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 consent, 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 early 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 accelerated, 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 - continuedextension 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

constitution of, 397 construction 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 early 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