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A Full Service Commercial Real Estate Company

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Commercial Real Estate Investment Newsletter

Modernizing The Commercial Rental

When you look around a community, you will usually find a number of properties that need to be upgraded. When you want an increased return on an older property it may be time to modernize the property. Some existing owners do not recognize the increased return that they could get or do not want to make the necessary investment. Often these buildings can be acquired at a price that reflects the return based on the current condition and income.

When you set out to modernize an older building, you will encounter three kinds of deterioration or obsolescence: physical deterioration, functional obsolescence, or economic obsolescence.

The first of these, physical deterioration, starts immediately after the building is completed and continues throughout its entire life, unless it is handled along the way with proper maintenance and repair. This type of deterioration usually can be taken care of by routine repairs and replacement of parts. Anytime the acquisition of a run-down building is being considered, the investor must be certain that the deterioration has not become so bad that the building will have to be demolished.

Functional obsolescence happens when the property loses its usefulness as a result of changes in styles or in the needs of tenants. As an example, an older apartment property could have an electrical system that is inadequate to handle modern appliances such as air conditioning, microwave ovens, computers, television or other recently developed equipment. This type of obsolescence can be cured usually by installing updated equipment.

Economic obsolescence is a change in value that is caused by circumstances that are not directly related to the property. Often this is a change in the neighborhood, such as a change in the use from residential to commercial or industrial. When this has happened, modernization of the building may not be worthwhile. If the building is structurally sound, it could be a good prospect for conversion.

The Ways We Modernize The Building

There are four ways usually used to modernize a building. These are:

(1) Structural changes;

(2) Architectural changes;

(3) Functional changes;

(4) Aesthetic improvements.

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July 2013

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When a building is quite old, **structural changes** may be needed for safety reasons. Before you purchase the building, a professional engineer should make an inspection. This can determine whether the building is structurally sound and what changes, if any, will have to be made.

The building can be partially redesigned with **architectural changes** during the modernization. If a building has very distinctive architectural features rather than a plain exterior, some investors feel that the property has a greater investment potential.

Functional changes and mechanical replacements can reduce costs in an old building and increase efficiency. Wiring will usually need to be replaced to provide safety for modern electrical and computer equipment. Old heating systems will usually be inefficient and cause high maintenance costs, and should be replaced.

Aesthetic improvements are the sprucing up of the property and can usually be done at a relatively little cost. When an investor is looking for a quick resale, this type of improvement may be done rather than some of the others. Cleaning up the property, inside and outside, installing new lighting and repainting the building can be enough sometimes to make a quick, small profit.

Why Modernize?

When an investor is looking for the proper investment, older apartment buildings in good neighborhoods often look better for a long-term commitment than new construction. When a property is modernized, rents can be raised substantially and, if the work can be done without disturbing the existing tenants, the investor will not have the expense of carrying the property as he would in new construction. He would also hope that most of the existing tenants would stay and pay the increased rents, so the costs related to acquiring new tenants, as would be needed with a new construction, would be avoided.

Finally, the overall costs may be less. Although the price of the property may be high in relation to the current rents, the final cost after modernization may be far less than the cost of new construction. With this lower cost, the investor may be able to charge lower rents than new buildings nearby, putting him into a very competitive position.

When The Property Is Unproductive

Unproductive properties can present opportunities for big profits. When a building is bringing in little or no income because obsolescence or because of changes in the neighborhood that have made the location unsuitable for the original use of the building, converting to a new use can make a new profitable income stream. As an example, a movie theatre in an area converted to industrial might be changed to a factory or warehouse. Some neighborhoods have changed from warehousing and factory areas to residential. A factory building that is no longer being used could be converted to a residential condominium project.

Don't overlook properties that are still productive, but may have a much greater potential after a conversion. A chocolate factory was converted to a shopping center on the west coast. Movie theatres have been converted to supermarkets. Garages have been converted to condominium parking buildings. Seeing potential profits in older buildings takes imagination. ❑

Cooperative Land Development

The acquisition and improvement of land is a large-scale operation and requires large amounts of capital. This has created methods of land acquisition that gives the developer access to and control over a large enough tract to make development economical without requiring an initial outlay of all of the capital necessary to acquire such a tract. From the point of view of the landowner, the disposal of a large tract at a good price may require a formula that will encourage the developer to commit improvement and development money for part of the tract that will build future value into the entire tract.

This may be accomplished by the following:

- The developer sets up a master plan that sets forth the general scheme of development and submits it for the approval of the owner.
- The developer and owner enter into an agreement setting forth the acreage prices for the entire property.
- Owner and developer agree on the number ➠

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of years over which the full development is to be completed.

- To protect the owner against freezing of his property, the developer firmly commits to buy a predetermined number of acres each year.
- If the developer fails to meet this schedule, the owner is released from his commitment.

A Development Agreement

Another way of handling the problem is for the developer to share the net profits from the land development with the landowner. This can be done by a "land development agreement" in which the developer agrees to perform the platting, the laying out, the installation of lot improvements, and the promotion of the subdivision. The landowner agrees to accept a percentage of the sales price of each lot, with a fixed minimum guaranteed. For example, the developer agrees to pay net to the landowner 25% of the sales price of each lot sold, with a minimum of $50,000 per lot.

With this kind of arrangement, it is important to protect the landowner from finding his land cluttered up with liens left by a subdivider who went broke. The landowner should consider confining the developer or subdivider to a small tract of land at a time and give him "rolling options" to acquire additional parcels at intervals over a period of time. Failure to keep up with this purchase program results in loss of future options. The land that has been optioned but not purchased is not subject to liens against the developer.

A Liability for Not Proceeding With Development. In one case, a jury found that a village breached its contract with a real estate developer calling for the village to acquire property and convey it to the developer for construction of apartment houses and a shopping center, all conditioned on obtaining financing from HUD. The village repudiated its explicit undertakings, to acquire and convey property to the developers. HUD had granted the main application and was in the process of considering the other grants involved, so the village could not back out of its promise. [Heritage Commons Partners v. Village of Summit, 730 FSupp 821, (ND Ill. 1990)] ❏

Using A Master Lease As A Seller Guarantee

Although office space is in supply in some locations, development has continued. Business leaders are optimistic about the long term future. Unemployment shows a marked improvement and earnings reports by large corporations are improving.

When new development is occurring in a market and developers are anxious to sell when the construction is complete, use of a master lease may facilitate a sale before the lease-up period is ended. A **master lease** is a form of seller guarantee that has several specific goals:

- It enables the seller to negotiate a price that reflects a stabilized occupancy and the long-term potential of the property.
- It assures the purchaser of a guaranteed level of income over an initial period and so assures for payment of debt service and equity dividends.
- When an appraisal is a necessary prerequisite for the purchase, the master lease enables an appraiser to value the property without regard to the initial vacancy rate (although certain adjustments may be required).

When a seller agrees to become a master tenant (and so be responsible for the agreed rental regardless of the actual occupancy level), the seller usually insists on having the management contract for the property for the duration of the master lease to assure an aggressive leasing effort. This also enables the seller to earn leasing commissions and usually is agreeable to the purchaser, which also is interested in achieving full occupancy as soon as possible.

The Terms That Protect Buyer And Seller

The essential purpose of a master lease is to assure the buyer that it will receive a specific amount of cash flow throughout the master lease term. The obligation on the seller can be structured in one of several ways. The seller may guarantee that a certain occupancy level will be maintained or that gross rents will not decline below a specified amount. The lease should contain protective provisions for the buyer; for example, the seller (as manager) should not be able to reduce rents below market merely to achieve a higher occupancy rate. Similarly, the seller-manager should not be able to offer additional and costly amenities in order to increase gross rental revenue. The term of the master lease usually will approximate the estimated time for the property to attain stabilized occupancy. Finally, the obligation of the seller should be secured through an escrow account, letter of credit or other form of guarantee. ❏

Lease Negotiations With Corporate Tenants

A few years ago, senior corporate managers were able to make major real estate decisions by themselves. Now, a negotiating team will negotiate leases. This team may consist of legal counsel, finance department representatives, outside specialists such as real estate brokers or tenant representatives, design and engineering consultants, and others.

In today's market, corporate tenants with high credit ratings, who are willing to make long-term lease commitments negotiate from a strong position. Therefore, corporations that formerly treated real estate transactions in a matter-of fact way have now developed detailed real estate negotiating strategies. The corporate tenant sees these negotiations as a way to cut costs within the company (whether upsizing or downsizing).

Landlords, developers, and brokers must be aware of this new style of negotiation. While the real estate executive plays a key role in developing the strategy, the other parties must be ready to respond quickly to requests for information and be prepared to discuss issues that rarely if ever arose in the past.

Request For Proposal

The document that best illustrates the new negotiating process is the Request For Proposal (RFP), sent to property owners. The RFP incorporates the specification for rental rates, free rent, up fitting, operating expenses, options, cash incentives and other "money clauses" that the corporation intends to negotiate. A short list of prospective sites or buildings is then prepared based on the initial responses to the RFP. The corporate real estate executive (often with the aid of a real estate broker) will negotiate to obtain the best deal with the prospective landlords.

The RFP usually contains a number of items that are nonnegotiable–for example, amount of usable square feet, geographic area, lease term, expansion option, parking facilities, and security. On the other hand, many items remain negotiable, such as rent rate, concessions, rent escalations, cash inducements, and amenities. The parties should understand from the outset that failure to obtain a nonnegotiable term could kill the deal for the tenant. Other items may be "throwaways" that could be modified or omitted from the lease.

Example: A corporate tenant may lack the capital funds to improve the leased premises, and so may be willing to pay a higher rental rate or extend the lease term in exchange for a larger allowance for improvements. Alternatively, the tenant may be willing to fund all or part of the improvement costs in exchange for a lower rental.

Give-and-Take in Negotiations

Although it is obvious that any negotiating process involves give and take by both sides, corporate real estate executives have learned the importance of understanding the strengths and weaknesses of their bargaining position as well as that of the landlord. Within reason, these tenants are assured of getting whatever is needed if the bargaining team is aware of the options and takes carefully calculated risks based on solid information ❏.

Commercial Real Estate Representation

There are a number of ways to buy, sell or exchange investment or commercial real estate. Having the knowledge of what you can do in some tax situations can be the difference between an annual profit or loss in a property that you intend to acquire or one that you already have in inventory.

The professional commercial real estate broker is in the position to represent clients in real estate transactions by setting up sales, exchanges, leases, purchase and sales of options, and management of real estate. A professional real estate practitioner must stay aware of current tax laws and court decisions in order to structure transactions, but does not give legal or tax advice (unless he/she is also an attorney or a certified public accountant). In any complex transaction that might result in changes in any owner's legal or tax situation, the other members of the "consulting team" should be the owner's attorney and CPA. We always recommend meeting with these other professionals during the planning and closing of major real estate transactions.

As commercial brokers, we are part of your professional team. It is our job to create the real estate transactions that will be needed to enhance your estate. We should meet with our clients on a regular basis to evaluate their present position in properties, reviewing plans for future acquisitions or exchanges.

Reviewing your plans and goals can give us the information needed to help us in moving you in new directions as soon as possible, using purchases, sales or tax deferred exchanges. ❏

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