COMMERCIAL LEASING SECOND EDITION

VOLUME ONE

EDITOR-IN-CHIEF JOSHUA STEIN, ESQ.

DEDICATION OF THE SECOND EDITION: LORRAINE POWER THARP

We dedicate the second edition of the New York State Bar Association's *Commercial Leasing* treatise to the memory of Lorraine Power Tharp, NYSBA's 105th President and the third woman to lead the Association. Before Lorraine was elected President of NYSBA, she was active for many years in the leadership of Section committees, including the executive committee, and served as Section chair.

The editor and authors of the *Commercial Leasing* treatise take pride in honoring Lorraine's many contributions to NYSBA and the legal profession.

"Lorraine strongly believed that making a difference was not only her calling, but the duty of every attorney. She once said that every single lawyer has the ability to help someone and to solve somebody's problem. Lorraine's legacy is her resounding belief that every lawyer counts and that every person counts, and she lived every day to pursue that higher calling," said Bernice K. Leber, who later served a term as president of NYSBA.

Lorraine brought that philosophy to her term as president of NYSBA. Our Association, she once said, is more than just a trade organization. It must be the voice of the law, if it is to be the voice of lawyers. It must advocate for the needs of the public. It must work to improve the lives of people, to improve the judiciary, to improve the law itself. Lorraine reminded us that a large part of the work of the law—to help directly improve people's lives—is being performed every day by small firms and small-town attorneys, the "journeymen" attorneys. As president, she made an effort to meet with as many of those attorneys as possible.

During her presidential term, 2002–2003, Lorraine created the Task Force on Increasing Diversity in the Judiciary, the Annual Meeting Presidential Summit, and the Special Committee on Animals and the Law. She fought for an increase in the assigned counsel fee rate, adequate funding for civil legal services, and the creation of a cutting-edge sexual harassment policy for law offices.

A native of Massena, New York, Lorraine graduated from Smith College and earned her law degree from Cornell Law School. She was the first woman lawyer at McNamee Lochner Titus & Williams and its first woman partner. She later became a partner of Whiteman Osterman &

Hanna LLP, chairing that firm's Commercial and Residential Real Estate Practice Group.

In 2003, Lorraine received the Albany Law School's prestigious Kate Stoneman Award. In 2004, she was named the New York County Lawyers' Association's Outstanding Woman of the Bar.

Lorraine is missed. We dedicate the Second Edition of NYSBA's *Commercial Leasing* treatise to honor the memory of Lorraine Power Tharp.

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ANDREW L. HERZ, ESQ.

Andrew L. Herz is a Senior Real Estate Partner of Patterson, Belknap, Webb & Tyler LLP who has recently been designated again as one of the world's leading real estate lawyers by *Euromoney* magazine. He is a recognized authority and frequent lecturer in the areas of commercial office leasing and mortgage financing.

He received his B.A. degree from Columbia College in 1968 and his J.D. degree from Columbia Law School in 1971.

In the area of commercial leasing, Mr. Herz served as Chair of the Leasing Committee of the American College of Real Estate Lawyers and Co-Chair of the Office Leasing Committee of the American Bar Association. As former Chair of the New York State Bar Association's Commercial Leasing Committee, he is the only New York real estate lawyer to have held all three such leadership posts in commercial leasing. In addition to bar association groups, Mr. Herz has taught intensive seminars on commercial leasing for the New York University Real Estate Institute and lectured for The Real Estate Board of New York, The Practising Law Institute, the *New York Law Journal*, The National Association of Corporate Real Estate Executives and numerous other industry groups. Mr. Herz is an Adjunct Professor at Vanderbilt Law School where he teaches Commercial Real Estate Transactions.

JAY B. ITKOWITZ, ESQ.

The Founding Partner of Itkowitz & Harwood, Jay Itkowitz has tried to verdict hundreds of jury and non-jury cases in state and federal court. Itkowitz & Harwood specializes in complex commercial litigation.

Mr. Itkowitz is admitted to practice in New York State, the U.S. District Court, Southern and Eastern Districts of New York, the U.S. Court of Appeals 2d Circuit, and the United States Supreme Court. Mr. Itkowitz graduated from New York Law School with honors in 1977, where he published a note in the *New York Law School Law Review*.

Mr. Itkowitz's firm has cleared several buildings for major capital projects. I&H was lead counsel, for example, in evicting tenants from Grand Central Station in the mid 1990s so that its historic renovation could be commenced. Other "deleasing" projects include clearing a series of buildings at 750 Lexington Avenue for Cohen Brothers Realty Corp.; the New York City headquarters of the Directors Guild of America, Inc.; Authority; and a building on 11th Avenue in Manhattan containing approximately 150 sub-tenants for Charles Benenson & Preston R. Tisch.

Mr. Itkowitz is Managing Partner of a number of residential and commercial real estate projects, and is currently building a regional company offering state-of-the-art office suites for attorneys and other professionals. Mr. Itkowitz manages 40,000 square feet of office space in New York and New Jersey.

Mr. Itkowitz has been an Adjunct Professor of legal writing at New York Law School and has authored many articles and given many lectures on real estate issues, including for the Practicing Law Institute, the New York State Bar Association, the Rent Stabilization Association, Lorman Education services and Lawline.

Mr. Itkowitz co-produced an independent film, *Frozen River*, which won the Grand Jury Prize at the 2008 Sundance Film Festival and garnered two Academy Award nominations—Best Original Screenplay and Best Actress.

Mr. Itkowitz, a former investigative journalist for newspapers in the New York Metropolitan Area, began his legal career as an Assistant Corporation Counsel for the City of New York and has clerked for U.S. District Court Judge for the Southern District of New York and a Kings County Supreme Court Judge.

BRADLEY A. KAUFMAN, ESQ.

Bradley A. Kaufman is a Member of Pryor Cashman's Real Estate Group, where he heads up the firm's commercial office, retail, and industrial leasing transactions. For more than 25 years, Mr. Kaufman has been responsible for acquisition, leasing and financing transactions aggregating many millions of square feet, representing owners and tenants in New York City and nationally.

Mr. Kaufman has authored numerous book and leasing manual chapters, including in the 2003 version of the *ALI-ABA Lease Negotiation Handbook*, chapters in both editions of this publication, and articles in various publications on a wide range of topics in the commercial and retail leasing field, including an annual article in the *New York Law Journal* on leasing trends in the New York marketplace.

Mr. Kaufman has been the Co-Chair of the New York State Bar Association's Real Property Section, Commercial Leasing Committee, since January 2002.

Mr. Kaufman received his A.B. from Hamilton College in 1979, and his J.D. from Fordham University School of Law in 1982.

ABRAHAM B. KRIEGER, ESQ.

Abraham B. Krieger practices in the areas of transactional corporate and real estate work and commercial and real estate litigation. He is admitted to practice in New York and before the U.S. Supreme Court, U.S. Tax Court and Eastern and Southern District Federal Courts. He previously served as general counsel of Safeco Title Insurance Co. of N.Y.

and has also served as an expert witness in federal and state courts in real estate litigations.

Mr. Krieger currently serves on the New York State Bar Association Executive Committee of the Real Property Law Section, as the 10th Judicial District Representative and serves on its Silent Lease Checklist and Professional Practice Committees. He served as President of the Great Neck Lawyers Association from 1997 to 1999, serving as its Chairman in 2000. He served on the NYS Executive Counsel of Bar Leaders and is actively involved in the Nassau County Bar Association as a member of its board from 2002–2005, chairing its Real Property Committee from 2003 through 2005 and is currently serving as Assistant Dean of the Academy of Law. He also currently serves on the We Care Advisory Board and is a member of the Executive Board of the Theodore Roosevelt American Inns of Court.

He has published in the *Nassau Lawyer* on "Attorney Pre-Lease Due Diligence" and is currently working on an article on "Wrongful Referral, or No Good Deed Goes Unpunished!" He has lectured before the Nassau Academy of Law on residential and commercial real estate transactions, leases and litigation, the N.Y.S. Conference of Bar Leaders on Enhancing Professionalism and Improving Public Perception of Small Bar Associations and the Great Neck Chamber of Commerce on Basic Legal Rights and Responsibilities of the Small Businessperson. He has published in the *New York Law Journal* and *Nassau County Real Estate Law Journal* on the "Property Conditions Disclosure Act" statute and published an article in the *International Law Review* on "The Holocaust as Catalyst for International Justice." He received the Nassau/Suffolk Law Services *Pro Bono* Attorney of the Month award in January 2000.

ANDREW A. LANCE, ESQ.

Andrew A. Lance is a Partner in Gibson, Dunn & Crutcher's Real Estate Practice Group and a resident in the New York office. Mr. Lance's clients include private real estate equity funds, hedge funds, corporate and individual developers and owners of office, retail, hotel, industrial, recreational, professional sports and entertainment real estate, mortgage and mezzanine lenders, REITs and other public and privately held companies investing in or using real estate. Mr. Lance also represents many not-for-profit organizations, particularly those building charter schools and involved in the performing arts. Mr. Lance also leads the firm's leasing practice and is co-chair of the firm's hospitality practice.

Mr. Lance is a member of the American College of Real Estate Lawyers and a fellow of the American College of Mortgage Attorneys. Mr. Lance was ranked as a leading Real Estate lawyer by *Chambers USA: America's Leading Lawyers for Business* 2010. *Chambers USA* described him as "an incredibly intelligent practitioner who is particularly good in negotiations." Mr. Lance is listed in *The Best Lawyers in America 2010* and 2009 and in *New York Magazine's* "2009 New York Area's Best Lawyers" edition. Mr. Lance was recognized by *Legal 500* in 2007 as a "big player in the complex field of mezzanine and preferred equity financing techniques." Mr. Lance was the lead attorney for the transactions that won the Real Estate Board of New York's Most Creative Retail Deal of the Year Award twice in recent years: the relocation of Hard Rock Café to the former World Wrestling Entertainment site at Times Square (2004), and the lease by Walgreens of the entire building at One Times Square (2007).

Mr. Lance joined Gibson, Dunn & Crutcher in March 1999. He previously practiced law as Special Counsel with Sullivan & Cromwell in New York from 1984 to 1993. Mr. Lance has been an Adjunct Professor at New York Law School since 1985, teaching Commercial Real Estate Leasing and Land Transfer and Finance, a Visiting Lecturer at Yale Law School, and a lecturer at the New York University Schack Institute of Real Estate teaching Real Estate Finance and Investment Analysis. He also is a frequent lecturer at programs of the Practicing Law Institute, the New York State Bar Association, the International Council of Shopping Centers, and IMN Conferences. Mr. Lance earned his J.D. in 1983 from Yale Law School, where he was a member of the *Yale Law Journal*. He earned a bachelor of arts degree *cum laude* in 1980 from Princeton University and attended the University of Paris. Mr. Lance was a Fellow of the Coro Foundation Leadership New York Program for the 1999-2000 term.

MATTHEW J. LEEDS, ESQ.

Matthew J. Leeds is a Partner in Ganfer & Shore, LLP. His practice includes the representation of owners, developers, sponsors, condominium and cooperative boards, investors, commercial tenants and institutional real estate lenders. Mr. Leeds is an Adjunct Professor of Law at Fordham Law School. He is a former Chair of the New York State Bar Association's Real Property Section, as well as of that organization's Condominiums and Cooperatives Committee. A frequent lecturer and writer, he has been a fellow of the American College of Real Estate Lawyers since 1999.

LAWRENCE P. LENZNER, ESQ.

Lawrence P. Lenzner is a Real Estate Partner at Patterson Belknap Webb & Tyler LLP. He practices real estate law and is experienced in a wide range of real estate transactions, including commercial leasing and subleasing (representing both landlords and tenants), commercial real estate financing (representing both borrowers and lenders), loan workouts and restructurings, and the purchase and sale of real property, including commercial property and cooperative and condominium apartments. Mr. Lenzner is a member of the New York State Bar Association. He graduated from Columbia University School of Law in 1990.

MARISA L. MANLEY, ESQ.

Marisa L. Manley is Founder and President of Commercial Tenant Real Estate Representation, Ltd. (CTRR), a Manhattan-based real estate brokerage and consulting firm serving tenants exclusively nationwide—never landlords—to help cut occupancy costs. She earned her B.Arch. at Cornell University's College of Architecture in 1979 and her J.D. from Harvard Law School in 1982. Ms. Manley started her career at IBM where she handled real-estate-related legal business in two-thirds of the United States.

At CTRR, on behalf of Fortune 500 companies and national law firms, she has performed analytical site surveys to find the most suitable location for tenant requirements; negotiated transactions including leases, lease renewals, ground leases, dispositions, joint ventures and purchases; audited landlord billings and identified and recovered for corporate tenants overcharges in operating expenses and related occupancy costs; helped screen architects and engineers; negotiated contracts with these firms; monitored tenant build-out; redesigned lease administration systems; trained lease administrators; and advised on related real estate matters across the United States.

Ms. Manley is also the President and Founder of Healthcare Real Estate Advisors (HCREA), a real estate advisory firm that specializes in the needs of healthcare clients with complex clinical and laboratory requirements.

Ms. Manley has also managed arbitration proceedings with landlords. Her articles have appeared in *Barron's*, the *Wall Street Journal* and *Harvard Business Review*.

MICHELLE A. MARATTO, ESQ.

Michelle A. Maratto is the Managing Partner in the firm of Itkowitz & Harwood. Ms. Maratto is admitted to practice in New York State and the U.S. District Court for the Southern District of New York.

She is an expert on legal technology, litigation support, and overall practice management.

Ms. Maratto has been practicing in the area of residential and commercial landlord and tenant law in the City of New York for 15 years. She also does real estate litigation, appellate work and transactional work.

Ms. Maratto is a frequent contributor to both legal publications and continuing legal education panels. She has been a faculty member for continuing legal education programs in the area of real estate for Lawline.com, Lorman Education Services, the Association of the Bar of the City of New York, the Practicing Law Institute, and the New York State Bar Association, Real Property Section, Commercial Leasing Committee. Ms. Maratto authored a manual on evictions in New York City for Lorman Education Services. Her five-part continuing legal education program for Lawline remains one of that provider's most popular programs.

She sits on the board of directors of Building Blocs, a not-for-profit organization, and she has been honored by the Brooklyn Bar Association Volunteer Lawyer's Project.

Ms. Maratto received her B.A. from Union College in 1989 and her J.D. from Brooklyn Law School in 1992.

JEFFREY A. MOERDLER, ESQ.

Jeffrey A. Moerdler is a member of the New York, Florida, Massachusetts and Washington, D.C. bars and is the New York Office Section Head of both the Real Estate and the Communications Sections for the Boston-based law firm Mintz, Levin, Cohn, Ferris, Glovsky and Popeo, P.C. Mr. Moerdler has a general commercial real estate practice emphasizing leasing, acquisitions, sales and financing of property as well as a unique practice in the overlap of real estate, telecommunications and technology—which is the largest practice of its type in the country—handling hundreds of telecom transactions involving thousands of properties every year. His telecom real estate practice includes representing property owners and telecommunications companies in all types of real estate transactions serving the communications industry, including switch hotels, data cen-

ters, inside building wiring, rooftop antennas, antenna towers, fiber optic transactions and related matters.

ANDREW L. ODELL, ESQ.

Andrew L. Odell is a Partner in the International Practice Group at the firm of Duane Morris LLD, concentrating in a wide range of international corporate and financial transactions.

Mr. Odell is a Member and Officer of the American Foreign Law Association, Inc., an Immediate Past Chairman and Member of the Hong Kong Association, Inc., an Officer and Director of the American Indonesian Chamber of Commerce and a Member of the New York State and American Bar Associations. From 1980 to 1985, he served as Deputy Commissioner/General Counsel for the New York City Commission for the United Nations and Consular Corps and has authored numerous articles on sovereign and diplomatic immunity.

Since 1985, Mr. Odell has been involved in a broad range of international corporate and financial transactions involving South America, Europe and Asia.

Mr. Odell graduated from Syracuse University in 1969 with a B.A. in fine arts and received his J.D. degree in 1973 from St. John's University. Mr. Odell also attended L'Universitée de Poitiers, Poitiers, France.

ROBERT J. SHANSKY, ESQ.

Bob Shansky advises clients in a very wide variety of complex real estate and corporate transactions, including acquisitions, dispositions, financing, and development of commercial, industrial, residential, and retail projects. Mr. Shansky was a Partner at Jones Day for 23 years and has been actively involved in the Firm's Corporate Real Estate Services Practice since its inception.

In recent years, he represented a major financial institution client in complex headquarters leases in New York City, affecting more than 2.5 million square feet of office space, and he continues to advise the client in connection with its use of space and disposition of excess space. He represented JPMorgan Chase in connection with the sale of the 1-million square-foot tower at 601 Travis Street, Houston, Texas, and the sale of the office building at 349 Fifth Avenue, New York, New York; both transactions involving leaseback of portions of each building. He was responsible

for the real estate aspects of Osprale Management's \$2.8-billion acquisition of the ConAgra Trade Group from ConAgra Foods.

Mr. Shansky is a member of the American Bar Association (sections on Business Law; Environment, Energy, and Resources; and Real Property, Probate and Trust Law (Leasing Group Committee on Emerging Issues and Specialized Leases and Retail Leasing Committee)), the New York State Bar Association (Environmental Law Section and Real Property Section, Commercial Leasing Committee), the Association of the Bar of the City of New York, and The Real Estate Board of New York (Environment and Transportation Committees).

SCOTT SHOSTAK, ESQ.

Scott Shostak has more than 20 years of commercial real estate experience with a focus on commercial leases, landlord tenant relationships, and real estate development, for both the private and public sector. He is currently a Counsel for the New York City Economic Development Corporation (NYCEDC), where he negotiates and drafts commercial leases—including office, warehousing, manufacturing, retail, and ground leases—and advises management on commercial real estate issues. He was formerly the Deputy General Counsel of the Brooklyn Navy Yard Development Corporation; the Special Assistant Corporation Counsel for the New York City Department of Citywide Administrative Services (DCAS); and an Associate at Fischman & Fischman, where he litigated residential and commercial landlord-tenant non-payment and holdover proceedings and researched commercial lease issues.

He received his J.D. from Pace University School of Law and a B.A. in Political Science from Vassar College. He also holds an M.B.A. in Finance, from New York University, Leonard N. Stern School of Business.

BENJAMIN WEINSTOCK, ESQ.

Benjamin Weinstock is a Senior Partner at the law firm Ruskin Moscou Faltischek, P.C. in Uniondale, New York, and serves as co-chair of the firm's Real Estate Department. Over the last 25 years, he has distinguished himself as one of the foremost real estate attorneys in New York State and is frequently sought after for his broad range of experience, knowledge and skill. In addition to representation of the firm's clients in specific matters, Mr. Weinstock has been called upon to testify as an expert witness in real estate matters.

Mr. Weinstock is a member of the legal advisory boards of Chicago Title Insurance Company and First American Title Insurance Company of New York and is a board member of C.W. Post's Real Estate Practitioner's Institute. Mr. Weinstock serves on the Real Property Law Committee of the Nassau County Bar Association, the Committee on Problems Affecting Title and Transfer and the Commercial Leasing Committees of the New York State Bar Association and the Real Property Law Committee of the American Bar Association. He is also a frequent lecturer on real property law matters on behalf of the New York State Bar Association and other organizations.

Formerly the Deputy Village Attorney of the Incorporated Village of Cedarhurst where he resides, Mr. Weinstock serves as the Village's Deputy Mayor. Governor Pataki named Mr. Weinstock to the New York State Real Estate Board, where he was elected Secretary. He is one of 13 real estate experts from across the state to serve on the Board.

Mr. Weinstock received his law degree *cum laude* in 1978 from Brooklyn Law School and his B.A. from Yeshiva University.

RUSSELL G. WOHL, ESQ.

Russell G. Wohl is Counsel at Patterson, Belknap, Wells & Tyler LLP in New York City. He received his B.A. degree from the State University of New York at Binghamton in 1986 and his J.D. degree from St. John's University School of Law in 1989.

Mr. Wohl is a frequent participant in the Advanced Commercial Leasing Institute, Georgetown University Law Center and co-author of "Negotiating the Major Office Lease."