

INTRODUCTION

Purpose and currency of checklist. 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. The checklist is current to September 4, 2025.

Key instructions for use of checklist:

- **Use of debenture.** Where a debenture is being used, the items marked “(DEB)” should be considered. For the most part, a debenture and a general security agreement are not markedly different, except that 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.
- **Fixtures and crops.** Personal Property Security Regulation, B.C. Reg. 227/2002, s. 1(3) to (5), should be considered in the context of a charge on land, fixtures, or crops. The intent of these 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.

LEGEND



Checkbox



Important Reminder



Deadline or Limitation Date

NEW DEVELOPMENTS

- **Investment Canada Act.** Recent amendments to the *Investment Canada Act*, R.S.C. 1985, c. 28 (1st Supp.) and changes to policy announced by the Minister of Innovation, Science and Industry (the “Minister”) continue to address changing threats that can arise from foreign investment.
- **Modernization.** *An Act to Amend the Investment Canada Act*, S.C. 2024, c. 4 received Royal Assent on March 22, 2024, with certain amendments coming into force September 3, 2024. The amendments further the Minister’s ability to detect, review, and restrict foreign investments that are potentially injurious to Canadian national security.
- **Investment digital media sector.** Foreign investors and Canadian businesses in the investment digital media sector (the “IDM sector”) must review their investment plans for potential connections to entities owned or influenced by hostile foreign states and consult with Innovation, Science and Economic Development Canada’s Investment Review Division at least 45 days before implementing any investment. Foreign investors in Canada’s IDM sector must ensure their stringent undertaking and possible reviews for net benefit by the Minister of Canadian Heritage, focusing on maintaining Canadian control and cultural expression.

- **Guidelines on the National Security Review of Investments.** On March 5, 2025, the Minister announced updates to the *Investment Canada Act* Guidelines on National Security Review of Investments. These guidelines set out the process for reviewing foreign investments, such as the establishment or acquisition of a Canadian business, to determine whether they pose a risk to Canada’s national security based on the factors identified in the guidelines.
- **Net benefit review thresholds.** For minimum enterprise values or asset values of Canadian businesses triggering a review to determine whether a foreign investment is likely to result in a net benefit to Canada, see the [net benefit review thresholds](#) effective for 2025.
- **Mandatory disclosure regime to report transactions.** Enhanced mandatory disclosure rules under ss. 237.3 to 237.4 of the *Income Tax Act*, R.S.C. 1985, c. 1 (5th Supp.) consist of changes to the existing reportable transaction rules and a new rule to report “notifiable transactions”. These rules apply to transactions occurring after June 21, 2023. Members of the legal profession are caught by the rules through the definition of an “advisor” and are therefore exposed to the possibility of substantial penalties. Legal professionals are currently exempt from the rules pending determination of the Federation of Law Societies of Canada’s challenge to the constitutionality of these rules on the grounds that they infringe the *Canadian Charter of Rights and Freedoms*, Part I of the *Constitution Act, 1982*, being Schedule B to the *Canada Act 1982* (U.K.), c. 11 (specifically, that the rules create potential conflicts of interest between legal professionals and their clients). Other parties, such as clients and accountants, are not exempt from the rules. Lawyers should consider advising their clients to consult with accountants and other professionals, such as tax counsel, on their obligations as well as updating their reporting correspondence.
- **Transparency register.** Private companies incorporated under the *Business Corporations Act*, S.B.C. 2002, c. 57 must create and maintain a “transparency register” of information about “significant individuals” (as defined by s. 119.11 of the *Business Corporations Act*). Consult the *Business Corporations Act* and British Columbia government websites to confirm compliance. Under the *Business Corporations Amendment Act, 2023*, S.B.C. 2023, c. 20, expected to take effect in fall 2025, private British Columbia companies will be required to file their transparency register information online with the BC Business Registry: (i) within six months of incorporation, amalgamation, restoration, or continuation; (ii) within 15 days of the company becoming aware of any changes to its transparency register; and (iii) annually (within prescribed period yet to be announced). For further information, see the Government of British Columbia’s website and the associated modernization updates.
- **Canada Business Corporations Act.** Amendments to the *Canada Business Corporations Act*, R.S.C. 1985, c. C-44 (the “CBCA”) which took effect August 31, 2022, require distributing corporations (generally, only public companies governed under the CBCA) to comply with new requirements with respect to the election of directors. Note the amendments in s. 106 of the CBCA, with respect to “majority voting” and “individual election” requirements. Accordingly, if a CBCA company is being incorporated, and particularly if it may become a reporting issuer, attention should be given to the company’s articles with respect to electing and appointing its directors. As of January 22, 2024, corporations created under the CBCA are required to file information regarding individuals with significant control (“ISC”) with Corporations Canada and to keep a copy of their ISC register with their corporate records.
- **Purpose-built rental exemption.** Effective January 1, 2024, certain new purpose-built rental buildings are exempt from the further 2% property transfer tax applied to residential property values that exceed \$3,000,000 and meet the eligibility requirements.

- **Competition Act.**
 - **Provisions related to restrictive covenants and exclusivity clauses.** Landlords and tenants may negotiate restrictive covenants and exclusivity clauses in their leases to: control tenant use and tenant mix; grant a tenant the exclusive right to conduct certain activities; and restrict other tenants from conducting those activities. Amendments to the *Competition Act*, R.S.C. 1985, c. C-34 (the “*Competition Act*”) came into effect on December 15, 2023. The Competition Bureau of Canada issued “*Competitor Property Controls and the Competition Act*”, dated June 4, 2025, which outlines the Competition Bureau’s enforcement approach to competitor property controls under the *Competition Act* following Royal Assent of Bill C-56 (<https://competition-bureau.canada.ca/en/how-we-foster-competition/education-and-outreach/publications/competitor-property-controls-and-competition-act>). The Competition Bureau has taken the position that restrictive covenants and exclusivity clauses may amount to property controls insulating firms from competition, thereby falling under the “abuse of dominance” and the “anti-competitive collaboration” provisions under ss. 78 and 90.1 of the *Competition Act*, respectively. Lawyers should review the *Competition Act* and the Competition Bureau’s guidance to determine whether any such restrictive covenant or exclusivity clause granting a tenant exclusive rights to carry on a particular activity, or restricting certain tenants from carrying out certain activities, amounts to a “competitor property control” subject to risk enforcement action by the Competition Bureau before the Competition Tribunal. Upon determining that a competitor property control is contrary to the *Competition Act*, the Competition Bureau may seek remedies including: prohibiting the terms of the competitor property control and its enforcement; requiring other measures to restore competition where necessary; and seeking administrative monetary penalties. Where a competitor property control raises issues under s. 90.1 of the *Competition Act*, the Competition Bureau will consider all parties to the agreement to be potential targets of its investigation (tenants and landlords alike).
 - **Greenwashing provisions.** The *Competition Act* added new provisions that took effect June 20, 2024. The new provisions require companies making environmental claims about their products or services to support these claims with adequate and proper testing. Furthermore, any statements regarding the environmental benefits of a business or its activities must be substantiated using “internationally recognized methodologies”. On June 5, 2025, the Competition Bureau issued guidance detailing its expectations (e.g., what constitutes a recognized methodology, and principles for substantiation and future-oriented claims), though the guidelines are not binding.
- **Business Practices and Consumer Protection Act.** Bill 4, the *Business Practices and Consumer Protection Amendment Act, 2025* received Royal Assent on March 31, 2025. The consequential amendments will come into force by regulation and are expected to introduce provisions that prohibit suppliers from mandating dispute resolution processes through consumer contract terms. Parties may still mutually agree to submit to arbitration or another form of dispute resolution.
- **Removing oneself as a director.** Effective May 4, 2023, a person who claims not to be a director but who is recorded as a director in a company’s notice of articles may, on notice to the company, apply to the registrar for the removal of their name and address from the company’s notice of articles (*Business Corporations Act*, s. 127.1, as amended B.C. Reg. 114/2023). On application, the registrar must alter the company’s notice of articles if the applicant provides satisfactory proof that they are not a director of the company, and the company failed to file a notice of change of directors with the registrar.

- **Resolutions upheld despite being made during annual general meeting not called in accordance with company’s articles.** In *Yinghe Investment (Canada) Ltd. v. CCM Investment Group Ltd.*, 2024 BCCA 285, a dispute arose when an annual general meeting was held without proper adherence to the company’s articles (the meeting was called by a single director instead of the required plural “directors”). The court found that the chambers judge did not err in exercising his discretion under s. 229 of the *Business Corporations Act*, as the decision to allow certain resolutions to stand was made in the company’s best interests.
- **Income Tax Act.** Amendments to the *CBCA* that took effect November 2, 2023, authorize the communication of certain taxpayer information to an official of the Department of Industry for the purpose of verifying and validating the data that must be filed by certain private corporations under s. 21.21 of the *CBCA* in relation to the corporate beneficial ownership registry.
- **Forced sale provisions and anti-deprivation rule.** In *ATB Financial v. Mayfield Investments Ltd.*, 2025 ABKB 61, the court declared a forced sale provision triggered by the bankruptcy of a shareholder to be void and unenforceable, as it violated the anti-deprivation rule. While not yet considered by courts in British Columbia a similar outcome is possible and this case should accordingly be considered when drafting shareholders agreement.
- **Amendments to the Land Title Act and Property Law Act.** The *Land Title and Property Law Amendment Act, 2024*, S.B.C. 2024, c. 9 came into force May 21, 2024, amending the *Land Title Act*, R.S.B.C. 1996, c. 250 and the *Property Law Act*, R.S.B.C. 1996, c. 377. The amendments recognize the power and capacity of a First Nation to hold, acquire, and dispose of land in the name of the First Nation as owner, and register its ownership in the land title office in its First Nation name.

OF NOTE

- **Aboriginal law.** Special considerations apply to security agreements pertaining to “reserve” lands or the personal property belonging to a First Nations or Indigenous person (pursuant to the *Indian Act*, 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 *Framework Agreement on First Nation Land Management Act*, 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 *Indian Act*), 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 (www.cle.bc.ca) and in other CLEBC publications.
- **Money laundering—unexplained wealth orders.** The Director of Civil Forfeiture has sought unexplained wealth orders to address common money laundering techniques (such as hiding assets with family members or associates) and target the wealth of organized crime.
- **Money laundering—companies, trusts, and other entities.** 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 whether it is appropriate to act (*BC Code* rules 3.2-7

and 3.2-8 and Law Society Rules 3-103(4), 3-109, and 3-110). See Law Society’s “Client ID & Verification” resources webpage, including: “Source of Money FAQs”; “Risk Assessment Case Studies for the Legal Profession”; “Red Flags Quick Reference Guide”; “Risk Advisories for the Legal Profession”; “Forming Companies and Other Structures—Managing the Risk”; and the Discipline Advisories (an updated list can be found at www.lawsociety.bc.ca/for-lawyers/discipline-advisories/), which include topics such as Client ID & Verification, Country/geographic risk, and Private lending. Lawyers may contact a Law Society practice advisor at practiceadvice@lsbc.org for a consultation about the applicable *BC Code* rules and Law Society Rules and obtain guidance.

- **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). Note in particular the commentary on the use of trust accounts only for legal services, fraud prevention, bank holds on trust funds, risks of private lending, and all other matters that may be relevant to loan transactions.
- **Additional resources.** For more information about security agreements, see *British Columbia Personal Property Security Act Practice Manual* (especially the SECURED TRANSACTION checklist) (CLEBC, 1995–); *Due Diligence Deskbook* (CLEBC, 1994–); *Real Estate Financing: Annotated Precedents* (CLEBC, 1994–); *Priorities—2013*, course materials (CLEBC, 2013); *Priorities—2009*, course materials (CLEBC, 2009); *Advising British Columbia Businesses* (CLEBC, 2006–); and *British Columbia Creditors’ Remedies: An Annotated Guide*, 2nd ed. (CLEBC, 2020–).

CONTENTS


1. Initial Contact
2. Identification of Parties
3. Recitals
4. Introductory Clauses
5. Obligation Secured
6. Security Interest
7. Debtor’s Representations and Covenants
8. Default
9. Enforcement
10. Other Rights of the Secured Party
11. Security Provisions
12. Miscellaneous
13. Interpretation and General Provisions
14. Date
15. Execution

1.	INITIAL CONTACT	
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).	<input type="checkbox"/>



2.	IDENTIFICATION OF PARTIES	
2.1	Debtor(s).	<input type="checkbox"/>
2.2	Secured party or parties.	<input type="checkbox"/>




3.	RECITALS	
3.1	Recitals setting out the special features of the transaction.	<input type="checkbox"/>

4.	INTRODUCTORY CLAUSES	
4.1	Consideration clause (e.g., “for value received”).	<input type="checkbox"/>

5.	OBLIGATION SECURED	
5.1	Specify the obligations secured:	<input type="checkbox"/>
	.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.)	
	.2 Specific debt (provide for any future advances, if there is to be more than a one-time advance).	
	.3 Current or running account, advances and re-advances.	
	.4 Performance generally, and not merely of the obligation to pay, under any or all agreements with the secured party.	
(DEB)	Provisions relating to promise to pay and interest:	
	<ul style="list-style-type: none"> • Promise to pay on demand, on a specified date, or by a payment schedule. 	
	<ul style="list-style-type: none"> • Amount (together with interest). 	
	<ul style="list-style-type: none"> • Where, when, and how payment is to be made. 	


	<ul style="list-style-type: none"> 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). 	
	<ul style="list-style-type: none"> Interest to be paid on principal and overdue interest; payable after as well as before maturity, default, or judgment. 	
	<ul style="list-style-type: none"> 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). 	
	<ul style="list-style-type: none"> Consider special clauses (e.g., an option to switch from a floating interest rate to a fixed rate). 	


6. SECURITY INTEREST		
6.1	Creation of security interest in personal property:	<input type="checkbox"/>
	.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)).	
	.2 After-acquired property.	
	.3 Proceeds.	
	.4 Consider excepting consumer goods from collateral (PPSA, ss. 55, 58, 61, 62, and 67).	
	.5 Consider excepting the last day of the term of any lease.	
	.6 If perfection is by possession, state that the collateral is delivered to the secured party for the purpose of perfecting the security interest.	
	.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.	
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.	

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.	
6.4	No postponement of attachment of security interest. (See item 12.1 in this checklist.)	<input type="checkbox"/>
6.5	Creation of floating charge:	<input type="checkbox"/>
	.1 Describe the property broadly.	
	.2 Use Land Title Office (“LTO”) execution format.	
6.6	Consider the need for a control agreement in respect of investment property.	<input type="checkbox"/>
6.7	For aircraft objects, consider whether an Irrevocable De-registration and Export Request Authorization (IDERA) is required.	<input type="checkbox"/>
(DEB)	Creation of fixed charge on real property, leasehold property, fixtures, chattels, etc.:	
	<ul style="list-style-type: none"> Describe the property in accordance with LTO requirements. 	
	<ul style="list-style-type: none"> 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 <i>Land Title Act</i>, R.S.B.C. 1996, c. 250). 	
	<ul style="list-style-type: none"> 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. 	
	<ul style="list-style-type: none"> 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. 	

7.	DEBTOR’S REPRESENTATIONS AND COVENANTS	
7.1	The representations are accurate.	<input type="checkbox"/>
7.2	Where the debtor is a corporation or other artificial body:	<input type="checkbox"/>
	.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 articles or bylaws, as applicable, and not amalgamate, continue, or undergo corporate re-organization.	
	.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.	

7.3	There are no pending actions against the debtor (or any subsidiary) or affecting the collateral.	<input type="checkbox"/>
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).	<input type="checkbox"/>
7.5	The debtor will not change its name or use a different name or trade name.	<input type="checkbox"/>
7.6	The debtor will not relocate its place of business, chief executive office, principal residence, or collateral to a place outside British Columbia.	<input type="checkbox"/>
7.7	The debtor will not dispose of its undertaking, and will maintain the business and the collateral.	<input type="checkbox"/>
7.8	Insurance:	<input type="checkbox"/>
	.1 The debtor will maintain insurance against fire and other risks, including business interruption, boiler and machinery, and liability insurance.	
	.2 The debtor will add the secured party as first loss payee on insurance policies.	
	.3 The debtor will deliver certificates of insurance and certified copies of insurance policies to the secured party.	
	.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.	
	.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).	
7.9	Financial covenants, such as:	<input type="checkbox"/>
	.1 The debtor will not become guarantor or endorser of any obligation other than in the normal course of business.	
	.2 Limitations (either absolute or requiring prior written consent of the secured party) on the debtor (and possibly affiliates):	
	(a) Capital expenditures.	
	(b) Dividend payments.	
	(c) Share capital redemption and reduction.	
	(d) Share issuance.	
	(e) Repayment of shareholder loans.	
	(f) Lease obligations.	
	(g) Financial covenants (e.g., debt-to-equity ratio, working capital ratio).	
	(h) Remuneration of directors, officers, and employees.	

	(i) Sale, removal, or other disposition of assets.	
	(j) Incurrence of debt.	
7.10	The debtor covenants to obey laws.	<input type="checkbox"/>
7.11	The debtor covenants to maintain in good standing all necessary licences and registrations in all relevant jurisdictions.	<input type="checkbox"/>
7.12	The debtor will keep proper books of account on its premises.	<input type="checkbox"/>
7.13	The debtor will permit entry and inspection by the secured party.	<input type="checkbox"/>
7.14	The debtor will provide financial statements to the secured party (e.g., audited or unaudited annual statements, interim statements).	<input type="checkbox"/>
7.15	The debtor will furnish information relating to the business of the secured party.	<input type="checkbox"/>
7.16	The debtor will notify the secured party of any encumbrances or proceedings.	<input type="checkbox"/>
7.17	The debtor will keep prior permitted encumbrances, if any, in good standing.	<input type="checkbox"/>
7.18	Nothing will be done by the debtor to encumber the collateral, except as specifically permitted.	<input type="checkbox"/>
7.19	The collateral has been in British Columbia for 60 days (see <i>PPSA</i> , ss. 5(3) and 7(3)).	
7.20	Regarding title to the collateral and other assets with which the debtor carries on business,	<input type="checkbox"/>
	.1 The debtor has legal and beneficial title free and clear of all encumbrances other than specified permitted encumbrances.	
	.2 The debtor will defend its title.	
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.	<input type="checkbox"/>
7.22	The debtor covenants to notify the secured party, upon request, of the location of chattels forming part of the collateral.	<input type="checkbox"/>
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.	<input type="checkbox"/>
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.	<input type="checkbox"/>



7.25	The debtor will not sell or dispose of the collateral, except inventory in the ordinary course of business.	<input type="checkbox"/>
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.	<input type="checkbox"/>
7.27	The debtor will pay the obligations when due.	<input type="checkbox"/>
7.28	The debtor will pay all costs relating to the creation, registration, enforcement, realization, discharge, and amendment of the security agreement.	<input type="checkbox"/>
7.29	The debtor will maintain the security (including the perfection thereof) created in the security agreement.	<input type="checkbox"/>
7.30	The debtor covenants to pay all taxes.	<input type="checkbox"/>
7.31	The debtor covenants to pay all debts and obligations to potential common-law and statutory lien claimants.	<input type="checkbox"/>
7.32	The debtor covenants to obtain all consents or waivers under any agreement, etc., required for the security interest.	<input type="checkbox"/>
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.	<input type="checkbox"/>
7.34	The debtor will consider if environmental representations, covenants, or indemnities are required relating to real property or personal property collateral.	<input type="checkbox"/>
(DEB)	Further assurances may include representations and covenants relating to any real property charged:	
	<ul style="list-style-type: none"> The debtor has legal and beneficial title free and clear of all encumbrances. 	
	<ul style="list-style-type: none"> The debtor will defend its title. 	
	<ul style="list-style-type: none"> The debtor will pay all taxes, rates, and similar charges. 	
	<ul style="list-style-type: none"> The debtor will maintain the property, keep it in good repair, and make all repairs reasonably required by the secured party. 	
	<ul style="list-style-type: none"> The debtor will pay all debts and obligations to potential builders' lien claimants and statutory lien claimants. 	
	<ul style="list-style-type: none"> The debtor will perform all obligations under leases and other encumbrances affecting title to the real property. 	
	<ul style="list-style-type: none"> 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. 	
	<ul style="list-style-type: none"> The debtor will create subsequent specific charges on real property as requested by the secured party. 	

	<ul style="list-style-type: none"> The debtor will provide environmental representations, covenants, or indemnities. 	
(DEB)	Additional covenants relating to any leasehold property charged:	
	<ul style="list-style-type: none"> The debtor has good leasehold interest free and clear of all encumbrances. 	
	<ul style="list-style-type: none"> The debtor will defend its leasehold interest. 	
	<ul style="list-style-type: none"> There is no default under the lease. 	
	<ul style="list-style-type: none"> 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. 	
	<ul style="list-style-type: none"> 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. 	
	<ul style="list-style-type: none"> The debtor will pay all debts and obligations to potential builders' lien claimants and statutory lien claimants. 	
	<ul style="list-style-type: none"> The debtor will observe and perform lease covenants. 	
	<ul style="list-style-type: none"> The debtor will exercise its renewal rights, obtain the most favourable terms possible, and mortgage the renewal leases to the secured party. 	
	<ul style="list-style-type: none"> The debtor will provide environmental representations, covenants, or indemnities. 	

8.	DEFAULT	
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).	<input type="checkbox"/>
8.2	Events constituting default:	<input type="checkbox"/>
	.1 Non-payment of the principal when it becomes due and payable.	
	.2 Default in payment of other indebtedness to the secured party (e.g., interest installments, other monies secured by the secured party, all indebtedness whether or not secured by the security interest).	
	.3 Default in performance of any other obligations to the secured party.	
	.4 A warranty or representation in the security agreement is or becomes untrue, or there is a misstatement in any certificate of officer.	
	.5 Breach of any provision of the security agreement.	

	.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.	
	.7 Sale or transfer of collateral except inventory in the ordinary course of business without the secured party's consent.	
	.8 Execution or other process becomes enforceable against the debtor and is not satisfied within a specified time.	
	.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).	
	.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.	
	.11 A non-permitted lien arises.	
	.12 The debtor ceases (or demonstrates the intention to cease) carrying on business.	
	.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.	
	.14 The debtor authorizes purchase by itself of its shares, or redeems shares, without first getting the secured party's written consent.	
	.15 The debtor changes effective management, or permits or authorizes a change in control, without first getting the secured party's written consent.	
	.16 The debtor carries on business that it is restricted from carrying on by its memorandum.	
	.17 A member of the debtor commences an action against the debtor, or gives notice of dissent to the debtor.	
	.18 The debtor defaults under any lease or other agreement.	
	.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.	
	.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.	
	.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.	
	.22 Any material portion of the collateral is damaged or destroyed.	
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.	<input type="checkbox"/>

9.	ENFORCEMENT	
9.1	Specify circumstances in which the secured party may use the various measures set out in the security agreement.	<input type="checkbox"/>
9.2	The secured party is to have all rights at law, including under the <i>PPSA</i> and in equity.	<input type="checkbox"/>
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.	<input type="checkbox"/>
9.4	The secured party has the power to preserve, maintain, and repair the collateral.	<input type="checkbox"/>
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.	<input type="checkbox"/>
9.6	The secured party has the power to sell with a deferred purchase price.	<input type="checkbox"/>
9.7	The secured party has the power to collect accounts.	<input type="checkbox"/>
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):	<input type="checkbox"/>
	.1 Set out how the power will be exercised.	
	.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.	
	.3 The secured party has no liability to the receiver-manager for remuneration, expenses, etc.	
	.4 Powers of receiver-manager:	
	(a) To take possession of, collect, and use the property.	
	(b) To carry on or concur in the carrying on of the business and to employ, discharge, and set remuneration for any persons.	
	(c) To sell or lease or concur in the selling or leasing of the property and to defer payment of selling price.	
	(d) To borrow money to carry on the business or maintain the property and to issue receiver's certificate.	
	(e) To make any arrangement that the receiver-manager thinks expedient.	
	.5 A receiver-manager is not liable for loss, unless caused by their negligence or wilful default.	
	.6 A purchaser is not bound to inquire regarding the validity of a sale.	
	.7 Proceeds of sale or profits of business are to be applied as set out in the security agreement, for example:	



	(a) To pay the receiver-manager's remuneration and expenses.	
	(b) To pay to the secured party any unpaid interest or other monies owing.	
	(c) To pay to the secured party the principal due.	
	(d) To pay any surplus to the debtor, subject to the rights of other creditors.	
9.9	The secured party does not elect to retain collateral unless notice is given to that effect.	
9.10	Consider acknowledging that specified procedures are "commercially reasonable".	<input type="checkbox"/>
9.11	The debtor's rights of reinstatement are limited to those set out in the <i>PPSA</i> .	<input type="checkbox"/>
9.12	The debtor is liable for any deficiency (excepting consumer goods).	<input type="checkbox"/>
9.13	All realization expenses are to be payable by the debtor and secured by the collateral.	<input type="checkbox"/>
(DEB)	Consider enforcement provisions relating to any real property charged:	
	<ul style="list-style-type: none"> Power to enter, take possession of, and use the property, and exclude the debtor. 	
	<ul style="list-style-type: none"> Power to preserve, maintain, and repair the property. 	
	<ul style="list-style-type: none"> Power to lease or sell the property, with the proceeds of the sale applied as set out in the debenture. 	
	<ul style="list-style-type: none"> Power to appoint a receiver or receiver-manager (see item 9.8 in this checklist for sample clauses). 	
	<ul style="list-style-type: none"> Power to proceed in respect of both real property and personal property as if the personal property were real property. 	



10.	OTHER RIGHTS OF THE SECURED PARTY	
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.	<input type="checkbox"/>
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.	<input type="checkbox"/>
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.	<input type="checkbox"/>
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.	<input type="checkbox"/>
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.	<input type="checkbox"/>

10.6	To allocate payments to preserve purchase money security interests (“PMSIs”).	<input type="checkbox"/>
10.7	To require the debtor to pay fees incurred in enforcing the security and for registering discharges and amendments.	<input type="checkbox"/>
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.	<input type="checkbox"/>
10.9	Consider consequences of an expropriation.	<input type="checkbox"/>
10.10	Consider adding any other rights typically included in commercial mortgage documents.	<input type="checkbox"/>
10.11	To exercise rights under a control agreement relating to collateral that is investment property.	<input type="checkbox"/>

11.	SECURITY PROVISIONS	
11.1	Security is additional to any other security held by the secured party. No merger.	<input type="checkbox"/>
11.2	Valid and continuing security until discharge.	<input type="checkbox"/>
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.	<input type="checkbox"/>
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.	<input type="checkbox"/>

12.	MISCELLANEOUS	
12.1	The secured party has no obligation to advance monies or otherwise. Consider the effect on attachment for <i>PPSA</i> purposes.	<input type="checkbox"/>
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.	<input type="checkbox"/>
12.3	Assignment of rights. Assignees to be bound by the provisions of the security agreement. Consider no assignment by debtor.	<input type="checkbox"/>
12.4	Waive receipt of copies of financing statements and financing change statements.	<input type="checkbox"/>
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.	<input type="checkbox"/>
12.6	Release and limitation on secured party liability.	<input type="checkbox"/>

12.7	Secured party may grant extensions of time.	<input type="checkbox"/>
12.8	Debtor to waive all rights permissible to waive.	<input type="checkbox"/>
12.9	Consider prohibition on the power to grant, create, or permit other security.	<input type="checkbox"/>
12.10	Where there is more than one debtor, indicate whether the obligation is joint and several.	<input type="checkbox"/>
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.	<input type="checkbox"/>
(DEB)	Consider the following provisions for the debenture:	
	(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.	
	(b) Repayment of advances does not constitute redemption.	
	(c) Prepayment rights or penalties; partial or full payment prior to due date.	

13.	INTERPRETATION AND GENERAL PROVISIONS	
13.1	Definitions.	<input type="checkbox"/>
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.	<input type="checkbox"/>
13.3	Principles that govern the interpretation of the security agreement (e.g., use of the masculine form, insertion of headings for convenience only).	<input type="checkbox"/>
13.4	Severability.	<input type="checkbox"/>
13.5	Time is of the essence.	
13.6	Notices.	
13.7	Enurement.	<input type="checkbox"/>
13.8	Amendments.	<input type="checkbox"/>
13.9	Schedules (e.g., list of assets, serial numbered goods, permitted encumbrances).	<input type="checkbox"/>
13.10	Further assurances.	<input type="checkbox"/>

14.	DATE
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15.	EXECUTION
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