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ICSC Legal Roundtable – April 30, 2018

ARBITRATION CLAUSES

1. Arbitration vs. court
 - Pros and Cons
 - Landlord's third party expert
2. Preliminary to Arbitration:
 - (i) Negotiation
 - (ii) Mediation
3. Arbitration Clauses: Issues:
 - (i) What is arbitrable: any disagreement? Rent renewal/CAM?
 - (ii) Qualifications of Arbitrator
 - (iii) One or 3? Who chooses the 3rd?
 - (iv) Time line for choice
 - (v) Default in making choice
 - (vi) Time line for arbitration and decision – (“baseball” arbitration?)
 - (vii) Confidentiality
 - (viii) Costs of arbitration
 - (ix) Interest
 - (x) Location and applicable law
 - (xi) Application of *Arbitration Act, 1991* or other arbitration legislation
 - (xii) Appeals
 - (xiii) Enforcement
4. Rent Formula
 - (i) Objective vs subjective (ground rent or unit rent)
 - (ii) FMR of premises with/without existing improvements
 - (iii) FMR for similar uses and terms, renewals/extensions
 - (iv) Minimum rent
 - (v) Non-Arbitration alternative to determining rent