



**Thursday, October 24, 2019  
9:30 AM – 10:45 AM**

**Peer to Peer 6**

**Square Peg in a Round Hole:  
Restaurant and Entertainment Leases in New and Existing Mixed-Use  
Developments**

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A 300,000 square foot single-level shopping center, called “Neighborhood Center,” has been operated by Developer for many years as a traditional grocery and drug-store anchored center, together with complementary retail uses. Neighborhood Center is situated in a prime location, but as demographics and trends in retail have changed over time, it has become somewhat obsolete. Developer decides to transform Neighborhood Center from a traditional strip center with surface parking into a multi-level mixed use life style center consisting of the following types of uses: residential, retail, restaurants, entertainment, health clubs and other fitness related uses and office. Developer envisions rebranding the Neighborhood Center as “Urban Row,” and creating a community where people can live, work, eat and play all under one roof, with all parking except a few surface spaces in front of the development to be provided via an underground parking garage. The municipality will not allow any monument or pylon signage for Urban Row. Rather, signage will be installed on the side of the building. As Developer’s General Real Estate Counsel, you will partner with in-house business, asset management, construction and development departments in an effort to structure a successful new Urban Row that opens and operates as seamlessly as possible, with the existing grocery and drug store tenants remaining in place.

1. Name three provisions in the existing leases that may pose challenges for the new development (i.e., typical grocery or drugstore lease provisions in a horizontal development that might cause issues for a new vertical development). How will you address those issues?
2. Assuming that you are able to agree upon appropriate parking ratios for the different types of uses, how will you set up parking in your underground parking garage to ensure that each type of tenant and resident will have the benefit of the parking that they have been promised?
3. Speaking of parking, the existing grocery lease requires all parking spaces to be available for the non-exclusive use of all tenants, but the potential tenants and residents of Urban Row want to use the few surface spaces as follows: residents want to offer visitor parking; the grocery store and restaurant tenants want to reserve the spaces for curbside service; and the restaurant tenants also want to offer valet service in front of the building. How do you handle these competing desires?
4. The grocery tenant wants to remain open during construction. What are the tenant's top three concerns with respect to construction?
5. Your company's form lease for mixed-use developments indicates that CAM will be "equitably allocated" among the different types of uses. Your litigation team tells you that they are currently involved in a lawsuit regarding what constitutes equitable allocation, and they would like you to propose a different way to split costs among the different uses. What are your thoughts?
6. What are the residential tenants' concerns about signage? How can your company address those concerns?



Urban Developer (“Developer”) recently purchased a parcel in the heart of downtown in Big City. Developer intends to construct a 7-story mixed-use development on the parcel, with retail, entertainment and restaurant uses located on the first 2 floors, residential condominium units located on floors 3 through 5, amenities (including a pool and a workout facility) located on floor 6, and a restaurant with a rooftop bar located on the top floor. Developer has hired a residential condominium attorney to prepare a condominium declaration that will establish individual residential units, as well as two commercial units, one of which will be located on the top floor of the building, and the other of which will be floors 1 and 2 of the building. The declaration prohibits “excessive” noise and vibrations from emanating from any unit, and further provides that the cost of trash removal will be split proportionately among the units based on each unit owner’s share of the development (which is based on the area of such unit owner’s unit compared to the aggregate area of all of the units). Developer will continue to own the two commercial units, and will lease them to retail, entertainment and restaurant uses. Developer has begun negotiations to lease the top floor to a hot new bar and restaurant. The restaurant tenant will pay percentage rent on all sales, including the sale of alcohol. The restaurant lease does not include any limitations on noise or vibrations, but makes the initial draft of the lease makes it subject to any existing or future documents of record.



1. You represent the purchaser of one of the residential units located on floor 5. What are your top three concerns regarding the development as it is described above?
2. You represent the bar and restaurant tenant. How do you handle the provision in the lease regarding existing and future documents of record?
3. How might the declaration be drafted to address noise and vibrations in a clearer way?
4. Is the split of trash costs equitable? If not, how can it be changed to be more equitable?
5. How can enforcement of the declaration be addressed in a way that creates both a disincentive for violations and an efficient way to address violations that do occur?



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