

Duff on Hospitality Law

Avoiding Pitfalls in Rooftop Leasing

on 2.24.12 | Posted in Premises Liability and Security, Real Estate

Rooftop leasing to telecommunications companies can be an attractive way for a hotel owner or operator to increase revenues. Rents can range from \$1,000 to \$10,000 a month based on the strength of the location, and capital outlays for the owner are often minimal because the telecommunication company usually provides the necessary equipment. Ashok Kumar notes these and other benefits in his article, “Wireless is Going Through the Roof – Can Your Hotel Make Money on it?”

Before entering into a rooftop telecommunications lease, however, one should consider some of the traps and pitfalls that are often associated with telecommunications company lease forms. Below are a few tips for an owner or operator’s consideration when evaluating a rooftop lease.

Lease Term. A typical form telecommunications company rooftop lease will provide for an initial term of 5 years and will include at least four more 5-year options under the control of the tenant. Telecommunications providers expect to be in a particular rooftop location for at least 25 years. That is a long commitment. In an interesting twist, form leases often also provide that a tenant can terminate the lease on fairly short notice for any reason. So while the owner is committed for decades, the tenant often seeks the ability to bail-out with a few months notice.

Interest in the Land. In most cases, telecommunications companies expect their rooftop leases to be financeable. As such, they often require recording of a Memorandum of Lease against title to the real property on which the hotel is located and sometimes request that the owner procure a Subordination, Non-Disturbance and Attornment Agreement (“SNDA”) from the owner’s lender. An SNDA is not necessarily easy to obtain and the request often comes as an unwelcome surprise to the property owner. If done improperly, these documents may also encumber more of the property than is intended as the tenant’s premises.

Rent. The initial rent usually looks good but over the course of several decades an above average rent in today’s dollars will quickly give way to inflation. The rooftop lease should include periodic escalations at the *greater* of a fixed increase or the applicable CPI increase.

Interference. Rooftop telecommunications leases can interfere with a hotel’s operations in many ways. If the equipment is visible from the ground, there may be aesthetic interference. If the initial installation is noisy and messy it may interfere with the guest experience. And regardless of compliance with FCC rules, there is the real possibility that the tenant’s signal will

interfere with signals from equipment or systems owned by the hotel or other rooftop tenants.

A good rooftop lease will address each of these pitfalls and will tailor the lease to fit the specific property. Please consider a formal review of the entire rooftop agreement before sealing the deal.

If you have any questions prior to entering into an agreement for a rooftop lease or license please feel free to contact [Greg](#) directly.

Tags: CPI, CPI increase, FCC, Jennifer Bragar, Memorandum of Lease, rooftop lease, Rooftop leasing, SNDA, Telecommunications, Wireless