



CONCURRENT SESSION IV: A

Breaking Up Is Hard to Do – Selling Shopping Centers in Pieces

SPEAKERS

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BREAKING UP IS HARD TO DO: SELLING SHOPPING CENTERS IN PIECES

A practical look at how to carve off pieces of a larger shopping center – whether selling an outparcel or breaking out a smaller strip center.

Key topics:

- Due diligence items and common obstacles
- REAs, leases, and site conditions that complicate subdivision
- Strategies and documents to clear the path
- Structuring the split and coordinating ongoing rights

SUBDIVISION

- **Consent Rights**
- **Boundaries & Geography**
- **Survey**
- **Tax Parcel Number**

RESTRICTIONS ON NEW PARCEL / RIGHTS OF EXISTING TENANTS ON REMAINDER PARCEL

- **Document Review & Analysis**
 - Existing Lease Restrictions on New Parcel
 - Other Tenant Rights/Remedies Dependent on Operation of New Parcel
 - Restrictions of Record
- **Definition of “Shopping Center” & Geographical Analysis**
- **Comparison & Recording of Supplemental Restrictions**
- **Additional Restrictions**
- **New Recorded Restriction Limitations**

RESTRICTIONS ON REMAINDER / RIGHTS OF NEW PARCEL TENANTS

- **Document Review & Analysis**

- Existing Lease Restrictions on Remainder of Shopping Center
- Existing Lease Rights Affecting Remainder of Shopping Center

- **Potential Additional Concerns**

- **Recorded Agreement Comparison**

- Consideration of additional gap obligations to be placed on the remainder Shopping Center prior to sale, as a balance between risk and marketability

NEW PARCEL TENANT EXPENSES AND LEAKAGE

- **Expense Analysis**
- **Common Area Expenses**
- **Insurance and Taxes**
- **Changing the Definition of “Shopping Center”**
- **Minimizing Leakage**

CAM LEAKAGE – FIXED VS. VARIABLE COSTS

- Lease Provision:
 - Commencing on the Rent Commencement Date and continuing thereafter on each subsequent anniversary of the Rent Commencement Date, Tenant shall pay to Landlord an annual access and use fee (the "Access Fee") for the main access road(s) serving the Premises in an amount equal to One Thousand and 00/100 Dollars (\$1,000.00) (subject to a 10% escalation every five (5) years with the first such escalation occurring on the fifth (5th) anniversary of the Rent Commencement Date).
- Existing REA Provision:
 - The owners of the Tracts and the owners of the Outparcels shall reimburse Developer on an annual basis for the actual expenses incurred in maintaining such access roads. Such annual charge shall be computed as follows: the Access Charge Expenses in each calendar year of the term shall be multiplied by a fraction ("Pro Rata Share"), the numerator of which shall be the Floor Area of the buildings on the Tract and the denominator of which shall be the total Floor Area of all buildings in the Development.

CAM LEAKAGE – DEFINITION OF SHOPPING CENTER

- Sometimes, the Lease will be explicit that the definition of Shopping Center cannot be changed:
 - At all times during the term of this lease, as such term may be extended, the Shopping Center shall be deemed to include the land shown on the Site Plan and the buildings located thereon from time to time regardless of whether such land or buildings are owned by Landlord
- Often, however, the Lease is silent and does expressly address landlord's right to alter the definition of the Shopping Center or otherwise adjust what land or parcels may constitute the Shopping Center

CAM LEAKAGE – PRO RATA CAP AND MINIMUM FLOOR AREA

- Pro-Rata Share Cap:
 - Notwithstanding the foregoing, Tenant's Pro Rata Share shall never be more than twenty percent (20%).
- Minimum Floor Area:
 - Notwithstanding the foregoing ... and (2) the denominator used to calculate Tenant's proportionate share of Common Area Charges shall never be less than eighty-five percent (85%) of the gross leasable area set forth in Article I.A.

POTENTIAL FOR MULTIPLE “DEVELOPERS/MALL OWNERS”

Subdivision can complicate REA provisions that grant rights to a
“Mall Owner or Developer”

- **CAM Considerations**
- **Approval Rights**
- **Waiver of restrictions**

SUPPLEMENTAL RECIPROCAL EASEMENT AGREEMENT

- **General Easements (Access, Utility, Parking)**
- **Parking Area Ratios**
- **Assess Sufficiency of Existing Easement Language**
- **Signage Rights**
- **Order of Operations (Complete Before Marketing)**

BROKER CONSIDERATIONS AND ACTIONS

- **Discussions with Seller**

- Ask your Seller: Has Seller completed a full separation analysis and recorded necessary documents? If not – recommend they do so or prepare for slowdowns.

- **Offering Memorandum: What to Include**

- Subdivision status & tax parcel number assignment
- Existing REA and cost obligations
- Tenant cost obligations and proportionate share calculations
- New Supplemental REA status
- Leakage Analysis / Leakage Mitigation

- **Offering Memorandum: What to Avoid**