

# ***RealLeasing 2008***

***Thursday, September 18, 2008***

***Metro Toronto Convention Centre, North Building***

## ***Timely Issues for Landlords, Owners, Tenants and Users***

- *Lease Negotiation Strategies in Today's Market*
- *The Business Case for Greener New & Existing Buildings*
- *How Green Buildings are Changing Leases and Negotiations*
- *Managing Tenant Construction & Costs in a Greening Market*
- *Anticipating Tenant Defaults, Bankruptcy and Insolvency*
- *Dealing with Asbestos and Other Environmental Challenges*
- *The Continuing Evolution of Operating Costs Issues*
- *Changing Face of Demand and Deals in Industrial Markets*
- *Assessing, Negotiating, and Finalizing Offers to Lease*
- *905/416: Office Markets Going in Different Directions?*
- *Key Leasing Trends and Issues in Retail Markets*
- *Expansion and Contraction Rights: Pitfalls & Scenarios*
- *Rapid Fire Legal Roundtable: Twelve Issues in 60 Minutes*

## **THE PROGRAM: THURSDAY, SEPTEMBER 18**

**7:00 a.m.      ONSITE REGISTRATION OPENS. CONTINENTAL BREAKFAST.**

**7:45 a.m.      OPENING PRESENTATIONS**

### **Introduction and Host for the Opening Session**

*David Bowden, President, Canada, Brokerage Services, Colliers International*

### **Where are the Canadian Economy and Interest Rates Heading?**

An examination of key trends in the Canadian and U.S. economies with a specific view towards their future direction for 2009 and beyond, and the outlook for Canadian interest and inflation rates.

*Douglas Porter, Managing Director, Deputy Chief Economist,  
BMO Capital Markets & BMO Nesbitt Burns*

### **Is the Fallout Over from the U.S. Subprime Market Issues? What is the Outlook for a U.S. Economic Recovery for 2009? What Will It Mean for the Canadian Market?**

The problems associated with the U.S. sub-prime market have had a significant impact on the deployment of capital, public and private debt and equity markets, the real estate asset class, as well as general economic conditions in the U.S. and their implications for the Canadian economy. Has the impact of the subprime market now over? What is the outlook for U.S. economic performance for 2009?

*Ross Moore, Executive Vice President and Director of Market & Economic Research,  
Colliers International*

### **Conference Opening Remarks:**

*Michael Harvey, Vice President and Managing Director, National Leasing,  
Oxford Properties Group Inc.*

*Ellen Williamson, Senior Director, Legal Services, The Cadillac Fairview Corporation Limited*

**9:00 a.m.      Opening Session ends**

## **NEW CONFERENCE FORMAT OFFERS YOU BETTER QUALITY CHOICES THREE MAJOR THEME AREAS WITH FOUR SESSIONS EACH**

The program for **RealLeasing 2008** has been uniquely designed to offer the greatest possible value and flexibility to asset managers, leasing executives, corporate real estate directors, inhouse legal counsel, external lawyers, and commercial realtors.

A wide range of the most significant leasing trends, issues, challenges, and strategies were identified and then grouped into three theme areas with each one offering four sessions.

You have a choice of attending all the sessions in a particular stream or selecting up to four various topics in two or more theme areas to makeup your itinerary for the day.

### **THEME A: LEASING CHALLENGES AND STRATEGIES IN A GREENING MARKET**

- 9:25 am      A1      The Business Case for Greener New & Existing Buildings: Do They Really Cost More? Will Tenants Pay Any Extra Freight?**
- 10:50 am     A2      Green Leases, Carbon Credits and Shared Environmental Objectives: How Are They Changing Lease Terms and Negotiations?**
- 1:00 pm      A3      Managing Tenant Construction and Costs in a Greening Market**
- 2:10 pm      A4      Asbestos, Other Hazardous Materials and the Environmental Challenges of Existing Buildings**

### **THEME B: THE BUSINESS AND THE LAW OF COMMERCIAL LEASING**

- 9:25 am      B1      The Continuing Evolution of Operating Cost Issues: Greenplating vs. Free Riding**
- 10:50 am     B2      Expansion and Contraction Rights: Pitfalls and Scenarios**
- 1:00 pm      B3      Leasing in a Slowing Economy: Anticipating Tenant Defaults, Bankruptcy & Insolvency**
- 2:10 pm      B4      Rapid Fire Legal Roundtable: Twelve Common Issues in 60 Minutes**

### **THEME C: MAJOR TRENDS & DEAL-MAKING IN TODAY'S LEASING MARKETS**

- 9:25 am      C1      Deal-Making in Today's Market: Assessing, Negotiating, and Finalizing Offers to Lease**
- 10:50 am     C2      The Changing Face of Demand and Deals in Industrial Markets**
- 1:00 pm      C3      905/416: Are These Markets Going in Different Directions or Not?**
- 2:10 pm      C4      Key Leasing Trends and Issues in Retail Markets**

**9:25 a.m. THREE CONCURRENT SESSIONS (SELECT A1, B1 OR C1)**

**THEME A1**

**THE BUSINESS CASE FOR GREENER NEW & EXISTING BUILDINGS: DO THEY REALLY COST MORE? WILL TENANTS PAY ANY EXTRA FREIGHT?**

There are so many divergent views about higher performance and greener buildings. Is there really a cost premium associated with a greening a new or existing building? Is there an added cost associated with sustainable building management practices? Can these higher costs, if they exist, be passed on to tenants? How are landlords dealing with any perceived or actual cost premiums? Can landlords sell “green” buildings on the basis of reduced future operating costs and lower capital expenditures as a result of greater life cycle strategies? How are landlords marketing a “greener” building to the tenant community? What are the current hot buttons in leasing green buildings? It is one thing to develop a new project as a green building; but what are the challenges of greening existing buildings? How do you reposition an older building to compete with new greener developments? What strategies appear to make the most sense in these circumstances? One of the case studies will be the experiences of TELUS Communications with their new green office projects in Vancouver, Ottawa and Toronto and the specific business case behind these buildings.

*Panel:*

*Doug Hitchcox, Vice President, Office Leasing Division, Sustainability Practice Group,  
Cushman & Wakefield LePage*

*Don Crichton, Vice President, Practice Leader-Workplace Solutions, HOK Canada*

*Trish Clarry, Executive Director, Real Estate Services, TELUS Communications Corporation*

*Jim Lord, Principal, Ecovert Corporation*

**THEME B1**

**THE CONTINUING EVOLUTION OF OPERATING COST ISSUES: GREENPLATING VS. FREE RIDING**

What are the top five continuing debates over operating costs inclusions? What’s fair for landlords and what’s fair for tenants? How are debates over controllable vs. uncontrollable costs influencing landlord capital planning and maintenance decisions? What is the U.S. experience on these issues? Will a fear of excessive spending to “green” a building lead to more negotiations on limiting this type of capital expenditures? How are property tax, insurance, and energy cost pressures impacting negotiations? How are landlords managing tenant audit risk? How should amortization and depreciation be ideally interpreted? What is the comparable experience with fixed operating costs vs. floating op costs? What are the strengths and weaknesses of each approach? If CAM costs are reduced, how are these savings passed on to tenants? If a tenant asks for full audit rights, can they exercise such a right? How frequently are landlords of office, retail and industrial space being audited by their tenants? What are their experiences and policies with respect to lease audits? What is the language of a good and a bad audit clause, including how to settle audits, the timing and the process?

*Moderator:*

*Bob MacDonald, Partner, Blakes Cassels and Graydon LLP*

*Panel:*

*Deborah Rogers, Senior Vice President, Legal, Eastern Canada,  
Brookfield Properties Corporation*

*Gayle Greenbaum, Legal Counsel, Shoppers Drug Mart Corporation*

*Nancy Prenevost, Vice President, Legal, Oxford Properties Group Inc.*

*Terry Armstrong, Director of Leasing, SNC-Lavalin ProFac Inc.*

## **THEME C1**

### **DEAL-MAKING IN TODAY'S MARKET: ASSESSING, NEGOTIATING AND FINALIZING OFFERS TO LEASE**

Vacancy rates in office, industrial and retail markets are generally holding firm, notwithstanding any economic fallout associated with the subprime market issues and general economic trends. How should landlords plan their leasing campaigns and set hurdle rates in these market conditions? How are prospective tenants being qualified in advance? How are threshold deal terms being set? Are NER's the best pricing metric for a landlord to use? Are there any alternative strategies that would be as or more effective? How do Canadian leasing strategies being used by tenants and landlords compare with U.S. strategies? Are the latter practices creeping into the Canadian market?

*Moderator:*

*Chris Holtved, Vice President, Commercial Properties, Pauls Properties Corporation*

*Panel:*

*Vince Brown, Vice President, Asset Management, Redcliff Realty Management*

*Werner Dietl, Vice President, Industrial Properties, CB Richard Ellis Limited*

*Paul Morse, Senior Managing Director, National Practice Director, Office Leasing, Toronto Central, Cushman & Wakefield LePage Inc.*

*Joanne Stevenson, Director, Leasing, GTA West, GWL Realty Advisors Inc.*

**10:25 a.m. MORNING REFRESHMENTS**

**10:50 a.m. THREE CONCURRENT SESSIONS (SELECT A2, B2 OR C2)**

## **THEME A2**

### **GREEN LEASES, CARBON CREDITS & SHARED ENVIRONMENTAL OBJECTIVES: HOW ARE THEY CHANGING LEASE TERMS AND NEGOTIATIONS?**

While the development of new and existing greener commercial buildings has been growing in Canada, there has been an absence of an appropriate "green lease" governing these types of properties for the benefit of both landlords and tenants. This session will examine in detail the first comprehensive "green lease" created specifically for the Canadian market. The REALpac Green Office Lease incorporates the latest sustainability principles and objectives, and offers landlords and tenants sustainability targets for energy, water, indoor air quality, and recycling. The Green Lease also enables landlords to carry out "green" renovations to existing building stock, and anticipates and provides for both carbon offsetting by a landlord, and future carbon trading. How can landlords and tenants agree to shared environmental objectives for tenant space and the building generally? How will the risk of "greenplating" be managed? How will existing buildings be converted over to a uniform "green lease"? In negotiating a "green lease", where will the pushbacks be? If a cap and trade scheme comes to Canada, who will get the carbon credits? How will the lease negotiation process be managed?

*Panel:*

*Michael Brooks, CEO, Real Property Association of Canada*

*Bill Rowlands, Partner, Lang Michener LLP*

*Gray Taylor, Chair, Climate Change & Emissions Trading, Bennett Jones LLP*

## **THEME B2**

### **EXPANSION AND CONTRACTION RIGHTS: PITFALLS AND SCENARIOS**

This session will provide a unique perspective on a group of special rights involving downsizing or expansion of premises. These have sometimes proven to be some of the more challenging elements of a lease: early termination rights, downsizing rights, rights of first offer, and rights of first refusal. Learn how these points should be addressed from the perspective of a landlord and a tenant resulting in a more ideal lease. What are some sources of common debate between a landlord and a tenant over special rights and how can they be avoided through the drafting process? How do you ensure that a ROFO and ROFR are easy to administer? What are the issues to concern yourself with when you are drafting them? Both landlords and tenants are trying to build flexibility, and control, into their leasing arrangements. How can competing interests co-exist? Landlords and tenants appear to be in tugs of war over expansion and contraction rights. While tenants are striving for flexibility, landlords are hesitant to encumber their space with options or to bear all costs for re-renting space if an occupant wants out. Are landlords granting any flexible space clauses? How do they structure financial caveats to ensure that a tenant who exercises an expansion or contraction option bears any related costs?

*Moderator:*

*Lisa Borsook, Managing Partner, WeirFoulds LLP*

*Panel:*

*Sheldon Disenhouse, Partner, Fraser Milner Casgrain LLP*

*Karen Domen, Vice President, Legal Contracts, Redcliff Realty Management*

*Celia Hitch, Counsel, Lang Michener LLP*

*Craig Tresham, Principal & Senior Vice President, Avison Young Commercial Real Estate*

## **THEME C2**

### **THE CHANGING FACE OF DEMAND AND DEALS IN INDUSTRIAL MARKETS**

What are the current trends in the industrial leasing market? How are the logistics market and the changes in the movement of goods impacting the design and location of warehousing? What type of space is becoming obsolete and what is not? How are industrial tenant requirements changing, and what recent landlord initiatives are addressing this demand? What is different about tenant buildouts in industrial space? How are landlords managing to develop new industrial product in an environment of rising municipal development charges, high priced land and rising construction costs? Are landlords able to pass along changes in development charges to deals that have been negotiated before that tenant moves in?

*Moderator:*

*Scott Addison, Executive Managing Director, Toronto Region, Colliers International*

*Panel:*

*Wendy Booth, Senior Vice President Leasing, Menkes Developments Ltd.*

*Kim Hill, Vice President, Eastern Canada, ING Real Estate Canada*

*Glenn Way, Vice President, Asset Management, GWL Realty Advisors Inc.*

*Michael Zenker, Vice President, Greater Toronto Area, Kevric Real Estate Corporation*

**11:50 a.m.    INFORMAL LUNCHEON AND RECEPTION.**

**1:00 p.m.    THREE CONCURRENT SESSIONS    (SELECT A3, B3 OR C3)**

### **THEME A3**

#### **MANAGING TENANT CONSTRUCTION AND COSTS IN A GREENING MARKET**

The first part of this session will provide some strategic advice on how to effectively manage a buildout or leasehold improvement (from the perspective of a landlord or a tenant) in today's market. Discussion will cover such as issues as: being ready on time; managing construction costs given the uncertainty in labour, materials and construction costs, delivery dates and penalties; and today's permit approval and building regulatory process. As more landlords begin to green building elements using LEED-EB or BOMA Go Green Plus and more tenants begin to us LEED-CI for enhancing their indoor environments, what are the challenges related to managing these types of projects specifically from design to commissioning? What tools can be used in the design and construction phases of a greening project that can ensure that the project stays on budget and meets its sustainability objectives? How can lifecycle assessment, whole building design, careful commissioning and thoughtful management help contain your costs? The LEED-EB process, for example, is creating tenant manuals for buildings which set out policies and procedures that affect contractors that are hired to complete tenant improvements in the building. These new policies and procedures will change the way contractors carry out their work.

*Moderator:*

*Panel:*

*Colleen Baldwin, Principal, Straticom Planning Associates Inc.*

*Michael Bardyn, Director of Leasing, Manulife Financial*

*William Braun, General Manager, Northam Realty Advisors Inc.*

*Chris Sloan, President, Style Construction Management*

### **THEME B3**

#### **LEASING IN A SLOWING ECONOMY: ANTICIPATING TENANT DEFAULTS, BANKRUPTCY, AND INSOLVENCY**

With the possibility of a recession looming, and escalating energy costs have a greater negative impact on various segments of the economy, are landlords prepared to deal with a potential increase in tenant defaults and restructuring requests? How is covenant risk being re-assessed? What steps ought to be taken to anticipate default and minimize risk? With the growing number of LLPs, LPs and other corporate entities, do landlords clearly know who their tenant is? Does the tenant know who their landlord really is? How should leasing be executed differently in a slowing economy? What are some techniques and tactics that should be considered?

*Moderator:*

*Lloyd Cornett, Partner, Aird & Berlis LLP*

*Panel:*

*Devon Jones, Vice President, Legal, Oxford Properties Group Inc.*

*Steve Posen, Partner, Minden Gross LLP*

*Wally Stevenson, Partner, McLean & Kerr LLP*

## **THEME C3**

### **905/416: ARE THESE MARKETS GOING IN DIFFERENT DIRECTIONS OR NOT?**

How are the 905 and 416 office markets across the Toronto commutershed differentiated? Is it feasible to view them as eight submarkets? What are the key trends in each of these targeted areas? To what extent are rents moving up or down in each submarket? How can downtown Toronto with its higher property tax burden compete with office space in the 905? What impact are higher energy costs having on transportation and tenant locational decisions? How do existing office buildings compete against new LEED certified buildings? How will the office market across the Toronto commutershed likely be segmented in the future?

*Moderator:*

*Sandy McNair, President, Altus InSite*

*Panel:*

*Rory MacLeod, Vice President & Assistant Portfolio Manager,  
The Cadillac Fairview Corporation Limited*

*Robert MacNicol, Senior Vice President, Office Leasing, Brookfield Properties Corporation*

*Scott Moyes, Vice President, Office Leasing, Orlando Corporation*

*Craig Walters, Senior Vice President, Northam Realty Advisors Inc.*

## **2:10 p.m. THREE CONCURRENT SESSIONS (SELECT A4, B4 OR C4)**

### **THEME A4**

#### **ASBESTOS, OTHER HAZARDOUS MATERIALS AND THE ENVIRONMENTAL CHALLENGES OF EXISTING BUILDINGS**

It can be difficult to move to “green” buildings until we have remediated the “brown” buildings. How are owners and tenants addressing asbestos abatement, toxic mould, and other environmental and health risk issues in their leases? Asbestos, for example, can be commonly found in many forms inside a building, e.g. insulation on hot water piping and heating ducts, floor tiles, sheet flooring, ceiling tiles and acoustical finishes, wall insulating materials. As of November, 2007, all asbestos must be identified and managed including re-inspections at frequent intervals with records being updated at least once a year. What are the implications of these regulations and liabilities on building owners and tenants?

On a related issue, how are leases dealing with toxic mould related issues inside the building envelope? What kind of environmental insurance and strategies are owners and tenants using in this regard? How should insurance clauses be drafted to cover off these risks?

What are some the latest “best practices” for upgrading “brown” buildings to “green” ones?

*Moderator:*

*Dennis Daoust, Partner, Daoust Vukovich LLP*

*Panel:*

*Bryan Buttigieg, Partner, Miller Thomson LLP*

*Sharon Ferrari, Risk Specialist, Scott’s REIT*

*David Motley, Vice President, Lease Administration, GWL Realty Advisors Inc.*

*Bruce Stewart, Senior Vice President, Pinchin Environmental*



## **THEME B4**

### **RAPID FIRE LEGAL ROUNDTABLE: TWELVE COMMON ISSUES IN 60 MINUTES**

A fast paced session that will cover an assortment of “odds and sods” that people often experience in the leasing process and do not always fully understand. Each issue will be addressed by a legal expert in five minutes or less. Among the questions that will be covered:

- What is the purpose of the "fictitious outside date" in a Commencement Date formula?
- What are "gross-ups"?
- Why do some leases allow landlords to terminate in lieu of consenting to a sublease while others do not?
- What is the covenant of Quiet Enjoyment?
- What is Non-disturbance? Subordination? Attornment?
- Why or when does a default cause three months rent to accelerate?
- What is the role of the broker vs the role of the lawyer in the leasing process? Can a lease be effectively negotiated and executed without one or the other?
- What is the fuss about demolition clauses?
- Why do some leases have security interests and others do not?
- When can a clause stipulate a penalty for non-performance?
- What is forfeiture? What is waiver of forfeiture?
- What is the difference between a chattel, a fixture and an improvement?

*Moderator:*

*Stephen Messinger, Senior Partner, Minden Gross LLP*

*Panel:*

*Kenneth Beallor, Partner, Fraser Milner Casgrain LLP*

*Joseph Grigano, Partner, Blakes Cassels and Graydon LLP*

*Harvey Haber, Senior Partner, Goldman Sloan Nash & Haber LLP*

*Jane Helmstadter, Partner, Corporate/Commercial, Bennett Jones LLP*

## **THEME C4**

### **KEY LEASING TRENDS AND ISSUES IN RETAIL MARKETS**

This session will examine the changing face of retail markets. Given the escalations in many centres in recent years, have rents reached their maximum limits? Is the softening economy slowing retail sales as a result any increase in rents? To what extent are Canadian shopping preferences changing? What is in store for any new retail formats in the coming years? Lifestyle centre and mixed-use developments are two examples of new trends. What challenges do owners face in leasing retail space in these formats? How do these formats impact lease negotiations? As landlords desire more flexibility to enable them to re-merchandise their products, how are they trying to deal with the issues of relocating tenants? What can they do if the tenant does not want to move?

*Moderator:*

*Glenn Featherstone, Vice President, Retail Leasing, Morguard Investments Inc.*

*Panel:*

*Tom Burns, Vice President, Retail Group, DTZ Barnicke*

*Marta Lewycky, Vice President, Legal Affairs, First Capital Realty Inc.*

*Jeff Ross, Vice President, Leasing, RioCan REIT*

*Mike Pelyk, Senior Vice President, Oberfeld Snowcap*

3:20 pm

**CLOSING ROUNDTABLE DISCUSSION:  
MASTERING LEASE NEGOTIATION IN TODAY'S MARKET: HOW TO TACKLE  
THE TOP STRATEGIC ISSUES AND CREATE VALUE FOR BOTH PARTIES**

The closing panel discussion will examine some of the most significant issues, key negotiating strategies, techniques and issues that landlords, tenants, lawyers and brokers may experience in today's real estate leasing environment.

Some observers suggest that we are moving towards a landlord's market while others are not so sure. This session will examine some strategies and techniques that tenants and brokers should consider using in a landlord driven environment. How do owners behave when buildings approach full occupancy? How do they deal with conflicts? What is the ideal timing for renewing leases in today's market? What is the risk and reward of waiting or acting now in an increasing interest rate environment? How do you deal with subleasing and sub-subleasing issues and reconciling the rights of first refusal and rights of first offer that might be multiple layers deep? Why do some landlords say "no"? How do you deal with the issue of relocation rights and what is "comparable space"? How often is this exercised and why? How do landlords perceive themselves? How do tenants perceive themselves? What are the typical discussion points that should be easily resolvable in lease negotiation and what are the arguments used to reach the middle ground? How long should it take to finalize a deal? How will a landlord deal with a bully tenant who just can't be satisfied? How should a tenant deal with a bully landlord that won't compromise? How does the fairness of the initial lease draft impact on the time and cost of negotiations? What are the typical discussion points that are easily resolvable in lease negotiation and what are the arguments used to reach the middle ground? How long should it take to finalize a deal in today's market? What are the other typical discussion points that are easily resolvable in lease negotiation and what are the arguments used to reach the middle ground?

Healthy leasing markets exist where the needs and business requirements of building owners and tenants work in partnership to establish 'market value' for a lease. Even in markets where there is a glut of vacant space, tenants may select higher cost locations for the perceived value they place on one alternative over another. This will never change. How do you find ways to uncover those value propositions so that developers can build what tenants need to be successful – since successful tenants make for successful landlords!

*Moderators:*

*Michael Harvey, Vice President and Managing Director, National Leasing,  
Oxford Properties Group Inc.*

*Ellen Williamson, Senior Director, Legal Services, The Cadillac Fairview Corporation Limited*

*Panel will include:*

*John Arnoldi, Managing Director, Office and Retail Practice Groups, Greater Toronto Area,  
Colliers International*

*Michael Caplice, Assistant Vice President, Leasing, Manulife Financial*

*Natalie Vukovich, Partner, Daoust Vukovich LLP*

*Monty Warsh, Partner, Goodmans LLP*