

## Is your roof green? Strategies a retailer can use in order to install solar panels on its roof

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Many retailers are examining ways in which they can reap the benefits, both environmentally and financially, from "green" initiatives, including the use of renewable energy sources. Notably (and laudably), retailers such as Staples, Kohl's, Walgreen Co., Whole Foods Markets and Costco are installing solar panels on the roofs of their stores to generate electricity for their store's use. Retailers interested in exploring such an option should consider adopting the following strategies:

1. Make sure that you have rights to your roof. If you are a large retailer like Costco or Home Depot, then it is likely that you own your building. In these instances you would not need anyone's permission to access your roof. However, if your store size is smaller like Bed Bath & Beyond, Office Depot or Circuit City, then the chances are good that your landlord owns your building, including the roof. In these cases it is imperative that you negotiate into your lease certain express rights, including the right to access the roof and to install and maintain the solar panels on the roof. If your landlord is amenable to this concept, then be prepared for your landlord to insist that: (a) you not void any roof warranties; (b) you use a contractor that is acceptable to your landlord; (c) you maintain the solar panels in a good condition; (d) you comply with applicable laws; and (e) at your landlord's option, at the end of the lease term, you either remove the solar panels or transfer ownership of the solar panels to your landlord. Watch out because some landlords might want to charge you additional rent for the right to use the roof.

2. Make sure that you have the right to all tax incentives. It is imperative that your lease provide that you have the exclusive rights to any and all tax incentives that are attributable to the solar panels. This is important because of the huge upfront costs of acquiring and installing solar panels. Without these tax incentives, it would be cost prohibitive to purchase and install solar panels.

3. Decide how you want to acquire the solar panels. There are basically three ways to acquire solar panels. You can purchase or lease the solar panels, in which event you would be responsible for paying for, installing and maintaining them. The third method, which is growing in popularity, is to enter into what is known as a "power purchase agreement" with a solar energy provider. With this type of arrangement, the solar energy provider actually pays for, owns, installs and maintains the solar panels, in which event it is important that you have the ability in your lease to transfer any and all tax incentives and roof rights to your solar energy provider. In return, you enter into an agreement (i.e., a power purchase agreement) with the solar energy provider that provides you with the right to purchase the electricity generated by the solar panels at a fixed rate for a long term, in some instances as long as 15 years. This gives you a nice hedge against inflating energy costs. The solar energy provider, on the other hand, will probably request that you obtain, for its benefit, certain protections from your landlord should you default under your lease and also at the end of the lease term. Because of its substantial investment, the solar energy provider will want to make sure that, in

either of these two instances, it can remove the solar panels from the roof or perhaps reserve the right to continue using the roof and supplying the electricity to the next occupant of the store.

4. Make sure that you have the exclusive right to the electricity generated by your solar panels. You should make sure that your lease provides you with the exclusive right to the electricity generated by your solar panels. In addition, you will need the ability to deal directly with the local utility to make sure that you are still connected to the grid so that you can obtain any additional electricity that you may need to operate your store and sell any excess electricity generated by your solar panels back to the utility. This is partially accomplished through the use of net metering, which is a billing process for grid-connected systems. You or the local utility will need to install either two meters (one to measure intake and the other to measure output) or one meter that is capable of running backwards as excess energy is contributed to the grid. It is also important to pay attention to local requirements because different states and utility companies have different regulations and policies with respect to net metering with size limits, eligible customer classes and rates at which excess generation is paid. As this area is still evolving, you will need to continually educate yourself and others at your company, as well as your landlord, so that you can successfully pursue the "greening" of your company and reap the financial rewards from the use of solar panels.

Although this article focuses on retailers, building owners can also take advantage of the financial and environmental benefits the use of solar panels and other sources of renewable energy can provide. For instance, purchasers are paying premiums for "green" buildings and "green" properties can also be more desirable to retailers if the building owner is able to provide cheap electricity to its tenants through the use of solar panels. Further, granting third-parties rights to the roof can be a potential source of additional income to the building owner. However, the strategies that a building owner can use to achieve these results are different and potentially more complicated than those of a retailer, and are beyond the scope of this article.

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