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# Hotel, office projects return to downtown Denver with a flair

The late 1970s and early 1980s saw the introduction to downtown Denver hotel and office projects of grand scope and size that became part of the fabric of our city. Projects like Tabor Center, 555 17th Street and Denver Place, with their towering skyscrapers and large flagged hotels, gained ready acceptance in the marketplace and continue to fare well more than 35 years later.

In the current development cycle, much has been written about the thousands of square feet of multifamily projects that have brought waves of new residents downtown, but from our practice perspective, we also have been fascinated by the return to Denver of new hotel and office projects, a product that has been largely absent for the last 35 years.

Over the past two years, we have had the privilege of representing the developers of three new hotel/office projects that each will contribute greatly to the vibrancy of our downtown scene – the ART, a hotel at West 12th Avenue and Broadway, being developed by Corporex Colorado and expected to open later this month; Union Tower West, being developed by Portman Holdings and Hensel Phelps Development, located at 1801 Wewatta St., which broke ground in April; and Z Block, being developed by McWhinney, Grand American and Sage Hospitality, a hotel/office/restaurant and retail project occupying an entire block between 18th and 19th and Wazee and Blake streets, which broke ground in May.

**Bruce James**
Shareholder,
Brownstein Hyatt
Farber Schreck,
Denver

■ **What is different this time around?** First, in each case, the size of the hotel and office components is far smaller. The challenges of raising equity and debt for large projects in today's capital markets, compared with the markets that facilitated the projects built in the '70s and '80s, dictated a different approach this time around. Smaller projects allowed the risk of new development to be more measured and created a larger pool of potential lenders and equity investors.

Second, each project was designed to occupy a certain market niche and Denver has become a market that embraces cool, unique projects. The ART will be the first introduction of a concept marrying art and hospitality in the Denver market, featuring captivating pieces of contemporary art woven through the entire guest experience. Union Tower West will bring to Denver the first Hotel Indigo, a boutique concept that has a loyal following in other markets and is a great complement to the vibrancy of Union Station. Z Block will feature a boutique hotel concept developed by Sage Hospitality, and with an entire city block, Z Block will activate the alley in a way unique to Denver and more akin to what can be found in great European cities.

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Lastly, in the case of ART and Z Block, they each used a different legal structure than traditional mixed-use condominium regimes, while Union Tower West reserved the right to do so at a future date.

The ART, a hotel and Z Block each took advantage of the "planned community" exemption under the Colorado Common Ownership Interest Act, which permits either small communities (under 20 units) or communities that are entirely nonresidential to qualify as a planned community and thus have far more flexibility in how the projects are constructed and operated. For all practical purposes, a planned community unit is conveyed, encumbered and insured like any other condominium unit.

A planned community approach is extremely beneficial if, either at the time of development or at some point in the future, the units will be owned or financed by separate entities. The planned community structure allows designation of separate units for fee-simple ownership, together with common elements owned by an association whose members are the respective unit owners. Most importantly, the planned community structure can be established prior to commencing construction by recording a planned community map and declaration, whereas CCIOA would otherwise only allow postcompletion map recordation, a challenge if the units have separate debt or equity interests.

In many respects, the biggest challenge in using the planned community exemption is the education process, particularly with out-of-state lenders and counsel, and the need to gain their trust and comfort with the exemption and how it varies from a traditional condominium regime. We have now used this structure successfully on four recent occasions and, with each use, it is gaining familiarity and traction with lenders, investors and their respective counsel.

With thanks to our fellow counselors, Dennett Hutchinson and Beat Steiner at Holland and Hart, Chris Kinsman at Davis Graham and Stubbs, and Amy Hansen at Polsinelli, who represented lender, equity or joint venture partners in one or more of the projects, as we crafted with their collective input a planned community regime that served the best interests of our respective clients.

For those of us who love new, complex development projects, it has been a great time to be active in Denver.▲