

REAL ESTATE POINT OF VIEW

Streets of Buckhead paved with legal work

SUTHERLAND LAWYERS RECALL THE INTRACIES—and the fun—of representing client Ben Carter Properties through the negotiations and deals required to transform Buckhead



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TRANSFORMING NINE ACRES of intown land in the heart of Buckhead into a one-of-a-kind, 600,000-square-foot cityscape of luxury retail boutiques, first-class restaurants, sidewalk cafes and high-end residential units is not an easy undertaking, to say the least.

Atlanta-based development group Ben Carter Properties began work on the historic mixed-use project, known as The Streets of Buckhead, in early 2006. A core team from Sutherland's real estate practice group, along with at least six Sutherland attorneys from several other practice groups, was enlisted to guide into reality long-time client Ben Carter's ambitious vision for the Buckhead of the future.

The Streets of Buckhead project kicked-off with an intense 24-month assemblage of all of the desired property within the "core" project area bounded by Peachtree Road on the west, East Paces Ferry Road on the north, Pharr Road on the south and North Fulton Avenue on the east. Ben Carter Properties also acquired neighboring properties outside of the core area, to be used for construction staging, temporary parking and ultimately future phases of the development. The total assemblage involved closing on 36 individual parcels owned by almost a dozen owners. Time was crucial in locking up the contractual rights to acquire these parcels, requiring close coordination and communication between the legal team and Ben Carter Properties' development team, and leading to more than one memorable story along the way. Perhaps the best-remembered contract signing took place on the Friday before Christmas in 2006,

Benjamin Carter Jr., vice president of the company—determined not to let execution of a purchase agreement for a critical parcel slip past the holidays—blocked the seller's car in place police-style and executed the agreement on the hood of the seller's car.

Acquiring rights to purchase all of the project area wasn't enough to give Ben Carter Properties the necessary rights to develop its project on schedule, however. Instead, the developer faced the daunting task of negotiating agreements to terminate or relocate more than three dozen existing tenants within the core area, to allow for demolition work to begin in August 2007, and the start of new construction three months later.

Achieving this goal required accommodating a number of individual tenants' particular idiosyncrasies that won't be quickly forgotten, such as negotiations over who would get to keep a Jerry Garcia stained glass window and hard-carved wooden doors from China, and a closing date for the parcel leased to Raccoon Lodge that was driven by the NCAA's March Madness. The Lodge was a favorite of local University of Florida fans and—in 2006—Florida was playing for (and would win) the National Championship; Ben Carter Properties had negotiated the right to close the transaction earlier but elected to allow Florida fans to enjoy the entirety of the tournament at their favorite bar.

Terminating the Chuck's Firearms lease required providing the tenant with significant leeway to figure out exactly how to legally and logistically move the store's inventory. The actual

two days of the move involved more than 50 people caravanning the guns and other merchandise up to Chuck's Firearm's new location a couple of blocks away. In the words of the tenant's attorney, "Saturday and Sunday looked like an ant hill with trucks shuttling guns and equipment from one location to the other."

Gaining the right to relocate Fadó Irish Pub involved permitting the pub to remain open in their old space through the end of the 2007 Rugby World Cup, bringing in materials and construction workers from Ireland to finish out Fadó's new location, and expediting construction of the new location so that Fadó's would be able to open before St. Patrick's Day, the biggest day of the year for the business.

Additional legal challenges of this unique and complex project have included:

- Obtaining approval of "brown-field" protection for the project from the Georgia Environmental Protection Division;
- Assisting Ben Carter Properties in obtaining tax abatement advantages stemming from the brownfields program; and
- Providing bankruptcy expertise when HiFi Buys filed for Chapter 11 protection before lease termination negotiations had been finalized with the electronics retailer.

The complexity and scope of this project also required expert land-use planning assistance, led by Seyfarth Shaw partner Carl E. Westmoreland Jr.

The project could not have reached its current stage without continued support and cooperation from a variety of civic and community leaders, including Mayor Shirley Franklin, city council president Lisa Borders, city council member Howard Shook

and the Buckhead Alliance and the local neighborhood planning unit.

In addition to contract and lease termination negotiations, the real estate team has been busy, and challenged, with structuring and negotiating vertical mixed-use development deals, handling joint venture negotiation and formation as well as mezzanine and mortgage financing, documenting easement rights and shared cost

Vacca now sprinkle their conversations as naturally and frequently as names like "Target," "PetSmart" and "Barnes & Noble" have before.

Tenants identified on Ben Carter Properties' website include Hermès, Oscar de la Renta, Bottega Veneta, Etro, Loro Piana, and Vilebrequin

Of course, a development project of this magnitude could not be achieved without sophisticated, intelligent and

Acquiring rights to buy all of the project area did not ensure Ben Carter Properties a timely start. To do that, the developer made a number of concessions to tenants, such as postponing closing on the Raccoon Lodge, allowing University of Florida fans to view the entire 2006 NCAA tournament—and UF's championship—at their favorite watering hole.

arrangements to govern the multi-block relationships of the project, and, of course, negotiating retail leases.

Striking deals with the retailers who will sell their luxury wares in the Streets of Buckhead has been a novel experience for even the most veteran of developers and real estate practitioners.

For example, the retailers signing on to the Streets of Buckhead tend not to be power- or lifestyle-centered tenants who execute 20, 30 or even 50 leases a year. Instead, they are the purveyors of haute couture; their schedules revolve around events like New York, Paris and Milan fashion weeks, not lease executions. The Ben Carter Properties' leasing team, headed by Ben Carter, Paisley Boney, and Palmer Carter, rose to the challenge, spending long spans of time in New York and Los Angeles. The names of Italian designers such as Domenico

flexible financial partners, including CB Richard Ellis Strategic Partners, which joined the project in its very early stages, when considerable assemblage risk still existed. Bank of America and Wachovia Corp. later joined the finance team, enabling the development work to get under way in earnest.

The role of the developer's construction and design team cannot be underestimated. Coordinating the design and construction, on schedule, of the vertical development of different uses makes the horizontal development of a typical shopping center seem easy. With the project slated for grand opening in November 2009, considerable work remains to be done by all players involved. One thing that is certain at this point, however, is that the next year and a half won't be boring for either Ben Carter Properties or Sutherland. ☎