANTOR

Authorised Signature Authorised Signature

Print Name and Title Print Name and Title

SECOND GRANTOR CREDITOR

Authorised Signature Authorised Signature

Print Name and Title Print Name and Title