

PROVISIONS TO BE CONSIDERED	NOTES
<p style="text-align: center;">INTRODUCTION</p> <p>Purpose and currency of checklist. This checklist is designed to be used with the CLIENT IDENTIFICATION AND VERIFICATION PROCEDURE (A1) and SECURITY AGREEMENT PROCEDURE (B12) checklists. It is current to March 1, 2010.</p> <p>Use of debenture. Where a debenture is being used, the items marked “(DEB)” should be considered. For the most part, a debenture and a general security agreement are not markedly different, except that generally a debenture creates an obligation to pay and charges land, whereas a general security agreement charges only personal property.</p> <p>Fixtures and crops. Personal Property Security Regulation, B.C. Reg. 227/2002, s. 1(3) to (5), should be considered in the context of a charge on land, fixtures, or crops. The intent of these sections is to ensure that fixtures and crops are included within the definition of personal property where the fixtures and crops are charged in conjunction with other personal property, but not where the fixtures or crops are charged in conjunction with an interest in the land to which the fixtures or crops are affixed. The wording of the sections, however, is complex, and the sections should be carefully reviewed.</p> <p style="text-align: center;">CONTENTS</p> <ol style="list-style-type: none"> 1. Initial Contact 2. Identification of Parties 3. Recitals 4. Introductory Clauses 5. Obligation Secured 6. Security Interest 7. Debtor’s Representations and Covenants 8. Default 9. Enforcement 10. Other Rights of the Secured Party 11. Security Provisions 12. Miscellaneous 13. Interpretation and General Provisions 14. Date 15. Execution <p style="text-align: center;">CHECKLIST</p> <ol style="list-style-type: none"> 1. INITIAL CONTACT <ol style="list-style-type: none"> 1.1 Consider Law Society of British Columbia Rules on Client Identification and Verification, and complete the CLIENT IDENTIFICATION AND VERIFICATION PROCEDURE (A1) Checklist. 2. IDENTIFICATION OF PARTIES <ol style="list-style-type: none"> 2.1 Debtor(s). 2.2 Secured party or parties. 	

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<p>3. RECITALS</p> <p>3.1 Recitals setting out the special features of the transaction.</p> <p>4. INTRODUCTORY CLAUSES</p> <p>4.1 Consideration clause (e.g., “for value received”).</p> <p>5. OBLIGATION SECURED</p> <p>5.1 Specify obligations secured:</p> <ol style="list-style-type: none"> .1 All present and future debts and liabilities of the debtor to the secured party. (The debtor may wish to narrow this provision to debt incurred in respect of a particular debt only. See item .2 below.) .2 Specific debt (provide for any future advances if there is to be more than a one time advance). .3 Current or running account, advances and re-advances. .4 Performance generally, and not merely of the obligation to pay, under all agreements with secured party. <p>(DEB) Provisions relating to promise to pay and interest:</p> <ul style="list-style-type: none"> • Promise to pay on demand, on a specified date, or by a payment schedule. • Amount (together with interest). • Where, when, and how payment is to be made. • Consider whether it is appropriate to limit debenture to a specified amount which is the total aggregate amount which may at any time be outstanding, especially where there is a charge on land (or charge on equity of redemption). • Interest to be paid on principal and overdue interest; payable after as well as before maturity, default or judgment. • Interest rate (ensure compliance with the disclosure requirements of the <i>Interest Act</i>, R.S.C. 1985, c. I-5, and <i>Bank Act</i>, S.C. 1991, c. 46. Also consider including provision in respect of the <i>Criminal Code</i>, R.S.C. 1985, c. C-46, respecting criminal rate of interest and the definition of “interest” established by <i>Criminal Code</i> and case law). • Consider special clauses (e.g., option to switch from floating interest rate to fixed rate). <p>6. SECURITY INTEREST</p> <p>6.1 Creation of security interest in personal property:</p> <ol style="list-style-type: none"> .1 Describe the collateral in accordance with s. 10 of the <i>Personal Property Security Act</i>, R.S.B.C. 1996, c. 359 (“PPSA”) (including location of property, characterization of property under PPSA categories, serial numbers and information required by PPSA for serial-numbered goods). .2 After-acquired property. .3 Proceeds. .4 Consider excepting consumer goods from collateral (ss. 55, 58, 62 and 67 of the PPSA). .5 Consider excepting the last day of the term of any lease. 	

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<p>.6 If perfection is by possession, state that the collateral is delivered to the secured party for the purpose of perfecting the security interest.</p> <p>6.2 Consider the need and ability to charge or assign rights that are neither personal nor real property (e.g., a quota or a fishing licence). It is often preferable to purport to create a security interest over such rights after advising the secured party that no opinion can be given as to the validity of a security interest over such rights.</p> <p>6.3 Consider the need to assign and charge intellectual property pursuant to a separate agreement that can be registered, as appropriate, with federal registration offices.</p> <p>6.4 No postponement of attachment of security interest. (See item 12.1.)</p> <p>6.5 Creation of floating charge:</p> <ol style="list-style-type: none"> .1 Describe the property broadly. .2 Use land title office (“LTO”) execution format. <p>6.6 Consider the need for a control agreement in respect of investment property.</p> <p>(DEB) Creation of fixed charge on real property, leasehold property, fixtures, chattels, etc.:</p> <ul style="list-style-type: none"> • Describe the property in accordance with land title requirements. • Create Form B—Mortgage for LTO purposes and attach debenture as Part 2 (unless debenture terms are filed as standard mortgage terms under the <i>Land Title Act</i>, R.S.B.C. 1996, c. 250). • A fixed charge on real property is conceptually the same whether included in a debenture or a mortgage. All searches, investigations, and other steps normally undertaken in commercial mortgage transactions are equally applicable where the mortgage is contained in a debenture. 	
<p>7. DEBTOR’S REPRESENTATIONS AND COVENANTS</p> <p>7.1 Accuracy of representations.</p> <p>7.2 Where the debtor is a corporation or other artificial body:</p> <ol style="list-style-type: none"> .1 Debtor is an existing corporation with capacity to execute, deliver, and perform its obligations under the security agreement and related documents. Debtor will maintain its corporate existence, remain in good standing, not alter the memorandum or articles, and not amalgamate, continue, or undergo corporate re-organization. .2 Security agreement is made in accordance with the required resolutions and all other things have been done to make the execution and delivery of the security agreement legal and valid. <p>7.3 No pending actions against the debtor (or any subsidiary) or affecting the collateral.</p> <p>7.4 Entry into, delivery, and performance of this security agreement does not result in a breach of any contracts or agreements that would adversely or materially affect the business, properties, operations, or financial condition of the debtor (or any subsidiary).</p> <p>7.5 Not to change or use a different name or trade name.</p> <p>7.6 Not to relocate place of business/chief executive office/principal residence/collateral to a place outside British Columbia.</p>	

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<p>7.7 Not to dispose of the undertaking, and to maintain the business and the collateral.</p> <p>7.8 Insurance:</p> <ul style="list-style-type: none"> .1 To maintain insurance against fire and other risks, including business interruption, boiler and machinery, and liability insurance. .2 To add secured party as first loss payee on insurance policies. .3 To deliver certificates of insurance and certified copies of insurance policies to the secured party. .4 To furnish proofs of loss to the secured party, and to do all things necessary to enable the secured party to obtain payment. .5 To apply the proceeds as set out in the security agreement (e.g., to repair the collateral, to pay to the secured party). <p>7.9 Financial covenants, such as:</p> <ul style="list-style-type: none"> .1 Not to become guarantor or endorser of any obligation other than in the normal course of business. .2 Limitations (either absolute or requiring prior written consent of the secured party) on the debtor (and possibly affiliates): <ul style="list-style-type: none"> (a) Capital expenditures. (b) Dividend payments. (c) Share capital redemption and reduction. (d) Repayment of shareholder loans. (e) Lease obligations. (f) Financial covenants (e.g., debt to equity ratio, working capital ratio). (g) Remuneration of directors, officers, and employees. (h) Sale of assets. (i) Incurrence of debt. <p>7.10 To obey laws.</p> <p>7.11 To maintain in good standing all necessary licences and registrations in all relevant jurisdictions.</p> <p>7.12 To keep proper books of account upon its premises.</p> <p>7.13 To permit entry and inspection by the secured party.</p> <p>7.14 To provide financial statements to the secured party (e.g., audited or unaudited annual statements, interim statements).</p> <p>7.15 To furnish information relating to the business of the secured party.</p> <p>7.16 To notify the secured party of any encumbrances or proceedings.</p> <p>7.17 To keep prior permitted encumbrances, if any, in good standing.</p> <p>7.18 Nothing done by debtor to encumber the collateral except as specified.</p> <p>7.19 Collateral has been in British Columbia for 60 days (<i>PPSA</i>, s. 7).</p> <p>7.20 Title to the collateral and other assets with which debtor carries on business:</p> <ul style="list-style-type: none"> .1 Debtor has title free and clear of all encumbrances. 	

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<p>.2 Debtor to defend title.</p> <p>7.21 To maintain leases in respect of the collateral in good standing, to maintain the collateral in good repair, to make all repairs reasonably required by the secured party, and to prevent collateral from becoming an accession to property not secured by the security agreement.</p> <p>7.22 To notify the secured party, upon request, of the location of chattels forming part of the collateral.</p> <p>7.23 To notify the secured party if any after-acquired property (including proceeds) are serial numbered goods or any serial number changes or any collateral has been lost or destroyed.</p> <p>7.24 Not to remove collateral from specified location. To notify secured party of location of collateral if removed.</p> <p>7.25 Not to sell or dispose of collateral, except inventory in the ordinary course of business.</p> <p>7.26 Not to grant any mortgage, or create any other charge on the collateral that would rank equally with or higher than the charges created by the security agreement, except as permitted in the security agreement.</p> <p>7.27 To pay the obligations when due.</p> <p>7.28 To pay all costs relating to the creation, registration, discharge, and amendment of the security agreement.</p> <p>7.29 To maintain the security created in the security agreement.</p> <p>7.30 To pay all taxes.</p> <p>7.31 To pay all debts and obligations to potential common law and statutory lien claimants.</p> <p>7.32 To obtain all consents or waivers under any agreement, etc., required for the security interest.</p> <p>7.33 Consider if environmental representations, covenants, or indemnities are required relating to real property or personal property collateral.</p> <p>7.34 Further assurances. Representations and covenants relating to any real property charged:</p> <ul style="list-style-type: none"> • Debtor has title free and clear of all encumbrances. • Debtor to defend title. • To pay all taxes, rates, and similar charges. • To maintain property, keep it in good repair, and make all repairs reasonably required by the secured party. • To pay all debts and obligations to potential builders lien claimants, and statutory lien claimants. • To perform all obligations under leases and other encumbrances affecting title to the real property. • Not to sell property, or grant any mortgage, or create any other charge or encumbrance on the property except as expressly permitted in the debenture. • To create subsequent specific charges on real property as requested by the secured party. • Environmental representations, covenants, or indemnities. 	

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<p>(DEB) Additional covenants relating to any leasehold property charged:</p> <ul style="list-style-type: none"> • Debtor has good leasehold interest free and clear of all encumbrances. • Debtor to defend leasehold interest. • No default under lease. • Not to assign lease, sublet or grant any mortgage, or create any charge or encumbrance on the leasehold interest except as expressly permitted in the debenture. • Landlord has consented to the debenture. • To pay all debts and obligations to potential builders lien claimants, and statutory lien claimants. • To observe and perform lease covenants. • To exercise renewal rights, get the most favourable terms possible, and mortgage renewal leases to the secured party. • Environmental representations, covenants, or indemnities. <p>8. DEFAULT</p> <p>8.1 Effect of default (e.g., at the option of the secured party, all outstanding monies become immediately payable, together with interest until the time of payment, and the security becomes enforceable).</p> <p>8.2 Events constituting default:</p> <ol style="list-style-type: none"> .1 Non-payment of the principal when it becomes due and payable. .2 Default in payment of other indebtedness to the secured party (e.g., interest installments, other monies secured by the secured party, all indebtedness whether or not secured by the security interest). .3 A warranty or representation in the security agreement is or becomes untrue, or there is a misstatement in any certificate of officer. .4 Breach of any provision of the security agreement. .5 Insolvency, such as: liquidation, winding-up, filing or presentation of a bankruptcy application, making a voluntary assignment or a proposal under the <i>Bankruptcy and Insolvency Act</i>, R.S.C. 1985, c. B-3, proceedings under the <i>Companies' Creditors Arrangement Act</i>, R.S.C. 1985, c. C-36, insolvency, commission or threat of commission of an act of bankruptcy, or appointment of a receiver or receiver-manager. .6 Sale of collateral except inventory in the ordinary course of business. .7 Execution or other process becomes enforceable against the debtor and is not satisfied within a specified time. .8 Distress is levied upon the collateral (unless the debtor disputes in good faith and gives the secured party adequate security to pay the full amount claimed). .9 Debtor creates a charge ranking in priority to or equal with a security interest created by the security agreement not expressly permitted by the security agreement. .10 A non-permitted lien arises. .11 Debtor ceases or demonstrates the intention to cease carrying on business. .12 Debtor allows a debt to remain unpaid for a specified time after proceedings have been taken to enforce it as a prior charge. 	

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<p>.13 Debtor authorizes purchase by itself of its shares, or redeems shares, without first getting the secured party's written consent.</p> <p>.14 Debtor changes effective management or permits or authorizes a change in control without first getting the secured party's written consent.</p> <p>.15 Debtor carries on business that it is restricted from carrying on by its memorandum.</p> <p>.16 A member of the debtor commences an action against the debtor or gives notice of dissent to the debtor.</p> <p>.17 Debtor defaults under any lease or other agreement.</p> <p>.18 Debtor uses funds advanced by the secured party for any purpose other than as declared to and agreed upon by the secured party.</p> <p>.19 Secured party, in good faith, believes and has commercially reasonable grounds to believe that the prospect of payment or performance is or is about to be impaired or that the collateral is or is about to be placed in jeopardy.</p> <p>8.3 The secured party may waive any breach or default, but this does not affect the rights arising from subsequent breaches or defaults.</p>	
<p>9. ENFORCEMENT</p> <p>9.1 Specify circumstances in which the secured party may use the various measures set out in the security agreement.</p> <p>9.2 Secured party to have all rights at law, including under <i>PPSA</i>, and in equity.</p> <p>9.3 Power to enter, take possession of, collect, and use the collateral, and to exclude the debtor.</p> <p>9.4 Power to preserve, maintain, and repair the collateral.</p> <p>9.5 Power to lease or sell the collateral, with the proceeds of the sale applied as set out in the security agreement.</p> <p>9.6 Power to sell with deferred purchase price.</p> <p>9.7 Power to collect accounts.</p> <p>9.8 Power to have a receiver or receiver-manager appointed:</p> <p>.1 How the power will be exercised.</p> <p>.2 Receiver-manager is an agent, officer, or attorney of the debtor, and the debtor is solely responsible for the receiver-manager's acts, defaults, and remuneration.</p> <p>.3 Secured party has no liability to the receiver-manager for remuneration, expenses, etc.</p> <p>.4 Powers of receiver-manager:</p> <p>(a) To take possession of, collect, and use the property.</p> <p>(b) To carry on or concur in the carrying on of the business and to employ, discharge, and set remuneration for any persons.</p> <p>(c) To sell or lease or concur in the selling or leasing of the property and to defer payment of selling price.</p> <p>(d) To borrow money to carry on the business or maintain the property and to issue receiver's certificate.</p>	

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<p>(e) To make any arrangement that he or she thinks expedient.</p> <p>.5 Receiver-manager not liable for loss, unless caused by his or her negligence or wilful default.</p> <p>.6 Purchaser not bound to inquire regarding validity of sale.</p> <p>.7 Proceeds of sale or profits of business to be applied as set out in the security agreement, for example:</p> <p>(a) To pay the receiver-manager's remuneration and expenses.</p> <p>(b) To pay to the secured party the principal due.</p> <p>(c) To pay to the secured party any unpaid interest or other monies owing.</p> <p>(d) To pay any surplus to the debtor, subject to the rights of other creditors.</p> <p>9.9 Secured party does not elect to retain collateral unless notice is given to that effect.</p> <p>9.10 Consider acknowledgement that specified procedures are "commercially reasonable".</p> <p>9.11 Debtor's rights of reinstatement limited to <i>PPSA</i>.</p> <p>9.12 Debtor liable for deficiency (excepting consumer goods).</p> <p>9.13 All realization expenses to be payable by the debtor and secured by the collateral.</p> <p>Enforcement provisions relating to any real property charged:</p> <ul style="list-style-type: none"> • Power to enter, take possession of, and use the property, and exclude the debtor. • Power to preserve, maintain, and repair the property. • Power to lease or sell the property, with the proceeds of the sale applied as set out in the debenture. • Power to appoint a receiver or receiver-manager (see item 9.8 for sample clauses). • Power to proceed in respect of both real property and personal property as if the personal property were real property. 	
<p>10. OTHER RIGHTS OF THE SECURED PARTY</p> <p>10.1 To do anything the debtor is required to do, if the debtor fails to do so. Costs to be payable by the debtor and secured by the collateral.</p> <p>10.2 To pay monies to preserve, protect, or repair the collateral. Costs to be payable by the debtor and secured by the collateral.</p> <p>10.3 To release one guarantor or debtor without releasing the others or prejudicing the security, to release other security held by the secured party, or to release some of the collateral.</p> <p>10.4 To apply insurance proceeds at the secured party's option, to the repair or reinstatement of the property or to the indebtedness secured by the security interest.</p> <p>10.5 To realize on all securities in any order. Rights and remedies set out in the security agreement are cumulative and additional to any other remedies.</p>	

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<p>10.6 To allocate payments so as to preserve purchase money security interests (“PMSIs”).</p> <p>10.7 To have fees for registering discharges and amendments payable by the debtor.</p> <p>10.8 To be appointed attorney for all purposes required under security agreement; this is particularly important with respect to assignments of “property” that is neither real nor personal (e.g., milk quota or fishing licence). Consider a separate assignment and power of attorney agreement. Consider consequences of an expropriation. Consider adding any other rights typically included in commercial mortgage documents.</p> <p>10.9 To exercise rights under a control agreement relating to collateral that is investment property.</p>	
<p>11. SECURITY PROVISIONS</p> <p>11.1 Security is additional to any other security held by the secured party. No merger.</p> <p>11.2 Valid and continuing security until discharge.</p> <p>11.3 Obligation to pay is not extinguished by a judgment or the exercise of power of seizure or sale. Consider s. 67 of <i>PPSA</i> in respect of consumer goods.</p> <p>11.4 Consider specifying (and limiting) duties of the secured party when collateral is in its possession or includes goods, instruments, investment property, chattel paper, or documents of title.</p>	
<p>12. MISCELLANEOUS</p> <p>12.1 Secured party has no obligation to advance monies or otherwise. Consider effect on attachment for <i>PPSA</i> purposes.</p> <p>12.2 Conditions to be satisfied for discharge. Releases and discharges to be prepared by the secured party, on the debtor’s request and at the debtor’s expense.</p> <p>12.3 Assignment of rights. Assigns to be bound by the provisions of the security agreement. Consider no assignment by debtor without consent.</p> <p>12.4 Waive receipt of copies of financing statements.</p> <p>12.5 Acknowledge receipt of copy of the security agreement and, if not waived as per item 12.4, the financing statements.</p> <p>12.6 Release and limitation on secured party liability.</p> <p>12.7 Secured party may grant extensions of time.</p> <p>12.8 Debtor to waive all rights permissible to waive.</p> <p>12.9 Consider prohibition on power to grant, create, or permit other security.</p> <p>12.10 Where more than one debtor, indicate if obligation joint and several.</p> <p>12.11 Monies secured to be paid without regard to any equities between the debtor and the original or any intermediate secured party, or any right of set-off or counterclaim.</p>	

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<p>Consider the following provisions for debenture:</p> <ul style="list-style-type: none">• Secured party is exclusively entitled to the benefit of the debenture. Debtor not bound to recognize any trust or equity affecting ownership.• Repayment of advances does not constitute redemption.• Prepayment rights or penalties; partial or full payment prior to due date. <p>13. INTERPRETATION AND GENERAL PROVISIONS</p> <p>13.1 Definitions.</p> <p>13.2 Choice of law/attornment to jurisdiction clause. Note that ss. 5 to 8.1 of the <i>PPSA</i> limit the applicability of choice of law clause.</p> <p>13.3 Principles that govern the interpretation of the security agreement (e.g., use of the masculine form, insertion of headings for convenience only).</p> <p>13.4 Severability.</p> <p>13.5 Time of the essence.</p> <p>13.6 Notices.</p> <p>13.7 Enurement.</p> <p>13.8 Amendments.</p> <p>13.9 Schedules (e.g., list of assets, permitted encumbrances).</p> <p>13.10 Further assurances.</p> <p>14. DATE</p> <p>15. EXECUTION</p>	