

BANKER & TRADESMAN

THE REAL ESTATE, BANKING AND COMMERCIAL WEEKLY FOR MASSACHUSETTS

A PUBLICATION OF THE WARREN GROUP

LOFTY CONCERNS

Rooftop Telecom Leases Contain Hidden Costs And Pitfalls

Short-Term Gains Could Sacrifice Long-Term Potential

BY SHERYL STARR
SPECIAL TO BANKER & TRADESMAN

Huge increases in demand for wireless services are driving the continued popularity of rooftop telecommunications leases. Studies have shown that this year the number of mobile devices in use will exceed the number of people on earth.



SHERYL STARR

For many property owners, a rooftop lease sounds like a deal too good to pass up. Rooftop telecom leases can generate a healthy revenue stream for commercial property owners by using space that would otherwise lie dormant.

But such leases are fraught with hidden costs and pitfalls that can burden a property owner for many years to come.

Keeping Your Options Open

One of the more serious consequences of such leases is the loss of flexibility in future use or development of the building. The telecom company will typically want a 25- to 30-year lease with kick-out rights during the term. They will resist giving the owner termination or non-renewal rights, even in the event of a casualty or condemnation. However, if use of the rooftop for telecom equipment after a casualty would not be feasible, or if a redevelopment opportunity is later available for an underperforming building, the rooftop lease may become the tail that wags the dog. Property owners should carefully consider any anticipated plans for future reconstruction or redevelopment and assure that their lease retains some flexibility in that regard.

There's No Such Thing As Market Rent

Rents for a rooftop lease have no real relationship to the fair market value of the prop-

erty, but rather to the utility of the location to the telecom company. Rents are usually based on considerations such as where coverage is needed, how long the lease term is, the ease or difficulty of equipment installation at the building, and permitting and zoning restrictions at that location. Although the telecom company will want a long-term lease with fixed rents, there are ways to take advantage of possible re-entry points to enable renegotiated rents and to compensate a property owner for a lease kick-out.

It's Not Just The Roof

While the major telecom equipment and antennas will be located on the rooftop, that equipment will require significant utility services, including electricity, cable and sometimes gas. Usually generators are also required, either on the roof or on the ground nearby. Utility lines may require unsightly conduits on the outside of the building, and generators can be noisy and cause vibration disturbing to tenants and other occupants. Additionally, the telecom company will want 24/7 access to its equipment. As a property owner, you will want to have some control over when and how the telecom company workers access your building, where the utility conduits run, and how often and when the generators run. The telecom company will usually work with the property owner to accommodate these concerns, as long as the right questions are asked during lease negotiations.

Additional Considerations

If the property is subject to a mortgage, hotel franchise agreement or other restrictive covenant, it is important to review those documents before entering into a rooftop telecom lease, as you may need to obtain third-party consent.

Consider also how the equipment will affect the building itself. Can the building structure and roof handle the weight of all that



equipment? Will roof penetrations void the owner's roof warranty? How can a property owner be sure that it has the right to relocate the equipment, temporarily or permanently, in order to complete needed roof repairs or replacements? And if a building has more than one rooftop lease, who is responsible to assure that the type and frequencies of the equipment will not interfere with one another?

Telecom rooftop leases can be win-win transactions, as long as care is taken to maximize the benefits and minimize the detriments to the property owner. The issues raised above are just a few of the considerations that should be taken into account when negotiating a rooftop telecom lease on behalf of a property owner. ■

Sheryl Starr is a partner at the Boston law firm of Bernkopf Goodman. She has over 30 years of experience in all aspects of commercial real estate transactions, including acquisitions, sales, leasing, sophisticated financing and debt restructuring and joint venture activities.