Leasing the Right to Advertise…On the Roof

Lowndes Leasing Lawyers Blog
02.15.2022

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Building owners may have a hidden income-generating asset – their roof. Utilizing rooftop space to advertise, by placing a sign or painting an advertisement onto a roof, is a rising trend, particularly in areas surrounding airports, where tourists can view advertisements on their descent into a city. For proof, visit Google Maps and look around major airports to find rooftop advertisements, such as the Target and Allstate logos on rooftops adjacent to O'Hare International Airport. Rooftop advertising has also gained popularity around the Orlando Eye, a 400-foot tall observation wheel in Orlando, Fla., from which rooftops are visible.

Landlords owning buildings on which rooftop advertising is possible could consider their roofs an asset and, in addition to leasing to third-party advertisers, could make advertising a bargaining point in negotiations with prospective tenants. Just like any other type of advertisement space, a rooftop's value for advertising is based on its visibility. Accordingly, rooftops near tall buildings, airports, and tourist attractions are the most desirable. However, landlords who own buildings farther away from these structures can also generate demand for their rooftops.

One way is to verify that a rooftop is on a commercial airplane's flightpath. Although they are not near an airport, rooftops are still visible to airplane passengers on their long descents into airports. Because airports generally use the same flight paths, a rooftop on one these flight paths will be visible to substantial amounts of airplane passengers daily, making it an attractive advertising space. Aside from noticing planes routinely flying over their building, landlords can visit websites that track flight paths to determine if their rooftop is on one.

Another way to generate demand for these rooftops is by appealing to advertisers who want to advertise on Google Maps and Google Earth. Rooftop advertising is visible on the satellite images these sites use. The downside to this type of advertising is that there is no guarantee that the advertisement will be captured on the satellite image because these websites use the same satellite images for numerous years. On average, Google Earth updates its images about once every three years; thus, if the advertisement is not on display when the satellite image is taken, it may

take years to be displayed. However, the upside is that if a rooftop advertisement is captured on one of these sites' satellite images, then the advertisement will remain visible until the image is updated, regardless of whether the rooftop advertisement is still on the roof.

Before promising prospective tenants the right to utilize a rooftop for advertising, there are various issues landlords should consider. For instance, landlords should consider who will be responsible for the repair and maintenance of the roof. With triple net leases, tenants are responsible for roof maintenance, making this issue straightforward. The issue of maintenance becomes a bit trickier when the roof is shared and covers a building leased by many tenants. If only one tenant is permitted to advertise on the roof, it may be appropriate to pass the responsibility for all roof maintenance and repairs that relate to the advertising onto that tenant. If more than one tenant is permitted to advertise on the roof, however, it may become more complicated to determine which tenant is responsible should a problem arise.

Also, landlords need to be aware of visibility issues when negotiating the price of rooftop space. As mentioned above, a rooftop advertisement can still be seen on websites using satellite images even after the advertisement is removed. Thus, landlords who seek compensation for the rooftop space based on a percentage of annual income generated from the advertisement must account for the possibility that the advertisement may generate income even after the lease expires.

Perhaps most importantly, landlords should also consider existing zoning laws and changes to zoning laws in response to rooftop advertising before providing broad rooftop advertising availability to their tenants, and particularly before adding broad rooftop advertising allowances in their leases. A few years back, Sao Paulo, Brazil banned all outdoor advertising. In the United States, there are various cities that heavily regulate advertising, such as Cary, North Carolina, and even New York City seems to be reversing its tendency to allow unfettered advertising. It is not uncommon for some jurisdictions, including the City of Orlando and Orange County, Florida, to have strict regulations on rooftop advertising. Landlords that wish to advertise on their roof will need to pay close attention to the zoning regulations promulgated by the relevant municipality.

Finally, landlords should consider whether rooftop advertising would have any impact on the roof warranty. If so, landlords should pass along the added cost to the tenant. Further, landlords wishing to restrict the content of their tenants' advertisements need to know the applicable zoning laws that may or may not permit certain advertisements. If a landlord wishes to restrict such content, the landlord also must restrict a tenant's right to assign such advertising rights to other advertisers.

In sum, landlords should ensure they understand the risks before permitting tenants to utilize a rooftop for advertising. Lease provisions permitting rooftop advertising should be drafted narrowly, should permit the landlord to approve of all advertisements, should provide an out if zoning laws change, and should ensure the tenant is prohibited from doing anything that would impact a roof warranty. Additionally, landlords should ensure that all costs of rooftop advertising are accounted for in the lease, so that the landlord doesn't incur unexpected costs. Once all bases have been covered, landlords should feel comfortable putting their rooftops to good use.