DEED OF MOVABLE HYPOTHEC



This Deed of Movable Hypothec (the “Agreement”) takes effect on [DATE],

**BETWEEN: [NAME OF FIRST PARTY]** (the "First Party"), a company organised and existing under the [COUNTRY] laws, with its headquarters located at:

 [YOUR FULL ADDRESS]

**AND: [NAME OF SECOND PARTY]** (the "Second Party"), a company organised and existing under the [COUNTRY] laws, with its head office located at:

 [COMPLETE ADDRESS]

THEREFORE, PARTIES AGREE WITH EACH OTHER AS FOLLOWS:

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

The following words and expressions, whenever 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:

“Asset Purchase Agreement” means that certain asset purchase agreement entered into with effective date of [DATE] between [COMPANY NAME], as Purchaser, and the Secured Party, as Seller, as same may be amended, supplemented or restated at any time;

“Company” means [COMPANY NAME] located in [PROVINCE], [COUNTRY] and includes any successor thereto;

“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 other instrument which is supplementary or ancillary hereto or in implementation hereof, the whole as same may be amended, supplemented or restated at any time;

“Event of Default” shall have the meaning ascribed to it in Section 5.1;

“Future Shares” means all of the shares in the capital stock of [COMPANY NAME] issued from time to time after the date hereof in favour or for the benefit of the Grantor or acquired by the Grantor, whether directly or indirectly, beneficially or otherwise, together with the renewals thereof, the substitutions therefor, accretions and additions thereto and all income and fruits thereof as well as the redemption price of any such shares and all certificates and instruments evidencing or representing such shares;

“Grantor” means [SPECIFY] and includes any successor thereof;

“Law” means all applicable provisions of statutes, ordinances, decrees, orders in council, rules, regulations, orders of governmental authorities, treaties and all applicable orders and decrees of courts and arbitrators;

“Lien” means any interest in property or assets, or the income or profit 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, whether such interest is based on common law, civil law, statute or contract, and including, but not limited to, any security interest, hypothec, mortgage, pledge, lien, claim, charge, cession, transfer, assignment, encumbrance, title retention agreement, lessor’s interest under a lease which would be capitalised on a balance sheet of the owner of such property or analogous instrument in, of, or on any property or on 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 or the property covered thereby in the operation of such Person’s business;

“Obligations” means the due and punctual payment by [COMPANY NAME] to the Secured Party of the “Balance of Sale” (as defined in the Asset Purchase Agreement) in principal and interest, in accordance with the terms of the Asset Purchase Agreement;

"Person" means any legal or natural person, corporation, firm, joint venture, partnership, whether general, limited or undeclared, trust, association, unincorporated organisation, governmental authority or other entity of whatever nature;

“Present Shares” means all of the shares in the capital stock of [COMPANY NAME] presently owned or held by the Grantor, whether directly or indirectly, beneficially or otherwise, together with the renewals thereof, the substitutions therefore, accretions and additions thereto and all income and fruits thereof as well as the redemption price of any such shares and all certificates and instruments evidencing or representing such shares;

“Proceeding” shall have the meaning ascribed to it in subsection [SPECIFY];

“Secured Party” means [COMPANY NAME] and includes any successor or assign thereof;

“Shares” means the Present Shares and the Future Shares.

* 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*.

* 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. **Governing Law**

This Deed and the interpretation and enforcement thereof shall be governed by and in accordance with the [COUNTRY] Municipal Systems Act: Section 118(3).

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

As a general and continuing collateral security for the performance by [COMPANY NAME] of the Obligations, the Grantor hereby pledges and hypothecates the Shares to and in favour of the Secured Party, to the extent of the sum of [AMOUNT] with interest thereon at the rate of [PERCENTAGE %] per annum.

* 1. **Additional Hypothec**

As general and continuing collateral security for the performance 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 Secured Party 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, the Grantor hereby pledges and hypothecates the Shares in favour of the Secured Party to the extent of an additional sum of [AMOUNT], in [COUNTRY] [CURRENCY], with interest thereon at the rate of [PERCENTAGE %] per annum.

1. **PROVISIONS RELATING TO THE SHARES**
	1. **Delivery and Registration of the Present Shares**

Concurrently with the execution of these presents, the Grantor shall deliver to the Secured Party the certificates and instruments representing the Present Shares, duly endorsed in blank for transfer and the Grantor hereby expressly undertakes to exert all reasonable efforts in order to ensure that (y) any transfer of such Present Shares further to the exercise by the Secured Party of its rights and recourses under these presents or under any [COUNTRY] law be duly recorded in the appropriate registers of [COMPANY NAME] and (z) [COMPANY NAME] issue the appropriate certificates and instruments duly registered in the name of any assignee of such transfer in place of the certificates and instruments initially endorsed and representing such transferred Present Shares.

* 1. **Delivery and Registration of the Future Shares**

The Grantor hereby covenants and agrees that in the event that any Future Shares are issued to it, it shall promptly advise the Secured Party of same, execute a deed of supplemental hypothec in order to evidence the pledge to the Secured Party of such Future Shares and shall deliver to the Secured Party the certificates and instruments representing the Future Shares, duly endorsed in blank for transfer and the Grantor hereby expressly undertakes to exert all reasonable efforts in order to ensure that (y) any transfer of such Future Shares further to the exercise by the Secured Party of its rights and recourses under these presents or under any [COUNTRY] Law be duly recorded in the appropriate registers of [COMPANY NAME] and (z) [COMPANY NAME] issue the appropriate certificates and instruments duly registered in the name of any assignee of such transfer in place of the certificates and instruments initially endorsed and representing such transferred Future Shares.

* 1. **The exercise of the Right to Vote pursuant to the Shares**

Until the occurrence of an Event of Default, the Secured Party expressly confers the power of attorney or proxy, as the case may be, to exercise the right to vote (including the signing of any written resolution in lieu of a meeting of shareholders) the Shares upon the Grantor, it being expressly understood that no vote can be exercised, no resolution signed and no consent, waiver or ratification given or any action taken which would give rise to an Event of Default or which would be inconsistent with the provisions hereof or which would have the effect of limiting the rights of the Secured Party under the terms of the Shares.

* 1. **Authorisation of the Secured Party to the Grantor to Collect the Fruits and Revenues of the Shares**

The Secured Party expressly authorises the Grantor to collect the fruits and revenues payable from time to time in virtue of the Shares for so long as no Event of Default shall have occurred and been continuing, and the Secured Party shall not have notified the Grantor of the withdrawal of the present authorisation and complied with all legal requirements regarding the withdrawal of the present authorisation. The Secured Party may withdraw the present authorisation to collect upon the occurrence of an Event of Default and for so long as such default is continuing.

* 1. **Application of Money**

All the sums of money received by the Secured Party as a result of the Liens created hereunder on the Shares may, notwithstanding the provisions of Article [NUMBER] and the second paragraph of Article [NUMBER] of the [COUNTRY] Civil Laws and every other legal rule concerning the imputation of payments, be applied to the full or partial reduction of the Obligations, the whole as the Secured Party may deem appropriate. In the absence of any such imputation on the part of the Secured Party, such sums may be placed on deposit by the Secured Party at the current rate of interest with a chartered bank or a trust company in [COUNTRY].

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

So long as any Obligation is outstanding and unpaid, the Grantor makes the following representations, provides the following warranties and covenants and agrees as follows:

* 1. **Title to the Shares**

That it is the lawful owner of the Shares, that it has full and lawful authority to hypothecate the Shares as provided in this Deed. The Shares are free and clear of all Liens. The Shares have been duly authorised and issued, and no option to purchase the Shares has been granted by or on behalf of the Grantor.

* 1. **Restriction on Alienation**

That it will not create any Lien on the Shares and that, unless the Secured Party otherwise consents to same in writing, the Grantor shall not sell, transfer or otherwise dispose of the Shares.

* 1. **Facilitating realisation of Securities**

That it will, from time to time, execute and do or cause to be executed and done all such documents, instruments and things and provide all such assurances as the Secured Party may reasonably require in order to facilitate the realisation of the Shares, the exercise of all the powers and discretions hereby conferred upon the Secured Party and the confirmation to any purchaser of any of the Shares the title to the property sold or proposed to be sold, and the Grantor will give or cause to be given all notices, and directions as the Secured Party may consider appropriate.

* 1. **No Violation**

That the entering into of this Deed and the transactions contemplated hereby will not result in the violation of, or default under, any of the terms and provisions of the contracting documents or by-laws of the Grantor or of any resolutions of the directors or shareholders of the Grantor or of any indenture or other agreement, written or oral, to which the Grantor may be a party or by which it is bound or in the creation of any Lien pursuant to any other document on any of the Shares.

* 1. **Control**

That individually or together with [SPECIFY], it shall at all times maintain control (within the meaning of Section [SPECIFY] of the [COUNTRY] Business Corporations Law) of [COMPANY NAME].

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 hereunder (here*in re*ferred to as an “Event of Default”):

* + 1. Payment

Should [COUNTRY] fail to make as and when same is due, in accordance with the Asset Purchase Agreement, any payment of principal or any payment of interest, fees or accessories on any of the Obligations and such default continue beyond any applicable grace period; or

* + 1. Observance of Covenants

Should the Grantor 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 [NUMBER] days following the receipt by the Grantor of a written notice from the Secured Party specifying such default and requiring the Grantor to rectify same; or

* + 1. Bankruptcy

Should [COMPANY NAME] or the Grantor 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 [COUNTRY] Law of any jurisdiction whatsoever or be adjudicated insolvent or bankrupt, or petition or apply to any tribunal to have any receiver, trustee, liquidator or sequestrator of, or for any substantial portion of its property; or if [COMPANY NAME] or the Grantor commences any proceeding relating to it or its property or any substantial portion thereof under any reorganisation, arrangement, readjustment, composition or liquidation [COUNTRY] Law of any jurisdiction, 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 Laws shall be referred to herein as a “Proceeding”); or if there is commenced against [COMPANY NAME], or the Grantor any Proceeding and such Proceeding remains undismissed for a period of [NUMBER] days; or if any receiver, trustee, liquidator or sequestrator of, or [COMPANY NAME] or the Grantor or any substantial portion of its property is appointed or if [COMPANY NAME] or the Grantor consents to or approves or accepts any Proceeding or the appointment of any receiver, trustee, liquidator or sequestrator of, or for [COMPANY NAME] or the Grantor or any substantial portion of its property.

* + 1. Seizure

Should any process of execution be enforced or levied upon the Shares 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 the Grantor and non-payment, in the reasonable opinion of the Secured Party, shall jeopardise or impair the Liens created hereunder.

* + 1. Representations

Should any representation which has been made by the Grantor under the terms of this Deed prove to be, at any time, substantially false or inaccurate in any material respect.

* + 1. Registrations affecting the Shares

Should the Grantor fail to obtain the cancellation of any prior notice of exercise of a hypothecary right or any other entry affecting the Shares in favour of any creditor of the Grantor other than the Secured Party 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 [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 Secured Party may otherwise have under any [COUNTRY] Law or under any other deed or document:

* + 1. Declaration by the Secured Party

The Secured Party 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 Grantor, anything in this Deed to the contrary notwithstanding.

* + 1. Sale

The Secured Party may sell, lease, liquidate, transfer, alienate, create a Lien upon or otherwise dispose of or deal with the whole or any part of the Shares, as a whole or in parts, by private agreement, by a call for tenders, by public auction or by judicial authority, at such prices and upon such terms and conditions as the Secured Party may consider advisable, the whole without any notice or formality whatsoever other than those expressly provided by [COUNTRY] Law, the Secured Party being hereby constituted the irrevocable attorney of the Grantor for the aforesaid purposes. The Secured Party or any agent or representative thereof may become purchasers at any sale of the Shares whether made under the power of sale herein contained or pursuant to foreclosure or other judicial proceedings.

* 1. **Acknowledgement of Secured Party**

Notwithstanding anything contained in this Deed to the contrary, the Secured Party hereby acknowledges and agrees that it shall have no personal recourse against the Grantor or any of its property, save and except for the Shares, for any of the Obligations or any of the obligations of the Grantor hereunder and the Secured Party hereby expressly renounces to all such personal recourses against the Grantor.

The Grantor shall only be liable under the Obligations and hereunder to the extent that its liabilities may be satisfied from the Shares and the Secured Party shall only look to the Shares for the satisfaction of all such liabilities. Nothing in this Section shall be construed as limiting any of the rights or remedies of the Secured Party against the Shares. The Grantor acknowledges that the Secured Party shall not be bound to exhaust its recourses against [COMPANY NAME] before exercising any of its recourses against the Shares.

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 Secured Party for the fulfilment of the Obligations and shall thus not operate as a novation of any Obligation of the Grantor towards the Secured Party.

* 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.

* 1. **Notices**

Any notice to be given under this Deed shall be in writing and delivered or, except in the event of disruption of postal service, mailed by prepaid registered mail addressed to the party to whom it is to be given at the address as shown below and such notice shall be deemed to have been given on the day of delivery or on the [NUMBER] business day after mailing as aforesaid, as the case may be:

IF TO THE GRANTOR:

[COMPANY NAME]

[FULL ADDRESS]

[PROVINCE]

Attention: The President

WITH A COPY TO:

[COMPANY NAME]

[FULL ADDRESS]

[PROVINCE]

Attention: The President

AND:

[NAME]

[COMPANY NAME]

[FULL ADDRESS]

[PROVINCE]

Attention: Mrs. [EMPLOYEE]

IF TO THE SECURED PARTY:

[COMPANY NAME]

c/o [NAME], [COMPANY NAME]

[FULL ADDRESS]

[PROVINCE]

Attention: Secretary

WITH A COPY TO:

[NAME], [COMPANY NAME]

[COMPANY NAME]

[FULL ADDRESS]

[PROVINCE]

Attention: Mr. [EMPLOYEE]

Notice of change of address may be given by any party in the same manner.

* 1. **Acknowledgement of the Grantor**

The Grantor hereby acknowledges that it has taken cognisance of an executed copy of the Asset Purchase Agreement and is familiar with all the provisions thereof.

* 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. **INTERVENTION**

Each of the undersigned, in his capacity as a director of [COMPANY NAME], hereby acknowledges having taken cognisance of the foregoing Deed and agrees to do all such things as may be necessary in order to give effect to the provisions of Sections 3.1 and 3.2 of the foregoing Deed, including the adoption by [COMPANY NAME] of all necessary resolutions.

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

## FIRST PARTY SECOND PARTY

Authorised Signature Authorised Signature

Print Name and Title Print Name and Title