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IN THE SPOTLIGHT

Leasing Outside The Box

Rooftop Solar Systems

By Preston Brooks and Andrew Kim

Whether it is due to the emergence of a "green" movement or a desire to find an additional income stream in today's challenging economic market, commercial property owners are now taking advantage of unused rooftop space to install solar energy systems. Although harnessing the sun's energy through photovoltaic solar panels is not a new idea, due to recent advancements in technology and tax incentives (including the 30% tax credit contained in last year's stimulus plan), the cost-efficiency of these systems has improved significantly.

THREE OPTIONS

Installing the System

For owners of commercial property, there are three ways to take advantage of unused rooftop space through installation of a solar system. The first is to purchase the system from a solar installer, often referred to as "integrator." The benefit of this approach is that the owner can obtain a hedge against rising energy costs, at least for a portion of the energy consumed on-site. While the owner incurs a large upfront cost, the 30% tax credit softens

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Vacation and Abandonment of Industrial Premises

By Paul R. Diamond and Adam Murad

The recent economic crisis has caused a number of tenants to vacate or abandon industrial space. In fact, the problem is so bad that it has been reported that the Obama administration is considering a proposal to raze entire industrial districts and return the land to nature. Tenants vacating or abandoning their leased space can create a number of problems for industrial landlords. To prevent these problems, it is imperative that all landlords include in their leases provisions prohibiting tenants from vacating or abandoning their leased space. Each such instance should be deemed to be an event of default.

The problems such clauses seek to prevent is the first focus of this article. A series of recommendations are then offered for industrial landlords to protect their properties and their bottom lines.

VANDALISM AND DETERIORATION

Vacant and abandoned industrial space can lead to vandalism and a general deterioration of a property. Such sites may also become an unattractive eyesore and nuisance. When an industrial property becomes vacant and poorly monitored, it becomes subject to criminal activity. Abandoned industrial properties are frequently vandalized and often become littered with broken glass and other garbage. At its most extreme, this phenomenon takes the form of illegal "fly dumping," whereby debris, perhaps including hazardous waste, is dumped onto a vacant site. Vermin, odor, and health problems may also be the direct result of fly dumping or littering. Industrial sites are targets, because they are often stand-alone buildings in remote locations.

LOWERED PROPERTY VALUES AND SUBSEQUENT COMPLIANCE ISSUES

Such problems also have the effect of lowering surrounding property values. The ill-will created in the surrounding community might result in political backlash, causing building code and other regulatory compliance issues with which the property owner may not have to contend otherwise.

Compounding the property owner's problem is the jeopardizing effect the vacancy or abandonment has on the insurance coverage for the site. For instance,

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the model insurance forms drafted by the Insurance Services Office and the American Association of Insurance Services do not cover any losses due to theft, water damage, broken glass, or vandalism occurring after an industrial facility has been vacant for more than sixty days. Additionally, damage due to any other cause during a period of such vacancy will result in recovery being reduced by 15%.

What Constitutes Vacation Or Abandonment?

While the vacation or abandonment of a property already constitutes events of default under many leases, there have been disputes over what constitutes such situations. Industrial landlords might be surprised to learn that vacation and abandonment are very distinct acts, with separate proof required for each. While courts and legal commentators at times conflate the terms or get them backwards, relevant case law illustrates the distinction.

Vacation

To define vacation, many courts have simply reached to the dictionary for assistance. For example, in *Saul Subsidiary II Ltd. P'ship v. Venator Group Specialty, Inc.*, 830 A.2d 854, 861 (D.C. 2003), the court used Black's Law Dictionary to define "vacate" as "to move out; to make vacant or empty; to leave; especially, to surrender possession by removal; to cease from occupancy." The court then pointed out that, in the realm of real property, "the term 'vacate' has a settled and relatively narrow meaning."

In this context, to "vacate" is the physical act of leaving an industrial building empty, without occupants or other contents. The courts are less likely to hold that an industrial property has been vacated to the extent people or a substantial amount of valuable property, or both, remain at a site. Two helpful cases illustrate the standard courts apply in determining whether a "substantial" amount of property remains and, therefore, whether an industrial building has been vacated.

In *Catalina Enters. v. Hartford Fire Ins. Co.*, 67 F.3d 63 (4th Cir. 1995), an industrial warehouse had been left empty for five months, except for one piece of scaffolding, a hand truck, and an office work table. Further, the heat, most circuit breakers, and the security system had been turned off. The court held that this constituted a vacancy, writing that "[V]irtually no building could be considered vacant if the notion of vacancy is defeated by the existence of a paper clip, a stray pencil, or a light bulb." Since this case arose in the context of construing a fire insurance policy, the court reasoned that the warehouse in question was more likely to develop fire hazards that would go undetected or, if a fire did occur, it would burn for a longer period of time before the fire department was called. Similarly, in *Cameron v. Frances Slocum Bank & Trust Co.*, 824 F.2d 570 (7th Cir. 1987), where the lease stated an industrial building was to be used as a water pumping station, a tenant who used the property solely for storage was deemed to have vacated the property. Although the court in this case did not speak of a fire risk, it noted that the property had fallen prey to vandalism, overgrown shrubbery and broken windows.

Courts differ on how important the element of intent is in finding that a vacancy exists. For example, it probably does not make sense to say that a momentarily absent tenant should be deemed to have vacated a property. On the other hand, some courts have held that the question of intent is immaterial to a finding of vacancy. Based on this view, it would not matter whether a tenant wished never to return, to come back after waiting out the recession,

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Costly Tenant Leasing Mistakes Can Be Avoided

Part One of a Two-Part Article

By Douglas E. Simon and Richard A. Bendit

For today's law firms (and their clients), leasing commercial real estate is rife with opportunities for failure. Even when tenants manage to navigate the issues of rent and space configuration successfully, mismanaged construction costs can easily turn a good deal bad. Furthermore, because a typical law firm or company goes through the leasing process only once every five, seven or 10 years, it is quite common to encounter costly problems or pitfalls.

Moreover, since real estate costs typically rank very high on a commercial tenant's list of individual expenses (second only to payroll), these mistakes can significantly impact a tenant's profitability. With this as background, it is extremely constructive to review some of the big mistakes that can be avoided by proper planning and guidance. This two-part article will provide a list that is by no means exhaustive, but an awareness of these problems, will help start the search on the right track.

The Power of Leverage and Competition When Entering The Market

Timing Considerations

There's an old broker's saying that it is never too early to start looking for space. While this may have a nice ring to it, it is probably not all that accurate. The truth is, there is a definite window of time to position a tenant optimally to sign a lease (whether to renew or relocate). The window has closed when there is insufficient time to commit to the longest lead time alternative. The opening of the window is a bit more difficult to determine, and depends largely on market conditions.

Stated simply, the ideal time to enter a market is early enough to ensure that all options can be considered (for some tenants, this means a sufficient time for a new building) but close enough to lease expiration as to be an attractive candidate to the prospect buildings. In the current market, for a typical office lease (10,000 – 30,000 rentable square feet), the ideal time is approximately 12-18 months in advance of a lease expiration date — or, if a build-to-suit is being considered, two years.

In addition to leaving sufficient time for your longest lead-time alternative, it is important to leave a "float" period — or time to break a deal and go with a different alternative — should the deal begin to fall apart during negotiations or deal terms begin to erode. We have shown our clients a relatively simple graph to illustrate leverage in landlord-tenant negotiations, and the one thing that is clear is that the leverage shifts completely from the tenant to the landlord as soon as the time to make a different choice is gone.

Landlords can be very adept at giving vague responses up until that shift in leverage — at which point the word "no" seems to be used a lot more frequently. Consequently, a law firm or other commercial tenant should not wait too long to make a deal. The question still remains: when is it too early to enter the market? For an anticipated move to a new location, a tenant has to keep in mind that building owners are, by nature, optimists. The deal to fill the building is always, "just around the bend." Accordingly, even if a building has a vacancy that is perfect for your firm or company, the landlord is not going to hold it open if it believes that it will forego other opportunities while waiting for your lease to expire. If a renewal is the likely outcome, starting too early can telegraph a reticence to move which, if understood and appreciated as such by your landlord, decreases its interest in providing an aggressive renewal proposal. Conversely, if the stay-put landlord has no reason to expect a renewal, it has a greater incentive to propose its most competitive pricing.

Having examined leverage, the next step is to analyze competition, or how leverage is used to optimize lease terms.

Market Forces: Competition In Leasing

Your lease is scheduled to expire in three years and your landlord approaches you with a ten-year renewal. He shares rental rates published for other spaces in your building and offers a deal starting at $1 per square foot below these rates. There are several factors to consider before signing on the dotted line.

Virtually every aspect of a commercial lease transaction is negotiable. As with any negotiable transaction, one can assume that the first offer made is not necessarily the best offer to be had. The key to a winning negotiating strategy is to identify a number of viable building alternatives with suitable availabilities that are deliverable on-time.

Having alternatives serves two important purposes. First, it forces the landlords whose buildings are under consideration to compete for the tenant's deal. As negotiations progress, quoted occupancy costs will be driven down and tenant concessions improved. Eventually, competition will force the best deal to emerge from the pack. Deals cannot be evaluated in a vacuum. By comparing alternatives, tenants can evaluate the relative merits of each and assess at what price point each alternative could become their first choice.

The other benefit to a well-run competitive process is that it will help bring to light other potential costs of occupancy that might not

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Tenant Leasing

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have been apparent from the initial offers (such as common area expense and tax pass-throughs, required base building-upgrades and fit-out costs). This improved transparency will provide the tenant's broker with valuable information needed to compare the deals being offered properly and ultimately allow the tenant to make a more informed decision.

The bottom line is, if a tenant is negotiating with just one landlord, that landlord has the advantage, as it is operating in a virtual monopoly. With proper timing and competition, a tenant should be able to drive down the rent, but beware… it is not always about the cheapest rent.

Occupancy Costs: It's Not Always the Rent

Assume there are two buildings with the required vacancy. Your broker advises you to engage an architect to do test fits of the spaces. Why should you incur the time and expense of hiring an architect when one of the spaces has a lower rent along with new carpet and a fresh coat of paint? When you are in the market to lease commercial office space, accepting the proposal with the lowest dollar per square foot rent does not necessarily mean you are getting the best deal.

To analyze the expenses associated with an offer properly, one must look at overall occupancy costs, for which there are three main drivers:

- Rental Rates;
- Square Footage; and
- Fit-Out Costs.

In order to understand the full financial impact of all of the occupancy cost variables, it is advisable to engage an experienced architect. A good architect analyzes a building's space and helps determine how a tenant's personnel fits into it most efficiently. Also, the architect can help determine the costs of needed tenant fit-out as well as any building system upgrades. To better understand how a tenant's broker can use the information provided by an architect, we will examine the impact of two of the occupancy cost drivers; rent and square footage.

For this example, assume the tenant is considering two different buildings. Building 1 is offering space at $25 per square foot per year, while Building 2 is offering space at $23 per square foot per year. At first blush, it appears as though Building 2 would be a good deal because the rental rate is lower than that in Building 1. However, assume that the architect analyzes the space in each of these two buildings and determines that the tenant will need 25,000 square feet to fit into Building 1 properly, but will need more space — 30,000 square feet — in order to fit into Building 2. Thus, the occupancy cost for Building 1 will be $625,000 ($25 x 25,000 sq. ft.) and for Building 2, it will be $690,000 ($23 x 30,000 sq. ft.). Even though the base rental rate for Building 2 is lower, it will actually cost the tenant $65,000 per year more than Building 1.

As shown above, the information provided by an architect can be critical in helping the tenant and its broker analyze the quality of each deal offered. Moreover, the results of its analysis will provide the tenant with valuable leverage to negotiate a better offer for each prospect building.

Takeaways

- It is essential to manage the timing of lease negotiations to avoid shifting leverage from the tenant to the landlord.
- Alternatives are key to successful negotiations.
- The lowest rent is NOT always the best deal.

The conclusion of this article will discuss construction costs and turnkey solutions.

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or to sublease. Similarly, most courts have held that no specific amount of time must elapse for a vacancy to occur. *PRC Kentron, Inc. v. First City Center Associates, II*, 762 S.W.2d 279, 283 (Tex. Ct. App. 1988). From this perspective, the dispositive — indeed, the only — inquiry relevant to a finding of vacancy is whether or not the industrial premises have been left substantially empty. Accordingly, a tenant may understandably want to indicate in its lease that a vacancy has not occurred until a specified time has passed, say 30 days. If such is the case, it is critical for landlords to ensure that during such a gap period, specific security measures are in place and insurance coverage is not adversely affected.

It is generally more difficult for a landlord to prove to a court that a tenant has abandoned its space. For example, in *King v. Petroleum Servs. Corp.*, 536 P.2d 116, 120 (Alaska 1975), the court held that an industrial warehouse was vacant, but not abandoned, when a tenant stopped paying rent but left personal property behind. In *Tenn-Tex Properties v. Brownwell Electro, Inc.*, 1987 Tenn. App. LEXIS 2938 (Tenn. Ct. App. 1987), the Court of Appeals of Tennessee ruled that a manufacturing plant had not been abandoned because the tenant still conducted some business on the premises, maintained security and utility services and left behind inventory valued at more than $20,000.

The difference between vacation and abandonment lies in the requirement of intent, which is secondary to the vacancy question, but is considered of paramount importance in the case of abandonment. This intent to give up one's interest in the property and never again reassert it must be shown by clear and convincing

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Strengthening Letter Of Credit Security Provisions

Recent FDIC Action Demonstrates The Need

By Adam Walsh and Eric Greenberg

Over the last several months, many landlords have seen a sizable number of their once financially stable tenants close their doors practically overnight as a result of looming bankruptcies, corporate restructuring or other issues. In all too many cases, these once reliable tenants are leaving those landlords with only a security deposit to fall back on. In addition, if the security deposit is in the form of a letter of credit (LOC), now more than ever the landlords must also keep one eye on the financial stability of the LOC issuer.

Recent Actions by the FDIC

This need is highlighted by the recent actions by the Federal Deposit Insurance Corporation (FDIC). In 2009, the FDIC began to issue written notices stating that it would not honor letters of credit issued by financial institutions that it had placed into receivership. However, unfortunately for landlords, the FDIC does not publish its internal "watchlist" of troubled or failing banks and financial institutions. With no publicly available FDIC watchlist, landlords need to be increasingly proactive in order to head-off a worst case scenario: A landlord with a financially precarious tenant assumes that at a minimum it will be able to recover the face amount of the LOC when and if such tenant defaults, but discovers too late that such LOC has become worthless, due to the financial condition of the issuer.

There are several ways in which landlords can proactively mitigate being stuck in this worst-case scenario. One is to implement internal procedures to monitor effectively the financial wherewithal of the issuers of the LOC in its leasing portfolio. Another is to strengthen lease provisions regarding the manner in which an LOC can be drawn or when it must be replaced, with an added focus on addressing the issues posed by the recent FDIC policy. This article focuses on this latter method.

Seek Flexibility

As a general matter, the landlord should seek maximum flexibility when drafting the terms and conditions under which an LOC can be drawn. Some typical examples of such flexibility include:

- If otherwise entitled to a draw, the landlord should have the unfettered right to draw the entire amount of the letter of credit without any liability to the tenant;
- The landlord should not be limited in its right to draw against the letter of credit only to the extent of the damages actually suffered by the landlord, as damages may not yet exist at the time of the landlord's draw;
- The landlord should avoid requirements that it specify to the issuing bank the landlord's intended use of the drawn funds;
- The landlord should have the right to draw against the letter of credit, among other reasons, in the event of a tenant bankruptcy, dissolution and due to the tenant's failure to pay debts generally as due;
- The landlord should be permitted to draw against the letter of credit if the letter of credit is not renewed within 60 days of its schedule expiration;
- Specific draw conditions should always be narrowly limited or avoided entirely; and
- The tenant should acknowledge within the lease that it has no personal property rights in the letter of credit.

However, the recent actions by the FDIC demonstrate that although the above items represent necessary protections, they are insufficient if the problem is the financial status of the LOC issuer. Additional protective language is required in order to address these concerns. Moreover, as the recent rapid deterioration of once venerable financial institutions demonstrates, these protections remain important even when the tenant and/or the issuer appear entirely safe and credit-worthy at the time of lease execution and/or LOC approval.

Adverse Events

For example, the lease should provide that the occurrence of certain adverse financial events relating to the issuer forms an independent basis for the landlord to draw on the LOC and to retain the proceeds until a replacement issuer can be obtained. It is inadequate if FDIC conservatorship/receivership is the only adverse event triggering the landlord's right to draw on the LOC. As noted above, the LOC is unlikely to be honored by the FDIC in such a circumstance anyway. However, a landlord can stipulate in the lease that if the issuer no longer satisfies certain objective financial criteria, the LOC is no longer acceptable and must be replaced. An example is to require a minimum credit rating for the issuer at all times, whether from Standard & Poor's, Moody's or otherwise. The Web sites of the major rating agencies provide landlords with a ready mechanism to verify these ratings. Another objective approach is to stipulate that the issuer maintain a certain level of capital reserves or exceed another financial metric.

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Security Provisions

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Adding a Subjective Basis

Inclusion of such objective criteria is worthwhile and should generate little controversy in lease negotiations. However, it is possible that the objective metrics available to landlords fail to keep up with the speed at which an issuer's financial situation deteriorates, or that the objective information is otherwise unavailable or imperfect. As such, due to the severity of the worst-case scenario described earlier, landlords may also want to consider adding a subjective basis for this type of LOC draw.

For example, a lease can provide that a draw by a landlord would be permitted if, in a landlord's sole discretion, there is a reasonable likelihood that the issuer will be placed under FDIC conservatorship at any time over the next (60/90) days, or if a material adverse event has occurred that substantially increases the likelihood, in the landlord's sole discretion, that the issuer will be placed under such conservatorship within such time frame. Furthermore, because the basis for such a draw would be inherently subjective, the lease should provide that the landlord shall have no liability to the tenant for any such draw as long as the draw was made in good faith.

The benefit of such a subjective standard is speed and flexibility — upon the occurrence of an event regarding an issuer that gives a landlord concern, the landlord does not need to wait for objective information to be available. The landlord is also not relying on the ability of the rating agencies to presage FDIC conservatorship. Although tenants may resist providing landlords with this amount of discretion, a landlord can mitigate such concerns by providing that the LOC proceeds will be returned to the tenant as long as an acceptable replacement letter of credit is provided within a designated time frame. For tenants with greater bargaining ability, a landlord could also provide for a notice and cure period, in order to give the tenant time to find a replacement letter of credit before the funds are drawn in the first instance.

Conclusion

It is important to note that the concepts discussed above do not represent a comprehensive list of all issues that should be addressed in a lease provision that covers an LOC. In addition, there could exist specific business aspects of a particular deal which would require special drafting. However, against the backdrop of the FDIC notices and the general uncertainty of the financial markets, it does appear that landlords would be wise to take a fresh look at their standard lease to see how it can be improved going forward and to see if there are any holes in their current portfolio.

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evidence. For instance, evidence of a desire to sublease vacated space reflects an intention not to abandon the space. Moreover, whereas courts have held that the question of time is immaterial for a finding of vacation, a finding of abandonment requires an intent to be gone forever. When this intent conjoins with an external act to evidence that intention, an abandonment is typically found to have occurred. In *King*, therefore, the court ruled that the tenant's mere vacation became an abandonment when he said in a telephone conversation, "[Y]ou aren't going to get any more money from me." At that point, the tenant's intent to abandon the leased premises became clear.

Abandonment

Surprisingly, however, it appears that the bar may be set lower in terms of acts found to evidence abandonment, than is the case for evidence of vacation. For example, whereas the key to vacation is the premises being substantially barren, abandonment has been found to exist in a case where a tenant was merely preparing to move out or was in the process of moving out. *Mason v. Schumacher*, 439 NW2d 61 (Neb. 1989). Therefore, while it might be helpful conceptually to describe vacation as a precursor to or the "lesser included offense" of abandonment, there are cases at the margins where this framework might begin to break down.

Surprisingly, however, it appears that the bar may be set lower in terms of acts found to evidence abandonment, than is the case for evidence of vacation.

Effective Steps

There are a number of simple and effective steps that industrial landlords can take to protect themselves from the consequences of the vacation or abandonment of industrial property. Industrial landlords should include in each lease provisions that guard against these problems. One such provision would be a default clause making it absolutely clear that consideration under the lease includes not merely payment of rent, but a material physical presence by the tenant to ensure the security, cleanliness and safety of the premises to protect against the problems outlined above. Industrial landlords should require that a minimum number of personnel be present during normal working hours, and not simply furniture, fixtures, and equipment. Indeed, all industrial landlords must work hard to contract around

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the legal quirk that the presence of personal property — with nary a human being in sight — might be enough to avoid a court finding that a vacancy exists, as it is the lack of people present in often remote locations that gives rise to problems.

IN THE COURTS

Courts are generally willing to enforce such provisions, even when the requirements in question are quite idiosyncratic. For example, in *Glen Southern, Inc. v. Marshall County*, 967 So. 2d 1256, 1260-61 (Miss. Ct. App. 2007), the tenant agreed to use an industrial building "in connection with the operation of its manufacturing plant … with the intent to furnish employment to persons in and about the County of Marshall during its occupancy thereof." When the tenant then subleased the premises for use as a warehouse, the court ruled that an abandonment had occurred. Aside from the application of these lease provisions, there are other actions that all landlords should take to guard against the harmful effects of tenant vacation or abandonment.

CONCLUSION

Quite simply, all landlords should regularly visit the properties they own. To prevent such problems as fly dumping, vermin, and vandalism, there is no substitute for a personal viewing. Industrial landlords should also require their tenants to install automatic fire alarms, security systems, and sprinklers to protect against damage in the event that a vacancy or abandonment goes undetected.

For a particularly high-risk property, an industrial landlord might wish to require the continuous presence of a particular minimum number of security guards. Likewise, it is incumbent upon all industrial landlords to be aware of their specific policy language and limitations regarding vacancy and abandonment.

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this blow. In addition, the "breakeven" point is typically about 12 years, after which time the owner is essentially receiving free energy for the remaining useful life of the solar system (usually 25-30 years). The owner may also be eligible for emission reduction credits (ERCs), which have market value. In addition to the economic benefits, installation of a solar system allows the property owner to purchase and deliver "green" power generated onsite directly to tenants.

Leasing the System

The second approach is to lease the solar system from the integrator. The advantage of this approach is that the upfront costs to the property owner can be dramatically reduced to the equivalent of mere "driveoff" charges under a car lease. Every month, the owner would make two payments — one to the solar integrator, and one to the utility — instead of the traditional payment to the utility. The goal, of course, would be that the two payments combined total is less than the current single payment to the utility. The lease term is usually 25 years. Under this approach, the owner typically would not receive the tax credit, and would not be able to sell ERCs.

Using a Utility Company

The third approach is to lease the rooftop space to an electricity producer (typically a utility company) under a power purchase agreement (PPA). Under this scenario, commercial property owners are able to receive a monthly income stream (which could be significant depending on the amount of square footage leased) without incurring expenses and, at the same time, help reduce greenhouse gases in the atmosphere. Under the terms of a typical PPA, the commercial property acts as a host site for solar electricity production, while the electricity producer assumes the responsibility of purchasing, installing, operating and maintaining the solar systems. The electricity produced under a PPA is generally sent back to the utility grid.

… new leases should contain the appropriate language granting the landlord the right to control and/or use the rooftop space.

CHALLENGES

Each approach comes with its own unique challenges. One issue that appears to exist in all of the approaches for a landlord is the landlord's ability to control access and/or use of the necessary rooftop space without violating the leasehold interests of existing tenants. A proper analysis of any underlying tenant leases should be performed to determine whether the landlord possesses this ability or whether a lease modification is required. If a modification is required, changing existing lease terms may be difficult without concessions from the landlord. To avoid this scenario, new leases should contain the appropriate language granting the landlord the right to control and/or use the rooftop space.

Other issues that should be considered in connection with rooftop solar systems include, at a minimum: 1) the true cost savings to the

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MOVERS & SHAKERS

Jeffrey H. Newman, a member of this newsletter's Board of Editors, has published a book entitled "Hear with Your Heart: Mastering the Art and Skill of Listening." Contact him for further information at jnewman@sillscummis.com.

Best Lawyers in America® has named **Willcox & Savage** lawyer **Robert L. Dewey** as the "Norfolk Real Estate Lawyer of the Year" for 2010. Mr. Dewey's commercial real estate practice focuses on retail and office leasing and development. He is also Managing Partner of the firm.

Wendel, Rosen, Black & Dean LLP welcomes **Robert Gonella** as a partner to the firm's Real Estate Practice. With more than 30 years of experience, Mr. Gonella joins the firm from **Target Corporation**, where he was a senior corporate counsel in the areas of real estate and general business.

Dominic J. Balascio has joined **Bayard P.A.**, a Meritas® member law firm based in Wilmington, DE. Having served since 2005 as in-house counsel to several prominent area real estate developers, Mr. Balascio has been instrumental in the development of many major construction and real estate projects throughout Delaware.

Baker, Donelson, Bearman, Caldwell & Berkowitz, PC announced that **William R. Sylvester** and **C. Bradley Cherry** have joined the firm's Birmingham, AL, office as the newest additions to Baker Donelson's real estate practice group. Mr. Sylvester and Mr. Cherry were both previously with **Walston Wells & Birchall, LLP**. Mr. Sylvester joins the firm as shareholder. His practice focuses on commercial real estate development and business and tax planning for real estate. Mr. Cherry, who joins as an associate, manages a diverse commercial real estate portfolio practice. His experience includes guiding clients through multifamily and golf course development transactions, acquisitions of manufacturing sites in the Southeast, as well as providing banking and financial counsel for clients.

Best Lawyers in America® has named 12 attorneys from **McDonough Holland & Allen PC** to its 2010 distinguished list. In the area of Real Estate, all based in the firm's Sacramento, CA, office are: Shareholders **Patricia D. Elliott** and **Jeffry R. Jones**, and **David J. Spottiswood**, Of Counsel.

Greenbaum, Rowe, Smith & Davis LLP (**GRSD**) announced that 32 of its attorneys have been named to the 2010 edition of Best Lawyers. In Commercial Litigation, the firm has six lawyers recognized. In addition, the firm has three attorneys in New Jersey listed in Alternative Dispute Resolution, as well as four in Land Use & Zoning Law. The firm's attorneys noted in the area of Real Estate Law are: **Robert S. Greenbaum**, **Arthur M. Greenbaum**, **Wendell A. Smith**, **Martin E. Dollinger**, **Dean A. Gaver**, **Robert C. Schachter**, **Douglas K. Wolfson**, T**homas J. Denitzio, Jr.**, **Robert S. Goldsmith**, **Kenneth T. Bills** and **Meryl A.G. Gonchar**.

Paul L. Baccari joins **Murtha Cullina LLP** as a Partner residing in the firm's Boston office. Mr. Baccari will be part of the Real Estate Department and Retail & Hospitality practice group.

Samuel P. Gussis and **Samuel A. Lichtenfeld** have joined the real estate practice group at **Baker & Daniels LLP**. Gussis becomes a partner and Lichtenfeld serves as counsel resident in the law firm's downtown Chicago office. Both lawyers focus their practice on real estate finance and development. Gussis and Lichtenfeld have represented lenders across the U.S. in all aspects of commercial mortgage transactions.

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property owner; 2) the structural integrity of the building; 3) the type of photovoltaic solar system (*e.g.*, thin film versus crystalline silicon panels, tracking versus stationary, etc.); 4) responsibility for the installation and removal of solar systems; 5) concerns that a solar system might obstruct signage, otherwise impede the sightlines of tenants' premises, or reduce the overall aesthetics of the center; 6) allocation of liability for any property damage and injury; and 7) allocation of ERCs and "going green" claims.

CONCLUSION

A thorough analysis of a commercial property owner's ability to use its rooftop and of the issues that may arise under the applicable approach used by the owner should be considered prior to entering into any such arrangement.

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