

COMMERCIAL LEASES – DRAFTING

INTRODUCTION

This checklist is designed to be used with the *Commercial Leases – Procedure* checklist. It 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.

LIST OF AUTHORITIES

Williams, *Canadian Law of Landlord and Tenant* (5th ed.), (Toronto: Carswell, 1988).

Commercial Leases (1996), Saskatchewan Bar Admission Course.

CONTENTS

A.	Date of Agreement.....	RE-3-2
B.	Identification of Parties.....	RE-3-2
C.	Introductory Clauses	RE-3-2
D.	Description of Premises	RE-3-2
E.	Words of Present Demise.....	RE-3-3
F.	Term of Lease	RE-3-3
G.	Rent.....	RE-3-4
H.	Use of Premises	RE-3-7
I.	Initial Construction to Complete the Premises	RE-3-8
J.	Alterations and Improvements.....	RE-3-10
K.	Maintenance and Repairs	RE-3-11
L.	Services to Be Furnished by Landlord.....	RE-3-11
M.	Common Areas	RE-3-12
N.	Parking.....	RE-3-13
O.	Operating Costs.....	RE-3-13
P.	Taxes.....	RE-3-15
Q.	Utilities and HVAC.....	RE-3-16
R.	Insurance and Indemnity.....	RE-3-16
S.	Damage and Destruction.....	RE-3-18
T.	Changes in Parties.....	RE-3-18
U.	General Rights of Landlord	RE-3-19
V.	General Covenants of Landlord.....	RE-3-20
W.	General Covenants of Tenant.....	RE-3-20

X.	Tenant's Options.....	RE-3-20
Y.	Merchants' Association or Promotion Fund for Shopping Centre.....	RE-3-21
Z.	Registration.....	RE-3-21
AA.	Overholding.....	RE-3-22
BB.	Termination of Lease.....	RE-3-22
CC.	Default.....	RE-3-22
DD.	Interpretation and General Provisions.....	RE-3-23
EE.	Indemnity.....	RE-3-24

Notes:

CHECKLIST

A. DATE OF AGREEMENT

B. IDENTIFICATION OF PARTIES

1. Landlord.
2. Tenant.
3. Indemnifier.

C. INTRODUCTORY CLAUSES

1. Recitals setting out special features of transaction.
2. Consideration clause.

D. DESCRIPTION OF PREMISES

1. Legal description and street address.
2. Clear description of the part leased, including:
 - 2.1 Reference to marked plan attached as schedule.
 - 2.2 Area, or procedure for calculating area.
 - 2.3 Boundaries relative to outside walls, corridor walls, walls of demise, windows, etc.
3. Whether landlord has right to expand, relocate or change leased premises or design or merchandising plan before or during term and, if so:
 - 3.1 Tenant's remedy if there is material change.

Notes:

- 3.2 Amendments to rent, additional rent, calculation of proportionate share, etc.
- 3.3 Qualifications as to location and access to new premises.
- 3.4 Improvement allowances, payment of undepreciated cost of existing improvements and extent of landlord's and tenant's work.
- 3.5 Minimum period of remaining term in which relocation can occur.
- 3.6 Notice requirement.
- 4. Specified exceptions (e.g., exterior face of building, areas not leased to full floor tenants, such as vertical shafts for elevators or utilities). Describe carefully and refer to marked plan attached as schedule.
- 5. Specified appurtenances included in demise, parking (see section N), basement, storage space, fixtures, furnishings, machinery. Describe carefully. If equipment is leased, consider registration requirements under *The Personal Property Security Act, 1993*.
- 6. Right to use common areas (see section M).
- 7. Right to use, place signage.
- 8. Obligation of landlord to build expansion space in future.

E. WORDS OF PRESENT DEMISE

F. TERM OF LEASE

- 1. Commencement date:
 - 1.1 Whether tied to completion of work and, if so:
 - 1.1.1 Method for determining when completion occurs and documenting commencement date.
 - 1.1.2 Requirement that tenant give notice within specified time after taking possession if premises are not acceptable.
 - 1.2 Whether tied to an official opening date and, if so:
 - 1.2.1 Whether date is certain, able to be changed by landlord, or to be determined and notified.
 - 1.2.2 Whether tenant must open on that date and not before.
 - 1.2.3 Whether it is contingent on anything (e.g., the opening of specified other businesses at the same time).

Notes:

- 1.3 Whether dependent on previous tenant vacating premises.
- 1.4 Whether dependent on landlord obtaining financing.
- 1.5 Insert “outside date” to avoid certainty problems.
2. Consequences of landlord’s failure to deliver premises on commencement date, for example:
 - 2.1 Cancellation of lease: whether mortgagee is entitled to cure the default.
 - 2.2 Adjustment of commencement date:
 - 2.2.1 Whether this is to involve abatement of rent and other charges.
 - 2.2.2 Whether there is any effect on term of lease.
 - 2.2.3 Whether memorandum is required between parties to confirm.
 - 2.3 Liquidated damages.
3. Whether tenant may take possession prior to commencement and, if so:
 - 3.1 Obligations as to payment of rent and other charges.
 - 3.2 Whether remaining provisions of lease apply.
 - 3.3 Whether there is any effect on term of lease.
4. Whether offer to lease merges on commencement or taking of possession.
5. Whether any of tenant’s obligations begin before commencement date.
6. Length of term and expiry date.
7. Whether renewal terms are defined as extension of term, or separately.

G. RENT

1. Payment details:
 - 1.1 Time of payment (e.g., monthly installments to be paid in advance on first day of each month). Note s. 145 of *The Land Titles Act 2000*.
 - 1.2 Place at which payments are to be made.

Notes:

- 1.3 When payments are to commence (e.g., any provision for rent-free fixturing period?).
 - 1.4 Provision for partial months.
 - 1.5 Whether tenant can make deductions or set-offs.
 - 1.6 Whether there is interest on late payment of rent, additional rent or other charges (comply with *Interest Act*).
 - 1.7 How payments of additional rent are to be made (see paragraph G. 3).
 - 1.8 Provision for obligation to pay to survive lease where calculations are not made until after termination of lease.
2. Basic or minimum rent:
- 2.1 Amount of annual rent and installments.
 - 2.2 Adjustment of rent necessitated by use of estimates:
 - 2.2.1 If rentable area changes or is not the same as specified estimate.
 - 2.2.2 If operating costs or base taxes are not the same as specified estimate (see sections O and P).
 - 2.3 Whether rent is fixed for term or adjusted at specified intervals to take into account inflation, market value, etc.
 - 2.4 Methods for calculating the rent and adjustments (e.g., Statistics Canada cost of living adjustment, fair market rental value, arbitration).
 - 2.5 Post-dated cheques.
3. Additional rent (required payments characterized as rent):
- 3.1 Taxes paid by landlord (see section P).
 - 3.2 Operating costs (see section O).
 - 3.3 Insurance paid by landlord (see section R).
 - 3.4 Amounts which tenant should have paid or for which landlord is entitled to reimbursement.
4. Percentage rent:
- 4.1 Whether this is in addition to basic rent; whether amounts are offset against minimum rent so that tenant pays larger amount.

Notes:

- 4.2 Calculation:
 - 4.2.1 Method including whether rate is fixed or graduated, and whether it applies only above stated amount of gross sales, etc.
 - 4.2.2 Clear definitions of factors and terms involved (e.g., “gross sales”).
 - 4.2.3 Specified inclusions and exclusions for gross sales.
 - 4.2.4 Whether minimum payment is required.
 - 4.2.5 Method of payment (e.g., monthly, together with monthly statement of “gross sales”).
 - 4.2.6 Annual adjustments (e.g., specify timing and whether audited, see also paras. G.2.2 and G.4.2).
 - 4.2.7 Landlord’s right to independent audit (tenant to pay if statements wrong by specified amount).
- 4.3 Tenant’s obligations:
 - 4.3.1 To operate business continuously.
 - 4.3.2 To operate during specified business hours; to be open for business when building is open for business.
 - 4.3.3 To keep adequate stock and staff to produce maximum revenues.
 - 4.3.4 To use specified trade name.
 - 4.3.5 To maintain a specified ratio of selling area to floor space.
 - 4.3.6 To keep records as specified (e.g., what type, where, for how long) and to allow landlord to examine them.
 - 4.3.7 To provide specified documentation with payments or at specified intervals.
 - 4.3.8 To honour credit cards.
 - 4.3.9 To not operate similar business within given radius (otherwise gross revenues will be subject to payment of percentage rent) (extend to related companies).

Notes:

- 4.4 Whether landlord is obliged to keep information confidential.
- 4.5 Audit rights and notice requirements.
- 4.6 Landlord's remedies in event of default:
 - 4.6.1 Termination of lease.
 - 4.6.2 Right to employ auditor.
 - 4.6.3 Payment of audit costs, interest, liquidated damages, etc. (Such amounts to be owing "on demand" of landlord to avoid automatic GST payments.)
- 4.7 Statement that sums are paid as rent and not as share of tenant's profits: negation of partnership or joint venture.
- 4.8 Payment of lesser amount than minimum rent is on account of earliest stipulated sum due: no acknowledgment or accord and satisfaction.

H. USE OF PREMISES

- 1. Tenant's obligations:
 - 1.1 To take possession, continuously occupy, carry on business in and not abandon premises.
 - 1.2 To use premises for specified uses only.
 - 1.3 Not to use premises for prohibited uses.
 - 1.4 Not to permit premises to be occupied by anyone other than specified persons (e.g., permitted subtenants, employees), not to permit premises to be used by specified persons (e.g., licensees, concessionaires, franchisees).
 - 1.5 Not to commit waste or nuisance, nor obstruct movement of persons in building.
 - 1.6 Not to use signs other than ones approved by landlord.
 - 1.7 Not to use heavy equipment without approval of landlord.
 - 1.8 To comply with applicable laws, by-laws and regulations.
 - 1.9 To operate tenant's business in accordance with specified standards (e.g., hours of operation, stocking and maintaining merchandise: see paragraph G. 4.3).

Notes:

- 1.10 To refer to building only by name designated by landlord; to use that name for all business and promotional activities.
2. Landlord's possible covenants:
 - 2.1 Tenant's proposed use:
 - 2.1.1 Is permitted under zoning by-laws.
 - 2.1.2 Does not conflict with use exclusively given to another tenant.
 - 2.2 That tenant will have exclusive right to operate specified type of business in building subject to landlord's obligations to comply with *Competition Act* or other legislation.
 - 2.3 To cooperate in securing any required license.
 - 2.4 Not to unreasonably withhold consent to change in permitted use.
3. If zoning change is required:
 - 3.1 Whose responsibility this is.
 - 3.2 Who pays the cost.
4. Right to use other parts of the building (e.g., common areas, see also paragraph D. 3 and section M.).

I. INITIAL CONSTRUCTION TO COMPLETE THE PREMISES

1. Who is to do the work.
2. Nature and extent of work (if necessary, attach plans as schedule).
3. Who pays cost.
4. Completion date for work.
5. Obligation to comply with building codes, etc. and to obtain required permits, insurance, etc. and provision for payment.
6. Whether other party has right to approve plans, and contractor doing work.
7. Access to leased premises (including times and cost).
8. For work to be done by tenant:

Notes:

- 8.1 Tenant's obligations:
 - 8.1.1 To meet specified requirements before starting work (e.g., insurance, permits, bonds, letter of credit, security).
 - 8.1.2 To pay cost of landlord's review and approval of plans.
 - 8.1.3 To use specified contractors and consultants.
 - 8.1.4 To use contractors having union affiliations compatible with landlord's contractors.
 - 8.1.5 To comply with specified construction procedures.
 - 8.1.6 To submit to landlord's supervision.
 - 8.1.7 To protect landlord re: builders' liens, other liens, security interests in favour of third parties, etc.
 - 8.1.8 To take out any additional insurance reasonably required by landlord.
 - 8.1.9 To do work during specified hours only.
 - 8.1.10 Not to interfere with landlord's other construction or use of building by other tenants.
 - 8.1.11 To pay garbage removal costs, lifting costs, loading dock charges, etc.
 - 8.2 Whether landlord is to pay for work or pay inducements and, if so:
 - 8.2.1 Whether there is any security for this (e.g., letter of credit).
 - 8.2.2 When this is payable (e.g., on completion of work in accordance with specifications, on tenant's furnishing proof that related obligations have been paid and no builders' liens filed, on commencement of the lease or amortized over period of lease).
 - 8.3 Landlord's remedies if tenant defaults in construction.
9. Acceptance of premises by tenant (see paragraph F. 1.1.2).

Notes:

J. ALTERATIONS AND IMPROVEMENTS

1. Landlord's rights:
 - 1.1 To make changes to leased premises before commencement date (see paragraph D. 3).
 - 1.2 To make changes to building:
 - 1.2.1 Qualifications (e.g., whether leased premises can be adversely affected).
 - 1.2.2 Landlord's rights with respect to leased premises (e.g., right of entry, support).
 - 1.3 To grant, modify, or terminate easements or other agreements pertaining to use and maintenance of building.
 - 1.4 To use and make changes to pipes, wires, conduits, etc. in the leased premises, but not so as to interfere materially with use and enjoyment of premises; landlord to pay damages, tenant to permit reasonable access.
2. Tenant's rights and obligations:
 - 2.1 Right to alter premises and install trade fixtures: whether landlord's approval is required and is not to be unreasonably withheld.
 - 2.2 Obligations similar to those set out in paragraph I. 8.1.
 - 2.3 Obligation to protect landlord re: builders' liens, etc.
3. Ownership of fixtures: obligation to repair. Consider prohibiting tenant from creating a security interest in fixtures except with landlord's prior consent.
4. On termination of lease:
 - 4.1 Whether trade and other fixtures can or must be removed; must rent not be in default; whether landlord can require that the premises be returned to their original condition. (Deal with refusal or neglect of tenant to remove).
 - 4.2 Whether landlord has lien for unpaid rent or other default under lease. (Note: landlord will be required to rely on its rights under security interest or *The Landlord and Tenant Act*).
 - 4.3 Ownership of leasehold improvements, any right in favour of tenant to recover fair value if landlord becomes owner.

Notes:

K. MAINTENANCE AND REPAIRS

1. Covenant from landlord re: habitability, state of repair of premises, related portions of adjacent premises, common areas, HVAC (heating, ventilation, air conditioning), etc. at commencement of lease.
2. Guarantee from landlord as to condition of premises for specified period of time.
3. Landlord's obligation to make specified repairs; exception where there is serious damage (see section S); whether recoverable from tenant as operating costs.
4. Landlord's right to make other specified repairs.
5. Tenant's obligation to make specified repairs or replacements, including:
 - 5.1 Whether landlord's approval is required.
 - 5.2 Whether landlord may inspect and give notice requiring tenant to make repairs.
 - 5.3 Whether there is right to be reimbursed by landlord.
6. Tenant's responsibility for acts or omissions of tenant, its employees or customers.
7. Replacement of mechanical equipment.
8. Exclusions (e.g., ordinary wear and tear, structural repair and latent defects, damage by perils, whether insurance is relevant, etc.).
9. Responsibility for:
 - 9.1 Maintenance of building systems.
 - 9.2 Janitorial services (see paragraph L. 1.4).
 - 9.3 Painting and decorating.
 - 9.4 Compliance with building codes and building standards.
10. Procedures for determining standards of repair.
11. Procedures for determining responsibility for rectification of environmental hazards on the premises/building.

L. SERVICES TO BE FURNISHED BY LANDLORD

1. Services:
 - 1.1 Hot and cold water.

Notes:

- 1.2 Electricity.
- 1.3 Heat, climate control, smoke, odours from other premises.
- 1.4 Elevator service.
- 1.5 Janitorial services (see paragraph K. 9.2).
- 1.6 Removal of garbage and rubbish.
- 1.7 Private security service.
- 1.8 Tenant's name on building directory board.
2. Standards.
3. Whether tenant will pay for services in addition to rent.
4. Tenant's obligations (e.g., energy conservation).

M. COMMON AREAS

1. Description of common areas (e.g., entrance foyer, lobby, parking lot, public entrance doors, halls, stairways, elevators, lavatories, shipping and receiving areas).
2. Parties who share them.
3. Whether landlord has exclusive right of control over them, and right to make rules and regulations.
4. Whether landlord is entitled to change them; qualifications on right (e.g., protection of tenant's right of access to premises).
5. Tenant's right to use them, subject to landlord's rules and regulations and any other specified restrictions (non-exclusive, non-transferable license).
6. Landlord's obligation to maintain them for use and benefit of all tenants, including:
 - 6.1 Hours of operation.
 - 6.2 Conditions for altering or closing common areas.
 - 6.3 Standard of maintenance and operation required of landlord.
 - 6.4 Restrictions on merchandising in common areas.
 - 6.5 Whether revenue from common areas is offset against maintenance and operating costs of these areas.

Notes:

7. Tenant's obligation to pay for specified 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).
8. Potential liability of tenant for accidents which occur in common areas.

N. PARKING

1. Whether parking is included in leased premises or is subject of separate agreement (whether lease or license).
2. Location and whether it can be changed by either party.
3. Landlord's obligations:
 - 3.1 To maintain parking facilities.
 - 3.2 To maintain a ratio of public parking stalls to rentable area.
4. Tenant's costs.
5. Whether landlord receives revenue from common area parking facilities and, if so, whether revenue is offset against expenditures.
6. Rights of landlord to charge public for use of parking area in retail facility.

O. OPERATING COSTS

1. Clear and comprehensive definition:
 - 1.1 Inclusions:
 - 1.1.1 General (all costs of operating, maintaining, repairing, replacing, rebuilding, insuring, supervising and administering).
 - 1.1.2 Specific.
 - 1.2 Possible exclusions:
 - 1.2.1 Structural repairs.
 - 1.2.2 Improvements, additions or alterations (except those made to reduce operating costs or to comply with changes in the law).
 - 1.2.3 Costs for which landlord is reimbursed or which are covered under contractor warranties.
 - 1.2.4 Interest on capital retirement of debt.

Notes:

- 1.2.5 Costs incurred for direct account of specific tenant or for unleased space.
- 1.2.6 Management costs not related to maintenance or operation (e.g., leasing expenses, promotional expenses).
- 1.2.7 Capital cost allowance, depreciation (also see paragraph O. 1.3); expensing capital repairs and replacements.
- 1.2.8 Lease rentals for land.
- 1.2.9 Capital tax, income, profits, tax, GST for which landlord receives input tax credit and other similar taxes.
- 1.2.10 Costs for public facilities or incurred to meet development agreement obligations.
- 1.2.11 Costs recovered directly from tenant for separate charges relating to his or her other premises.
- 1.2.12 Revenue received for common areas and facilities.
- 1.2.13 Costs reimbursed by insurer.
- 1.2.14 Inherent structural/construction defects.
- 1.2.15 Amounts required to rectify environmental hazards existing prior to tenancy.
- 1.3 How capital costs and depreciation are dealt with (see also paragraph O. 1.2.7).
- 1.4 How operating costs are calculated, including procedures for adjustment if:
 - 1.4.1 Estimates are used.
 - 1.4.2 Operating costs increase or decrease.
 - 1.4.3 Different are included in operating costs for different years.
 - 1.4.4 There are changes in area of premises, amount of unleased space or total rentable area.
- 2. Tenant's share:
 - 2.1 Whether tenant must pay proportionate share.

Notes:

- 2.2 How tenant's share is calculated:
 - 2.2.1 Method (e.g., payment on monthly estimates, payment on request, adjustment when final costs known or documentation required from landlord).
 - 2.2.2 What areas of premises or building are included; denominator to be building area from time to time, to give flexibility for future expansion.
 - 2.2.3 Whether tenant must pay share of all or only some operating costs (e.g., costs of various types allocated to different parts of building or types of premises).
 - 2.3 Whether landlord reserves right to allocate costs on equitable basis.
 - 2.4 Whether all tenants must pay proportionate share or whether some are given special treatment, in which case the proportionate share may be required to be adjusted.
3. Management fees.

P. TAXES

- 1. Landlord's obligation to pay specified taxes (e.g., municipal taxes, business taxes).
- 2. Tenant's obligation to pay (prior to due date):
 - 2.1 Property taxes:
 - 2.1.1 On leased premises.
 - 2.1.2 On proportionate share of taxes for the building, if premises are not assessed separately (define and specify exclusions, e.g., improvements made by landlord or other tenants which result in taxes).
 - 2.1.3 On fixtures or improvements to premises.
 - 2.2 Business taxes.
- 3. Method of calculating and adjusting present and future payments (generally the same as used re: operating costs: see section O).
- 4. Whether tenant has right to contest taxes and, if so, security and indemnity provisions.
- 5. Whether tenant must furnish evidence of payment.
- 6. Tenant to pay GST assessed for rent or any other payable by tenant under lease.
- 7. Consider inclusion of capital tax, if not dealt with in operating costs.

Notes:

Q. UTILITIES AND HVAC

1. Landlord's obligation to provide:
 - 1.1 Type of service (e.g., electric power, heating, ventilation, air conditioning).
 - 1.2 Hours of operation.
 - 1.3 Standards, provision for initial adjustment period; not liable if services interrupted for repairs, etc.
2. Tenant's obligations:
 - 2.1 To pay:
 - 2.1.1 Own costs, where there is separate metering.
 - 2.1.2 Proportionate share of costs for building (e.g., see sections O. and P.); whether landlord may allocate on basis of use.
 - 2.2 Regarding energy conservation.
 - 2.3 To maintain sufficient heat or air conditioning so as not to affect overall temperature in rest of building.
3. Provisions relating to excessive use by tenant.

R. INSURANCE AND INDEMNITY

1. Landlord's obligation to insure:
 - 1.1 Types of insurance required, for example:
 - 1.1.1 All risk insurance for building, improvements, common facilities; or fire and extended coverage, consider also building bylaw endorsement.
 - 1.1.2 Boilers, pressure vessels.
 - 1.1.3 Third party liability (including personal injury and property damage)
 - 1.1.4 Business interruption.
 - 1.2 Waiver of subrogation in favour of tenant.
 - 1.3 Whether tenant must be named as co-insured in liability policies, and whether landlord must obtain cross-liability clause.

Notes:

2. Tenant's obligation to insure:
 - 2.1 Types of insurance required, for example:
 - 2.1.1 All-risk insurance for stock-in-trade, furniture, etc. and leasehold improvements (full replacement cost).
 - 2.1.2 General liability insurance (including public liability and property damage).
 - 2.1.3 Legal liability.
 - 2.1.4 Business interruption.
 - 2.1.5 Such other insurance as landlord or mortgagee may reasonably require.
 - 2.2 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 landlord, notice of non-payment given to landlord, requirement that tenant's insurance be considered primary and will not call into contribution landlord's policies).
 - 2.3 Whether minimum amounts are specified.
 - 2.4 Whether landlord must be named as co-insured (e.g., for improvements paid for by landlord).
 - 2.5 Landlord's rights:
 - 2.5.1 To approve policies.
 - 2.5.2 To be given evidence of coverage.
 - 2.5.3 To insure and recover cost if tenant fails to insure or if insurer threatens to cancel policy.
3. Tenant's covenant to indemnify landlord (e.g., for breach of covenant, property damage, injury).
4. Landlord's waiver of responsibility (e.g., for property damage, injury), except where caused by landlord's negligence (or gross negligence) or willful acts.
5. Tenant's responsibility for increase in landlord's insurance premiums.

Notes:

S. DAMAGE AND DESTRUCTION

1. Type of peril (all, or only those insured by landlord).
2. Degree of damage (consider substantial damage to building but not premises, etc.).
3. Effect on lease, for example:
 - 3.1 Abatement of rent (except where tenant at fault); extent of abatement.
 - 3.2 Landlord's obligation or option to repair or rebuild (consider use of insurance proceeds); tenant's obligations. Should be consistent with maintenance and repair obligations (see section K).
 - 3.3 Rights of parties to terminate lease (see paragraph BB. 2).
 - 3.4 Lease becomes void.
4. Landlord not responsible for specified types of loss or damage.
5. Provisions for expropriation and condemnation.

T. CHANGES IN PARTIES

1. Assignment and subletting:
 - 1.1 Right to assign, sublet or otherwise part with possession; in what circumstances, whether prior written approval is required (approval not to be unreasonably withheld; objective tests for withholding approval; ensure tests for withholding approval are "without limitation" to other reasonable tests). Note: s. 47(1) of *The Landlord and Tenant Act*.
 - 1.2 Whether successive assignees and any subtenants are required to become contractually bound to landlord.
 - 1.3 Whether original tenant remains liable under lease, subject to release by landlord.
 - 1.4 Manner in which provisions of lease apply to assignee or subtenant.
 - 1.5 Provisions regarding:
 - 1.5.1 Right of first refusal in favour of landlord.
 - 1.5.2 Sharing of profit rent with landlord.
 - 1.5.3 Assignment of subtenant's rent to landlord.
 - 1.5.4 Landlord's right to terminate lease.

Notes:

- 1.6 Provisions regarding subsequent assignment, subletting, etc.
- 1.7 Whether tenant is prohibited from advertising premises for rent, sublease, etc.
2. Change in control of a party:
 - 2.1 Whether consent of landlord required; whether advance notice required.
 - 2.2 Effect.
 - 2.3 Whether this is different for public corporation traded and listed on recognized stock exchange.
 - 2.4 Tenant's obligation to furnish share records.
3. Transfer of property by landlord; landlord not liable if transferee assumes obligations.
4. Whether tenant has right to finance operation by mortgaging lease.
5. Consider prohibiting tenant from creating security interest in fixtures without landlord's prior written consent.

U. GENERAL RIGHTS OF LANDLORD

1. Right to make rules and regulations:
 - 1.1 Type of rules and regulations; whether they apply to common areas and premises and to all visitors to premises.
 - 1.2 Relationship to lease (e.g., whether they become part of lease; whether they may contradict lease).
 - 1.3 Notice requirements.
2. Right to enter premises:
 - 2.1 For specified purposes (e.g., to inspect, make repairs).
 - 2.2 At specified times.
3. Right to exhibit premises:
 - 3.1 For specified purposes (e.g., for rental, for financing, for prospective sale of building).
 - 3.2 At specified times (e.g., within certain period of time before lease expires).
4. Designation of manager of building.

Notes:

V. GENERAL COVENANTS OF LANDLORD

1. That landlord has sufficient interest in property to grant leasehold.
2. Building and improvements comply with building and zoning requirements.
3. Covenant of quiet enjoyment (subject to tenant complying with terms of lease).
4. Covenant to comply with relevant laws.
5. Covenant to pay taxes (subject to tenant paying its share).

W. GENERAL COVENANTS OF TENANT

1. To pay rent as provided in lease.
2. To perform covenants in lease.
3. To pay costs incurred by landlord in enforcing provisions of lease, on solicitor-and-client basis.
4. To subordinate lease to any mortgages or to register lease in priority to any mortgage. Consider also:
 - 4.1 Appointment of landlord as tenant's attorney to execute postponement documents.
 - 4.2 Whether subordination clause is operative without further documentation (e.g., not agreement to subordinate). Whether attornment is operative without express agreement of lender.
 - 4.3 Tenant's requirement for non-disturbance agreement from landlord's mortgagee.
 - 4.4 Whether non-disturbance agreement is subject to tenant not being in default or landlord otherwise being entitled to terminate.
 - 4.5 To peaceably surrender premises at end of term in good condition.
 - 4.6 To deliver estoppel certificates from time to time in form and substance required by landlord.

X. TENANT'S OPTIONS

1. Option or right of first refusal to rent other space in building.
2. Option or right of first refusal to purchase premises.

Notes:

3. Option to renew:
 - 3.1 Whether term, rent and essential conditions are certain. (Consider fair market rental value test if amount to be agreed or arbitrated.)
 - 3.2 Method and timing for determining the terms.
 - 3.3 Method and timing of exercise of option.
 - 3.4 Whether there are conditions precedent to exercise of right (e.g., no existing default, no default during term of lease and no assignment of lease).
 - 3.5 Whether guarantor, indemnifier or tenant who has assigned its leasehold interest during initial term must join in exercise of option and execute new indemnity covenant. (Note, landlord may prefer indemnity to guarantee).
 - 3.6 Whether option may be assigned.
 - 3.7 Whether, on renewal, there is option to renew again.

Y. MERCHANTS' ASSOCIATION OR PROMOTION FUND FOR SHOPPING CENTRE

1. Merchants' association:
 - 1.1 Tenant's covenants:
 - 1.1.1 To join, maintain membership and pay dues.
 - 1.1.2 To comply with rules.
 - 1.1.3 To promote shopping centre in its advertising.
 - 1.2 Landlord's covenants (e.g., to contribute to promotion).
 - 1.3 Rules to be approved by landlord.
2. Promotion fund:
 - 2.1 Tenant's covenant to contribute.
 - 2.2 Landlord's covenant to contribute.
 - 2.3 Promotion director.
 - 2.4 Fund to be used to promote the centre.

Z. REGISTRATION

1. Whether lease is to be registered by Interest Registration; any special rights to be protected (e.g. right of first refusal, right to renew, option to purchase).

Notes:

AA. OVERHOLDING

1. Status of tenant (must be month to month, otherwise possible renewal of term).
2. Obligations of parties (e.g., rent).

BB. TERMINATION OF LEASE

1. At option of one or both parties.
2. Whether specified events will terminate lease or may terminate it at landlord's option (if not, make other provisions for them):
 - 2.1 Bankruptcy, insolvency, etc. of tenant, guarantor and assignee (note: *The Landlord and Tenant Act*, ss. 42 to 49 and *Bankruptcy and Insolvency Act*, ss. 30, 65, 69 and 69.1).
 - 2.2 Damage or destruction of specified degree (e.g., that will take specified time to repair, or that affects specified percentage of leasable premises).
 - 2.3 Expropriation of interest of one or both parties.
3. On default (see paragraph CC. 6).
4. Whether landlord has right to terminate lease early for sale, demolition or redevelopment and, if so, notice requirements and compensation to tenant.
5. If surrender of lease, consider s. 2.8 of *The Landlord and Tenant Act*.

CC. DEFAULT

1. Provisions regarding violation by either party of obligations set out above (consider including with clauses creating each obligation).
2. Description of events of default (e.g., for tenant these would include nonpayment of rent, breach of covenant, insolvency and abandonment of premises), whether delay constitutes default and whether time for performance may be extended.
3. Force majeure clause.
4. Cross-default to other agreements.
5. Whether notice must be given; whether party is entitled to reasonable time to cure default and, if so, what is reasonable time in different circumstances.
6. Whether default may be cured by non-defaulting party; whether defaulting party is liable for costs.

Notes:

7. Remedies (in addition to any provisions included throughout lease):
 - 7.1 Tenant's remedies, including circumstances in which the lease may be terminated and procedures to be followed: see paragraph BB. 2).
 - 7.2 Landlord's remedies:
 - 7.2.1 Remedies are cumulative and in addition to any other remedies.
 - 7.2.2 Interest (on demand).
 - 7.2.3 Collection of rent; acceleration.
 - 7.2.4 Re-entry.
 - 7.2.5 Re-letting as tenant's agent and collection of rent.
 - 7.2.6 Seizure.
 - 7.2.7 Damages, including present value of rent for balance of term.
 - 7.2.8 Whether tenant waives any statutory protection against distress.
 - 7.2.9 Circumstances in which lease may be terminated. Waiver of default does not affect rights arising from subsequent defaults.
 - 7.3 Notice requirements.

DD. INTERPRETATION AND GENERAL PROVISIONS

1. Definitions.
2. Choice of law, attorn to jurisdiction of courts.
3. Principles that govern interpretation of agreement (e.g., use of masculine form, insertion of headings for convenience only).
4. Lease constitutes entire agreement, relationship to agreement to lease (e.g., merger).
5. Severability.
6. Time is of essence.
7. Notices.
8. Enurement.
9. Amendment.

Notes:

10. Arbitration and other methods for resolving disagreements (consider including specific provisions with relevant clauses of agreement).
11. Costs.
12. Statement of relationship (e.g., negation of partnership or joint venture).
13. Security for tenant's performance of its obligations:
 - 13.1 Security deposit.
 - 13.2 Letter of credit.
 - 13.3 Security agreement.
14. Net lease.
15. Schedules.

EE. INDEMNITY