

## General Assignment Of Leases And Rents

This **Agreement** made as of the \_\_\_\_\_ day of \_\_\_\_\_, 2\_\_\_\_, between:

(the "Assignor")

of the first part,

– and –

**Canadian Imperial Bank of Commerce**

(the "Assignee")

of the second part,

**Whereas** in order to further secure the payment and performance of the Obligations (as hereinafter defined), the Assignee has requested the Assignor to enter into this Agreement;

**Now Therefore This Agreement Witnesses** that in consideration of the premises and the covenants herein contained and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged by each of the parties, the parties hereto agree as follows:

### 1. Definitions

Unless there is something in the subject matter or text that is inconsistent therewith, all capitalized terms used herein which are not otherwise defined herein shall have the meanings ascribed thereto in the Charge or Mortgage. In addition, the following terms shall have the following meanings:

**"Agreement"** means this agreement and all amendments made hereto by written agreement between the parties.

**"Charge or Mortgage"** means the charge or mortgage of land in the original principal amount of \$ \_\_\_\_\_ registered on \_\_\_\_\_, 20\_\_\_\_, as Instrument No. \_\_\_\_\_, charging among other things, the interest of the Assignor in the Property, and including, but not limited to any Schedules and any Standard Charge/Mortgage Terms referred to therein or attached thereto, forming a part thereof, as the same may be amended, restated and/or supplemented from time to time.

**"Event of Default"** means a default by the Assignor under the Charge or Mortgage or any other default set out in the Loan Agreement.

**"Leases"** means the Assignor's interest as landlord in:

- i) every existing and future lease, sublease and agreement to lease, of the whole or any portion of the Property;
- ii) every existing and future tenancy, agreement as to use, occupation and licence

in respect of the whole or any portion of the Property, whether or not pursuant to any written lease, sublease, agreement or licence;

- iii) every existing and future guarantee or indemnity of all or any of the obligations of any existing or future Tenant of the whole or any portion of the Property; and
- iv) every existing and future assignment and agreement to assume the obligations of Tenants of the whole or any portion of the Property.

**“Loan Agreement”** means the loan agreement made as of \_\_\_\_\_, 20\_\_\_\_, with respect to a \$ \_\_\_\_\_ loan between, *inter alia*, the Assignor, as borrower, and the Assignee, as lender, as the same may be amended, supplemented, extended, renewed, restated, replaced or superseded from time to time.

**“Obligations”** means all of the obligations, liabilities and indebtedness (present and future, absolute or contingent, matured or otherwise) of any kind whatsoever of the Assignor pursuant to, in connection with or relating to the Loan Agreement or Charge or Mortgage.

**“Property”** means the lands and premises described in Schedule “A” hereto, all buildings, structures, fixtures, and improvements of any nature or kind now or hereafter located on such lands (save for sales inventory of manufactured homes), and all Leases, Rents and all other appurtenances thereto.

**“Rents”** means all revenues, receipts, income, credits, deposits, profits, royalties, rents, additional rents, recoveries, accounts receivable and other receivables of any kind and nature whatsoever arising from or relating to the Property or any part thereof (including all amounts payable under any Lease).

**“Tenant”** means any lessee, sublessee, licensee or grantee of a right of use or occupation under a Lease and such person’s successors, legal personal representatives or permitted assigns.

## 2. Assignment

The Assignor hereby assigns, as security, to the Assignee, its successors and assigns, and grants a security interest in (as continuing collateral security for the Obligations) all of the Assignor’s right, title, benefit and interest in and to the Leases (the **“Assigned Leases”**) and the Rents (the **“Assigned Rents”**), with full power and authority to demand, collect, sue for, recover, receive and give receipts for the Assigned Rents, and to exercise the rights of the Assignor with respect to the enforcement of the Assigned Leases and the payment of the Assigned Rents in the name of the Assignor. Notwithstanding such assignment, the Assignee will not be responsible or liable for any obligations of the Assignor in respect of the Leases.

## 3. Assignor Permitted to Collect Rents

The Assignor shall be permitted to collect and receive the Assigned Rents as and when they become due and payable according to the terms of each of the Leases unless and until an Event of Default has occurred and for so long as it remains outstanding and, thereafter, the Assignee gives notice to the Tenant, user, occupier, licensee or guarantor thereunder requiring payment to the Assignee of the Assigned Rents, provided that nothing herein shall release, discharge, postpone, amend or otherwise affect the present assignment and security interest in and to the Assigned Leases and the Assigned Rents and the immediate attachment

thereof in accordance with the Loan Agreement. The Assignor may amend, modify, vary, alter or release the Leases in accordance with the terms of the Loan Agreement until the Charge or Mortgage and any other security become enforceable under the Loan Agreement.

#### **4. Assignee Not Bound**

Nothing in this Agreement shall have the effect of making the Assignee, its successors or assigns, responsible for the collection of Rents or any of them or for the performance of the covenants, obligations or conditions under or in respect of the Leases or any of them to be observed or performed by the Assignor, and the Assignee shall not, by virtue of this Agreement or its receipt of the Assigned Rents or any of them, become or be deemed a mortgagee in possession of the Property or of the interests assigned hereunder, and the Assignee shall not be under any obligation to take any action or exercise any remedy in the collection or recovery of the Rents or any of them or to see to or enforce the performance of the obligations and liabilities of any person under or in respect of the Leases or any of them and the Assignee shall be liable to account only for such monies as shall actually come into its hands, less all reasonable costs and expenses and other proper deductions as allowed by law.

#### **5. Excluded Collateral**

Notwithstanding anything contained in this Agreement, the assignment contained herein shall not constitute an assignment of the right, title, interest and benefit of the Assignor in any of the Leases which require the consent of any third party to such assignment or which, if assigned, would give rise to a default or penalty (collectively the "**Excluded Collateral**"). In each such case, the Assignor shall forthwith, upon request, use its commercially reasonable efforts to obtain the necessary consent of any third party to the assignment contained herein in respect of any such Excluded Collateral and, upon such consent being obtained, the assignment contained herein shall apply to such Excluded Collateral without regard to this section 5 and without the necessity of any further assurance to effect the assignment contained herein in respect thereto. Until such consent is obtained, the Assignor shall, to the extent that it may do so by law or under the terms of the Excluded Collateral and without giving rise to any default or penalty, hold all right, title, benefit and interest to be derived therefrom in trust for the Assignee as additional security, as if the assignment contained herein applied, and shall deliver up such right, title, benefit and interest to the Assignee forthwith upon demand under the Charge or Mortgage or upon any other security becoming enforceable under the Loan Agreement.

#### **6. Further Assurances**

The Assignor shall from time to time execute and deliver such further assurances as may be reasonably required by the Assignee from time to time to perfect this Agreement and assignment.

#### **7. Re-Assignment**

It is understood and agreed that none of the rights or remedies of the Assignee under any other security granted to it in respect of the Obligations shall be delayed or in any way prejudiced by this Agreement, and that following registration of a discharge of the Charge or

Mortgage, this Agreement and assignment shall be of no further force and effect and such registration of that discharge shall be deemed to be a reassignment of this Agreement and assignment in favour of the Assignor.

## 8. Notice

Any notice, demand or other communication to be made or given hereunder shall be in writing and may be made or given by personal delivery or by transmittal by telecopy, telefax or other electronic means of communication, addressed to the respective party as follows:

i. to the Assignor at:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Attention: \_\_\_\_\_

Facsimile: \_\_\_\_\_

ii. to the Assignee at:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Attention: \_\_\_\_\_

Facsimile: \_\_\_\_\_

or to such other address or telex number, telecopy number or telefax number as any party may from time to time notify the others in accordance with this Section 8. Any demand, notice or communication made or given by personal delivery shall be conclusively deemed to have been given on the day of actual delivery thereof, or, if made or given by facsimile or other electronic means of communication, on the first business day following the transmittal thereof.

## 9. Successors and Assigns

This Agreement shall enure to the benefit of and be binding upon the parties hereto and their respective successors and assigns.

## 10. Governing Law

This Agreement shall be governed in all respects by the laws of the Province or Territory where the Property is situate and the laws of Canada applicable therein and shall be treated in all respects as a contract of that Province or Territory.

## **11. Continuing Collateral Security**

This Agreement shall be held by the Assignee as general and continuing collateral security to the Assignee for the Obligations. This Agreement and the assignments granted hereby are in addition to and not in substitution for any other security now or hereafter held by the Assignee and this Agreement will remain in full force and effect until re-assigned and discharged by the Assignee.

## **12. Conflict**

To the extent that there is any conflict or inconsistency between this Agreement and the Loan Agreement, the provisions of the Loan Agreement shall prevail. Notwithstanding the foregoing, in the event that this Agreement contains remedies which are in addition to the remedies set forth in the Loan Agreement or Charge or Mortgage, the existence of such remedies shall not constitute a conflict with the terms of this Agreement.

## **13. Amendments and Waivers**

No amendment to this Agreement will be valid or binding unless set forth in writing and duly executed by all of the parties hereto. No waiver of any breach of any provision of this Agreement will be effective or binding unless made in writing and signed by the party purporting to give the same and, unless otherwise provided in the written waiver, will be limited to the specific breach waived.

## **14. Severability**

If any covenant, obligation or provision of this Agreement, or the application thereof to any person or circumstance shall, to any extent, be invalid or unenforceable, the remainder of this Agreement or the application of such covenant, obligation or agreement to persons or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected thereby and each covenant, obligation and agreement of this Agreement shall be separately valid and enforceable to the fullest extent permitted by law.

## **15. Relationship of Parties**

Nothing herein contained shall be deemed or construed by the parties hereto or by any third party as creating the relationship of principal and agent or of partnership or of joint venture between the Assignor and the Assignee; it being understood and agreed that none of the provisions herein contained or any acts of the Assignee or of the Assignor, shall be deemed to create any relationship between the Assignee and the Assignor other than the relationship of assignee and assignor.

## **16. Sections and Headings**

The division of this Agreement into Sections and the insertion of headings are for convenience of reference only and will not affect the construction or interpretation of this Agreement. The terms "this Agreement", "hereof", "hereunder" and similar expressions refer to this Agreement and not to any particular Section or other portion hereof and include any agreement

supplemental hereto. Unless something in the subject matter or context is inconsistent therewith, reference herein to Sections are to Sections of this Agreement.

## **17. Extended Meaning**

In this Agreement words importing the singular number also include the plural and vice versa, words importing any gender include all genders and words importing persons include individuals, partnerships, associations, trusts, unincorporated organizations and corporations.

## **18. Future Lease Interests**

The Assignor covenants and agrees that if and to the extent that its right, title, estate or interest in any Lease or Rents is not acquired until after delivery of this Agreement, this Agreement shall nonetheless apply thereto and the security interest of the Assignee hereby created shall attach to the Assignor's interest in any such Lease or Rents at the same time as the Assignor acquires rights therein, without the necessity of any further assignment or other assurance, and thereafter the security interests created hereby in respect of such Lease or Rents shall be absolute, fixed and specific.

## **19. Assignment**

The rights of the Assignee under this Agreement may be assigned by the Assignee to a person to whom the Assignee may also assign its rights under the Loan Agreement to the same extent, and on and subject to the same terms and conditions, as the Assignee may assign its rights under the Loan Agreement. The Assignor may not assign its obligations under this Agreement except in accordance with the provisions of the Loan Agreement.

**[Signatures Appear on Following Page]**

**In Witness Whereof** the Assignor has executed this Agreement.

Per: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Per: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

I/We have the authority to bind the Corporation.

## **Schedule A**

### **Legal Description of Property**