

**43<sup>RD</sup> ANNUAL**



# **LAW CONFERENCE**

**October 16 - 19, 2013  
Manchester Grand Hyatt  
San Diego, CA**

**Program**

## Wednesday, October 16

**12:00 noon – 8:00 pm**

### Registration

**2:00 – 3:15 pm**

### Seminars

#### Seminar 1

#### **The Promises, Profits and Pitfalls of Public-Private Partnerships**

Declining tax revenues, burgeoning pension obligations, and budgetary constraints imposed by the current economic environment are limiting the public sector's capacity to invest in job creation and infrastructure. State and local regulatory challenges, such as the dissolution of redevelopment authorities in California and mandates for prevailing wages, are exacerbating the problem. At the same time, private equity and development interests are pursuing financial arrangements with the public sector on water, transportation and education facilities. How do public and private stakeholders work together to monetize revenue and provide public benefits? How are public-private partnerships being structured today to create value and transparency? Which models work, and which don't? This seminar will address the social, political and business issues that define the successful public-private partnership, providing recent examples and useful tools to enhance project profitability and avoid costly pitfalls.

#### **LEWIS G. FELDMAN**

Goodwin Procter LLP  
Los Angeles, CA

#### **AARON G. MARCH**

White Goss Bowers March Shulte & Weisenfels  
Kansas City, MO

#### Seminar 2

#### **Are You a Hipster or Just a Non-Conformist? The Anatomy of a Lease: Conforming Deals**

In this seminar we will explore the key attributes of a retail lease transaction by analyzing basic leasing issues in the context of the "conformed" deal. We will engage in a lively discussion about which lease provisions are fundamental to any deal, which provisions require special tailoring due to site specific or deal specific considerations and the role of leasing counsel in identifying and addressing risks.

#### **KATHRYN R. ALBERGOTTI**

Albergotti Law  
Minneapolis, MN

#### **JARED E. OAKES**

Thompson Hine LLP  
Cleveland, OH

**2:00 – 3:15 pm**

### Workshops

#### Workshop 1

#### **Up, Up, and Away (From the Mall): Vertical and Street Retail**

Urban redevelopment is becoming more prevalent in retail and mixed-use development. A big part of this trend is the development of street retail and vertical shopping centers in-filling urban areas. This workshop will focus on unique legal and operational issues presented by urban vertical and street retail projects, such as cost sharing allocations, signage, exclusive and co-tenancy concerns, condominium associations, parking and loading concerns, use restrictions, easements, and future development rights. This workshop will be interactive and will encourage participants to ask questions and discuss "best practice" urban vertical and street retail project experiences.

#### **LORI E. KILBERG**

Hartman Simons & Wood, LLP  
Atlanta, GA

#### **MARC E. WASSER**

Goldfarb & Fleece LLP  
New York, NY

#### Workshop 2

#### **SNDA's and Estoppels: Separating the Wheat from the Chaff and Getting and Giving What is Truly Important**

This workshop will address the importance of estoppel certificates and subordination, non-disturbance and attornment agreements (SNDAs) and how to identify and protect the interests of tenants and landlords, with some attention to lender interests. The workshop will explore the perspectives of the various parties involved in the negotiation of each document and ways to finalize these simple, yet important, documents effectively and efficiently to achieve a result that satisfies the key interests of each party.

#### **GREGORY R. BEEKMAN**

Lewis Rice & Fingersh, L.C.  
St. Louis, MO

#### **STEVEN J. ROBERTS**

Hirschel, Savitz, Parker & Hollman, P.A.  
Gaithersburg, MD

#### Workshop 3

#### **Can I "Draft Around" The Bankruptcy Code? Bankruptcy Issues for Leasing Lawyers**

This interactive workshop will address the general lack of success of efforts made by transactional real estate attorneys to draft lease provisions that attempt to get "around" the Bankruptcy Code and discuss alternatives for drafting "into" the Bankruptcy Code by crafting lease provisions that protect shopping center landlords in

## Wednesday, October 16 continued

bankruptcy cases. We will highlight and explain why many existing lease provisions are not enforceable in a bankruptcy context and identify areas where practitioners can tailor lease language to maximize its effectiveness in a tenant's bankruptcy. "Real life" examples, such as assignment, attorneys' fees and use provisions, will be examined.

### **DUSTIN P. BRANCH**

Katten Muchin Rosenman LLP  
Los Angeles, CA

### **IVAN M. GOLD**

Allen Matkins  
San Francisco, CA

**3:30 – 4:45 pm**

## **General Session**

### **General Session 1**

#### **Casualty Insurance Retrospective: Major Catastrophes Do Happen – Handling Major Catastrophes and Lessons Learned for Drafting Leases and REAs**

This panel will share their varied experiences with major catastrophes, resulting claims and the manner in which such claims were handled and resolved in light of existing document language. Lessons learned from these experiences will be discussed to advise how improved language in leases and REAs can better protect your clients.

### **JEFFREY S. ALPAUGH**

Marsh & McLennan Companies, Inc.  
Boston, MA

### **ELWOOD F. CAHILL, JR.**

Sher Garner Cahill Richter Klein & Hilbert, LLC  
New Orleans, LA

### **RONALD L. GERN**

Pyramid Management Group  
Syracuse, NY

### **NEIL C. KAHN**

Goodman-Gable-Gould/Adjusters International  
Pikesville, MD

**3:30 – 4:45 pm**

## **Seminars**

### **Seminar 3**

#### **Yes, This Is Retail! How the Current Title Insurance Policy Forms Come to Life in Our Retail Practice**

This seminar will include an overview – with practical applications – of the ALTA title insurance policy forms for owners and lenders,

a discussion of the new ALTA endorsement forms and an analysis of non-imputation concerns and coverages, mezzanine loan structures and insuring options.

### **ELLIOT L. HURWITZ**

Chicago Title Insurance Company  
New York, NY

### **JULIE A.S. WILLIAMSON**

Akerman Senterfitt LLP  
Miami, FL

### **Seminar 4**

#### **Mixed Up over Mixed-Use: Structuring and Documenting Mixed-Use Projects**

Mixed-use projects have become increasingly popular and necessary to meet the lifestyle and smart growth demands of consumers and municipal planners. These projects present many design and construction challenges and require careful consideration of the legal structure and drafting alternatives, including REAs, vertical subdivisions and condominiums. The panelists will discuss the documents involved and practical and effective ways to draft the project documents to address the many issues that arise in a mixed-use project. Whether you represent the interests of the master developer, a specialty developer, the landlord, an office or retail tenant, or the lender, you will not want to miss this seminar.

### **SHARON NELSON CRAIG**

Lerch, Early & Brewer, Chtd.  
Bethesda, MD

### **ROGER WINSTON**

Ballard Spahr LLP  
Bethesda, MD

**3:30 – 4:45 pm**

## **Workshops**

### **Workshop 4**

#### **Subleasing Issues: It Takes Three to Tango**

This workshop will explore the reasons retailers focus on subleasing rights and balancing those objectives with a landlord's desire for certainty as to its tenant mix. We will explore how these issues affect drafting and negotiating these clauses from the landlord and tenant perspectives and will review hypothetical fact patterns to facilitate discussion.

### **CONNIE SIMMONS TAYLOR**

Baker Botts LLP  
Houston, TX

### **THEODORE I. YI**

Quarles & Brady LLP  
Chicago, IL

## Wednesday, October 16 continued

### Workshop 5

#### Current Tax Issues Involving Shopping Center Leases and Operations

This workshop will address a variety of the most important federal income tax issues for both landlords and tenants. Among the issues discussed will be the treatment of tenant improvements, payments for options, special considerations arising from REIT ownership, and alternative energy incentives.

##### RONALD W. GARRITY

Greene Radovsky Maloney Share & Hennigh LLP  
San Francisco, CA

##### LOUIS B. SCHATZ

Shipman & Goodwin LLP  
Stamford, CT

### Workshop 6

#### Entitlements: Sharing Tips on Successfully Navigating the Municipal Approval Process

Attendees will discuss how to overcome common challenges in the entitlements process. This workshop will focus on how to make compelling arguments to boards and commissions that your use is permitted, with a goal of maximizing long-term flexibility in approvals. Practical tips on dealing with site plan changes, parking, sustainability policies, and creating consensus among all stakeholders will be discussed by presenters and attendees alike.

##### JERRY L. ENGEN

Westfield, LLC  
San Diego, CA

##### DONNA J. PUGH

Foley & Lardner LLP  
Chicago, IL

### Workshop 7

#### Outparcel Leasing and Development: Balancing the Competing Interests of Landlord, Tenant and the Shopping Center

This workshop will focus on the unique issues that arise between landlords and tenants when leasing outparcels and explore the development challenges presented by outparcel leasing, including balancing the competing interests of the outparcel use and the remainder of the shopping center. We will also survey trends in outparcel leasing and development, including uses beyond retail and restaurant such as medical, entertainment, hotel, office, and residential. This workshop will provide an opportunity for participants to ask questions and discuss their own best practices in outparcel leasing and development.

##### JOEL R. HALL

Law Offices of Joel R. Hall  
Santa Rosa, CA

##### ANDREW P. MASSMANN

General Growth Properties, Inc.  
Chicago, IL

### 3:30 – 4:45 pm

#### Peer to Peer



##### Peer to Peer 1

#### Delivery Date Conditions: Delivery and Rent Commencement Concerns in a Redeveloping Center

There are a myriad of issues that landlords and tenants need to address and balance prior to delivering and accepting possession of a premises or building pad. In the context of the redevelopment of an existing shopping center, these issues are even more complicated due to the operational and business needs of the existing tenants and occupants of the shopping center. This peer to peer forum will address the significant business, timing and legal issues encountered when delivering possession of new premises and pad sites during the course of redeveloping an existing shopping center.

##### ROBERT C. ONDAK, JR.

Benesch, Friedlander, Coplan & Aronoff  
Cleveland, OH

##### DAVID C. SKRILOW

Law Offices of David Skrilow  
New York, NY

### 5:00 – 6:30 pm

#### First Timers &

#### Next Generation Orientation



Get inside tips on how to make the most of your first Law Conference at this special welcome reception. Long-time attendees will host small discussion tables to share their insights and answer your questions. This is a great networking opportunity to kick off your conference experience. Business casual attire is recommended.

### 6:30 – 8:00 pm

#### Welcome Reception

It's opening night of the conference and all registrants are invited to get together for cocktails and networking under the stars. Business casual attire is recommended.

## Thursday, October 17

7:00 am – 2:00 pm

### Registration

7:00 – 8:15 am

### Roundtable Discussions

8:15 – 9:30 am

### General Session

#### General Session 2

##### Solving an Ethical Dilemma: Who's the Client?

Sure, we all think we know who our client is — if we're in-house, it's the corporate entity, and if we're outside counsel, it's the entity that retained us. Isn't that right? Wait! Are you sure that this is the correct answer when many business structures involve subsidiaries, special purpose entities, joint ventures, interlocking boards, or the same corporate contact who wears multiple hats? Back by popular demand, nationally-known speaker Mike Rubin will lead us through a fast-paced romp with his unique blend of scholarship and humor and one of the most unusual PowerPoint presentations you'll ever see. You won't need caffeine to stay awake for this presentation.

#### MICHAEL H. RUBIN

McGlinchey Stafford PLLC  
Baton Rouge, LA

9:45 – 11:00 am

### General Session

#### General Session 3

##### Recent Developments in the Law

This session will identify and analyze recent cases of special interest that can impact shopping centers, with a focus on trends and shifts in the law. Don't forget to look at the materials for a comprehensive summary of the cases affecting shopping center law over the past year.

#### VICTORIA S. BERGHEL

Chattanooga, TN

#### ANN PELDO CARGILE

Bradley Arant Boult Cummings LLP  
Nashville, TN

#### JANE S. SMITH

Fulbright & Jaworski LLP  
Austin, TX

9:45 – 11:00 am

### Seminars

#### Seminar 5

##### Regulatory Roulette: The Non-Real Estate Regulatory Issues Putting Retailers at Risk to Lose Big

The laws affecting retailers and owners and operators of shopping centers encompass far more than real estate. Retailers focused on running their day-to-day business may be less attuned to various regulatory requirements and trends. Regulatory missteps can lead to penalties, burdensome administrative consent decrees, consumer litigation and, perhaps worst of all, bad PR. This seminar focuses on current regulatory hot topics affecting retailers and shopping center owners in the areas of corporate social responsibility, prepaid access (gift cards), contests and sweepstakes, and social media and Website regulations. The seminar will provide an introductory overview and will offer practical guidance on how to keep your business out of trouble and when to seek outside help.

#### MARKUS FUNK

Perkins Coie LLP  
Denver, CO

#### AARON HENDELMAN

Wilson Sonsini Goodrich & Rosati  
Seattle, WA

#### APRIL RETTKOWSKI

Nordstrom, Inc.  
Seattle, WA

#### Seminar 6

##### To Compete or Not to Compete: Leasing Exclusives and Their Impact

With the proliferation of different tenant types in today's shopping centers, there has been an increase in the range of exclusives that tenants are requesting, even in the traditional enclosed regional shopping center. These exclusives can affect not only true competitors, but also marginal competitors whose primary business is distinct from that of the company protected by the exclusive. The proper drafting of an exclusive, including providing for reasonable and well thought-out exceptions, will protect all parties concerned.

#### ELLEN B. FRIEDLER

Neal Gerber & Eisenberg, LLP  
Chicago, IL

#### HANK R. ROUDA

H&M Hennes & Mauritz AB  
New York, NY

#### Seminar 7

##### Commercial Ground Leases: Creating Long-Term Value

This seminar explores market practices and trends in the financing of ground leases. We will discuss the nature of ground leases

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and leasehold loans and analyze the increased elements of risk associated with a loan secured with a mortgage on a ground lease compared to a loan secured with a mortgage on fee-owned real property. We will discuss the effect of a lender's foreclosure on ground leases and the treatment of such leases in bankruptcy. Finally, we will examine and discuss sample provisions relating to important issues in ground leases and leasehold mortgages, including mortgagee protection clauses and subordination clauses, from the perspective of each of the landlord, the tenant and the lender.

### BRADLEY V. RITTER

Paul Hastings LLP  
Chicago, IL

### DAVID B. SICKLE

DLA Piper LLP  
Chicago, IL

**9:45 – 11:00 am**

## Workshops

### Workshop 8

#### It's All in the Mix: Drafting Workable Agreements to Balance the Competing Interests of Mixed-Use Projects

This workshop will focus on creating and drafting cohesive documents for mixed-use projects, which may include retail, residential, office, industrial, entertainment and parking components. Multiple site plans will be used for reference, and attendees will be asked to focus on the interests of a particular party, how such interests mesh or conflict with those of the other parties, and how to draft workable agreements that balance divergent interests. We will address typical provisions and the issues arising from each, with specific attention to how those issues change from project to project.

### MICHELLE L. GIERKE

Target Corporation  
Minneapolis, MN

### ADAM C. HIRSCHFELD

Rudolph Fields LLP  
Bethesda, MD

### Workshop 9

#### Letters of Intent: Handshake or Handcuffs?

In this interactive workshop we will discuss letters of intent for both leasing and purchase and sale transactions. We will briefly review recent developments in the law addressing enforceability of the terms of a Letter of Intent (LOI) and briefly compare the uses of letters of intent in the U.S. and Canada. The balance of our discussion will focus on the role of brokers, business people, in-house counsel and outside counsel in the preparation and negotiation of the LOI, the scope of the LOI and the provisions

typically included, and the benefits and detriments of a signed LOI. Sample LOIs will be included in the materials.

### DANIEL R. BRONSON

Bronson & Kahn LLC  
Chicago, IL

### NANCY B. PINKHAM

Darden Restaurants, Inc.  
Orlando, FL

### Workshop 10

#### Anchor "Away!" Critical Issues in the Non-Anchor Tenant Lease

What is a non-anchor tenant? What is the role of a non-anchor tenant in the center? What issues are critical to address in non-anchor tenant leases? Who has the negotiating edge in a non-anchor tenant lease transaction? In this interactive workshop we will delve into this often overlooked and underappreciated aspect affecting virtually every shopping center. We will discuss issues unique to non-anchor spaces in shopping centers together with potential resolutions to issues that may arise in these transactions.

### ABE J. SCHEAR

Arnall Golden Gregory LLP  
Atlanta, GA

### MATTHEW I. WEINSTEIN

Cozen O'Connor  
Philadelphia, PA

### Workshop 11

#### Getting Serious about Social Media: Case Studies and Best Practices to Build and Protect Your Brand Online

We will discuss the practical lessons learned from advising clients on best practices to build and protect their brands in the world of social media. The workshop will focus on tools clients can use to monitor brands, engage the public, and secure their brand identities. The unique characteristics of the various social media channels will be considered.

### DAVID W. GRACE

Loeb & Loeb LLP  
Los Angeles, CA

### RONALD J. LEVINE

Herrick, Feinstein LLP  
Princeton, NJ

### Workshop 12

#### Disclosing the Secrets about Confidentiality Agreements

This workshop will cover how and when confidentiality agreements are used in real estate transactions, including a discussion of hot topics in the area. The discussion will cover (i) a review of the initial cost-benefit analysis of entering into a confidentiality agreement, (ii) the scope of confidentiality agreements, (iii) the parties to be

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bound by confidentiality agreements, (iv) breaches and remedies for breaches of confidentiality agreements, and (v) miscellaneous issues such as term and choice of law. The session will be interactive and provide practical advice based upon recent deal experience and case law.

### **J. CLIFF MCKINNEY**

Quattlebaum, Grooms, Tull & Burrow PLLC  
Little Rock, AR

### **KENT S. NEVINS**

Shipman & Goodwin LLP  
Stamford, CT

## 9:45 – 11:00 am

### Peer to Peer



#### Peer to Peer 2

#### **Danger! Are You Covered? Negotiating the Allocation of Risk in a Retail Lease**

Negotiating casualty, indemnification, and insurance lease provisions challenges even the most experienced attorneys. This peer to peer forum will allow participants to discuss and negotiate sophisticated yet common risk allocation provisions in a retail lease, including: (i) business interruption and rent loss insurance/rent abatement mechanisms; (ii) property coverage for tenant improvements; and (iii) harmonizing insurance and indemnification provisions.

### **KATHLEEN FELDERMAN, CRM, CIC, CRIS**

AON Risk Solutions  
Denver, CO

### **TANYA D. MARSH**

Wake Forest University School of Law  
Winston-Salem, NC



#### Peer to Peer 3

#### **Looking Forward While Looking Backward: A Workshop on Purchase and Sale Representations and Warranties**

This is a peer to peer forum on the thorny and vexing issues that face all of us as we negotiate the representations and warranties of a purchase agreement for an operating shopping center. What should be covered by the tenant's due diligence and what should be covered by warranties and representations? How do you protect the buyer against erroneous representations? How do you protect the seller against residual liability?

### **JONATHAN D. BLOCK**

Honigman Miller Schwartz and Cohn LLP  
Bloomfield Hills, MI

### **THOMAS B. CAHILL**

Thomas B. Cahill Attorney at Law, P.C.  
Naperville, IL

## 11:15 am – 12:30 pm

### General Session

#### General Session 4

#### **You Want What!?! The Tug of War between Landlords and Tenants**

This general session for practitioners with limited leasing experience will address some of the legal and practical issues that arise between landlords and tenants during lease negotiations, including those related to operating covenants, exclusive and prohibited uses and radius restrictions. The discussion will include shared experiences on running the legal gauntlet between addressing tenants' needs while not hand-cuffing a property owner's ability to operate a successful retail project.

### **JERRY M. CYNCYNATUS**

DDR Corp.  
Beachwood, OH

### **NANCY SCHIRMER RENDOS**

Macerich Co.  
Excelsior, MN

### **J. THEODORE SMITH**

Vorys, Sater, Seymour and Pease LLP  
Columbus, OH

## 11:15 am – 12:30 pm

### Seminars

#### Seminar 8

#### **Overcoming Environmental Obstacles to Commercial Real Estate Development**

Contamination, underground storage tanks, wetlands, endangered species — these are but a few of the environmental issues that are commonly encountered when developing or redeveloping property for commercial purposes. This seminar will address these common obstacles and more, and how to identify, assess and overcome them to ensure a successful project, from performing environmental due diligence (“all appropriate inquiry”) to investigating and identifying such issues, to covering common challenges associated with wetlands, such as jurisdiction, wetland permitting strategies, wetland compensatory mitigation and enforcement.

### **MICHAEL P. COMODECA**

Spencer Fane Britt & Browne LLP  
Overland Park, KS

### **LAWRENCE W. FALBE**

Quarles & Brady LLP  
Chicago, IL

#### Seminar 9

#### **Navigating Law Firm Conflicts of Interest: What In-House and Outside Counsel and Clients Should Know**

Topics in this seminar will include actual versus potential conflicts, “business” and “positional” conflicts, and when you should waive

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conflicts. The panel will also explore when ethical walls may be necessary, how to address joint representation conflicts, in-house counsel conflicts, former client conflicts, and conflicts that “travel” with a lawyer.

### **TED S. HELWIG**

Katten Muchin Rosenman LLP  
Chicago, IL

### **TARA A. SCANLON**

Holland & Knight LLP  
Washington, DC

### **Seminar 10**

#### **How to be a Franchise Player without Any Athletic Ability: Leasing Concepts for Franchisors, Franchisees and Landlords**

As the global economy continues to improve, an increasing number of entrepreneurs are diving into the world of franchising, opening everything from restaurants to shoe stores, day care centers to medical offices. While franchise-based leases often start from the same forms developers use to negotiate non-franchise deals, there are many unusual aspects to a franchise-based lease which, if understood, can greatly benefit the parties involved and also differentiate the trained practitioner from his/her peers. This seminar will cover some of the most fundamental of these franchise-based lease issues, including the collateral assignment of lease, franchisor rights of entry and notice/cure rights, and important trademark and operational concerns. This seminar will then dive deeper into the franchisee/franchisor/landlord dynamic, and identify key operational and practical issues.

### **JONATHAN L. NEVILLE**

Arnall Golden Gregory LLP  
Atlanta, GA

### **NEIL E. SPRAGUE**

EPR Properties  
Kansas City, MO

**11:15 am – 12:30 pm**

### **Workshops**

#### **Workshop 13**

#### **Restaurant Development: From a Buffet of Operational Issues to a Smorgasbord of Unusual Challenges**

Restaurant leases are not for the faint of heart. These deals are very different from other retail uses involving a much heavier emphasis on utility issues, the permitting process (including liquor licenses) and capital investment. In addition, particular issues such as visibility and signage and operational issues such as hours, trash, lighting, noise, traffic flow and odor must be dealt with specifically and carefully. To complicate matters, not all restaurant deals are

alike. Restaurants located in airports, mixed-use developments, street-scape, inline shopping center space, pad sites, and office locations all have particular issues. This workshop will explore all of these areas, along with practice tips for those brave enough to venture into restaurant leasing.

### **RICHARD HELLER**

Legal Sea Foods, LLC  
Boston, MA

### **KATHRYN E. SHERWOOD**

Macerich Co.  
Dallas, TX

#### **Workshop 14**

#### **Who Says that Brokerage and Management Agreements are Not Negotiable?**

This workshop will encourage an active discussion from the owner’s and broker’s/manager’s perspective of major issues in agreements and the ongoing responsibility of an owner and manager in leasing and operating a retail property. The attendees will discuss sophisticated issues, including waiver of subrogation, termination rights and reimbursable expenses. The lesson to be learned is that many of the issues on this topic are negotiable—just don’t tell the other side.

### **MATTHEW E. CASH**

Jones Lang LaSalle Americas, Inc.  
Chicago, IL

### **JAMES T. MAYER**

Holland & Knight LLP  
Chicago, IL

#### **Workshop 15**

#### **Real Estate Financing in 2013: No Issues, Just Solutions**

In this advanced level workshop we will explore post-recession concerns of lenders and borrowers in shopping center financing (including CMBS, bank and insurance company loans). We will provide an overview of current market trends and negotiated outcomes on key issues from some of the largest and most respected lenders and borrowers.

### **NICOLE B. CANTU**

Teachers Insurance and Annuity Association of America  
Charlotte, NC

### **MICHAEL D. HAMILTON**

DLA Piper LLP  
Los Angeles, CA

#### **Workshop 16**

#### **Advanced Indemnity Issues: Is Your Client Really Protected?**

This advanced level workshop will focus on two important considerations in negotiating and drafting indemnity provisions in

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leases and other contracts: (i) the wide gulf between the indemnity coverage the parties frequently agree to in such agreements and the actual coverages available in standard form policies and endorsements, and (ii) the clash between the exculpation language in indemnity provisions in leases and the regulatory or statutory schemes designed to thwart the parties' expectations. Other insurance/indemnity issues will be addressed as raised by the workshop's participants during discussion of these topics.

### **KENNETH GORDON**

Akerman Senterfitt LLP  
New York, NY

### **KATHERINE J. HENRY**

Bradley Arant Boult Cummings LLP  
Washington, DC

### **Workshop 17**

#### **Shopping Center Operational Issues: Lessons Learned and Planning for the Future**

This workshop will explore real-world issues affecting the day-to-day operations of shopping centers. The workshop leaders will explore legal strategies either to prevent issues from arising or to deal with them cost-efficiently when they do arise. Among the topics to be covered are lease defaults, bankruptcies, public access, the Americans with Disabilities Act, and natural disasters.

### **BRIAN D. HUBEN**

Katten Muchin Rosenman LLP  
Los Angeles, CA

### **STEVE SPECTOR**

Macerich Co.  
Santa Monica, CA

## 11:15 am – 12:30 pm

### **Peer to Peer**



#### **Peer to Peer 4**

#### **The Prohibited Use Blues: How to Write the Song and How to Right the Wrong**

Together in this peer to peer forum we will discuss the best way to craft a prohibited use clause from both the landlord and tenant perspectives. We'll also consider potential remedies for both parties, and touch upon other matters that may arise during the life of the lease.

### **RUTH SCHOENMEYER**

McDonald's Corporation  
Oak Brook, IL

### **LILA SHAPIRO-CYR**

Ballard Spahr LLP  
Baltimore, MD

## 12:30 – 12:45 pm

### **Networking Break**

## 12:45 – 2:00 pm

### **Seminars**

#### **Seminar 11**

#### **Assignment and Subletting: Working through the Unexpected**

This interactive seminar will address the challenges in drafting assignment and subletting provisions to anticipate future conditions and unknown exit strategies. Several hypotheticals will be used to identify problems and practical solutions to common, but not always anticipated, situations.

### **JOSEPH B. CONN**

Sprouts Farmers Market  
Phoenix, AZ

### **AUDRA ESREY**

Stanley, Esrey & Buckley, LLP  
Atlanta, GA

#### **Seminar 12**

#### **Arrested Development: How Not to Get Held Up by Your Lender over Leases**

This seminar will focus on certain lender hot-buttons relating to retail leases, including rights of first refusal, purchase options, the obligation to deliver SNDAs, tenant allowances and improvements and rent credits and their impact on reserves, tenant obligations to obtain certificates of occupancy, base rent and lender underwriting criteria, co-tenancy issues, operating covenants, master leases, prepayments of rent more than one month in advance, tenant alterations, tenant's rights to casualty/condemnation proceeds, tenant insurance, use restrictions, radius clauses and terminations rights.

### **LAURA G. CIABARRA**

Dechert LLP  
Hartford, CT

### **ELLEN M. GOODWIN**

Alston & Bird LLP  
New York, NY

## 12:45 – 2:00 pm

### **Workshops**

#### **Workshop 18**

#### **Ethics for the Commercial Leasing Lawyer: MJP, UPL, and Other Issues You Should Be Considering but Might Not Be**

Lawyer mobility, client needs, and an increasingly virtual practice are constrained by the traditional ethics rules that regulate the legal profession based on where a lawyer is admitted to practice.

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The organized bar is faced with the choice of either enforcing rules that no longer seem realistic or purposeful or adapting to the reality of a borderless practice while preserving essential values of the profession. The workshop will explore the rules and their application, the tensions involved in change, and progress toward recognition of a borderless practice.

### **WILLIAM B. DUNN**

Clark Hill PLC  
Grand Rapids, MI

### **NANCY R. LITTLE**

McGuireWoods LLP  
Richmond, VA

### **Workshop 19**

#### **Will Your Lease Stand Up to a Real Fire or Will it Be Collateral Damage? Reflections from After the Fact**

Every lease contains damage, destruction, and related insurance provisions, but few will ever be tested unless “It” happens. Hear from an experienced team of workshop leaders about how Murphy’s Law, or its corollary, “nature always sides with the hidden flaw,” applies when the disaster actually hits. Join our two workshop leaders and share your ideas with everyone else in the room in a collaborative effort to figure out how to “get it right” in our leases.

### **JOHN KIM**

Westfield, LLC  
Los Angeles, CA

### **IRA MEISLIK**

Meislik & Meislik  
Montclair, NJ

### **Workshop 20**

#### **Site Plans: From Development to Redevelopment**

This workshop will provide a practical discussion of the importance of the site plan throughout the life of a development, as well as balancing the interests of both the developer and the occupants. We will address the rights and remedies in the reciprocal easement agreement or the lease, as well as those at law and in equity, available to the various parties in the event of site plan violations.

### **MELISSA G. HARVEY**

Dallas, TX

### **B. ANDREW ZELERMYER**

Goulston & Storrs  
Boston, MA

### **2:15 – 2:45 pm**

#### **Do You Want to be a Speaker?**

This brief non-CLE credit workshop will address the potential speaking opportunities available at future Law Conferences

for attendees of almost all experience levels, the requirements speakers must meet and, if selected to speak, what it takes to be a successful Law Conference speaker.

### **RAYMOND G. TRUITT**

Ballard Spahr LLP  
Baltimore, MD

### **3:00 – 4:00 pm**

#### **First Timers &**

#### **Next Generation Reception**



Please join us for a friendly and informal gathering that will provide a comfortable way for you to meet new faces in a smaller social setting. Casual attire is recommended.

## Friday, October 18

### **7:00 am – 2:00 pm**

#### **Registration**

### **7:15 – 7:45 am**

#### **Continental Breakfast**

### **7:45 – 8:00 am**

#### **ICSC Update**

### **8:00 – 9:00 am**

#### **Keynote Speaker Address**



### **MADDY DYCHTWARD**

Author, Age Wave co-founder, and leading expert on the changing demographic trends shaping the marketplace, the workplace and our lives.

### **9:15 – 10:30 am**

#### **General Session**

#### **General Session 5**

#### **The Art and Science of Updating REAs: Using a Scalpel Instead of a Saw**

This general session will address issues that typically arise in dealing with an existing REA when a developer wants to breathe new life into an older shopping center. The hypothetical to be used involves an older mall which will be modernized to (i) allow for a lifestyle addition, (ii) retrofit a former department store for use by a big box retailer and (iii) demolish another former department store and build a new two-story building to accommodate two retailers. The panel will explore how to surgically amend the REA, rather than

## Friday, October 18 continued

renegotiate the entire REA, to permit this modernization by focusing on likely impediments under the existing REA and those issues that are most important to both the developer and these new retailers.

### **KATHLEEN D. BOYLE**

General Growth Properties, Inc.  
Chicago, IL

### **DAVID J. RABINOWITZ**

Goulston & Storrs  
New York, NY

### **BRADLEY SYVERSON**

J.C. Penney Corporation, Inc.  
Plano, TX

**9:15 – 10:30 am**

## **Seminars**

### **Seminar 13**

#### **Won't You Be My Neighbor? The Art of Negotiating Co-Tenancy, Opening and Operating Covenants**

This seminar will explore the critical provisions and concepts included in co-tenancy, opening and operating covenants. The panel will discuss these issues from the positions of both landlord and tenant and identify concerns that must be addressed to allow for the successful operation of both the retail business and the shopping center.

### **ERIC A. ADAMSON**

The Fresh Market, Inc.  
Greensboro, NC

### **KAREN R. PIFER**

Honigman Miller Schwartz and Cohn LLP  
Bloomfield Hills, MI

### **MARGARET K. SITKO**

Sitko Bruno, LLC  
Pittsburgh, PA

### **Seminar 14**

#### **Real Estate Joint Venture Agreements: Current Topics and Trends**

In this seminar we will explore market practice and trends in real estate joint venture agreements, with a particular focus on the retail sector. This program will examine sample provisions relating to important issues between developers and capital sources, including distribution waterfalls, exit strategies and relative governance rights. The speakers will focus on commonly negotiated sections in a typical "95/5" structure where the developer contributes a small percentage of capital and materially participates in project upside through a promoted interest in capital proceeds. The discussion will cover single development projects as well as programmatic ventures which establish a new sourcing, acquisition and development relationship between developer and capital source.

### **TANYA E. BRADY**

Phillips Edison & Company  
Cincinnati, OH

### **JOSHUA P. HANNA**

Kirkland & Ellis LLP  
Chicago, IL

### **Seminar 15**

#### **Allocation of Risk: Insurance, Indemnity and Casualty Provisions – What's in Your Policy?**

Understanding the interplay among the insurance, indemnity and casualty provisions of a lease will be the focus of this seminar including (i) the types of insurance coverage typical for shopping centers, (ii) allocating risk in a shopping center (who indemnifies and insures what, for how much, and why), and (iii) identifying emerging trends with respect to handling risks of terrorism and similar events.

### **JAY BYRON LEIBOVITZ**

Barack Ferrazzano Kirschbaum & Nagelberg LLP  
Chicago, IL

### **KAREN O'MALLEY**

Goulston & Storrs  
Boston, MA

### **Seminar 16**

#### **Unlike TV Shows, In the Real World You Need a Formal Executed Sale-Purchase Agreement**

This seminar will address the contents of a sale-purchase agreement (SPA). Our focus will include representations, covenants, remedies for breach, and conditionality (including due diligence provisions). In addition, we will discuss the relative bargaining positions of the seller and purchaser and solutions to frequently encountered issues.

### **JAMES I. HISIGER**

Latham & Watkins LLP  
New York, NY

### **GABRIEL J. STEFFENS**

Teachers Insurance and Annuity Association of America  
Newport Beach, CA

**9:15 – 10:30 am**

## **Workshops**

### **Workshop 21**

#### **Leasing To a Franchisee Tenant: Is the Tenant's American Dream a Landlord's Nightmare?**

From the site selection process through lease negotiations and from grand opening until store closure, working with franchisee tenants creates many unusual challenges for shopping center operators and landlords. In this interactive workshop we will explore issues connected with the franchise process, including

## Friday, October 18 continued

understanding and negotiating franchisor lease riders, exploring and understanding common concepts found within franchise agreements and market development agreements, balancing ongoing operational interests of the franchisor, franchisee and the overall retail development, and addressing conflicts, challenges and litigation when such issues arise.

### **ELIZABETH D. SANTIS**

Westwood Financial Corp.  
Los Angeles, CA

### **DEAN C. WALDT**

Ballard Spahr LLP  
Phoenix, AZ

### **Workshop 22**

#### **Arbitration and Other Forms of ADR: Understanding the Process and Making the Lease Provisions Work**

This workshop will address the alternative dispute resolution (ADR) mechanisms of mediation, arbitration, and judicial reference, and the application of each to the commercial and retail leasing context. We will also directly engage the attendees with specific fact scenarios which will serve to highlight the issues.

### **JEFFREY N. BROWN**

Pircher, Nichols & Meeks  
Los Angeles, CA

### **DAVID K. TAYLOR**

Bradley Arant Boult Cummings LLP  
Nashville, TN

### **Workshop 23**

#### **Breaking Bad: Leases Gone Wrong**

This advanced workshop will explore leases in light of the current economic landscape from the perspectives of both transactional and litigation counsel. The session will examine the issues that confront the landlord and tenant when things go terribly wrong with the lease transaction; specifically, new methods to deal with old issues. In these trying economic times, the enforcement strategies and negotiation techniques require a different finesse and a more forward-thinking plan in order to maintain a mutually beneficial business relationship.

### **JULIE M. KENNEDY**

Johnson & Bell, Ltd.  
Chicago, IL

### **JOHN J. WILES**

Wiles & Wiles, LLP  
Marietta, GA

### **Workshop 24**

#### **Construction Contracts in Real Life: A Mock Negotiation**

This workshop will examine the hottest issues in design and construction contract negotiation from a real life perspective. We won't discuss the "pie in the sky" provisions you will never get. In this session the moderator, taking the retail owner's position, will negotiate key contract provisions with the general counsel of a large general contracting firm and a large architectural firm in an attempt to reach practical, real life resolutions to various contract issues. Workshop participants will also be asked to lend their perspective on how these provisions can be fairly resolved.

### **ROBERT L. CREWDSON**

DLA Piper LLP  
Atlanta, GA

### **LISA STRAUCH EGGERS**

Callison, Inc.  
Seattle, WA

### **CHARLES L. GRIZZLE, JR.**

Brasfield & Gorrie, LLC  
Birmingham, AL

### **Workshop 25**

#### **You Are What You Eat: Hot Issues in Grocery Anchored Developments**

Despite the ups and downs in the economy, nothing has been more consistent in recent retail history than grocery anchored developments. While grocery stores provide a solid customer base for any retail project, the unique demands of the grocery retailer can have a long-lasting effect on the character of a shopping center. In this workshop developer's counsel and grocery store's counsel will lead an interactive discussion focusing on the hottest issues raised in grocery-anchored developments.

### **BRAD DALLET**

Whyte Hirschboeck Dudek S.C.  
Milwaukee, WI

### **JANIS B. SCHIFF**

Holland & Knight LLP  
Washington, DC

### **9:15 – 10:30 am**

#### **Peer to Peer**



#### **Peer to Peer 5**

#### **Ethics: Privilege and Attorney Work Product or Exhibiting Your Private Parts**

This peer to peer forum will explore the comforting – but erroneous – beliefs that real estate lawyers have regarding privileged communications and their attorney work product. The privilege can be lost in many inadvertent and seemingly innocent ways. The attorney work product – which lawyers believe to be their own property – becomes an issue when the client's file is returned, whether at its request or as a matter of the lawyer's policy, and it

## Friday, October 18 continued

has unflattering (perhaps libelous) contents and suggestions of the law firm's errors.

### MARK SENN

Senn Visciano Canges P.C.  
Denver, CO

### KEVIN L. SHEPHERD

Venable LLP  
Baltimore, MD



### Peer to Peer 6

#### Financing of Ground Leases, Net Leases and Other Leasehold Interests: Comparison of CMBS and Portfolio Loan Requirements

The peer to peer forum will include (i) a discussion of lenders' requirements and rating agency concerns in the financing of ground leases, net leases and other leasehold interests, (ii) a presentation of recent transactions highlighting certain issues and concerns and showing how borrower's and lender's counsels can mitigate them, and (iii) a discussion of tenant and lender concerns with respect to landlord financing.

### ANDREW A. LANCE

Gibson Dunn & Crutcher  
New York, NY

### JEFFREY S. RHEELING

Kirkland & Ellis LLP  
Chicago, IL

## 10:45 am – 12:00 noon

### General Session

#### General Session 6

#### Changes in Leasing in the 21st Century, and What We Have to Look Forward To!

This general session will focus on lease provisions that have evolved as a result of the great financial crisis and changes in the retailing environment during the first decade of the 21st century. In particular, the panel will discuss co-tenancy, operating covenants, assignment/sublease, use and exclusive use clauses, prohibited uses, CAM, SNDA and bankruptcy remedies. The panel will approach the discussion of the provisions with a real-world, practical approach from both landlord and tenant perspectives. In addition, suggestions will be offered on new provisions to consider, including in lease forms.

### JANE S. BORDEN

Target Corporation  
Minneapolis, MN

### CAROL KAUFFMAN

Chico's FAS, Inc.  
Fort Meyers, FL

### RORY A. PACKER

Westfield, LLC  
Los Angeles, CA

## 10:45 am – 12:00 noon

### Seminars

#### Seminar 17



#### Analysis of Lease Language Addressing Allocation of Risk and Insurance Matters: How to Get it Right and Sleep Soundly

This advanced seminar will provide an in-depth discussion with drafting suggestions addressing the issues that arise in lease and contract negotiations concerning insurance requirements and risk shifting, including the interaction of insurance and indemnity; self-insurance, deductibles and self-insured retentions; exclusions from insurance coverage such as acts of terror, additional insured status and much, much more.

### SCOTT B. OSBORNE

Foster Pepper PLLC  
Seattle, WA

### CHARLES W. TRAINOR

Trainor Fairbrook  
Sacramento, CA

#### Seminar 18

#### Walking the Talk: An In-House Lawyer's Guide to Promoting an Ethical Workplace

This seminar will focus on the importance of lawyers as role models for ethical behavior in their organizations. Unethical behavior is sometimes, but not always, illegal and often results in claims that end up on the desks of in-house lawyers. We'll use hypothetical situations to analyze an in-house lawyer's obligations to report or investigate alleged ethical violations, as well as opportunities for lawyers to champion ethics with their business colleagues.

### TINA F. COWEN

Destination Maternity Corporation  
Philadelphia, PA

### AUBREY WADDELL

Jones Lang LaSalle Americas, Inc.  
Atlanta, GA

#### Seminar 19

#### Lease-O-Matic: How Courts Can Slice and Dice Your Lease Provisions to Reach Unintended Results

This seminar will provide attendees with real examples of problems that can arise from carelessly drafted lease provisions. From both a drafting and litigation perspective we will review various provisions from signed leases and discuss how the provisions have ended in (if not invited) disputes, even where at first blush the provisions appear to be clear. We will also review how courts have applied

## Friday, October 18 continued

certain principles to resolve these disputes in ways that are far from what either party intended.

**PAUL M. PORTER**  
 Hill, Farrer & Burrill LLP  
 Los Angeles, CA

**MARK V. THIGPEN**  
 King & Spalding  
 Charlotte, NC

**10:45 am – 12:00 noon**

### Workshops

#### Workshop 26

##### Work Letters That Will Work

This interactive workshop will focus on the negotiation and drafting of key provisions in work letters from both the landlord and tenant perspectives. This discussion will also explore the impact of the work letter on other significant provisions found elsewhere in the lease, as well as on the terms and conditions found in agreements with general contractors, architects and construction managers. Attendees are encouraged to raise issues which they have faced with regard to work letters and the actual build-out of tenant premises, with the goal of providing practical drafting alternatives to mitigate these issues.

**DANIEL P. KELLIHER**  
 Kelliher & Salzer, LLC  
 Columbia, MD

**SARA HANSEN WILSON**  
 Drinker Biddle & Reath LLP  
 San Francisco, CA

#### Workshop 27

##### Bring it Back From the Dead: Issues in Resurrecting the Distressed Center

This advanced workshop will focus on some of the legal and practical difficulties encountered when a troubled shopping center is redeveloped or repositioned. Topics will include lender/loan issues, working within or overcoming co-tenancies, use restrictions, shopping center layout constraints, REA limitations and other title considerations.

**J. ADAM ROTHSTEIN**  
 Honigman Miller Schwartz and Cohn LLP  
 Bloomfield Hills, MI

**ROBERT J. STEWART III**  
 Pyramid Management Group  
 Manilus, NY

#### Workshop 28

##### The Past, Present and Future of Shopping Center REAs

This workshop will examine shopping center reciprocal easement agreements (REAs), also known as operating and easement agreements (OEAs), by considering the relationship and priorities of the developer and the anchor retailers. The session will be composed of three segments, with the first looking back to REAs put in place for shopping centers developed thirty or forty years ago, the second looking at redevelopment of a shopping center under an existing REA with considerations for putting in place a new REA, and the third discussing REA considerations for the future use and development of a shopping center.

**GREGORY G. LUTJE**  
 Samuels Yoelin Kantor, LLP  
 Portland, OR

**JEFFREY J. WILD**  
 Benesch, Friedlander, Coplan & Aronoff  
 Cleveland, OH

#### Workshop 29

##### What's Up With Those Pop-Ups?

This workshop will cover the history of “pop-up” locations, the reasons why pop-ups are re-emerging, what the advantages are, and why they are attractive to both retailers and developers as a retail opportunity. Definitions of “pop-ups” will be examined and the participants will address the various legal issues in structuring these occupancy agreements. Ideas and alternatives will be shared for papering the unique pop-up retail occupancy transaction.

**JOAN HILL**  
 Williams-Sonoma, Inc.  
 San Francisco, CA

**HOWARD SIGAL**  
 General Growth Properties, Inc.  
 Chicago, IL

#### Workshop 30

##### Effective and Efficient Negotiation of Purchase and Sale Agreements: No One Makes Any Money until the Deal Closes

Attorneys can help their clients get to the closing table faster by completing the purchase and sale agreement as quickly as possible. Doing so often involves understanding not only your clients’ objectives, but those of the other side. This workshop will discuss various “needs versus wants” of both the purchaser and the seller and explore possible strategies and compromise positions to facilitate the goals of both parties.

**CHARLES A. BRAKE**  
 Miller & Martin PLLC  
 Atlanta, GA

## Friday, October 18 continued

### ANTHONY L. GRIMALDI

Teachers Insurance and Annuity Association of America  
New York, NY

### 10:45 am – 12:00 noon

#### Peer to Peer



#### Peer to Peer 7

##### What Puts the “Urban” in Urban Leasing?

This peer to peer forum will focus on the differences between leasing in the traditional shopping center setting and in an urban situation. The exchange will emphasize discussion of the nuances a city locale introduces to the usual issues regarding parking, logistics (e.g., deliveries, trash disposal, storage), permitted and prohibited uses, REAs and other governing documents, operating costs, operating covenants, radius restrictions and restrictive covenants, co-tenancies, signage, security, maintenance obligations and renovations.

### DAVID S. LIMA

Target Corporation  
Minneapolis, MN

### MINDY W. SHERMAN

Perkins Coie LLP  
Chicago, IL



#### Peer to Peer 8

##### Whose Money is it Anyway? Tenant Improvement Allowance Payment Conditions and Securing Payment

This interactive peer to peer forum will feature presentation of hypothetical fact patterns designed to encourage discussion and debate focused on alternative structures for tenant improvement allowances and various ways to secure payment of the allowance. Each small group will report its discussion results and the speakers will lead a forum on negotiations to ensure a smooth improvement construction process and drafting solutions to resolve potential pitfalls in the payment phase. The forum will address tenant allowance issues from both the landlord's and tenant's perspectives.

### LAURA LEE GARRETT

Hirschler Fleischer  
Richmond, VA

### STEVEN J. MESSINGER

Minden Gross LLP  
Toronto, ON

### 12:00 noon – 12:15 pm

#### Networking Break

### 12:15 – 1:30 pm

#### Seminars

##### Seminar 20

##### Landlords Just Want to Have Funds: Issues Relating to CAM, Taxes and Other Operating Expenses

This seminar will look at issues relating to CAM, taxes and other operating expenses from a landlord's and tenant's perspective, with panelists asserting positions most beneficial to one side or the other. The seminar will address items landlords desire to include and tenants want to exclude in CAM charges and will analyze caps on charges, base year or base thresholds and discuss recent trends toward having fixed CAM costs or absolute gross rents. Other expenses, such as real estate taxes, insurance and marketing charges will be considered as well.

### IRA FIERSTEIN

Seyfarth Shaw LLP  
Chicago, IL

### SPENCE J. MEHL

RCS Real Estate Advisors  
New York, NY

### 12:15 – 1:30 pm

#### Workshops

##### Workshop 31

**ADV**

##### Advanced Property Insurance: Beating the Insurance Shell Game

During this advanced workshop the panelists – an attorney and an insurance professional – will evaluate the property and business loss insurance strategies that will permit a property owner to get back in business in time to keep its tenants in place or in the case of a retailer, to preserve its market share. Issues to be explored include the need for extra expenses coverage and business losses caused by lack of utility services or by damage to a key property not owned by the insured, such as a convention center or tourist attraction. In addition, the speakers will discuss the lease provisions that a landlord needs if it is relying on the tenant's property insurance and the dilemma presented to both landlord and tenant when a casualty occurs and the parties are faced with the question whether a termination of the lease will cause the insurer to stop paying business or rental loss proceeds.

### SANDRA A. McCLIVE

Hylant Group  
Chicago, IL

### MARIE A. MOORE

Sher Garner Cahill Richter Klein & Hilbert, LLC  
New Orleans, LA

## Friday, October 18 continued

### Workshop 32

ADV

#### Who's in Charge of Your Joint Venture?

An advanced discussion of the changing roles of promoters/ developers and investors in the management of joint ventures and the issues arising out of the impact of those changes on the rights and responsibilities of the parties and on the operation of joint ventures.

#### SCOTT A. FISHER

Arnall Golden Gregory LLP  
Atlanta, GA

#### LEE SAMUELSON

Hogan Lovells US LLP  
New York, NY

### Workshop 33

#### From the Front Lines: ADA Update on the Latest Issues and Trends for Shopping Centers

This workshop will cover: (i) key recent court decisions on ADA violations, including the ability to seek indemnification from architects and consultants; (ii) the developing legal landscape on ADA issues in electronic communications, including shopping center websites, mobile apps, and self-service kiosks; (iii) new regulations on service animals and power-driven mobility devices; and (iv) state legislative responses to ADA enforcement actions.

#### THERESA L. KITAY

Theresa L. Kitay: Attorney at Law  
Marina Del Rey, CA

#### MINH N. VU

Seyfarth Shaw LLP  
Washington, DC

### 7:00 – 10:00 pm

#### Cocktail Reception and Dinner Buffet

It's the final night of the conference and you won't want to miss our beach party themed reception complete with dinner, drinks and dancing to live entertainment. Casual attire is recommended.

(Conference Registration fee includes one dinner ticket. Additional guest dinner tickets may be purchased. Please refer to the Registration Form for details.)

## Saturday, October 19

### 8:00 – 9:15 am

#### Roundtable Discussions

## LEASING SYMPOSIUM

### 9:30 – 10:45 am

#### Seminars

##### Seminar 21

#### Lease Provisions with Real or Imagined Impact on Sale, Financing, Exit Strategies and Corporate Transfers

The seminar will address how common lease provisions can complicate (and even undermine) a landlord's efforts to sell or finance its property and a tenant's efforts to dispose of a bad lease, restructure its company or sell assets which include leased premises.

#### MARK S. HENNIGH

Greene Radovsky Maloney Share & Hennigh LLP  
San Francisco, CA

#### THEANI C. LOUSKOS

Bartko Zankel Bunzel & Miller  
San Francisco, CA

##### Seminar 22

#### Don't Get Burned: How to Address "Hot-Button" Retail Leasing Issues Through Drafting and Negotiation

This point-and-counterpoint seminar will include the perspectives of both landlord and tenant on hot-button retail leasing issues. The speakers will provide examples of how the parties negotiate key issues, such as clauses related to a tenant's use, exclusive, co-tenancy rights, tenant's obligations to continuously operate and site plan issues, and insight as to how the drafting of lease provisions addresses each party's concerns.

#### BARTOW B. DUNCAN, III

Parker, Hudson, Rainer & Dobbs LLP  
Atlanta, GA

#### CHRISTINE LEVONIAN GRESHAM

France Gresham LLC  
Gaithersburg, MD

### 9:30 – 10:45 am

#### Workshops

##### Workshop 34

#### CAM Trends: Traditional CAM vs. Fixed CAM - Is the CAM Battle Over?

This workshop will address the current state of CAM. It will cover traditional CAM issues, including operating costs definitions, exclusions, caps, audits and pro rata share. It will also address different approaches to fixed CAM. It will consider the questions: is fixed CAM really fixed, should it be, and is the CAM battle over?

**Saturday, October 19** continued

## LEASING SYMPOSIUM

### **MARGARET M. JORDAN**

Kane Russell Coleman & Logan, PC  
Dallas, TX

### **GREGORY M. OTTO**

Jenkins & Kling, PC  
Saint Louis, MO

#### **Workshop 35**

##### **How Limber is Your Lease? Lease Provisions That Give Landlord and Tenant the Most Flexibility**

This workshop will focus on ways to maximize your flexibility (or maximize your control if you are wearing the other hat) in connection with the following rights in leases: tenant's right of first offer as to other space, tenant's right to expand its premises, each party's right to terminate if tenant's gross sales are terrible, landlord's right to recapture if the tenant goes dark or seeks to assign or sublet, landlord's right to relocate tenant in connection with a redevelopment of the center, and ground lessee's right to purchase all or a portion of the center. These rights share "Whack A Mole" tendencies since unanticipated issues are likely to "pop up" as issues are resolved (both in drafting and in implementation).

### **SHELDON A. HALPERN**

Pircher, Nichols & Meeks  
Los Angeles, CA

### **MARIA MANLEY-DUTTON**

DDR Corp.  
Beachwood, OH

#### **Workshop 36**

##### **Let's Talk About Guaranties: We Guaranty You'll Learn Something New**

This workshop will explore the practical legal issues in structuring, drafting and negotiating a lease guaranty and its effectiveness as a credit enhancement device. We will explore the different types of corporate and individual guaranties, joint and several liability, limitation of liability provisions, pitfalls that may inadvertently lead to the release of a guarantor and issues relating to substitute guarantors in connection with lease transfers.

### **MARC J. BECKER**

Goldfarb & Fleece LLP  
New York, NY

### **SEAN W. SOUTHARD**

Crosbie Gliner Schiffman Southard & Swanson LLP  
San Diego, CA

**9:30 – 10:45 am**

### **Peer to Peer**



Peer to Peer 9

#### **Think Before You Draft: Landlord Recapture/Repurchase Rights Upon Tenant Transfer, Going Dark or Change in Use**

This peer to peer forum will explore the ins and outs of the landlord's rights to terminate a lease or purchase the leasehold interest upon (i) a tenant's proposed assignment of the lease or subletting of the premises or (ii) the tenant's cessation of business or change in use. Many of the principles discussed will also apply to the exercise of a repurchase right in a fee ownership context.

### **THOMAS M. FEINER**

Macy's, Inc.  
St. Louis, MO

### **CRAIG D. SWANSON**

Crosbie Gliner Schiffman Southard & Swanson LLP  
San Diego, CA

Program information current as of July 17, 2013.

## ICSC 2013 U.S. Shopping Center Law Conference Program Planning Committee

ICSC sincerely thanks the following members of the 2013 U.S. Shopping Center Law Conference Program Planning Committee for their valuable assistance in developing this year's program:

### Conference Chair:

Linda K. Schear, Gregory Greenfield & Associates, Ltd., Atlanta, GA

### Conference Co-Chair:

Raymond G. Truitt, Ballard Spahr LLP, Baltimore, MD

### General Session Subcommittee:

Deborah Stear De Luca, Co-Chair, Holland & Knight LLP, Fort Lauderdale, FL

Lawrence D. McLaughlin, Co-Chair, Honigman Miller Schwartz and Cohn LLP, Detroit, MI

Robert M. McAndrew, Ross Stores, Inc., Pleasanton, CA

Terri K. Simard, Target Corporation, Minneapolis, MN

Gail M. Stern, Rosenberg Martin Greenberg, LLP, Baltimore, MD

### Seminar Subcommittee:

David G. Johansen, Co-Chair, Nordstrom, Inc., Seattle, WA

David J. Rabinowitz, Co-Chair, Goulston & Storrs, New York, NY

Brian D. Huben, Katten Muchin Rosenman LLP, Los Angeles, CA

Daniel J. Perlman, Kirkland & Ellis LLP, Chicago, IL

Harold D. Piazza, Jr., Glen Ridge, NJ

Alan J. Salle, Honigman Miller Schwartz and Cohn LLP, Bloomfield Hills, MI

### Workshop Subcommittee:

Eric D. Rapkin, Co-Chair, Akerman Senterfitt LLP, Fort Lauderdale, FL

Richard S. Friedman, Co-Chair, Resch Polster & Berger LLP, Los Angeles, CA

Elizabeth H. Belkin, Belkin Law Offices, Chicago, IL

Lester M. Bliwise, Seyfarth Shaw LLP, New York, NY

Richard E. Galen, Kelliher & Salzer, LLC, Columbia, MD

Renee J. Magnant, J.C. Penney Corporation, Inc., Plano, TX

Rory Packer, Westfield, LLC, Los Angeles, CA

Neil Oberfeld, Greenberg Traurig, LLP, Denver, CO

Jane Snoddy Smith, Fulbright & Jaworski LLP, Austin, TX

### Peer to Peer Subcommittee:

Robert DiVita, Co-Chair, Sills Cummis & Gross P.C., Newark, NJ

Neil S. Kessler, Co-Chair, Troutman Sanders LLP, Richmond, VA

### Roundtable Subcommittee:

Jerry M. Cyncynatus, Co-Chair, DDR Corp., Beachwood, OH

Carol A. Williams, Co-Chair, Chicago, IL

James A. Moomaw, The Howard Hughes Corporation, Dallas, TX

### Recent Developments Program Leaders:

Victoria S. Berghel, Chattanooga, TN

Ann Peldo Cargile, Bradley Arant Boult Cummings LLP, Nashville, TN

### Administration:

Joseph S. Finkelstein, Chair, Blank Rome LLP, Philadelphia, PA

### Social Media Subcommittee:

Nancy M. Davids, Chair, Goulston & Storrs, Boston, MA

Robert L. Crewdson, DLA Piper LLP, Atlanta, GA

Jo-Ann M. Marzullo, Posternak Blankstein & Lund LLP, Boston, MA

### Monitoring & Evaluations Subcommittee:

Charles J. Benvenuto, Chair, Charles J. Benvenuto, P.C., Oak Brook, IL

Oscar R. Rivera, Siegfried, Rivera, Lerner, De La Torre & Sobel, P.A., Plantation, FL

### Session Materials Subcommittee:

Joseph S. Finkelstein, Chair, Blank Rome LLP, Philadelphia, PA

Jo Anne M. Bernhard, Law Office of Jo Anne M. Bernhard, Sacramento, CA

Mark S. Hennigh, Greene Radovsky Maloney Share & Hennigh LLP, San Francisco, CA

Cathy Hershcopf, Cooley LLP, New York, NY

### First Timers and Next Generation Subcommittee:

Kathleen A. Crocco, Co-Chair, SL Green Realty Corp, New York, NY

Nina Kampler, Co-Chair, Kampler Advisory Group, Teaneck, NJ

### Nominating Subcommittee:

Ann Peldo Cargile, Chair, Bradley Arant Boult Cummings LLP, Nashville, TN

David G. Johansen, Nordstrom, Inc., Seattle, WA

Renee J. Magnant, J.C. Penney Corporation, Inc., Plano, TX

David Pollack, Ballard Spahr LLP, Philadelphia, PA

David Rabinowitz, Goulston & Storrs, New York, NY

Linda K. Schear, Gregory Greenfield & Associates, Ltd., Atlanta, GA

Raymond G. Truitt, Ballard Spahr LLP, Baltimore, MD

### Additional Committee Members:

Jay A. Epstien, DLA Piper LLP, Washington, D.C.

Ronald L. Gern, Pyramid Management Group LLC, Syracuse, NY

### Emeritus Subcommittee:

Jeffrey H. Newman, Chair, Sills Cummis & Gross P.C., Newark, NJ

Thomas P. Bloch, Samuels & Associates, Boston, MA

Richard J. Burstein, Honigman Miller Schwartz and Cohn LLP, Bloomfield Hills, MI

Stephen K. Cassidy, Hanson Bridgett LLP, San Francisco, CA

Morton P. Fisher, Jr., Baltimore, MD

Ronald G. Galip, Youngstown, OH

J. Kevin Garvey, Chicago, IL

Richard R. Goldberg, Philadelphia, PA

William P. Hise, Bonita Springs, FL

Howard E. Kane, DLA Piper LLP, Chicago, IL

Edward R. Krasnove, Griffin Fletcher & Herndon LLP, Carlsbad, CA

Jack A. Marino, Jr., Chicago Title Insurance Co., New York, NY

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## Session Descriptions

**I. General Sessions:** General Sessions are intended to provide a broad, general perspective of the topic. Sessions are held in large rooms and led by a panel of three or four speakers. There is limited interaction with the audience as a result of the size and scope of the presentation.

**II. Seminars:** Seminars are intended to present a more in-depth discussion of the topic. They are led by two or three practitioners with substantial prior experience on the topic. Interaction with the audience is often encouraged, but the session speakers are expected to control and limit discussion as well as cover all of the subject matter described in the outline of the session.

**III. Workshops:** Workshops are intended to be interactive and are typically led by two practitioners with a substantial level of experience in the topic area. Interaction between the workshop leaders and the audience is encouraged and expected, with the freedom to stray from the outline and address audience concerns in a more specific and detailed fashion.

**IV. Peer to Peer Forums:** Nine workshops have been designed as Peer to Peer forums and will involve breakouts into small group discussions with reporting back to the entire workshop. All Peer to Peer forums are considered to be advanced. Attendance at these programs will be strictly limited to the first 40 attendees.

**V. Roundtable Discussions:** The roundtables are organized as informal discussions among industry professionals regarding specified topics. The roundtable leader is not expected to have prepared any written materials. The leader is there to guide the discussion and ask questions of the roundtable participants for discussion among themselves. Roundtable leaders are chosen for their prior experience with the topic.

**VI. Leasing Symposium:** The Saturday morning sessions focus on the most popular topic – leasing issues. Conference attendees will want to make every effort to attend these timely and insightful leasing sessions.

**VII. Advanced Level Sessions:** **ADV**  
Advanced level sessions are recommended for attendees with an intermediate or greater level of knowledge of the topic.



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