THE ONLY WEEKLY REAL ESTATE NEWSPAPER IN THE U.S.
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REAL ESTATE WEEKLY

Vol. 55, No. 47 • 36 pages in 2 sections WEDNESDAY, JULY 22, 2009 $1.75

Extell held a special presentation of the International Gem Tower, the new commercial condominium at 50 West 47th Street for gem and jewelry executives at the Waldorf Astoria Hotel. Extell president Gary Barnett and Joseph Lipton (right), head of sales for the project, spoke about the great success the company has had in its first phase of sales and marketing for the International Gem Tower. Phase Two of IGT's marketing efforts begins at the end of July with an exclusive dinner for members of the Indian Diamond & Colored Stone Association. Following that, the IGT sales and marketing team will head to Mumbai for a number of high-level, one-on-one meetings with industry leaders.

NEW MOVES TO STOP FIRE SALE

By Daniel Geiger

For months, real estate industry experts have said that commercial real estate investors are waiting patiently for distressed deals to materialize.

Many, including major real estate players like Vornado and the Blackstone Group, have begun to work amassing large troves of capital in anticipation of bargains ahead.

Because real estate values have plunged from peak levels seen before the current economic

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PREI to shed $1B in real estate this year

By Daniel Geiger

At a luncheon held by Prudential Real Estate Investors, company executives revealed that it plans to shed $1 billion of real estate from this collection of funds this year.

issue that all funds are managing and dispositions are a key source of liquidity for those funds," said company CEO, Allen Smith.

"Our philosophy is to stay in the market selling property. I think noteworthy has been that

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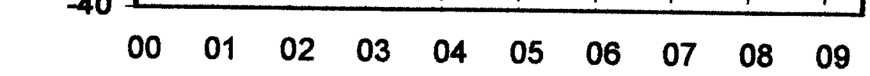

Market gets comfy in soft cycle

The US office market has settled into an aggressive softening cycle, the length of which will depend on when job losses dissipate, according to second quarter reports from Grubb & Ellis.

The vacancy rate ended the second quarter at 16.6%, an increase of 100 basis points from the first quarter and 180 basis points since the start of the year. These movements are on par with the 2001-03 softening cycle during which vacancy rose by an average of 85 basis points per quarter.

Manhattan, the New York Outer Boroughs and Long Island are holding onto their sub-10 percent vacancy rates, but spiking availability rates and sublease inventories suggest they will lose their grip within the next quarter or two.

Sixteen markets posted vacancy rates above 20%, double the number from the first quarter and quadruple the number from the year-ago quarter. More than one-quarter of Phoenix's office inventory is empty, followed closely by Detroit and California's Inland Empire.

Net absorption has recorded steep negatives this year at -19.3 million square feet in the second quarter and -18.2 million square feet in the first quarter. As with the vacancy rate, this performance is on par with the losses recorded in the thick of the softening cycle earlier this decade.

New York City led all other markets on the downside by giving up 3.3 million square feet of occupied space in the second quarter, i.e. negative absorption.

Markets posting between negative 1 and 2 million square feet included Northern and Central New Jersey, Chicago and Los Angeles, a sign of how the recession has spread across all regions. A small handful of markets did manage to post positive absorption, led by Seattle with 561,000 s/f absorbed in the second quarter.

The construction pipeline is emptying quickly; space under construction plummeted by more than 18 million square feet to end the quarter at 48 million square feet, its lowest level in four years.

A hopeful sign was that the inventory of available sublease space added a negligible 1.4 million square feet, by far the smallest quarterly gain since the market began to soften.

In each of the prior two quarters, sublease space had increased by an average of 10.2 million square feet. The sudden leveling off is one more indicator that the financial panic of last fall and spring has subsided. The sublease inventory totaled 113 million square feet at the end of the second quarter, its highest level since 2004-Q1 but well below the prior peak of 146 million square feet recorded in 2002-Q1.

Asking rental rates, typically the last real estate indicator to register a change in the cycle, have turned lower. Year over year, the average rates across the U.S. are down by 3.2 percent for Class A space and 3.7 percent for Class B space. The average effective rate, however, is down by 16% for all classes of space.

In the early stages of a softening cycle, land-

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"There were a lot of questions about how the program works and even policymakers were reaching out to the industry and having conversations 'if you were an investor what would you look at'," Durning said. "People will need to see how those first transactions are received on the investor side, no one wants to be the guinea pig. How do you coordinate a funding? Once the mechanics are put in place, then we'll be in a position to see how effec-

But more has to happen for the market to revive.

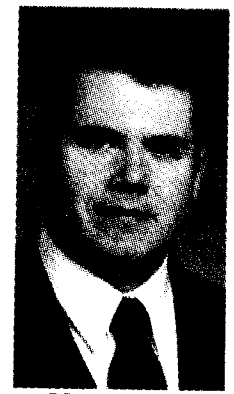
The interest rates that lenders are demanding on loans needs to fall for new loans to become attractive to borrowers.

"If the financial institutions pull back or pricing doesn't come down, I think we'll get that panic back again about what are we going to do about this," Durning said. "It's slumbering, it hasn't gone away." ■

Court ruling puts new slant on commission

By Brian A. Mills partner, Maselli, Warren PC

Commercial real estate brokers recently received some assistance from the New Jersey Supreme Court in assuring their ability to collect renewal commissions following a sale of the property by the landlord with whom the broker had a listing agreement.


BRIAN MILLS

This is an important issue because, upon the sale of a property, the broker no longer has privity with the owner of the property — a legal prerequisite to being able to enforce a contract right.

The new Court decision relaxes the privity requirement and provides direction for brokers who wish to protect their right to the valuable income provided by renewal commissions.

This decision, Pagano Company v. 48 South Franklin Turnpike, LLC, 198 N.J. 107 (2009), softened the Court's 1994 ruling on the issue in VRG

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Court ruling puts new slant on commission

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Corp. v. GKN Realty Corp. which gave buyers of leased properties a very clear path to avoiding the payment of commissions due after the purchase of a property.

To reconcile the seemingly inconsistent rulings, the Court did not expressly reverse the VRG ruling, rather it broadened the circumstances under which a purchaser is said to have "affirmatively assumed" the obligation to pay commissions.

Accordingly, it is incumbent upon brokers to understand the ruling in order to position themselves favorably with respect to this important issue.

The VRG case involved a developer and owner who signed a commission listing agreement with the broker, VRG Corporation to procure tenants for a new shopping center.

At the time the property was sold, the broker calculated the value of the remaining commissions to be $309,388.96. Upon becoming aware of the pending sale, the broker approached the buyer and seller on the issue of these commissions. The seller assured the broker that it would pay the commissions.

Meanwhile, the buyer and seller modified their contract to expressly provide that the commissions would be paid by the seller. Within a few weeks of closing, the seller filed bankruptcy rending it uncollectible and unable to pay the commissions.

"It is incumbent upon brokers to understand the ruling in order to position themselves favorably with respect to this important issue."

Accordingly, the broker sued the buyer for the commissions on the legal theory that it had an equitable lien for her commissions.

The court rejected this argument on the grounds that the buyer could not be said to have "affirmatively assumed" the obligation to pay commissions and in doing so, followed the findings of New York courts that there is "no obligation on the purchaser's part to pay the broker unless the purchaser affirmatively assumes that obligation."

The court stated that the obligation to pay a commission "is personal" and does not run with the land the same way, for example an undischarged mortgage would.

Fortunately for brokers, the recent Pagaono ruling has expanded the circumstances under which the obligation to pay commissions will be deemed to have been "affirmatively assumed" by a purchaser of leased property.

Pagano was a similar fact-pattern. The owner of an office building entered into an exclusive listing agreement with a broker (Pagano) to secure tenants. The broker would earn a 5% commission on the total lease payments, including renewals and extensions.

Seven years later, the owner sold the office building to 48 South Franklin Turnpike, LLC ("Franklin"). Franklin refused to pay commissions and Pagano sued.

The Court deemed language in the listing agreement providing that it is binding upon both parties' successor and assignees, coupled with express references to the listing agreement in the leases was sufficient to impose the obligation to pay commissions on the buyer even though the buyer alleged it was never provided with the listing agreement.

The ruling was limited, however, providing, "it would be grossly onerous and unfair to hold that in all contracts, a buyer impliedly agrees with the broker that he will pay the commission if the broker cannot legally collect it from the seller."

Consequently, the prudent broker will consult with an attorney when drafting and negotiating listing agreements. ■