INDEX

ACCESS
excavation, 301
right of entry, 352

ACCORD AND SATISFACTION, 403

ACT, DEFINED, 11

ADDITIONAL RENT, DEFINED, 12

ADVERTISING, 145, 148, 248

AGENCY
no relationship created by lease, 405

AIR-CONDITIONING
responsibilities re, 137
services, 448

ALTERATIONS
defined, 13
generally. See ACCESS

ARBITRATION
market rent, re, 492
renewal of lease, re, 465

ARCHITECT, DEFINED, 13

ARCHITECT'S CERTIFICATE, 79, 262

ASSIGNMENT
landlord’s consent —
requirement, 265
unreasonably withheld, 265
transfer by tenant. See TRANSFER
ATTORNMENT. See SUBORDINATION AND ATTORNMENT

AUDIT, 102, 104
lease, 105

BANKRUPTCY
act of default, as, 317
Bankruptcy and Insolvency Act rights, 317, 378, 382
indemnity agreement provisions re, 424, 458
trustee in bankruptcy of transferee, termination of lease by, 275

BASEMENT AREAS, DEFINED, 14

BROKERAGE COMMISSIONS, 405

CAPITAL TAX, DEFINED, 14

CENTRE
changes to, 124
defined, 15
destruction of, 256
flea markets, use for, 121
floor plan of, 439
food court provisions, 18, 130
kiosks, 121, 127, 128
landlord’s control and maintenance, 119, 141, 236
leasehold improvements, 26, 426
legal description of, 439, 657
no obligation to complete construction, 418, 654
parking, 514
proportionate share of operating costs —
    payment of, 134
tenant to bear, 130
relocation of premises, 127
roof, use of, 17
use of common facilities, 80, 119
weighted rentable area of, 68-69

CLAIMS
defined, 16
economic loss claim, 383, 642
liability of landlord for, 452, 675

COMMENCEMENT DATE, 18, 50, 80, 203, 400

COMMON FACILITIES
defined, 16
use of, 80, 119
CONDUCT OF BUSINESS

concessions, 191
continuous operation of business, 170
   mandatory injunction cases, 173
tenant’s options, 181
destruction of premises, 71, 253, 256
dispensing machines, 188
energy conservation, 188
entrances and exits, 186
financing arrangements, 33, 95, 171
franchises, 191
harmful selling or merchandise, 189
hazardous substances, 189
hours of operation, 182
illegal or obscene merchandise, 190
indemnities, 462
Internet shopping program, 190
Investment Canada Act, 203
licences, 191
lighting and signage, 186
observance of law, 194
radius clause, 203
reputable merchandise, 171, 176
shipping and receiving, 186
standards, 171
telecommunication systems, 140, 187
ticket validation system, 186
vestibules, use of, 186

CONFIDENTIALITY, 419

CONSTITUTION OF TENANT, 397

CONSTRUCTION OF PREMISES

generally, 439
interim service charges, 445
landlord’s work, 253, 442
payment schedule, 448
tenant’s acknowledgments, 439
tenant’s work, 443
landlord’s requirements for, 445
responsibilities, 443
schedule for, 444

CONTINUOUS OPERATION. See CONDUCT OF BUSINESS

CORPORATE SEAL

requirement for, 6
CORPORATE SEAL — continued
signing authority, 7

CORPORATE TENANCY, 419

CORPORATION
indemnitor, as, 463
transferee of lease, as, 270

C.P.I., DEFINED, 16

CREDIT, 7

DATE OF LEASE, 8

DEFAULT
acts of —
 abandonment of premises, 318
 remedies, 324
 bankruptcy or insolvency, 317
 bulk sale, 318
 change of control of tenant, 319
 confidentiality, 320
 dissolution or winding-up, 317
 distress, levy of, 319
 failure to carry on business, 319, 320, 372
 hazardous conditions, failure to cure, 320
 insurance, requirement to maintain, 319
 misrepresentation of information, 316
 rent, failure to pay, 311, 320
 rules and regulations, failure to observe, 321
 sale of goods, 318
 security deposit, failure to provide, 320
 s. 19(2) notice, 311
 terms of lease, non-observance of, 311
 unauthorized use of premises, 319
 website shut down, 320
 charges collectable as rent, 371
 curing by landlord, 366
 paying rent, 366
 performance of tenant’s covenants, 367
 distress. See DISTRESS
 expenses, 344
 failure to carry on business, 319, 320, 372
 landlord’s options, 373
 mandatory court order/injunction, 374
 re-entry, right of, 311
 relet, right to, 336
DEFAULT — continued
remedies, generally, 374
  action, proceeding or counterclaim, restrictions on, 377
Bankruptcy and Insolvency Act rights, 378, 382
“community of interest” action, 383
cconsent, withholding of, 382
economic loss claims, 383
financial information, provision of, 381
injunctive relief, 382
Limitations Act provisions, 384
merger defence, 378, 382
notice re: curing default, 375
renewal or extension of lease, 380
restrictive covenants, 380, 383
rights of redemption, 377
set-off, 382
termination of lease, tenant’s right, 376
rights, exercising of, 321
security agreement, 367
  after-acquired collateral, 368
  P.P.S.A. financing statement, registration of, 368
subordination to bank financing, 368
under other lease, 390

DEFAULT CLAUSE, 426

DEFINITIONS
Act being Commercial Tenancy Act, 11
additional rent, 12
alterations, 13
architect, 13
basement areas, 14
capital tax, 14
centre, 15
claims, 16
common facilities, 16
C.P.I., 16
fixturing period, 18
food court, 18
generally, 11
gross revenue, 18
hazardous substance, 24
H.S.T., 24
indemnitor, 25
injury, 25
jurisdiction, 25
land surveyor, 25
DEFINITIONS — continued
landlord, 25
large corporations tax, 26
laws, 26
lease, 26
leasehold improvements, 26
mezzanine areas, 32
minimum rent, 33
mortgagee, 33
opening date, 33
operating costs, 33
owner, 47
percentage rent, 47
person, 48
P.P.S.A., 48
premises, 48
prime rate, 48
proportionate share, 48
rent, 49
rentable area of premises, 49
rental year, 50
representations, 51
retail leasable premises, 51
rules and regulations, 51
sign or signs, 52
storage areas, 52
taxes, 52
tenant, 57
term, 58
trade fixtures, 58
weighted rentable area of the centre, 68
weighted rentable area of the premises, 69

DELAYED POSSESSION, 83

DESTRUCTION
of centre, 256
of premises, 185, 253

DISTRESS
bailiff’s costs, 361
change of locks, 351
dangers of, 362
described, 346
evaluation of distrained goods, 355
excessive, 355
Execution Act exemptions, 349, 362
DISTRESS — continued
financed goods, 356
following removed goods, 355
forcible entry, 352
"illegal distress", 347
"irregular distress", 344
liability, 354
notice of, 350, 354
P.P.S.A. issues, 357
professional records, 365
repudiation/cancellation of lease, as, 353
Retail Sales Tax Act clearance certificate, 363
right to distrain, 349
subtenant’s goods, 359
superliens, 363
tenant’s options, 356
timing of, 353
"wrongful distress", 347

DOCUMENTS, EXECUTION OF. See EXECUTION OF DOCUMENTS

EARLY OCCUPANCY, 83

ENTRY, RIGHT OF, 299

ENVIRONMENTAL QUESTIONNAIRE, 454
premises, use of, 194

ESTOPPEL CERTIFICATE, 304

EXECUTION OF DOCUMENTS
landlord as tenant’s attorney, 310
tenant’s responsibility, 309

EXPROPRIATION, 261
architect’s certificate, 262

EXTENSION OF TERM
good faith negotiation, 499
market rent, arbitration re, 495
minimum rent, 492
personal nature of option, 491
renewal of lease vs., 466
renovations, 478
rent, payment of, 490
terms of lease, exceptions to, 491
written notice requirement, 490, 498
FINANCIAL INFORMATION, 310

FIXTURES
tenant’s work re, 84
trade fixtures, 58

FIXTURING PERIOD, DEFINED, 18

FLOOR PLAN, 439

FOOD COURT
defined, 18
provisions re, 130
use of premises as, 159

FORCE MAJEURE, 405

FORFEITURE. See DEFAULT

GROSS REVENUE, DEFINED, 18

H.S.T.
defined, 24
payment of, 116

HAZARDOUS CONDITIONS, FAILURE TO CURE, 320

HAZARDOUS SUBSTANCE
conduct of business and, 189
defined, 24

HEATING
responsibilities re, 139
services, 448

INDEMNITOR
defined, 25
guarantor vs., 6
identity of, 6

INDEMNITY
conduct of business and, 191
insurance and. See INSURANCE

INDEMNITY AGREEMENT, 424
actions or proceedings, 463
bankruptcy, etc., circumstances of, 460
complete and primary liability, 458
corporate indemnitor, 463
debts and liabilities, 464
INDEMNITY AGREEMENT — continued
  default under lease, 460
  information, delivery of, 464
  joint and several liability, 464
  modification of, 463
  notice, 460
  term of, 458

INJUNCTION, 173, 374, 382

INJURY, DEFINED, 25

INSURANCE
  cancellation of, 217
  generally, 207
  indemnity of landlord, 220, 224
    landlord’s fault or negligence, 224
    lease enforcement costs, 225
    limitation of liability, employee coverage, 226
    litigation, 225
  insurance premiums, increase in, 216
  landlord’s insurance, 220
    waiver of subrogation, 221
  loss or damage, 218
    indemnification, 220
    landlord’s negligence, 218
    landlord’s non-responsibility, 218
    tenant exceptions, 207
  tenant’s, 207
    all risks policy, meaning of, 208
    boiler and machinery insurance, 209
    by-law endorsement, 213
    cancellation prohibition, 207
    certificates of insurance, delivery of, 208
    commercial general liability insurance, inclusive limits, 214
    default, 216
    loss of earnings, 213
    mortgage clause, 212
    waiver of subrogation rights, 210

INTENT. See INTERPRETATION CLAUSES

INTERPRETATION CLAUSES
  entire agreement, 75
  extended meanings, 72
  governing law, 77
  headings, 72
  net lease, 71
INTERPRETATION CLAUSES — continued
obligations as covenants, 72
partial invalidity, 74
time of the essence, 77

INVESTMENT CANADA ACT, 203

JURISDICTION, DEFINED, 25

LAND SURVEYOR, DEFINED, 25

LANDLORD
defined, 25
identity of, 4
searches re, 4-5

LARGE CORPORATIONS TAX, DEFINED, 26

LAWS, DEFINED, 26

LEASE
audit, 105
date of, 8
default under. See DEFAULT
defined, 26
extension of term. See EXTENSION OF TERM
form of, 7
registration of, 339-41
renewal of. See RENEWAL, OPTION RE
transfer of. See TRANSFER

LEASE FORM, 7

LEASEHOLD IMPROVEMENT ALLOWANCE, 426

LEASEHOLD IMPROVEMENTS
defined, 26
centre and, 125
LIMITED ASSETS, 410

MAINTENANCE. See REPAIRS AND MAINTENANCE

MEDIATION, 480

MERCHANTS' ASSOCIATION, 147

METRIC CONVERSION, 418

MEZZANINE AREAS, DEFINED, 32

MINIMUM RENT
 defined, 33
 extension of term and, 492
 generally, 85
 increase in, 96
 renewal, option re, 472
 transfer terms and conditions, 272

MORTGAGEE, 33

NEGOTIATIONS
 good faith in, 499
 methods of, 4
 strategies, 2

NET LEASE, 71

NOTICES
 delivery requirements re, 406
 e-mail delivery, 407
 invalid, effect of, 409

OFFER TO LEASE
 agreement to lease vs., 3
 changes, right to make, 2
 negotiating strategies, 2
 standard form, reasons not to sign, 2
 tenant clauses, 2
OPENING DATE, DEFINED, 33
OPERATING COSTS, DEFINED, 33 45
OPTION IN PREMISES, 418
OPTION TO RENEW. See RENEWAL, OPTION RE
OVERHOLDING, 393
OWNER, DEFINED, 47
PARTNERSHIP
not created by lease, 405
PERCENTAGE RENT
defined, 47
generally. See RENT
renewal of lease and, 476
transfer of lease and, 273
PERSON, DEFINED, 48
PERSONAL INFORMATION, 310
PLANNING ACT, COMPLIANCE WITH, 412
P.P.S.A.
defined, 48
distress and, 357
PREMISES
abandonment of, 318
acceptance of, 83
advertising of, 286
architect’s certificate re, 79
common facilities, use of, 80
construction of. See CONSTRUCTION OF PREMISES
defined, 48
delayed possession, 83
destruction of, 185, 253
everly occupancy, 83
floor plan re, 79
interior vs. exterior, 80
physical boundaries in lease, 80
relocation of, 124
renovation of, 477
surrender of, 238
tenant’s work re fixturing, 84
PREMISES — continued
unauthorized use of, 319
use of. See USE OF PREMISES
weighted rentable area of, 68

PRIME RATE, DEFINED, 48

PROMOTION FUND, 145

PROPORTIONATE SHARE, DEFINED, 48

QUIET ENJOYMENT, 419

REASONABILITY CLAUSE, 425

REFUSAL, FIRST RIGHT OF
case law upholding, 430
forms of, 429

REGISTRATION OF LEASE, 410

RENEWAL, OPTION RE
arbitration/mediation re, 481
extension of term vs., 465
generally, 465
litigation re, 483
minimum rent, 472
payment of rent condition, 469
percentage rent, 476
personal nature of right, 466
renegotiation of renewal option, sample, 478
renewal term, 472
renovation of premises, 478
same options and conditions, 471
written notice condition, 471, 477, 481

RENOVATIONS
extension of term and, 497
renewal of lease and, 498

RENT, see also MINIMUM RENT; PERCENTAGE RENT
additional, 11
accrued, 12
audit, right to, 104
charges collectable as, 371
cost of construction increase, 96
covenant to pay, 85
default and, 311, 320
defined, 49
RENT — continued
extension of term and, 490
gross revenue reports, 100
   annual statements, 101
certified statement, 101
change of procedure, 102
delivery of statements and audits, 102
electronic transmission, 102
monthly statements, 100
financing increase, 95
initial rent, 95
letter of credit, 89
market, 492
minimum rent, 85
   extension of term and, 492, 498
   increase in, 96
past due, 108
payment, 86
   advance rent, 87
   automatic debiting system, 87
   post-dated cheques, 86
   service authorization form, automatic rent payment, 456
percentage rent, 97
   adjustment, 99
   CPI adjustment, 100
   failure to pay certain level of, 99
   payment of, 98
   percentage rent factor, 97
professional fees, 95
sales trends, 103
security deposit, 97
tenant’s failure, 107
tenant’s records, 103
   right to examine, 104
transfer and, 267, 272, 273

RENTABLE AREA OF PREMISES, DEFINED, 49

RENTAL YEAR, DEFINED, 50

REPAIRS AND MAINTENANCE
alterations by tenant —
   approval by landlord, 224
by landlord, 236
by tenant, 229
damage or deficiency, notice by tenant, 247
liens, tenant to discharge, 247
REPAIRS AND MAINTENANCE — continued
overloading —
  of facilities, 241
  of floors, 242
pest extermination, 250
removal and restoration by tenant, 242
repair —
  on notice, 237
  where tenant at fault, 240
signs and advertising, restrictions on, 248
surrender of premises, 238

REPRESENTATIONS, DEFINED, 51

RESTRICTIVE COVENANT
enforceability of, 436
example of landlord’s draft, 432
resistance by landlord, 431
specificity, requirement for, 432
successor in interest, application to, 435

RETAIL LEASABLE PREMISES, DEFINED, 51

RIGHT OF FIRST REFUSAL. See REFUSAL, FIRST RIGHT OF

RULES AND REGULATIONS
defined, 51
details of, 449
requirement to comply, 393

SECURITY DEPOSIT, 87, 320, 280

SECURITY INTERESTS. See DEFAULT

SHORT FORMS OF LEASES ACT, 8
form of, 8
notwithstanding clause, effect of, 9
provincial variations, 8
termination rights and, 9

SIGNS
conduct of business and, 184, 187
defined, 52
restrictions on, 248
STATUS STATEMENT, 303

STORAGE AREAS, DEFINED, 52

SUBLETTING. See TRANSFER

SUBORDINATION AND ATTORNMENT, 304
importance of, 305
new lease, contents of, 305
non-disturbance agreement, 306
redemption of mortgage by landlord, 306

SUBROGATION RIGHTS, 221

SUCCESSORS, 397

SURRENDER OF PREMISES, 238

TABLE OF CONTENTS, 10

TAXES
defined, 52
H.S.T., 116
payable by landlord, 111
payable by tenant —
  business taxes, etc., 115
  proportionate share, 111
per diem adjustment, 116
tenant's responsibility, 115

TENANT
collection of, 397
collection of premises and. See CONSTRUCTION OF PREMISES
default by. See DEFAULT
defined, 57
distress and. See DISTRESS
financial viability of, 6
identity of, 5
insurance of. See INSURANCE
married individual, as, 5
repairs and maintenance and. See REPAIRS AND MAINTENANCE
taxes payable by, 95, 96
trustee, as, 5
TELECOMMUNICATIONS, 122-4, 167-8

TELEPHONES, 122-4

TERM
commencement and ending date of, 66-8
defined, 58
delayed possession, 83
every occupancy, 83
extension of. See EXTENSION OF TERM
notice and certificates re, 82

TRADE FIXTURES, DEFINED, 58

TRANSFER
advertising of premises, 286
consent. See ”transfer”, alternative meaning
corporate ownership, 286
disposition by landlord, 288
landlord’s options, 279
  information requirements, 280
  right to terminate lease, 280
terms and conditions, 266
  amounts owed, payment in full, 274
  by operation of law, 267
  consent not constituting waiver, 266
default, circumstances of, 267
documentation re, preparation of, 268
liability of landlord for claims, 276
prohibition against, 267
renewal rights, 276
rent —
  collection of, 267
  minimum rent provisions, 272
  percentage rent, calculation of, 273
retention of rights under lease, no, 271
special conditions, 263
time limitation, 276
transferee —
  corporation, where, 270
  execution of agreement by, 268
  payments to tenant by, 271
trustee in bankruptcy of transferee, termination of lease by, 275
”transfer”, alternative meaning, 289

USE OF PREMISES
airlines, 149
art shop, 149
USE OF PREMISES — continued

bagel shop, 150
bakery, 151
barber shop, 151
beauty salon, 151
books and stationery, 152
bowling alley, 152
camera store, 152
candy store, 152
catalogue showroom, 152
clothing, 153
conduct of business. See CONDUCT OF BUSINESS
department store, 154
dollar store, 154
drapery store, 155
drug store, 156
dry cleaning, 156
fabric store, 156
financial institution, 156
florist, 157
food store, 157
delicatessen vs. European-style delicatessen, 157
food court, 159
restaurant, 160
snack bar, 161
furniture store, 161
generally, 149
gift shop, 161, 167
greeting card shop, 162
hardware store, 162
health food store, 163
jewellery store, 163
junior department store, 163
luggage and leather goods store, 164
musical instrument store, 164
non-arcade type store, 164
one-hour photofinishing store, 165
optical outlet, 165
pet shop, 166
photography studio, 166
prohibited activities, 169
record shop, 166
sportswear store, 166
supermarket, 166
tobacco and sundries store, 166
variety store, 167
video store, 167
UTILITIES
charges for, 137
deregulation, 139
heating, ventilation and air-conditioning —
  tenant’s responsibilities re, 139
  tenant’s share of cost, 139
telecommunications and data carrier, 140

VENTILATION, see also UTILITIES
services, 448

WAIVER, right of, 398

WEIGHTED RENTABLE AREA
of the centre, defined, 69
of the premises, defined, 68