

ACTION 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 (A-1), CLIENT FILE OPENING AND CLOSING (A-2), and COMMERCIAL LEASE PROCEDURE (B-10) checklists. This checklist must be considered in relation to the particular facts in the matter at hand, and augmented and revised as appropriate. This checklist is primarily intended for use by the lawyer acting for the landlord. It is current to September 1, 2020.</p> <p>New developments:</p> <ul style="list-style-type: none"> • COVID-19 pandemic. The COVID-19 pandemic has had significant impacts on business, including commercial leases: inability of tenant to carry on business in the premises or pay rent; attempts to rely on <i>force majeure</i> clauses and/or business interruption insurance; implementation of the Canada Emergency Commercial Rent Assistance (CECRA) program; inability to attend, or aversion to, in-person meetings; possible delays at government agencies and public registries; border closures; unpredictable economic circumstances, etc. Counsel should keep apprised of developments related to COVID-19 (and response measures) that may affect commercial leasing. See the course presentation by L. Hellrung, C. Sharpe, and W. Holder, “Hot Topics in Leasing in a Time of COVID-19” (CLEBC, 2020), and the related course materials “Commercial Leasing in a Time of COVID-19”, both available through CLEBC’s Courses on Demand. For a precedent force majeure clause and related commentary see chapter 11 (Special Tenant Rights) in <i>Commercial Leasing: Annotated Precedents</i> (CLEBC, 1996–). Note that: <ul style="list-style-type: none"> ○ The Land Title Survey Authority has implemented temporary practice changes that remain effective until further notice. The main changes involve remote witnessing procedures and acceptance of true copies instead of originals. For further information see: ltsa.ca/covid-19-resources/. ○ Counsel conducting due diligence searches will need to be mindful of the impact of the COVID-19 pandemic. Response times for search requests may be delayed and, accordingly, such delays should be accounted for in the due diligence timeline. Counsel should be aware that search results may not disclose certain actions, fines, levies, or administrative penalties which have been delayed but are otherwise permitted to be filed or issued beyond the typical limitation period. • New Arbitration Act. The <i>Arbitration Act</i>, S.B.C. 2020, c. 2, came into force on September 1, 2020. It is strongly recommended that practitioners review the new legislation prior to drafting or revising arbitration clauses in agreements. • Land Owner Transparency Act. On May 16, 2019, the <i>Land Owner Transparency Act</i>, S.B.C. 2019, c. 23, (the “LOTA”) received Royal Assent and is in force on November 30, 2020 (except for specified provisions that will come into force on April 30, 2021) (B.C. Reg. 250/2020). B.C. Reg. 250/2020 also sets out the new Land Owner Transparency Regulation, made effective November 30, 2020. Under the <i>LOTA</i>, the Land Title and Survey Authority will operate a Land Owner Transparency Registry (the “LOTR”), which is a public database of information on individuals who have an indirect interest in land, such as through a company, trust, or partnership. By the definition of “interest in land” under the <i>LOTA</i>, a tenant registering a lease in the land title office that has a remaining term of more than 10 years will have to concurrently file a transparency declaration, unless the tenant or the leased lands are exempt (for example, if the tenant is a public company or a strata corporation, or if the lands are treaty or reserve lands). If the tenant is a reporting body under the <i>LOTA</i>—which includes most corporations, 	

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<p>trusts, and partnerships, subject to limited exemptions—it will also have to file a transparency report any time there is a change in the tenant’s interest holders or beneficial owners. Any tenant who has an existing lease registered in the land title office, with a remaining term of more than 10 years when the <i>LOTA</i> comes into force on November 30, 2020, will also be required to file a transparency report with the LOTR by November 30, 2021. Landlords who are registered owners of property in any land title office in British Columbia when the <i>LOTA</i> comes into force, or who become such a registered owner thereafter, will also be required to file a transparency declaration, and if applicable, a transparency report. For further information, see LandTransparency.ca, and also the course presentation and materials by R. Danakody, “Introducing the Land Owner Transparency Registry”, in <i>Residential Real Estate Conference 2019</i> (CLEBC, 2019), available through CLEBC Courses on Demand.</p> <ul style="list-style-type: none"> • Exemptions on additional property transfer tax on foreign entities. The Property Transfer Tax Regulation, B.C. Reg. 74/88, provides for relief, in certain circumstances, from the additional 20% property transfer tax on transfers of residential property in the Metro Vancouver Regional District, Capital Regional District, Regional District of Central Okanagan, Fraser Valley Regional District, and Regional District of Nanaimo to “foreign entities”. Effective June 20, 2020, see s. 22 for the “Exemption for general partner in limited partnership”. See ss. 17.1 to 20 for the exemption for a foreign national who has confirmation as a worker under the Provincial Nominee Program, and see s. 21 regarding the refund of the extra tax paid by a transferee who became a Canadian citizen or permanent resident within one year of the registration date. <p>Of note:</p> <ul style="list-style-type: none"> • Money laundering—companies, trusts and other entities. British Columbia is viewed as a province in which money laundering in real estate has burgeoned. Media reports and independent reviews into money laundering by retired RCMP deputy commissioner Dr. Peter German, QC and an expert panel led by SFU professor and former deputy attorney general Maureen Maloney, QC, led to the provincial government establishing a Commission of Inquiry into Money Laundering in BC, with Supreme Court Justice Austin Cullen appointed as the commissioner. The inquiry’s broad mandate includes the real estate and professional services sectors (including lawyers). It also includes the corporate sector in relation to the use of shell companies, trusts, securities and financial instruments. The Law Society is a participant in the inquiry. The commissioner’s final report on money laundering in BC, with recommendations, is scheduled for delivery in May 2021. <p>Criminals use ordinary legal instruments to launder money, including shell and numbered companies, bare trusts, and nominees, attempting to disguise the true owners of real property, the beneficial owners. It can be hard to detect money laundering, requiring lawyers to assess the facts and context of the proposed retainer and financial transactions. Lawyers should be aware of red flags and if a lawyer has doubts or suspicions about whether the lawyer could be assisting in any dishonesty, crime or fraud, make enough enquiries to determine whether it is appropriate to act (<i>BC Code</i>, rules 3.2-7 to 3.2-8 and Law Society Rules 3-103(4), and 3-109 to 3-110). See the resources on the Law Society’s Client ID & Verification resources webpage such as the Risk Assessment Case Studies for the Legal Profession in the context of real estate, trusts and companies and the Red Flags</p>	

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<p>Quick Reference Guide. Also see the Risk Advisories for the Legal Profession regarding real estate, shell corporations, private lending, trusts, and litigation and the Discipline Advisory (private lending). Lawyers may contact a Law Society practice advisor at practiceadvice@lsbc.org for a consultation about the applicable <i>BC Code</i> rules and Law Society Rules and obtain guidance.</p> <ul style="list-style-type: none"> • Importance of Verifying Zoning. In <i>Laidar Holdings Ltd. v. Lindt & Sprungli (Canada) Inc.</i>, 2018 BCSC 66, the court found a tenant’s professional advisors, a Toronto brokerage, 70% liable for the damages awarded to the plaintiff landlord by the defendant tenant, for failing to ensure that the zoning for leased premises was compliant with the tenant’s proposed use. The Toronto brokerage had erroneously assumed that the tenant’s other advisors, its solicitors, and a Vancouver real estate brokerage, had confirmed the zoning. Although the tenant’s solicitors gave evidence at trial, they were not sued by the tenant. This decision underscores the importance of verifying zoning when negotiating an offer to lease and confirming client instructions in writing. (See 2019 BCSC 83 for the decision on the quantum of damages.) • Lease of portion of a parcel of land. If premises to be leased are on an unsubdivided portion of a legal lot, consider the effect and application of <i>Land Title Act</i>, R.S.B.C. 1996, c. 250, ss. 73(1) and 73.1. Note that s. 73(3) provides that s. 73(1) does not apply to a subdivision for the purposes of leasing a building or part of a building. <i>International Paper Industries Ltd. v. Top Line Industries Inc.</i> (1996), 20 B.C.L.R. (3d) 41 (C.A.), held that any lease that offends s. 73 is not only unregistrable, but unenforceable as an illegal contract. However, s. 73.1 provides that a lease or an agreement for lease of part of a parcel of land is not unenforceable between the parties by reason only that it does not comply with Part 7 of the <i>Land Title Act</i>, or that an application to register it may be refused or rejected. In <i>Idle-O Apartments Inc. v. Charlyn Investments Ltd.</i>, 2010 BCCA 460, the court held that, while s. 73.1 is remedial legislation in effect to prevent the hardship caused by <i>Top Line</i>, it does not operate retroactively. Subsequently, in <i>Idle-O Apartments Inc. v. Charlyn Investments Ltd.</i>, 2014 BCCA 451, the Court of Appeal held that where the non-retroactive nature of s. 73.1 results in hardship, equitable remedies may be appropriate. The court upheld the trial judge’s use of proprietary estoppel as a basis for granting a replacement lease but emphasized that there can be no retroactive reliance on s. 73.1 in reaching such a conclusion. The court varied the trial judge’s finding that the replacement lease should be under the exact same terms as the lease signed by the parties, saying that the terms should strike a balance between the parties’ expectations and the public policy impact of creating an equitable exception to the requirements of the <i>Land Title Act</i>. • Aboriginal law. Special considerations apply to land situated within a reserve or which are the subject of a treaty. While CIRNAC/ISC (Crown-Indigenous Relations and Northern Affairs Canada and Indigenous Services Canada) helps to manage a significant number of reserves for the benefit of “Indians” (as defined in the <i>Indian Act</i>, R.S.C. 1985, c. I-5), there are some First Nations in British Columbia that manage their own lands. To investigate whether a particular First Nation is a signatory to the Framework Agreement on First Nations Land Management (ratified and implemented by the <i>First Nations Land Management Act</i>, S.C. 1999, c. 24), consult the website of the First Nations Land Management Resource Centre (www.labrc.com). The lands of some First Nations (such as the Sechelt Indian Band, Nisga’a Nation, and the Tsawwassen First Nation) are registered under the provincial land title system, although special provisions in the <i>Land Title Act</i> apply to the lands of those First Nations. If a lease, mortgage, land 	

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<p>conveyance, or transfer of leasehold interest involves reserve or First Nation lands, consider seeking the advice of a lawyer who has experience in Aboriginal law matters. Further information on Aboriginal law issues is available on the “Aboriginal Law” page on the “Practice Areas” section of the Continuing Legal Education Society of British Columbia website (www.cle.bc.ca) and in other CLEBC publications.</p> <ul style="list-style-type: none"> • Additional resources. For detailed information about commercial lease procedures, including various precedent leases and commentary, see <i>Commercial Leasing: Annotated Precedents</i> (CLEBC, 1996–). • Law Society of British Columbia. For changes to the Law Society Rules and other Law Society updates and issues “of note”, see LAW SOCIETY NOTABLE UPDATES LIST (A-3). The Law Society's resources related to procedures generally and issues arising from COVID-19 can be viewed at www.lawsociety.bc.ca/about-us/covid-19-response/. 	
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<p style="text-align: center;">CHECKLIST</p> <p>1. INITIAL CONTACT</p> <p>1.1 Complete the CLIENT FILE OPENING AND CLOSING (A-2) and COMMERCIAL LEASE PROCEDURE (B-9) checklists. Confirm compliance with Law Society Rules 3-98 to 3-110 for client identification and verification and the source of money for financial transactions, and complete the CLIENT IDENTIFICATION AND VERIFICATION PROCEDURE (A-1) checklist. Consider periodic monitoring requirements (Law Society Rule 3-110).</p> <p>2. EFFECTIVE DATE OF AGREEMENT</p> <p>3. INTRODUCTORY CLAUSES</p> <p>3.1 Whether made under the <i>Land Transfer Form Act</i>, R.S.B.C. 1996, c. 252 (consider whether this is advisable and whether the wording of the lease makes any of the provisions of this Act applicable).</p> <p>3.2 Recitals setting out the special features of the transaction.</p> <p>3.3 Consideration clause.</p> <p>4. IDENTIFICATION OF PARTIES</p> <p>4.1 Landlord.</p> <p>4.2 Tenant.</p> <p>4.3 Third-party indemnifier (if any).</p> <p>5. DESCRIPTION OF PREMISES</p> <p>5.1 Legal description and street address.</p> <p>5.2 Clear description of the premises leased, including:</p> <p>.1 Reference to a marked plan attached as a schedule if a portion of a building (avoid using colours as they will not show on black and white photocopies/scans—bold outline or hatching is preferable).</p> <p>.2 Area, or procedure for calculating the area (e.g., indication that the area is grossed-up for common areas and hallways), which must accord with the plan. Whether it can be re-calculated during the term and impact on rent.</p> <p>.3 Boundaries relative to outside walls, corridor walls, walls of demise, windows, etc.</p> <p>.4 Description of premises vertically, if necessary.</p> <p>.5 If the premises to be leased are an unsubdivided portion of a legal lot, consider, the effect and application of <i>Land Title Act</i>, R.S.B.C. 1996, c. 250, ss. 73(1) and 73.1. Note that s. 73(3) provides that s. 73(1) does not apply to a subdivision for the purposes of leasing a building or part of a building. See “Lease of portion of a parcel of land” in “Of note” in this checklist.</p> <p>5.3 Whether the landlord has the right to expand, relocate, change, demolish, or upgrade the premises, the development containing the premises, or the common areas or facilities, or the right to alter the design or merchandising plan, before or during the term, and if so:</p>	

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<p>.1 Whether the tenant has any rights or remedies if there is a material change (if you are acting for the tenant, consider limits on the landlord's rights).</p> <p>.2 Amendments to rent, additional rent, calculation of proportionate share, etc.</p> <p>.3 Qualifications as to location, size of, and access to new premises.</p> <p>.4 Improvement allowances, payment of undepreciated cost of existing improvements, and extent of landlord's and tenant's work.</p> <p>.5 Minimum period, if any, of the remaining term in which relocation can occur.</p> <p>.6 Notice requirements.</p> <p>5.4 Specified exceptions (e.g., the exterior face of the building, roof areas not leased to full floor tenants, such as vertical shafts for elevators or utilities). Describe such exceptions carefully, and if applicable, refer to a marked plan attached as a schedule.</p> <p>5.5 Specified appurtenances included in the demise or over which rights of use or licences are granted, such as parking (see item 15 in this checklist), basement, storage space, pylon or podium signage, fixtures, furnishings, machinery. Describe them carefully. (If equipment is leased, consider registration requirements under the <i>Personal Property Security Act</i>, R.S.B.C. 1996, c. 359.)</p> <p>5.6 Right to use common areas (see item 14 in this checklist). (If the premises are a strata lot, consider whether an easement or other grant of rights is required from the strata corporation.)</p> <p>5.7 Obligation or right of the landlord to expand the building or construct additional improvements in the future. Set out details very clearly.</p>	
<p>6. WORDS OF PRESENT DEMISE</p> <p>6.1 Include the landlord's agreement to lease premises to the tenant, and the tenant's agreement to lease premises from the landlord.</p>	
<p>7. TERM OF LEASE</p> <p>7.1 Commencement date:</p> <p>.1 Whether it is tied to completion of work, and if so:</p> <p>(a) Method for determining when completion occurs and for documenting the commencement date.</p> <p>(b) Whether, in the event that the tenant finds the premises to be deficient, the tenant has the ability to give notice within a specified time after taking possession and having the landlord rectify deficiencies, or whether taking possession is deemed acceptance.</p> <p>.2 Whether it is tied to an official opening date, and if so:</p> <p>(a) Whether the date is certain, is subject to change by landlord, or is yet to be determined (and the tenant is to be notified).</p> <p>(b) Whether the tenant must open on that date and not before.</p> <p>(c) Whether the date is contingent on anything (e.g., the opening of specified other businesses at the same time).</p> <p>.3 Whether it is conditional on any previous tenant vacating the premises.</p>	

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<p>.4 Whether it is conditional on landlord obtaining financing or approvals/permits.</p> <p>.5 Insert “outside date” or other mechanism to avoid certainty problems.</p> <p>7.2 Consequences of landlord’s failure to deliver the premises on the commencement date, for example:</p> <p>.1 Cancellation of the lease; whether the mortgagee is entitled to cure the default.</p> <p>.2 Adjustment of the commencement date:</p> <p>(a) Whether this is to involve an abatement of rent and other charges (tenant may seek to negotiate additional free rent period as a result of delays).</p> <p>(b) Whether there is any effect on the term of the lease and expiry date.</p> <p>(c) Whether an agreement between the parties or unilateral notice is required to confirm.</p> <p>.3 Liquidated damages for delay.</p> <p>.4 <i>Force majeure</i> considerations.</p> <p>7.3 Whether the tenant may take possession prior to commencement of the term of the lease and, if so:</p> <p>.1 Obligations as to payment of rent and other charges.</p> <p>.2 Whether the remaining provisions of the lease apply or only limited provisions (e.g., insurance, utilities).</p> <p>.3 Whether there is any effect on the term of the lease (e.g., term commences if tenant begins operating from the premises).</p> <p>.4 Length of fixturing period, and use permitted, including whether the tenant can begin operating from the premises before the commencement date.</p> <p>.5 Whether such occupation is exclusive or is shared with the landlord (e.g., if the landlord is concurrently undertaking landlord’s work).</p> <p>7.4 Whether offer to lease merges on commencement or taking of possession.</p> <p>7.5 Whether any of the tenant’s obligations begin before the commencement date.</p> <p>7.6 Length of term.</p> <p>7.7 Whether the term of the lease includes extension or renewal terms (see item 24.3 in this checklist).</p>	
<p>8. RENT</p> <p>8.1 Payment details:</p> <p>.1 Time of payment (e.g., monthly installments to be paid in advance on the first day of each month).</p> <p>.2 Place at which payments are to be made and ability of landlord to direct other places.</p> <p>.3 When payments are to commence (e.g., any provision for a rent-free period).</p> <p>.4 Provision to pro-rate rent for partial months.</p>	

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<p>.5 No deductions or set-offs.</p> <p>.6 Whether there is interest on late payment of rent, additional rent, or other charges (must comply with the <i>Interest Act</i>, R.S.C. 1985, c. I-15).</p> <p>.7 How payments of percentage and additional rent are to be made (see items 8.3 and 8.4 in this checklist).</p> <p>.8 Provision that the obligation to pay survives the lease, including where calculations are not made until after the termination of the lease.</p> <p>8.2 Basic or minimum rent:</p> <p>.1 Amount of annual rent and installments.</p> <p>.2 Adjustment of rent necessitated by use of estimates once actual amounts are determined.</p> <p>.3 Whether the rent is fixed for the term or adjusted at specified intervals to take into account inflation, market value, etc.</p> <p>.4 Methods for calculating the rent and adjustments (e.g., Statistics Canada cost of living adjustment, consumer price index, fair market rental value, arbitration. See “<i>New Arbitration Act</i>” under “New developments” in this checklist.)</p> <p>.5 Post-dated cheques or automatic debit payments.</p> <p>8.3 Additional rent (required payments should be characterized as rent):</p> <p>.1 Taxes payable by the landlord such as property taxes (see item 17 in this checklist).</p> <p>.2 Operating costs (see item 16).</p> <p>.3 Insurance taken out by the landlord (see item 19).</p> <p>.4 Amounts that the tenant is required to pay, or for which the landlord is entitled to reimbursement.</p> <p>.5 The tenant’s right to audit, inspect the landlord’s records, or obtain information to verify amounts; periods in which review and adjustments, if any, must be made.</p> <p>8.4 Percentage rent:</p> <p>.1 Whether this is in addition to the basic rent; whether it is payable only if certain thresholds are met.</p> <p>.2 Calculation:</p> <p>(a) Method, including whether the rate is fixed or graduated, and whether it applies only above a stated amount of gross sales, etc.</p> <p>(b) Clear definitions of factors and terms involved (e.g., “gross sales”).</p> <p>(c) Specified inclusions and exclusions for gross sales.</p> <p>(d) Whether a minimum payment is required.</p> <p>(e) Method of payment (e.g., monthly, together with monthly statement of “gross sales”).</p> <p>(f) Annual adjustments (e.g., specify timing and whether audited; see also items 8.2.2 and 8.4.6).</p> <p>.3 Tenant’s obligations:</p>	

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<p>(a) To operate the business continuously and to use the entire premises.</p> <p>(b) To operate during specified business hours; to be open for business when the building is open for business.</p> <p>(c) To keep adequate stock and staff to produce maximum revenues.</p> <p>(d) To use a specified trade name.</p> <p>(e) To maintain a specified ratio of selling area to floor space.</p> <p>(f) To keep records as specified (e.g., what type, where, for how long) and to allow the landlord to examine them.</p> <p>(g) To provide specified documentation (e.g., sales records) upon payment of rent or at specified intervals.</p> <p>(h) To honour credit cards.</p> <p>(i) To not operate a similar business within a given radius (otherwise gross sales of other business will be subject to payment of percentage rent). Consider whether this extends to related companies.</p> <p>.4 Whether the landlord is obliged to keep information confidential.</p> <p>.5 Audit rights and notice requirements.</p> <p>.6 The landlord's right to an independent audit (for which the landlord will pay, unless statements are wrong by a specified amount—e.g., greater than 5%).</p> <p>.7 The landlord's remedies in the event of default:</p> <p>(a) Termination of the lease.</p> <p>(b) Right to employ an auditor.</p> <p>(c) Payment of audit costs, interest, liquidated damages, etc. (Such amounts to be owing "on demand" by the landlord, to avoid automatic goods and services tax ("GST") payments.)</p> <p>.8 Statement that sums are paid as rent and not as a share of the tenant's profits; negation of partnership or joint venture.</p> <p>.9 GST.</p> <p>8.5 Intent: whether it is a net lease and the tenant is responsible for all costs related to the premises except as specifically provided.</p> <p>8.6 Mechanism to settle disputes as to costs.</p> <p>9. USE OF PREMISES</p> <p>9.1 The tenant's obligations:</p> <p>.1 To take possession, continuously occupy the entire premises, carry on business continuously in, and not abandon the premises.</p> <p>.2 To use the premises for the specified uses only (particularly important where exclusive rights are given to other tenants, in which case restrictive covenants should be included).</p> <p>.3 Not to engage in prohibited uses of the premises.</p> <p>.4 Not to permit the premises to be occupied by anyone other than the specified persons (e.g., permitted subtenants, employees); not to permit the premises to be used by anyone other than the specified persons (e.g., licensees, concessionaires, franchisees).</p>	

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<p>.5 Not to commit waste or nuisance, and not to interfere with other tenants or obstruct the movement of persons in the building.</p> <p>.6 Not to use signs or other advertising material visible from the exterior of the premises without the landlord’s approval.</p> <p>.7 Not to use heavy equipment without the landlord’s approval. Not to use equipment that would overload the floors or the facilities.</p> <p>.8 To comply with applicable laws, bylaws, and regulations relative to the premises and to the business carried on. Where the premises are strata property, to comply with current bylaws, rules, and Form K (notice of tenant responsibilities, affirming that the tenant and other occupants of the premises will comply with the strata corporation’s bylaws and rules, which the landlord must provide to the tenant; <i>Strata Property Act</i>, S.B.C. 1998, c. 43, ss. 130, 131, and 146, and Strata Property Regulation, B.C. Reg. 43/2000, Form K).</p> <p>.9 To operate the tenant’s business in accordance with the specified standards (e.g., hours of operation, stocking and maintaining merchandise—see item 8.4.3 in this checklist).</p> <p>.10 To refer to the building only by the name designated by the landlord; to use that name for all business and promotional activities.</p> <p>.11 Not to permit hazardous substances or any prescribed waste to be brought on to, or stored or handled in or around, the premises and building, and to take any necessary remedial action in that regard. Consider requiring immediate notice to the landlord where such remedial action becomes necessary and requiring landlord’s approval prior to taking remedial action; consider stipulating that the landlord has the ability to undertake such work. Consider including an indemnity regarding non-compliance and the ability of the landlord to enter the premises to conduct testing.</p> <p>.12 Consider whether a radius restriction is warranted in a retail property (even in circumstances where tenant is paying basic rent) where foot traffic is important to the landlord (see item 8.4.3(i) in this checklist).</p>	
<p>9.2 Landlord’s covenants and representations:</p> <p>.1 To lease the premises.</p> <p>.2 Quiet enjoyment.</p> <p>.3 Remainder of covenants and representations are negotiable and may include:</p> <p>(a) That the tenant’s proposed use is permitted under zoning bylaws.</p> <p>(b) That the tenant’s proposed use does not conflict with a use exclusively given to another tenant.</p> <p>(c) That the tenant will have the exclusive right to operate the specified type of business in the building, subject to the landlord’s obligations to comply with the <i>Competition Act</i>, R.S.C. 1985, c. C-34, or other legislation. Consider describing the type of business objectively; references to businesses “of a similar nature” to that of the tenant may be interpreted to mean “of a similar nature to the tenant’s business as it was when the contract was signed”: <i>1575573 Ontario Inc. v. Armaiti Inc.</i>, 2016 ONSC 6113.</p> <p>(d) That the landlord will co-operate in securing any required licences.</p>	

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<p>(e) Representations regarding the environmental condition of the property (consider whether knowledge qualified).</p> <p>9.3 If a zoning change is required:</p> <p>.1 Whose responsibility this is and whether approval is a condition to the lease.</p> <p>.2 Who pays the cost.</p> <p>9.4 Right to use other parts of the building (e.g., common areas—see also items 5.6 and 14).</p> <p>9.5 Consider whether any covenants specific to the premises or current circumstances are advisable, e.g., during the COVID-19 pandemic, provisions regarding making application for and cooperating with respect to government relief programs.</p> <p>10. INITIAL CONSTRUCTION TO COMPLETE THE PREMISES</p> <p>10.1 Who is to do the work.</p> <p>10.2 Nature and extent of the work (if necessary, attach plans as a schedule).</p> <p>10.3 Who pays the cost.</p> <p>10.4 Completion date for the work (consider liquidated damages if the work is not done on schedule, and whether the commencement date/term extends by the number of days it takes to complete the work).</p> <p>10.5 Obligation to comply with building codes, etc.; to obtain required permits, insurance, etc.; and provision for payment.</p> <p>10.6 Whether the other party has the right to approve the plans and specifications, and the procedure for approval.</p> <p>10.7 Access to the leased premises (including times and cost).</p> <p>10.8 For work to be done by the tenant:</p> <p>.1 The tenant’s obligations:</p> <p>(a) To meet specified requirements before starting work (e.g., insurance, permits, bonds, letter of credit, security).</p> <p>(b) To pay the cost of the landlord’s review and approval of plans.</p> <p>(c) To use specified contractors and consultants.</p> <p>(d) To use contractors having union affiliations compatible with the landlord’s contractors.</p> <p>(e) To comply with specified construction procedures and design schemes.</p> <p>(f) To submit to the landlord’s supervision.</p> <p>(g) To protect the landlord re: builders liens, other liens, security interests in favour of third parties, etc.</p> <p>(h) To take out any additional insurance reasonably required by the landlord.</p> <p>(i) To do the work during specified hours only.</p> <p>(j) Not to interfere with the landlord’s other construction, or use of the building by other tenants.</p> <p>(k) To pay garbage removal costs, utilities, lifting costs, loading dock charges, etc.</p>	

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<p>.2 Whether the landlord is to pay for work or pay inducements, and if so:</p> <p>(a) Whether there is any security for this (e.g., tenant fixturing loan agreement—see item 3.9.9 in the COMMERCIAL LEASE PROCEDURE (B-10) checklist).</p> <p>(b) When this is payable (e.g., on completion of the work in accordance with specifications, on tenant’s furnishing proof that related obligations have been paid and no builders liens filed on expiry of lien claim period, on commencement of the lease, on tenant opening for business, or amortized over the period of the lease).</p> <p>(c) Whether inducement payments include GST component.</p> <p>.3 Filing of notice of interest under the <i>Builders Lien Act</i>, S.B.C. 1997, c. 45, before commencement of any work by tenant (see item 11.1.5 in this checklist).</p> <p>.4 The landlord’s remedies, if the tenant defaults in construction.</p> <p>10.9 Acceptance of the premises by the tenant (see item 7.1.1(b) in this checklist).</p> <p>10.10 Unavoidable delay/<i>force majeure</i>.</p>	
<p>11. ALTERATIONS AND IMPROVEMENTS</p> <p>11.1 The landlord’s rights:</p> <p>.1 To make changes to the leased premises before the commencement date (see item 5.3 in this checklist).</p> <p>.2 To make changes to the building:</p> <p>(a) Qualifications (e.g., whether the leased premises can be adversely affected).</p> <p>(b) The landlord’s rights with respect to the leased premises (e.g., right of entry, support).</p> <p>(c) Restrictions on the tenant’s ability to claim breach of quiet enjoyment or to claim compensation.</p> <p>.3 To grant, modify, or terminate easements or other agreements pertaining to the use and maintenance of the building and lands.</p> <p>.4 To use and make changes to pipes, wires, conduits, etc. in the leased premises (the tenant will permit reasonable access). Consider whether the landlord can interfere materially with the use and enjoyment of the premises, or if the landlord must use reasonable efforts to minimize disruption, and whether the landlord is to pay damages or compensation.</p> <p>.5 To file a notice of interest under the <i>Builders Lien Act</i>.</p> <p>11.2 Tenant’s rights and obligations:</p> <p>.1 Right to alter the premises and install and remove trade fixtures; whether the landlord’s approval is required, and is not to be unreasonably withheld.</p> <p>.2 Obligations similar to those set out in item 10.8.1 in this checklist.</p> <p>.3 Obligation to protect the landlord from liability with respect to builders’ liens, etc.</p> <p>11.3 Ownership of fixtures; obligation to repair. Consider prohibiting the tenant from creating a security interest in the fixtures except in favour of the landlord or with the landlord’s prior consent.</p>	

ACTION TO BE CONSIDERED	NOTES
<p>11.4 On termination of the lease:</p> <ul style="list-style-type: none"> .1 Whether trade and other fixtures can or must be removed (consider whether the landlord can require the tenant to remove fixtures that the tenant did not install); whether the landlord can require that the premises be returned to their original condition or base building (deal with refusal or neglect of the tenant to remove). .2 Whether the landlord has a lien for unpaid rent or other default under the lease. (Note: the landlord will be required to rely on its rights under a security interest or its common law rights of distress that, in certain circumstances, extend for a period of six months after the expiry of a lease by lapse of time—but not where the lease is terminated for default—under ss. 3 and 4 of the <i>Commercial Tenancy Act</i>, R.S.B.C. 1996, c. 57.) .3 Ownership of leasehold improvements; ability to remove and store at a different location or sell at the tenant’s cost; any right in favour of the tenant to recover fair value if the landlord becomes owner. 	
<p>12. MAINTENANCE AND REPAIRS</p> <p>12.1 Consider a covenant from the landlord at the commencement of the lease dealing with habitability, the state of repair of the premises, related portions of adjacent premises, common areas, heating, ventilation, air conditioning (“HVAC”), etc. (Note: if premises are a strata lot, the strata corporation has certain obligations, such as to insure the building and repair and properly maintain common property and common assets. See also item 20.3.2 in this checklist and chapter 21 (Strata Clauses for Commercial Leases) of <i>Commercial Leasing: Annotated Precedents</i> (CLEBC, 1996–).</p> <p>12.2 The landlord’s obligation to make specified repairs or replacements; an exception where there is serious damage (see item 20) or where damage is caused by the negligence or willful misconduct of the tenant; whether repair costs are recoverable from the tenant as operating costs. (See item 12.1 in this checklist regarding strata property.)</p> <p>12.3 The landlord’s right to make other specified repairs.</p> <p>12.4 The tenant’s obligation to make specified repairs or replacements, including:</p> <ul style="list-style-type: none"> .1 Whether the landlord’s approval is required. .2 Whether the landlord may inspect and give notice requiring the tenant to make repairs. .3 Whether there is a right to be reimbursed by the landlord. <p>12.5 The tenant’s responsibility for its own acts or omissions, and those of its employees, agents, contractors, or customers.</p> <p>12.6 Replacement of mechanical equipment.</p> <p>12.7 Exclusions (e.g., ordinary wear and tear, structural repair and latent defects, damage by perils, whether insurance is relevant).</p> <p>12.8 Responsibility for:</p> <ul style="list-style-type: none"> .1 Maintenance of building systems. .2 Janitorial services (see item 13.1.5). .3 Painting and decorating. .4 Compliance with building codes and building standards. 	

ACTION TO BE CONSIDERED	NOTES
<p>.5 See item 12.1 in this checklist regarding strata property.</p> <p>12.9 Procedures for determining standards of repair.</p> <p>12.10 Procedures for determining responsibility for rectifying environmental hazards on the premises or in the building or lands.</p>	
<p>13. SERVICES TO BE FURNISHED BY LANDLORD</p> <p>13.1 Services:</p> <ul style="list-style-type: none"> .1 Hot and cold water. .2 Electricity. .3 Heat, climate control, ventilation. .4 Elevator service. .5 Janitorial services (see item 12.8.2). .6 Removal of garbage and rubbish. .7 Private security service. .8 Building directory board listing the tenant's name. .9 The landlord is not liable for service interruption, but is required to pursue rectification. <p>13.2 Standards with respect to services to be provided (e.g., first class or befitting the building having regard to age, usage, and location, etc.).</p> <p>13.3 Whether the tenant will pay for services in addition to rent; ability of the landlord to reallocate costs if the tenant is a heavy user of services and to provide additional services if it chooses (e.g., supervision of moving, repairs, etc.).</p> <p>13.4 The tenant's obligations (e.g., energy conservation).</p>	
<p>14. COMMON AREAS</p> <p>14.1 Description of common areas (e.g., entrance foyer, lobby, parking lot, public entrance doors, halls, stairways, elevators, washrooms, shipping and receiving areas).</p> <p>14.2 Parties who share common areas.</p> <p>14.3 Whether the landlord has the exclusive right of control over common areas, and the right to make rules and regulations. If the premises are strata property, consider the strata corporation's right of control over common areas.</p> <p>14.4 Whether the landlord is entitled to change the common areas, and whether there are any qualifications on the right (e.g., protection of the tenant's right of access to the premises).</p> <p>14.5 The tenant's right to use common areas, subject to the landlord's rules and regulations, strata corporation bylaws (if applicable), and any other specified restrictions (non-exclusive, non-transferable licence).</p> <p>14.6 The landlord's obligation to maintain common areas for the use and benefit of all tenants, including:</p> <ul style="list-style-type: none"> .1 Hours of operation. .2 Conditions for altering or closing common areas. 	

ACTION TO BE CONSIDERED	NOTES
<p>.3 Standard of maintenance and operation required of the landlord.</p> <p>.4 Restrictions on merchandising in common areas.</p> <p>.5 Whether revenue from common areas is offset against the maintenance and operating costs of these areas (e.g., parking).</p> <p>.6 See item 12.1 in this checklist regarding strata property.</p> <p>14.7 The tenant's obligation to pay for a portion of specified common area costs (e.g., maintenance, snow removal, cleaning, lighting, signs, liability insurance, real estate taxes, replacing light fixtures, repaving, restriping, heating and cooling of mall areas).</p> <p>14.8 The potential liability of the tenant for accidents or other events that occur in common areas.</p>	
<p>15. PARKING</p>	
<p>15.1 Whether parking is included in the leased premises or is the subject of a separate agreement (whether lease or licence).</p> <p>15.2 Location, and whether it can be changed by either party.</p> <p>15.3 The landlord's obligations:</p> <p>.1 To maintain parking facilities.</p> <p>.2 To maintain a ratio of public parking stalls to rentable area.</p> <p>15.4 The tenant's costs.</p> <p>15.5 Whether the landlord receives revenue from common-area parking facilities and, if so, whether this revenue is offset against expenditures.</p> <p>15.6 The landlord's right to charge the public for parking in a retail facility. Consider whether the landlord will reimburse the tenant's customers for all or a portion of the cost of parking in a retail setting.</p>	
<p>16. OPERATING COSTS</p>	
<p>16.1 Clear and comprehensive definition:</p> <p>.1 Inclusions:</p> <p>(a) General (all costs of operating, maintaining, repairing, replacing, rebuilding, insuring, supervising, managing, and administering).</p> <p>(b) Specific.</p> <p>.2 Possible exclusions:</p> <p>(a) Structural repairs.</p> <p>(b) Improvements, additions or alterations (except those made to reduce operating costs or to comply with changes in the law).</p> <p>(c) Costs for which the landlord is reimbursed or which are covered under contractor warranties.</p> <p>(d) Interest on capital retirement of debt.</p> <p>(e) Costs incurred for the direct account of a specific tenant, or for un-leased space.</p> <p>(f) Management costs not related to maintenance or operation (e.g., leasing expenses, promotional expenses).</p>	

ACTION TO BE CONSIDERED	NOTES
<p>(g) Capital cost allowance, depreciation, expensing capital repairs and replacements.</p> <p>(h) Lease rentals for land.</p> <p>(i) Capital tax, income tax, profits tax, GST for which landlord receives an input tax credit, and other similar taxes.</p> <p>(j) Costs for public facilities or costs incurred to meet development agreement obligations.</p> <p>(k) Costs recovered directly from a tenant for separate charges relating to their other premises.</p> <p>(l) Revenue received for common areas and facilities.</p> <p>(m) Costs reimbursed by an insurer.</p> <p>(n) Inherent structural/construction defects.</p> <p>(o) Amounts required to rectify environmental hazards existing before the tenancy.</p> <p>.3 How capital costs and depreciation are dealt with (see also item 16.1.2(g)).</p> <p>.4 How operating costs are calculated, including procedures for adjustment if:</p> <p>(a) Estimates are used.</p> <p>(b) Different items are included in operating costs for different years.</p> <p>(c) There are changes in the area of the premises, the amount of unleased space, or the total rentable area.</p> <p>16.2 The tenant's share of operating costs:</p> <p>.1 Whether the tenant must pay a proportionate share; if so, whether there is to be a gross-up for lobby and washroom areas or for vacant premises.</p> <p>.2 How the tenant's share is calculated:</p> <p>(a) Method (e.g., payment on monthly estimates, payment on request, adjustment when final costs are known, documentation required from the landlord).</p> <p>(b) What areas of the premises or building are included; the denominator to be the building area from time to time, to give flexibility for future expansion.</p> <p>(c) Whether the tenant must pay a share of all, or only some, operating costs (e.g., costs of various types allocated to different parts of the building or types of premises).</p> <p>.3 Whether the landlord reserves the right to allocate costs on an equitable basis.</p> <p>.4 Whether all tenants must pay a proportionate share, or whether some are given special treatment, in which case the proportionate share may be required to be adjusted.</p> <p>16.3 Management fees. Consider limit on amount (e.g., 10% of operating costs excluding insurance and property taxes).</p>	

ACTION TO BE CONSIDERED	NOTES
<p>16.4 Strata fees. If the premises are strata property and you are acting for the tenant, ensure that there is no overlap between the definition of operating costs in the lease and strata fees payable to the strata corporation and provide that such will be without duplication. Note that the strata corporation will incur most of the expenses that are typically operating costs in a lease, and that the landlord's expenses may be only strata fees, property taxes, and insurance. Also, consider what expenses forming part of the strata fees should be excluded from the fees payable by the tenant (e.g., capital expenses for repairs or replacements, contingency reserves, and expenses incurred in maintaining limited common property for the exclusive use of other strata lots; consider also whether special levies should be excluded).</p>	
<p>17. TAXES</p> <p>17.1 The landlord's obligation to pay specified taxes (e.g., property taxes) and whether the obligation depends on payment by the tenant.</p> <p>17.2 The tenant's obligation to pay (prior to the due date):</p> <p>.1 Property taxes:</p> <p>(a) On the leased premises.</p> <p>(b) On a proportionate share of the taxes for the building, if the premises are not assessed separately (define and specify exclusions, e.g., improvements made by the landlord or other tenants that result in taxes).</p> <p>(c) On fixtures or improvements to the premises.</p> <p>.2 Business taxes.</p> <p>17.3 Method of calculating and adjusting present and future payments (generally the same as used for operating costs—see item 16 in this checklist).</p> <p>17.4 Whether the tenant has a right to contest taxes and, if so, security and indemnity provisions.</p> <p>17.5 Whether the tenant must furnish evidence of payment.</p> <p>17.6 The tenant will pay GST assessed on the rent and on any other items paid for by the tenant under the lease, as well as provincial sales tax ("PST") if it applies to any such items. Commercial lease payments are generally subject to GST, but commercial leases would not generally include PST, which applies to tangible personal property and some services. Both PST and GST are generally applicable to legal services. Further information about the GST and PST can be found at www.canada.ca/en/services/taxes.html and www2.gov.bc.ca/gov/content/home, and see also chapter 14 (GST and Commercial Leasing) in <i>Commercial Leasing: Annotated Precedents</i> (CLEBC, 1996–).</p>	
<p>18. UTILITIES AND HVAC</p> <p>18.1 The landlord's obligation to provide:</p> <p>.1 Type of service (e.g., hydro, heating, ventilation, air conditioning).</p> <p>.2 Hours of operation.</p> <p>.3 Standards (e.g., provision for an initial adjustment period; not liable if services are interrupted for repairs, etc.).</p> <p>18.2 The tenant's obligations:</p> <p>.1 To pay:</p> <p>(a) Own costs, where there is separate metering.</p>	

ACTION TO BE CONSIDERED	NOTES
<p>(b) Proportionate share of costs for the building (e.g., see items 16 and 17 in this checklist); whether the landlord may allocate on the basis of use.</p> <p>.2 Regarding energy conservation.</p> <p>.3 To maintain sufficient heat or air conditioning so as not to affect the overall temperature in the rest of the building.</p> <p>18.3 Provisions relating to excessive use by a tenant or use after normal business hours.</p>	
<p>19. INSURANCE AND INDEMNITY</p> <p>19.1 Landlord's obligation to insure. Where the premises are strata property, the strata corporation must insure the buildings (<i>Strata Property Act</i>, ss. 149 to 152).</p> <p>.1 Types of insurance required, for example:</p> <p>(a) All-risk insurance for building, improvements, common facilities; fire and extended coverage; consider also building bylaw endorsement.</p> <p>(b) Boilers, pressure vessels.</p> <p>(c) Third-party liability (including personal injury and property damage).</p> <p>(d) Business interruption.</p> <p>.2 Whether waiver of subrogation is made in favour of the tenant.</p> <p>.3 Whether the tenant must be named as co-insured in liability policies, and whether the landlord must obtain a cross-liability clause.</p> <p>19.2 The tenant's obligation to insure:</p> <p>.1 Types of insurance required, for example:</p> <p>(a) All-risk insurance for stock-in-trade, furniture, etc., and leasehold improvements (full replacement cost).</p> <p>(b) General liability insurance (including public liability and property damage).</p> <p>(c) Legal liability.</p> <p>(d) Business interruption.</p> <p>(e) Contractor's insurance, if the tenant is improving the premises.</p> <p>(f) Such other insurance as the landlord or the mortgagee may reasonably require.</p> <p>.2 Endorsements required (e.g., waiver of subrogation, inclusion of additional named insureds, cross-liability and severability of interests clause, waiver of breach of conditions clause, contractual liability, non-owned automobile, notice of amendment or cancellation given to the landlord, notice of non-payment given to the landlord, requirement that the tenant's insurance be considered primary and will not require contribution from the landlord's policies).</p> <p>.3 Whether minimum amounts are specified.</p> <p>.4 Whether the landlord must be named as a co-insured (e.g., for improvements paid for by landlord).</p> <p>.5 The landlord's rights:</p> <p>(a) To approve policies and/or insurers.</p>	

ACTION TO BE CONSIDERED	NOTES
<p>(b) To be given evidence of coverage.</p> <p>(c) To insure and recover the cost if the tenant fails to insure or if the insurer threatens to cancel the policy.</p> <p>19.3 The tenant’s covenant to indemnify the landlord (e.g., for breach of covenant, property damage, injury).</p> <p>19.4 The limitation or waiver of the landlord’s liability (e.g., for property damage, injury); consider exception where caused by the landlord’s (gross) negligence or willful acts.</p> <p>19.5 The tenant’s responsibility for any increase in the landlord’s insurance premiums and the landlord’s ability to terminate the lease if the insurance is cancelled.</p> <p>19.6 The landlord’s covenant to indemnify the tenant (e.g., for breach of covenant or for damages resulting from interruptions in the tenant’s business as a result of the operation of the building systems).</p>	
<p>20. DAMAGE AND DESTRUCTION</p>	
<p>20.1 Type of peril (all, or only those insured by the landlord).</p>	
<p>20.2 Degree of damage (to premises but also consider substantial damage to building or to the anchor tenant, but not to the premises, etc.).</p>	
<p>20.3 Effect on lease, for example:</p>	
<p>.1 Abatement of rent; extent of abatement.</p>	
<p>.2 The landlord’s obligation or option to repair or rebuild (consider use of insurance proceeds); the tenant’s obligations. Should be consistent with maintenance and repair obligations (see item 12 in this checklist). If the premises are strata property, the strata corporation is responsible for reconstruction and repairs to the building, including the common property (<i>Strata Property Act</i>, ss. 72, 157, and 159).</p>	
<p>.3 Rights of parties to terminate the lease (see item 28.2 in this checklist). Consider right to insurance proceeds on leasehold improvements if termination (e.g., where tenant paid for the leasehold improvements tenant may wish to receive proceeds; however, if landlord is entitled to retain leasehold improvements or contributed to their cost, may insist that proceeds are paid to landlord).</p>	
<p>20.4 The landlord is not responsible for specified types of loss or damage.</p>	
<p>20.5 Provisions for expropriation and condemnation.</p>	
<p>21. CHANGES IN PARTIES</p>	
<p>21.1 Assignment and subletting:</p>	
<p>.1 Right to assign, sublet, or otherwise part with possession; in what circumstances; whether prior written approval is required; whether approval is not to be unreasonably withheld or delayed; tests for withholding approval; ensure that tests for withholding approval are “without limitation” to other reasonable tests; information about assignee and subtenant is required to be delivered to the landlord; timing requirements.</p>	
<p>.2 Whether successive assignees and any subtenants are required to become contractually bound to the landlord in writing.</p>	

ACTION TO BE CONSIDERED	NOTES
<p>.3 Whether the original tenant remains liable under the lease, subject to a release by the landlord.</p> <p>.4 Manner in which the provisions of the lease apply to the assignee or subtenant.</p> <p>.5 Provisions regarding:</p> <p> (a) Right of first refusal in favour of the landlord.</p> <p> (b) Sharing of profit rent with the landlord or payment of 100% to landlord.</p> <p> (c) Assignment of subtenant’s rent to the landlord.</p> <p> (d) The landlord’s right to terminate the lease.</p> <p>.6 Provisions regarding subsequent assignment, subletting, etc.</p> <p>.7 Whether the tenant is prohibited from advertising the premises for rent, sublease, etc.</p> <p>.8 Whether the landlord may charge an assignment fee; the tenant’s responsibility to pay all legal and other fees and disbursements incurred by the landlord in considering the tenant’s request for an assignment and documenting same.</p> <p>21.2 Change in control of a party:</p> <p> .1 What constitutes a “change in control”.</p> <p> .2 Effect.</p> <p> .3 Whether this is different for a public corporation traded and listed on a recognized stock exchange.</p> <p> .4 The tenant’s obligation to furnish share records.</p> <p>21.3 Transfer of property by the landlord; the landlord is not liable if the transferee assumes obligations.</p> <p>21.4 Whether the tenant has the right to finance operations by mortgaging the lease.</p> <p>21.5 Consider prohibiting the tenant from creating a security interest in fixtures without the landlord’s prior written consent.</p>	
<p>22. GENERAL RIGHTS OF LANDLORD</p> <p>22.1 Right to make rules and regulations:</p> <p> .1 Type of rules and regulations; whether they apply to common areas and the premises, and to all visitors to the premises; whether the landlord must enforce against all tenants.</p> <p> .2 Relationship to the lease (e.g., whether they become part of the lease; whether they may be in conflict with the lease).</p> <p> .3 Notice requirements.</p> <p>22.2 Right to enter the premises:</p> <p> .1 For specified purposes (e.g., to inspect, make repairs or alterations—whether this includes the ability to leave materials and equipment on the premises without constituting default of the landlord’s obligations).</p> <p> .2 At specified times; notice of requirements.</p> <p>22.3 Right to exhibit the premises:</p>	

ACTION TO BE CONSIDERED	NOTES
<p>.1 For specified purposes (e.g., for rental, for financing, for prospective sale of the building).</p> <p>.2 At specified times (e.g., within a certain period of time before the lease expires); notice of requirements.</p> <p>22.4 Designation of building manager.</p>	
<p>23. GENERAL COVENANTS OF TENANT</p> <p>23.1 To pay rent as provided in the lease.</p> <p>23.2 To perform the covenants in the lease.</p> <p>23.3 To pay costs incurred by the landlord in enforcing the provisions of the lease.</p> <p>23.4 To subordinate the lease to any mortgages or to register the lease in priority to any mortgage. Consider also:</p> <p>.1 Whether the subordination clause is operative without further documentation (i.e., not an agreement to subordinate in the future or conditional on non-disturbance by the lender). Whether attornment is operative without the express agreement of the lender.</p> <p>.2 The tenant's requirement for a non-disturbance agreement from the landlord's mortgagee.</p> <p>.3 Whether a non-disturbance agreement is subject to the tenant not being in default or the landlord otherwise being entitled to terminate.</p> <p>23.5 To peaceably surrender the premises at the end of the term, in good condition. Restoration obligations; obligations to remove improvements, fixtures, etc., and repair damage caused thereby.</p> <p>23.6 To deliver estoppel certificates from time to time in the form and substance as reasonably required by the landlord.</p>	
<p>24. TENANT'S OPTIONS</p> <p>24.1 Option or right of first refusal to rent other space in the building.</p> <p>24.2 Option or right of first refusal to purchase the premises.</p> <p>24.3 Option to renew or extend:</p> <p>.1 Whether term, rent, and essential conditions are certain. Consider the test for fair market rental value if rent during a renewal or extension term is to be agreed or arbitrated. Consider whether rent during a renewal or extension term is to be not less than rent during the preceding term. Clarify whether rent is based on improved or unimproved premises; see <i>Fire Productions Ltd. v. Lauro</i>, 2006 BCCA 497, which held that the phrase "fair market rent" in a renewal clause meant the rent the premises would attract if exposed to the market at the time of the renewal, taking into account the value of the tenant's improvements. See "New Arbitration Act" under "New developments" in this checklist.</p> <p>.2 Method and timing for determining the terms.</p> <p>.3 Method and timing of the exercise of the option.</p> <p>.4 Whether there are conditions precedent to the exercise of the right (e.g., no existing default, no default during the term of the lease, and no assignment of the lease).</p>	

ACTION TO BE CONSIDERED	NOTES
<p>.5 Whether the guarantor, indemnifier, or tenant who has assigned its leasehold interest during the initial term must join in the exercise of the option and execute a new indemnity covenant.</p> <p>.6 Whether the option may be assigned.</p> <p>.7 Whether, on renewal or extension, there is a further option to renew or extend.</p> <p>.8 Whether the renewal or extension is on the same terms as in the original lease, or on the landlord's then-current terms (if on original terms, set out exceptions such as rent, inducements, and renewal clause). If renewal of lease rather than extension, consider whether personal rights such as options or tenant inducements need to be expressly included or excluded for renewal term.</p>	
<p>25. MERCHANTS' ASSOCIATION OR PROMOTION FUND FOR SHOPPING CENTRE</p> <p>25.1 Merchants' association:</p> <p>.1 The tenant's covenants:</p> <p>(a) To join, maintain membership, and pay dues.</p> <p>(b) To comply with rules.</p> <p>(c) To promote the shopping centre in its advertising.</p> <p>.2 The landlord's covenants (e.g., to contribute to promotion).</p> <p>.3 Rules to be approved by the landlord.</p> <p>25.2 Promotion fund:</p> <p>.1 The tenant's covenant to contribute.</p> <p>.2 The landlord's covenant to contribute.</p> <p>.3 Promotion director.</p> <p>.4 Fund to be used to promote the centre.</p>	
<p>26. REGISTRATION</p> <p>26.1 Whether the lease is to be prepared in registrable form, and, if so, at whose expense; whether the lease may be registered; consider <i>Property Law Act</i>, R.S.B.C. 1996, c. 377, s. 5(2), and <i>Land Title Act</i>, s. 20(2). Determine if a short form of lease is to be registered (see the COMMERCIAL LEASE PROCEDURE (B-10) checklist, item 2.6.19).</p> <p>26.2 Responsibility for cost of the plan.</p> <p>26.3 Responsibility for cost of preparing the general instrument (Form C).</p> <p>26.4 The tenant will pay property transfer tax (if the lease term, including renewals, is more than 30 years). Even if the lease is exempt, filing a special property transfer tax return is required.</p> <p>26.5 Consider and attend to requirements of the <i>LOTA</i>; see "<i>Land Owner Transparency Act</i>" under "New developments" in this checklist.</p>	

ACTION TO BE CONSIDERED	NOTES
<p>27. OVERHOLDING</p> <p>27.1 Status of tenant (must be month-to-month, otherwise possible renewal of term or year-to-year).</p> <p>27.2 Obligations of parties (e.g., tenant to pay double rent).</p> <p>28. TERMINATION OF LEASE</p> <p>28.1 At the option of one or both parties.</p> <p>28.2 Whether specified events will terminate the lease or may terminate it at the landlord's option (if not, make other provisions for these events):</p> <ul style="list-style-type: none"> .1 Bankruptcy, insolvency, etc. of tenant, guarantor, and assignee (note <i>Commercial Tenancy Act</i>, R.S.B.C. 1996, c. 57, s. 29, and <i>Bankruptcy and Insolvency Act</i>, R.S.C. 1985, c. B-3, ss. 30, 65.1, 65.2, 65.21, 65.22, 69, and 69.1). .2 Damage or destruction to a specified degree (e.g., that will take a specified time to repair, or that affects a specified percentage of the leasable premises). .3 Expropriation of the interest of one or both parties. .4 Redevelopment by the landlord. <p>28.3 On default (see item 29.6).</p> <p>28.4 Whether the landlord has the right to terminate the lease early for sale, demolition, or redevelopment, and if so, what notice requirements must be satisfied or what compensation provided to the tenant.</p> <p>29. DEFAULT</p> <p>29.1 Provisions regarding violation by the tenant of the obligations set out in the items above (consider including these with the clauses creating each obligation).</p> <p>29.2 Description of events of default (e.g., for the tenant, these would include non-payment of rent, insolvency, abandonment of premises); whether delay constitutes default and whether the time for performance may be extended.</p> <p>29.3 <i>Force majeure</i> clause.</p> <p>29.4 Whether notice must be given; whether the party is entitled to a reasonable time to cure the default and, if so, what is a reasonable time in different circumstances.</p> <p>29.5 Whether default may be cured by the non-defaulting party; whether the defaulting party is liable for the costs.</p> <p>29.6 Remedies (in addition to any provisions included throughout the lease):</p> <ul style="list-style-type: none"> .1 The landlord's remedies: <ul style="list-style-type: none"> (a) Remedies are cumulative and in addition to any other remedies. (b) Interest (on demand). (c) Collection of rent; acceleration. (d) Re-entry. (e) Re-letting as tenant's agent, and collection of rent. (f) Seizure. 	

ACTION TO BE CONSIDERED	NOTES
<p>(g) Damages, including prospective rent such as the present value of the rent for the balance of term.</p> <p>(h) Whether the tenant waives any statutory protection against distress.</p> <p>(i) Termination.</p> <p>(j) Waiver of a default does not affect the rights arising from subsequent defaults.</p> <p>.2 Notice requirements.</p>	
<p>30. INTERPRETATION AND GENERAL PROVISIONS</p> <p>30.1 Definitions (consider putting them at the beginning of the lease or in a schedule).</p> <p>30.2 Choice of law and forum.</p> <p>30.3 Principles that govern the interpretation of the agreement (e.g., use of the masculine form, insertion of headings for convenience only).</p> <p>30.4 Whether the lease constitutes the entire agreement; its relationship to the offer to lease (e.g., merger).</p> <p>30.5 Severability (consider carefully, as it may create a lease that is missing certain key provisions).</p> <p>30.6 Time is of the essence.</p> <p>30.7 Notices (consider whether information transmitted by SMS or text messaging should constitute notice: see <i>L'ouvrier Inc. v. Leung</i>, 2016 ONSC 6993, affirmed 2017 ONCA 589).</p> <p>30.8 Enurement.</p> <p>30.9 Amendment requirements.</p> <p>30.10 Arbitration and other methods for resolving disagreements (consider including specific provisions with the relevant clauses of the agreement if limited to only certain clauses). See “New <i>Arbitration Act</i>” under “New developments” in this checklist.</p> <p>30.11 Costs of preparing and settling the lease.</p> <p>30.12 Statement of relationship (i.e., negation of partnership or joint venture).</p> <p>30.13 Application or waiver of the <i>Commercial Tenancy Act</i>.</p> <p>30.14 Security for the tenant’s performance of its obligations:</p> <p>.1 Security deposit.</p> <p>.2 Letter of credit.</p> <p>.3 Security agreement.</p> <p>.4 Provision for the landlord’s remedies being exclusive or cumulative if the landlord realizes on security.</p> <p>30.15 Schedules.</p>	
<p>31. THIRD-PARTY INDEMNITY</p> <p>31.1 Obligations for which the indemnity is given and whether there is a “cap” or maximum amount of liability under the indemnity.</p>	

ACTION TO BE CONSIDERED	NOTES
<p>31.2 Whether it is absolute and unconditional—set out events that can occur without release (e.g., extensions of time, waivers, assignments, etc.).</p> <p>31.3 Waiver of notice of default by the tenant and waiver of any obligation to proceed against the tenant or other indemnifier/security.</p> <p>31.4 Survival of indemnity. See <i>KKBL No. 297 Ventures Ltd. v. IKON Office Solutions, Inc.</i>, 2004 BCCA 468, regarding survival of indemnity after disclaimer of a lease by the trustee. Consider whether indemnity should be contained in separate agreement. For detailed information about guarantees and indemnities in commercial leasing, including a precedent indemnity agreement, see chapter 19 (Guarantees and Indemnities in Commercial Leases) in <i>Commercial Leasing: Annotated Precedents</i> (CLEBC, 1996–).</p> <p>31.5 Whether an indemnifier is a primary obligor to the same effect as if the indemnifier had entered the lease as the tenant; whether the indemnifier is obligated to enter a new lease on the same terms as the tenant, if the lease is terminated, disclaimed, or surrendered.</p>	

