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Golden opportunity for tech tenants to seek new value

Perhaps "golden" overstates it, but despite headlines such as "challenging," "difficult," and "struggling" used to describe the current real estate market, the downturn in the economy provides opportunities for savvy technology tenants to realize benefits from their real estate platform.

Most real estate professionals acknowledge current and projected market dynamics have led to more favorable terms for tenants. With landlords striving to maintain occupancy and cash flow, many are increasingly receptive to current tenants' needs and are eager to make new leases or extend existing leases.

GUEST COLUMN

Bob Carney

Smart landlords are positioning their buildings to retain existing tenants and entice new tenants from other projects using economic and non-economic factors. The result is increased tenant leverage, with the trick for technology tenants being how best to exploit this opportunity.

Know your market and your relative strengths and weaknesses as a tenant. While few deny that New England real estate fundamentals have softened, some sectors and sub-markets are faring better than others. Many believe the technology-based sectors are stronger and better suited to weather the downturn than others such as financial services.

Do your homework and engage a knowledgeable adviser to tell you what is happening in your market. Find out the terms of deals being made today and the pace of the market. Try to get a sense of what your landlord and other building owners are doing, and are up against, such as their capital structure, type and form of debt on property and other variables. Consider how that corresponds to your specific lease timing — current and projected project vacancy, upcoming lease expirations, rents and concessions being offered, such as fit-up allowances, free rent periods and lease buyouts. This analysis will help form your strategy with your landlord and the market.

> "**Be ready to consider trade-offs** such as extending your lease term, service or space reductions, or relocation to make the deal."

Many companies are rethinking and delaying real estate transactions to control the expense side of their budgets, and some are running into serious difficulty. In light of individual circumstances or general market conditions, some tenants are asking for, and getting, rent concessions. In addition to a rent reduction or deferral, these concessions take forms such as waived, reduced or fixed operating expense charges for a specified period, deferring scheduled rent increases, or additional free rent periods or fit-up allowances relating to extension, renewal or expansion rights. In requesting a concession, expect your landlord to require a genuine showing of hardship or inequity.

Obtaining a rent concession may take significant effort, financial disclosure and convincing your landlord that the concession will strengthen the building's performance by maintaining a good tenant relationship, cash-flow and occupancy during a difficult time. Be ready to consider trade-offs such as extending your lease term, service or space reductions, or relocation.

Another potential goal is to work with your landlord to restructure your lease for maximum flexibility so your real estate platform more closely fits your business plan. Space elasticity can be achieved through a combination of rights. Typical examples for accommodating growth include expansion rights and rights of first refusal or first opportunity on additional space in the building. On the other hand, tailored contraction rights allow you to give back space or a lease termination option allows flexibility if your space needs decline. Some landlords will resist these types of rights because they add complexity to marketing plans and administration. Obviously, the opportunity to gain traction on these issues will depend on your landlord's willingness to engage and your leverage in the building.

Use these discussions with your landlord as an opportunity to resolve your other space concerns or performance issues as well. The most common tenant complaints relate to heating and cooling performance, maintenance issues, and common-area benefits such as health clubs and food services.

In pursuing these opportunities, remember that your landlord has its own set of limitations and constituency it must consider. Landlords must often advise and even obtain consent from their lenders and investment partners for modifications to leases. Tenants should be reasonable and work toward a resolution with mutual benefits. Finally, document your agreement with a written lease amendment to clearly and completely preserve these gains. Telephone calls and ambiguous e-mail or letter exchanges with a property manager may not ultimately get you anything other than a dispute.

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