

Tips on Renting or Leasing Spectacular Signage

by James P. Cornelio

Times Square has once again earned its sobriquet as the "Crossroads of the World," with crowds descending on its streets in unprecedented numbers and major media exposure expanding beyond the tried and true, but truly tired, New Year's Eve countdown with Dick Clark to Good Morning America and MTV.

Owners of buildings in the Times Square area are reaping the financial benefits that accompany its designation as the new hot location.

One increasingly important component of these benefits is the windfall profit generated by leasing signs for outdoor advertisements. With recent deals closing at \$1,000,000 or more a year for a single, relatively modestly sized sign in "Cadillac" quality locations, it's like adding the equivalent of tens of thousands of square feet of office space to those buildings fortunate enough—by virtue of the site they occupy and their exterior design—to take advantage of this new explosion in rental values. And all this without the headaches created by pesky tenants traipsing through corridors, causing wear and tear on facilities and demanding expensive services.

As with all markets providing increasingly significant revenue streams, strategies need to be developed not only to mine these opportunities but to manage the risks. Here are a few things to consider:

Going it Alone

Some building owners who would never rely on the maxim that "if you build it, they will come" in marketing their office space and who recognize the value added by real estate professionals such as brokers, nevertheless seem to believe that if you place an ad in *The New York Times* you have covered all of your marketing bases. Though a start, it's not nearly enough.

Just as there are well respected and aggressive brokerage firms with the expertise to place office tenants, there are firms with the expertise to place outdoor sign advertisements. Let's call them the Sign Mavens. And what value do the Sign Mavens add?

First, through contacts in the advertising community, they can best identify the prospects for your sign space. Second, they see value where you see curtain wall, and can advise on realistic and achievable rents. Third, they can integrate sign design with the exterior façade of your building, while being cognizant of the sensibilities of your office tenants (don't block my view!—well how about a blade sign?). Fourth, they not only know, but the better outfits are actually good at, all that creative stuff involved in planning and designing signs. Fifth, they can get that creative stuff built, up and operating in a timely manner. Sixth, they know how to maintain it. And, seventh, and perhaps most important, they can get the deal closed.

Although sign lease transactions are simpler than office leases, there are certain special characteristics with which Sign Mavens are already familiar, and with which building owners should become familiar.

Working with the Sign Maven

Let's suppose Owner X goes to Sign Maven and asks Sign Maven to find an incredibly wealthy and well-respected but not-too-frugal advertiser to lease his highly desirable sign space. Obviously, being the successful business people that they are, these two parties need to enter into some sort of an agreement. That agreement can range from something akin to an office lease, a management/agency agreement or a brokerage agreement, all business arrangements with which Owner X has familiarity. But which one to choose and how to modify it once you've decided?

The form of agreement selected may depend on the business deal between Owner X and Sign Maven. For example, if Sign Maven is simply to be paid a one-time consulting fee for finding and placing the advertiser, the brokerage agreement form would likely be the best candidate. But that type of business deal is usually the least likely to offer the best overall protection to Owner X.

Remember that Sign Maven has various types of expertise, and it is not to Owner X's benefit to have Sign Maven simply introduce the prospect, facilitate negotiations, then walk away with a fat check for services rendered at closing. Advertising messages may change on the sign, the advertiser's ongoing concerns may need to be addressed and, given the plethora of pigeons in Times Square and the fallibility of light bulbs and other lighting and mechanical systems in the more sophisticated displays, signs need to be maintained.

These matters are best handled by a pro, and most building owners are not pros in this area. And, with a more permanent arrangement, Owner X not only gets to keep Sign Maven's compensation on the line but he keeps a convenient intermediary to deal with the advertiser.

If a more permanent arrangement, like a lease or a management agreement is entered into, Owner X must obviously retain the ability to kick Sign Maven out if Sign Maven turns out not to be such a maven after all. In the alternative, if Sign Maven puts together a truly remarkable deal, his compensation should reflect that. These "performance standards" and "performance hurdles," and the various factors that affect them, are some of the most carefully negotiated provisions in the agreements between Sign Mavens and owners.

In addition, provisions relating to rental (or more appropriately, rental and expense sharing), subletting (if a lease format), construction of the sign, maintenance, legal compliance, electricity and other matters need to be crafted to address the issues peculiar to this type of a transaction. If a leasing format is selected with the intention that the advertiser be a subtenant of Sign Maven, then non-disturbance from Owner X must be provided for. These advertisers, after all, are not only spending a million a year to lease the space but often are spending a million or more to construct some of these so-called "spectacular" signs. The leasing format also offers certain significant protections to Sign Maven's interest in assuring the continued flow of compensation for which he has bargained.

Working with the Advertiser

One thing Sign Mavens do believe in, and demand the same of their attorneys, is the maxim "Keep it simple, stupid!" This is not always the case with building owners and their attorneys. Sign leases between advertisers and Sign Mavens (as agent for an owner or as sublessor under a lease with an owner) seldom exceed six or seven pages whereas agreements between building owners and office tenants often run to many multiples of that. After all, it is only a sign and the advertisers often see it exactly as the advertisement that it is, with unique characteristics but an advertisement nonetheless.

What kinds of issues are likely to be addressed in the agreement with the advertiser? Well, certainly electricity, including the affect on rentals if service is interrupted for any extended period of time. And, while advertisers resist paying rents until the sign is up and operating (which with some of today's million dollar "spectacular" signs can take months), they can and should be persuaded to pay a healthy percentage of the "spectacular" sign rental for a temporary flex sign (which can often be completed in days).

A structure whereby the Sign Maven agrees with the advertiser in a document separate from the actual sign lease to provide maintenance and obtain and maintain appropriate governmental approvals and insurance for the sign (yes, the recent flying flex sign fiasco in Times Square underscores the importance of insurance) permits the rentals under the sign agreement to be net to the lessor. Any offset right for failure to provide these services would be available only as to the payments made under the separate agreement, thereby preserving the underlying value attributable to the sign space.

Advertisers can also be expected to raise such issues as exclusivity and, if they're thinking, a prohibition on, or adjustment for, any obstruction to the sight lines to their signs.

Finally, issues such as the application and impact of various city taxes, laws and ordinances (including those specifically related to signs in the Times Square area); whether a sign lease is really a lease for purposes of New York's Real Property and Procedure Law; and whether a Sign Maven might be considered a broker requiring a license, need to be considered.

In the meantime, isn't it nice, that not only is there money to be made in these sign transactions, but at the same time Times Square is made a more vibrant and wondrous place to visit. Next stop, Herald Square!

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