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<p style="text-align: center;"><b>INTRODUCTION</b></p> <p><b>Purpose and currency of checklist.</b> This checklist is designed to be used with the CLIENT IDENTIFICATION, VERIFICATION, AND SOURCE OF MONEY (A-1), CLIENT FILE OPENING AND CLOSING (A-2), and SECURITY AGREEMENT PROCEDURE (B-12) checklists. It is current to September 1, 2023.</p> <p><b>Key instructions for use of checklist:</b></p> <ul style="list-style-type: none"> <li>• <b>Use of debenture.</b> 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 a general security agreement charges only personal property and may include a floating charge on land, whereas a debenture may charge both personal and real property by way of fixed and floating charges. A debenture contains a promise to pay, whereas a general security agreement usually does not.</li> <li>• <b>Fixtures and crops.</b> 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 provisions 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 should be carefully reviewed.</li> </ul> <p><b>New developments:</b></p> <ul style="list-style-type: none"> <li>• <b>Enhanced scrutiny under the <i>Investment Canada Act</i>, R.S.C. 1985, c. 28 (1st Supp.).</b> On April 18, 2020, in response to COVID-19, the Minister of Innovation, Science and Industry (the “Minister”) announced a new policy under which foreign investments in Canadian businesses that are related to public health or involved in the supply of critical goods and services will be subjected to additional scrutiny. The policy targets foreign investments in Canadian businesses that are related to public health or involved in the supply of critical goods and services. On October 28, 2022, the Minister announced strategic policy surrounding foreign direct investment in Canadian Critical Mineral sectors in response to the Critical Minerals List announced on March 11, 2021. Under the <i>Investment Canada Act</i>, the Minister must approve proposed acquisitions of control from foreign investors, including state-owned entities, where the value of the Canadian business is above the defined threshold. An application by a foreign state-owned entity will only be approved on an exceptional basis. Furthermore, effective August 2, 2022, a new filing option gives non-Canadian investors the ability to obtain pre-implementation regulatory certainty with respect to a national security review of investments that do not require a filing under the Act. See the <a href="#">full policy statement and voluntary filing information</a>. The Minister also released a policy statement regarding net benefit reviews and national security reviews involving Russian entities and/or Russian investors to heightened scrutiny due to the Ukraine crisis, which can be accessed at <a href="https://ised-isde.canada.ca/site/investment-canada-act/en/investment-canada-act/policy-statement-foreign-investment-review-and-ukraine-crisis">https://ised-isde.canada.ca/site/investment-canada-act/en/investment-canada-act/policy-statement-foreign-investment-review-and-ukraine-crisis</a>.</li> <li>• <b>Electronic meetings.</b> On May 20, 2021, the majority of the provisions of the <i>Finance Statutes Amendment Act (No. 2)</i>, 2021, S.B.C. 2021, c. 14 came into effect by Royal Assent. The Act amends the <i>Business Corporations Act</i>, S.B.C. 2002, c. 57 (the “BCA”), as well as the <i>Cooperative Association Act</i>, S.B.C. 1999, c. 28; <i>Financial Institutions Act</i>, R.S.B.C. 1996, c. 141; and <i>Societies Act</i>, S.B.C. 2015, c. 18 to expressly permit virtual AGMs and board meetings. The legislation</li> </ul>	

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<p>now provides that, unless the memorandum or articles provide otherwise, a company may hold its AGM by telephone or other communications medium if all shareholders and proxy holders attending the meeting are “able to participate in it”. This replaces the previous requirement that shareholders and proxy holders be “able to communicate with each other”. The rules further provide that if a company holds a meeting of shareholders that is an electronic meeting, the company must “permit and facilitate participation in the meeting”. Companies should consider whether they may want to require in-person meetings (which will now require an explicit restriction on holding an AGM by telephone or other communications medium in the company’s articles).</p> <ul style="list-style-type: none"> <li>• <b>Arbitration Act.</b> 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.</li> <li>• <b>Proposed amendments to the <i>Investment Canada Act</i>.</b> On December 7, 2022, the Minister introduced amendments to the <i>Investment Canada Act</i> to specifically address national security concerns. The bill is currently at Second Reading in the House of Commons. The amendments, if passed, include: new filing requirements in prescribed business sectors; extensions on the national security review of investments; potential conditions on investments; and required undertakings to address national security concerns.</li> <li>• <b>Land Owner Transparency Act.</b> The <i>Land Owner Transparency Act</i>, S.B.C. 2019, c. 23 (the “LOTA”) came into force on November 30, 2020 (except for certain specified provisions that came into force on April 30, 2021). The <i>LOTA</i> includes the Land Owner Transparency Regulation, B.C. Reg. 250/2020, also made effective November 30, 2020. The <i>LOTA</i> requires a transparency declaration to be filed in the new Land Owner Transparency Registry (the “LOTR”) any time an application is made to register or transfer an interest in land under the <i>Land Title Act</i>, R.S.B.C. 1996, c. 250. The LOTR will be administered by the LTSA. A reporting body under the <i>LOTA</i>—which includes most corporations, trusts, and partnerships, subject to limited exemptions—will have to file a transparency report upon registration and any time there is a change in interest holders or beneficial owners, even if legal title is not transferred. For further information, see the Land Owner Transparency Registry website and also the course presentation and materials by S. Carter, R. Danakody, and C.R. MacDonald, “Land Title and Survey Authority of British Columbia: Land Owner Transparency Registry”, in <i>Residential Real Estate Conference 2020</i> (CLEBC, 2020), and by R. Danakody and T. Norman, “Land Owner Transparency Registry (LOTR)” in <i>Real Estate Development Update 2021</i> (CLEBC, 2021), available through CLEBC Courses on Demand.</li> <li>• <b>Transparency register.</b> The operative provisions of the <i>Business Corporations Amendment Act, 2019</i>, S.B.C. 2019, c. 15 came into force on October 1, 2020 (B.C. Reg. 77/2020). The Act requires private companies incorporated under the <i>BCA</i> to create and maintain a “transparency register” of information about “significant individuals”. Individuals will be considered “significant individuals” if: they directly or in-directly own, or indirectly control 25% or more of the issued shares of the company, or shares that carry 25% or more of the voting rights of the company, or they are able to exercise rights or influence, directly or indirectly, that would result in the election, appointment, or removal of the majority of the company’s directors. If two or more individuals meet the above criteria by jointly holding the prescribed interest or right, then each will be deemed a “significant individual”. Similarly, two or more individuals who are acting in concert, or who meet the definition of “associate” in s. 192(1) of the <i>BCA</i>, must add their interests together. If the group meets the above criteria, the company must list every member of the group as significant individuals in its transparency register. The</li> </ul>	

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<p>transparency register must contain the following information for each significant individual: full name, date of birth, and last known address; whether the individual is a Canadian citizen or permanent resident of Canada and, if not, a list of every country of which the individual is a citizen; whether the individual is a resident of Canada for tax purposes; the date on which the individual became or ceased to be a significant individual; a description of how the individual meets the definition of a significant individual; and any further information that may be required by regulation. Access more information at <a href="http://www2.gov.bc.ca/gov/content/employment-business/business/bc-companies/transparency-register">www2.gov.bc.ca/gov/content/employment-business/business/bc-companies/transparency-register</a>.</p> <ul style="list-style-type: none"> <li>• <b>Exemptions on additional property transfer tax on foreign entities.</b> 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 or bare trustee of limited partnership”. As of March 11, 2021, a general partner or bare trustee of a limited partnership has up to six years to apply for a refund of the tax paid if they failed to apply for the exemption on the registration date (see s. 23). See also ss. 17.1 to 20 for the exemption for a foreign national who has confirmation as a worker under the Provincial Nominee Program, and 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.</li> </ul> <p><b>Of note:</b></p> <ul style="list-style-type: none"> <li>• <b>Aboriginal law.</b> Special considerations apply to security agreements pertaining to “reserve” lands or the personal property belonging to a First Nation or Indigenous person (pursuant to the <i>Indian Act</i>, R.S.C. 1985, c. I-5). The Framework Agreement on First Nation Land Management (the “Framework Agreement”) was ratified as the central authority by the <i>Framework Agreement on First Nation Land Management Act</i>, S.C. 2022, c. 19, s. 121, which came into force on December 15, 2022. The Framework Agreement recognizes First Nations’ inherent right to govern their lands, and signatory First Nations assume the administration and law-making authority over their lands. If a security agreement involves reserve lands (pursuant to the <i>Indian Act</i>), or personal property situated on a reserve or on lands subject to a treaty, consider seeking advice from 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 (<a href="http://www.cle.bc.ca">www.cle.bc.ca</a>) and in other CLEBC publications.</li> <li>• <b>Money laundering—companies, trusts, and other entities.</b> The prevalence of money laundering in British Columbia (particularly in the area of real estate) continues to be a concern. The provincial government established the Commission of Inquiry into Money Laundering in British Columbia, which was led by Austin Cullen J. as the commissioner. The Cullen Commission’s final report was publicly released on June 15, 2022. For more information on the Cullen Commission, and the link to the full report, see LAW SOCIETY NOTABLE UPDATES LIST (A-3).</li> </ul> <p>As a means of laundering money, criminals use ordinary legal instruments (such as shell and numbered companies, bare trusts, and nominees) in the attempt to disguise the true owners of real property, the beneficial owners. These efforts can be hard to detect. As such, lawyers must 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 they could be assisting in any dishonesty, crime, or fraud, they should make enough inquiries to determine</p>	

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<p>whether it is appropriate to act (<i>BC Code</i> rules 3.2-7 and 3.2-8 and Law Society Rules 3-103(4), 3-109, and 3-110). See the resources on the Law Society’s Client ID &amp; Verification resources webpage such as the Source of Money FAQs, Risk Assessment Case Studies for the Legal Profession in the context of real estate, trusts, and companies, and the Red Flags Quick Reference Guide. Also see the Risk Advisories for the Legal Profession regarding real estate, shell corporations, private lending, trusts, and litigation; “Forming Companies and Other Structures—Managing the Risk” (<i>Benchers’ Bulletin</i>, Spring 2021); and the Discipline Advisories, including country/geographic risk and private lending. Lawyers may contact a Law Society practice advisor at <a href="mailto:practiceadvice@lsbc.org">practiceadvice@lsbc.org</a> 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"> <li>• <b>COVID-19 pandemic.</b> Counsel should keep apprised of developments related to COVID-19 (and response measures) that may affect transactions. Note that: <ul style="list-style-type: none"> <li>○ The Land Title Survey Authority will retire temporary COVID-19 practice changes under the <i>Land Title Act</i> on September 30, 2023, which include remote witnessing of affidavits for use in land title applications. Further information may be accessed at <a href="https://itsa.ca/covid-19-resources/">https://itsa.ca/covid-19-resources/</a>.</li> <li>○ Counsel conducting due diligence searches must be mindful of the impact of the COVID-19 pandemic on the due diligence process. 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 that have been delayed but are otherwise permitted to be filed or issued beyond the typical limitation period.</li> </ul> </li> <li>• <b>Additional resources.</b> For more information about security agreements, see <i>British Columbia Personal Property Security Act Practice Manual</i> (especially the SECURED TRANSACTION checklist) (CLEBC, 1995–); <i>Due Diligence Deskbook</i> (CLEBC, 1994–); <i>Real Estate Financing: Annotated Precedents</i> (CLEBC, 1994–); <i>Priorities—2013</i>, course materials (CLEBC, 2013); <i>Priorities—2009</i>, course materials (CLEBC, 2009); <i>Advising British Columbia Businesses</i> (CLEBC, 2006–); and <i>British Columbia Creditors’ Remedies: An Annotated Guide</i>, 2nd ed. (CLEBC, 2020–).</li> <li>• <b>Law Society of British Columbia.</b> For changes to the Law Society Rules and other Law Society updates and issues “of note”, see LAW SOCIETY NOTABLE UPDATES LIST (A-3). Note in particular the commentary on fraud prevention, bank holds on trust funds, risks of private lending, and all other matters that may be relevant to loan transactions.</li> </ul> <p style="text-align: center;"><b>CONTENTS</b></p> <ol style="list-style-type: none"> <li>1. Initial Contact</li> <li>2. Identification of Parties</li> <li>3. Recitals</li> <li>4. Introductory Clauses</li> <li>5. Obligation Secured</li> <li>6. Security Interest</li> <li>7. Debtor’s Representations and Covenants</li> <li>8. Default</li> <li>9. Enforcement</li> </ol>	

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<p>10. Other Rights of the Secured Party 11. Security Provisions 12. Miscellaneous 13. Interpretation and General Provisions 14. Date 15. Execution</p> <p style="text-align: center;"><b>CHECKLIST</b></p> <p><b>1. INITIAL CONTACT</b></p> <p>1.1 Complete the CLIENT FILE OPENING AND CLOSING (A-2) and SECURITY AGREEMENT PROCEDURE (B-12) checklists. Consider Law Society Rules 3-98 to 3-110 for client identification and verification and source of money for financial transactions, and complete the CLIENT IDENTIFICATION, VERIFICATION, AND SOURCE OF MONEY (A-1) checklist. Consider periodic monitoring requirements (Law Society Rule 3-110).</p> <p><b>2. IDENTIFICATION OF PARTIES</b></p> <p>2.1 Debtor(s). 2.2 Secured party or parties.</p> <p><b>3. RECITALS</b></p> <p>3.1 Recitals setting out the special features of the transaction.</p> <p><b>4. INTRODUCTORY CLAUSES</b></p> <p>4.1 Consideration clause (e.g., “for value received”).</p> <p><b>5. OBLIGATION SECURED</b></p> <p>5.1 Specify the obligations secured:</p> <p>.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 5.1.2 in this checklist.)</p> <p>.2 Specific debt (provide for any future advances, if there is to be more than a one-time advance).</p> <p>.3 Current or running account, advances and re-advances.</p> <p>.4 Performance generally, and not merely of the obligation to pay, under any or all agreements with the secured party.</p> <p><b>(DEB)</b> Provisions relating to promise to pay and interest:</p> <ul style="list-style-type: none"> <li>• Promise to pay on demand, on a specified date, or by a payment schedule.</li> <li>• Amount (together with interest).</li> <li>• Where, when, and how payment is to be made.</li> <li>• Consider whether it is appropriate to limit the debenture to a specified amount, being the total aggregate amount that may at any time be outstanding, especially where there is a charge on land (or a charge on equity of redemption).</li> </ul>	

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<ul style="list-style-type: none"> <li>• Interest to be paid on principal and overdue interest; payable after as well as before maturity, default, or judgment.</li> <li>• Interest rate (ensure compliance with the disclosure requirements of the <i>Interest Act</i>, R.S.C. 1985, c. I-15, and the <i>Bank Act</i>, S.C. 1991, c. 46. Also consider including a provision respecting the criminal rate of interest and the definition of “interest” established by the <i>Criminal Code</i>, R.S.C. 1985, c. C-46, and case law).</li> <li>• Consider special clauses (e.g., an option to switch from a floating interest rate to a fixed rate).</li> </ul>	
<p><b>6. SECURITY INTEREST</b></p> <p>6.1 Creation of security interest in personal property:</p> <ol style="list-style-type: none"> <li>.1 Describe the collateral in accordance with s. 10 of the <i>Personal Property Security Act</i>, R.S.B.C. 1996, c. 359 (the “PPSA”) (including location of property, characterization of property under PPSA categories, serial numbers, and information required by the PPSA for serial-numbered goods (see ss. 9 to 12 of the Personal Property Security Regulation, B.C. Reg. 227/2002)).</li> <li>.2 After-acquired property.</li> <li>.3 Proceeds.</li> <li>.4 Consider excepting consumer goods from collateral (PPSA, ss. 55, 58, 61, 62, and 67).</li> <li>.5 Consider excepting the last day of the term of any lease.</li> <li>.6 If perfection is by possession, state that the collateral is delivered to the secured party for the purpose of perfecting the security interest.</li> <li>.7 For aircraft objects, ensure that the agreement complies with the requirements for description of collateral pursuant to the <i>Convention on International Interests in Mobile Equipment</i>, signed in Cape Town on November 16, 2001, and the <i>Protocol to the Convention on International Interests in Mobile Equipment on Matters Specific to Aircraft Equipment</i>. The <i>Convention</i> and <i>Protocol</i> have the force of law in British Columbia under the <i>International Interests in Mobile Equipment (Aircraft Equipment) Act</i>, S.B.C. 2011, c. 12.</li> </ol> <p>6.2 Consider the effect of s. 4 of the PPSA and the need for a separate agreement and/or registration charging property not governed by the PPSA.</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 in this checklist.)</p> <p>6.5 Creation of floating charge:</p> <ol style="list-style-type: none"> <li>.1 Describe the property broadly.</li> <li>.2 Use Land Title Office (“LTO”) execution format.</li> </ol> <p>6.6 Consider the need for a control agreement in respect of investment property.</p> <p>6.7 For aircraft objects, consider whether an Irrevocable De-registration and Export Request Authorization (IDERA) is required.</p>	

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<p><b>(DEB)</b> Creation of fixed charge on real property, leasehold property, fixtures, chattels, etc.:</p> <ul style="list-style-type: none"> <li>• Describe the property in accordance with LTO requirements.</li> <li>• Create Form B—Mortgage for LTO purposes (use the e-file form) and attach the debenture as Part 2 (unless debenture terms are filed as standard mortgage terms under the Land Title Act, R.S.B.C. 1996, c. 250).</li> <li>• Leasehold interest requires underlying lease to be registered against title to the lands if mortgage of lease is to be registered. Where a mortgage of lease is to be obtained, the lease should be reviewed and a determination as to whether a landlord consent agreement is required.</li> <li>• 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.</li> </ul> <p><b>7. DEBTOR’S REPRESENTATIONS AND COVENANTS</b></p> <p>7.1 The representations are accurate.</p> <p>7.2 Where the debtor is a corporation or other artificial body:</p> <ol style="list-style-type: none"> <li>.1 The debtor is an existing corporation with capacity to execute, deliver, and perform its obligations under the security agreement and related documents. The debtor will maintain its corporate existence, remain in good standing, not alter its memorandum or articles, and not amalgamate, continue, or undergo corporate re-organization.</li> <li>.2 The 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.</li> </ol> <p>7.3 There are 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 The debtor will not change its name or use a different name or trade name.</p> <p>7.6 The debtor will not relocate its place of business, chief executive office, principal residence, or collateral to a place outside British Columbia.</p> <p>7.7 The debtor will not dispose of its undertaking, and will maintain the business and the collateral.</p> <p>7.8 Insurance:</p> <ol style="list-style-type: none"> <li>.1 The debtor will maintain insurance against fire and other risks, including business interruption, boiler and machinery, and liability insurance.</li> <li>.2 The debtor will add the secured party as first loss payee on insurance policies.</li> <li>.3 The debtor will deliver certificates of insurance and certified copies of insurance policies to the secured party.</li> <li>.4 The debtor will furnish proofs of loss to the secured party, and do all things necessary to enable the secured party to obtain payment.</li> </ol>	

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<p>.5 The debtor will apply the proceeds as set out in the security agreement (e.g., to repair the collateral, to pay to the secured party).</p> <p>7.9 Financial covenants, such as:</p> <p>.1 The debtor will not become guarantor or endorser of any obligation other than in the normal course of business.</p> <p>.2 Limitations (either absolute or requiring prior written consent of the secured party) on the debtor (and possibly affiliates):</p> <p>(a) Capital expenditures.</p> <p>(b) Dividend payments.</p> <p>(c) Share capital redemption and reduction.</p> <p>(d) Share issuance.</p> <p>(e) Repayment of shareholder loans.</p> <p>(f) Lease obligations.</p> <p>(g) Financial covenants (e.g., debt-to-equity ratio, working capital ratio).</p> <p>(h) Remuneration of directors, officers, and employees.</p> <p>(i) Sale, removal, or other disposition of assets.</p> <p>(j) Incurrence of debt.</p> <p>7.10 The debtor covenants to obey laws.</p> <p>7.11 The debtor covenants to maintain in good standing all necessary licences and registrations in all relevant jurisdictions.</p> <p>7.12 The debtor will keep proper books of account on its premises.</p> <p>7.13 The debtor will permit entry and inspection by the secured party.</p> <p>7.14 The debtor will provide financial statements to the secured party (e.g., audited or unaudited annual statements, interim statements).</p> <p>7.15 The debtor will furnish information relating to the business of the secured party.</p> <p>7.16 The debtor will notify the secured party of any encumbrances or proceedings.</p> <p>7.17 The debtor will keep prior permitted encumbrances, if any, in good standing.</p> <p>7.18 Nothing will be done by the debtor to encumber the collateral, except as specifically permitted.</p> <p>7.19 The collateral has been in British Columbia for 60 days (see <i>PPSA</i>, ss. 5(3) and 7(3)).</p> <p>7.20 Regarding title to the collateral and other assets with which the debtor carries on business,</p> <p>.1 The debtor has legal and beneficial title free and clear of all encumbrances other than specified permitted encumbrances.</p> <p>.2 The debtor will defend its title.</p> <p>7.21 The debtor covenants 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 the collateral from becoming an accession to property not secured by the security agreement.</p>	



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<p>7.22 The debtor covenants to notify the secured party, upon request, of the location of chattels forming part of the collateral.</p> <p>7.23 The debtor covenants to notify the secured party if any after-acquired property (including proceeds) includes serial-numbered goods, or if any serial number changes, or if any collateral has been lost or destroyed.</p> <p>7.24 The debtor will not remove the collateral from a specified location, or will notify the secured party if the collateral is relocated, and to where.</p> <p>7.25 The debtor will not sell or dispose of the collateral, except inventory in the ordinary course of business.</p> <p>7.26 The debtor will not 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 specifically permitted in the security agreement.</p> <p>7.27 The debtor will pay the obligations when due.</p> <p>7.28 The debtor will pay all costs relating to the creation, registration, enforcement, realization, discharge, and amendment of the security agreement.</p> <p>7.29 The debtor will maintain the security (including the perfection thereof) created in the security agreement.</p> <p>7.30 The debtor covenants to pay all taxes.</p> <p>7.31 The debtor covenants to pay all debts and obligations to potential common-law and statutory lien claimants.</p> <p>7.32 The debtor covenants to obtain all consents or waivers under any agreement, etc., required for the security interest.</p> <p>7.33 The debtor will provide the secured party with control (as defined in the <i>Securities Transfer Act</i>, S.B.C. 2007, c. 10) over any after-acquired investment property when the debtor obtains rights therein.</p> <p>7.34 The debtor will consider if environmental representations, covenants, or indemnities are required relating to real property or personal property collateral.</p> <p><b>(DEB)</b> Further assurances may include representations and covenants relating to any real property charged:</p> <ul style="list-style-type: none"> <li>• The debtor has legal and beneficial title free and clear of all encumbrances.</li> <li>• The debtor will defend its title.</li> <li>• The debtor will pay all taxes, rates, and similar charges.</li> <li>• The debtor will maintain the property, keep it in good repair, and make all repairs reasonably required by the secured party.</li> <li>• The debtor will pay all debts and obligations to potential builders' lien claimants and statutory lien claimants.</li> <li>• The debtor will perform all obligations under leases and other encumbrances affecting title to the real property.</li> <li>• The debtor will not sell the property, or grant any mortgage, or create any other charge or encumbrance on the property except as expressly permitted in the debenture.</li> <li>• The debtor will create subsequent specific charges on real property as requested by the secured party.</li> </ul>	

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<ul style="list-style-type: none"> <li>• The debtor will provide environmental representations, covenants, or indemnities.</li> </ul> <p>(DEB) Additional covenants relating to any leasehold property charged:</p> <ul style="list-style-type: none"> <li>• The debtor has good leasehold interest free and clear of all encumbrances.</li> <li>• The debtor will defend its leasehold interest.</li> <li>• There is no default under the lease.</li> <li>• The debtor will not assign, sublet, or grant any mortgage, or create any charge or encumbrance on the leasehold interest except as expressly permitted in the debenture.</li> <li>• The landlord has consented to the debenture and, to the extent permitted under the lease, agreed to provide notice of defaults under the lease and consented to the transfer of the lease in the event of realization.</li> <li>• The debtor will pay all debts and obligations to potential builders' lien claimants and statutory lien claimants.</li> <li>• The debtor will observe and perform lease covenants.</li> <li>• The debtor will exercise its renewal rights, obtain the most favourable terms possible, and mortgage the renewal leases to the secured party.</li> <li>• The debtor will provide environmental representations, covenants, or indemnities.</li> </ul> <p><b>8. DEFAULT</b></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"> <li>.1 Non-payment of the principal when it becomes due and payable.</li> <li>.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).</li> <li>.3 Default in performance of any other obligations to the secured party.</li> <li>.4 A warranty or representation in the security agreement is or becomes untrue, or there is a misstatement in any certificate of officer.</li> <li>.5 Breach of any provision of the security agreement.</li> <li>.6 Insolvency or bankruptcy, 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.</li> <li>.7 Sale or transfer of collateral except inventory in the ordinary course of business without the secured party's consent.</li> <li>.8 Execution or other process becomes enforceable against the debtor and is not satisfied within a specified time.</li> </ol>	

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<p>.9 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).</p> <p>.10 The 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.</p> <p>.11 A non-permitted lien arises.</p> <p>.12 The debtor ceases (or demonstrates the intention to cease) carrying on business.</p> <p>.13 The debtor allows a debt to remain unpaid for a specified time after proceedings have been taken to enforce it as a prior charge.</p> <p>.14 The debtor authorizes purchase by itself of its shares, or redeems shares, without first getting the secured party's written consent.</p> <p>.15 The debtor changes effective management, or permits or authorizes a change in control, without first getting the secured party's written consent.</p> <p>.16 The debtor carries on business that it is restricted from carrying on by its memorandum.</p> <p>.17 A member of the debtor commences an action against the debtor, or gives notice of dissent to the debtor.</p> <p>.18 The debtor defaults under any lease or other agreement.</p> <p>.19 The 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>.20 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>.21 Any guarantor or indemnitor commits a breach of, or fails to observe or perform, any covenant, representation, or warranty in favour of the secured party.</p> <p>.22 Any material portion of the collateral is damaged or destroyed.</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. Failure to enforce does not constitute a waiver of any default.</p>	
<p><b>9. ENFORCEMENT</b></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 The secured party is to have all rights at law, including under the <i>PPSA</i> and in equity.</p> <p>9.3 The secured party has the power to enter, take possession of, collect, and use the collateral, to carry on the business of the debtor, and to exclude others, including the debtor.</p> <p>9.4 The secured party has the power to preserve, maintain, and repair the collateral.</p>	

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<p>9.5 The secured party has the power to lease or sell the collateral, with the proceeds of the sale to be applied as set out in the security agreement.</p> <p>9.6 The secured party has the power to sell with a deferred purchase price.</p> <p>9.7 The secured party has the power to collect accounts.</p> <p>9.8 Power to have a receiver or receiver-manager appointed (see, generally, s. 64 of the <i>PPSA</i> with respect to the appointment and qualifications of receivers):</p> <ul style="list-style-type: none"> <li>.1 Set out how the power will be exercised.</li> <li>.2 A 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.</li> <li>.3 The secured party has no liability to the receiver-manager for remuneration, expenses, etc.</li> <li>.4 Powers of receiver-manager: <ul style="list-style-type: none"> <li>(a) To take possession of, collect, and use the property.</li> <li>(b) To carry on or concur in the carrying on of the business and to employ, discharge, and set remuneration for any persons.</li> <li>(c) To sell or lease or concur in the selling or leasing of the property and to defer payment of selling price.</li> <li>(d) To borrow money to carry on the business or maintain the property and to issue receiver's certificate.</li> <li>(e) To make any arrangement that the receiver-manager thinks expedient.</li> </ul> </li> <li>.5 A receiver-manager is not liable for loss, unless caused by their negligence or wilful default.</li> <li>.6 A purchaser is not bound to inquire regarding the validity of a sale.</li> <li>.7 Proceeds of sale or profits of business are to be applied as set out in the security agreement, for example: <ul style="list-style-type: none"> <li>(a) To pay the receiver-manager's remuneration and expenses.</li> <li>(b) To pay to the secured party any unpaid interest or other monies owing.</li> <li>(c) To pay to the secured party the principal due.</li> <li>(d) To pay any surplus to the debtor, subject to the rights of other creditors.</li> </ul> </li> </ul> <p>9.9 The secured party does not elect to retain collateral unless notice is given to that effect.</p> <p>9.10 Consider acknowledging that specified procedures are "commercially reasonable".</p> <p>9.11 The debtor's rights of reinstatement are limited to those set out in the <i>PPSA</i>.</p> <p>9.12 The debtor is liable for any deficiency (excepting consumer goods).</p> <p>9.13 All realization expenses are to be payable by the debtor and secured by the collateral.</p> <p><b>(DEB)</b> Consider enforcement provisions relating to any real property charged:</p>	

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<ul style="list-style-type: none"> <li>• Power to enter, take possession of, and use the property, and exclude the debtor.</li> <li>• Power to preserve, maintain, and repair the property.</li> <li>• Power to lease or sell the property, with the proceeds of the sale applied as set out in the debenture.</li> <li>• Power to appoint a receiver or receiver-manager (see item 9.8 in this checklist for sample clauses).</li> <li>• Power to proceed in respect of both real property and personal property as if the personal property were real property.</li> </ul> <p><b>10. OTHER RIGHTS OF THE SECURED PARTY</b></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 (with interest until paid) 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 (with interest until paid) and secured by the collateral.</p> <p>10.3 To release any one or more guarantors or debtors 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> <p>10.6 To allocate payments to preserve purchase money security interests (“PMSIs”).</p> <p>10.7 To require the debtor to pay fees incurred in enforcing the security and for registering discharges and amendments.</p> <p>10.8 To be appointed attorney for all purposes required under the 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.</p> <p>10.9 Consider consequences of an expropriation.</p> <p>10.10 Consider adding any other rights typically included in commercial mortgage documents.</p> <p>10.11 To exercise rights under a control agreement relating to collateral that is investment property.</p> <p><b>11. SECURITY PROVISIONS</b></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 <i>PPSA</i>, s. 67 in respect of consumer goods.</p>	

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<p>11.4 Consider specifying (and limiting) the 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><b>12. MISCELLANEOUS</b></p> <p>12.1 The secured party has no obligation to advance monies or otherwise. Consider the 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. Assignees to be bound by the provisions of the security agreement. Consider no assignment by debtor.</p> <p>12.4 Waive receipt of copies of financing statements and financing change statements.</p> <p>12.5 Acknowledge receipt of a copy of the security agreement and, if not waived as per item 12.4 in this checklist, 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 the power to grant, create, or permit other security.</p> <p>12.10 Where there is more than one debtor, indicate whether the obligation is 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> <p><b>(DEB)</b> Consider the following provisions for the debenture:</p> <p>(a) Secured party is exclusively entitled to the benefit of the debenture. The debtor is not bound to recognize any trust or equity affecting ownership.</p> <p>(b) Repayment of advances does not constitute redemption.</p> <p>(c) Prepayment rights or penalties; partial or full payment prior to due date.</p> <p><b>13. INTERPRETATION AND GENERAL PROVISIONS</b></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 any 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 is 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, serial numbered goods, permitted encumbrances).</p>	

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<p>13.10 Further assurances.</p> <p><b>14. DATE</b></p> <p><b>15. EXECUTION</b></p>	

