



The benefits of conducting a sale and leaseback of a property

May 26, 2015 - New York City

The "sale and leaseback of a property" can benefit both the seller/tenant and purchaser of a property varying on the different economic and financial aspects required and expected by each party. The sale of a property by seller who leases back the entire property may provide the seller/tenant continued self-management and control of the property. Seller/tenant may triple net lease the property on the sale for a stated period of time (leaseback) and if it is the sole tenant of the property on the leaseback it will continue to control and manage the property under a lease as if it owned the property. The seller/tenant knows all the hidden issues with the property, i.e. roof, structural issues and will not require the same due diligence as a new tenant of the property.

In the event the seller/tenant is leasing back less than 100% of the property, the seller/tenant needs to decide with the purchaser who will manage and provide services to the other tenants in the building. Seller/tenant is familiar with the other tenants in the building and may not have any issues with providing managerial and other building related services, unless the purchaser (new landlord) wants to provide these services to other tenants of the building. The purchaser will be able to diversify the current use of the building if the seller/tenant were to only leaseback a portion of the building. It will enable the purchaser to use that portion for their own business purposes or obtaining new tenants at increased rents. The seller/tenant also has the advantage of remaining in the space for a stated period of time and not be forced to find alternative space or enter into a long term lease on the sale.

The purchaser may like the idea of a steady income stream from the seller/tenant until it has time to re-evaluate the building's needs and charms. The purchaser during the leaseback period also has additional time to find new tenants without necessarily having vacant space (non-income producing). On a 1031 exchange the seller/tenant would have a benefit of continuing its business operations until it re-invests and decides where to move. The seller/tenant may want the capital from the sale for other investments in either its business or in purchasing other properties and paying rent and taking it as an expense. The triple net lease (NNN) is also attractive for a purchaser because the seller/tenant not only pays a fixed sum in rent, but also assumes the responsibility for the real estate taxes (including increases), the building insurance and maintenance of the building. It removes a lot of the burden for a purchaser in being a landlord.

Pierre Debbas, Esq. is a managing partner and Peter Reiter, Esq. is a partner at Romer Debbas, LLP, New York, N.Y.