

ACREL FALL 2022 MEETING CHICAGO, IL

SESSION TITLE: *JUST AN OLD FASHIONED LOVE SONG? RETHINKING COMMON AND HIGHLY NEGOTIATED LEASE PROVISIONS*

PAPER: *RETHINKING LEASE REDEVELOPMENT CLAUSES*
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Rethinking Lease Redevelopment Clauses

One of the more heavily negotiated lease provisions today is the redevelopment clause. Landlords and tenants understand a project may need to evolve, and even substantially change, to remain economically viable. However, tenants are concerned that the changes a landlord may want to make, if not constrained within certain parameters, will be so significant that the changes will compromise the reasons a tenant initially elected to lease space in the project and will adversely affect its operations.

This natural tension between a landlord's need for flexibility and a tenant's desire for certainty is not easily resolved, tends to be site specific and often hinges on the relative bargaining power of the parties.

Underlying the need for a thoughtful redevelopment clause is the landlord's desire not to completely demolish the existing project, but to maintain, reconfigure or enhance those portions of the development that continue to be successful; and a tenant's desire to remain in a development that may currently be struggling, but in which it is succeeding (and in which it may be even more successful after redevelopment).

History of Redevelopment Clause – Shopping Centers

For decades, shopping center leases have contained a provision giving a landlord exclusive control and management of the common areas, the right to make alterations and additions to buildings in the shopping center and to demolish buildings, the right to add and exclude areas from the shopping center and the right to relocate improvements in the shopping center. This broad provision granting a landlord the right to make physical changes has usually been tempered by other lease provisions, some in the landlord's standard form lease and some negotiated by tenants, that require the shopping center to remain primarily a first-class retail center, maintain a certain parking ratio, maintain access and visibility corridors, limit buildings to certain permitted building areas, and prohibit a long list of uses. Landlords have also been constrained by similar provisions in declarations, reciprocal easement agreements and development agreements.

The net effect of these operational limitation provisions has been two-fold: first, the landlord's broad right to make physical changes to the shopping center has been practically limited, particularly by those provisions governing permitted uses, required parking and protected common areas; and second, the landlord's right to broaden the mix of uses in the shopping center beyond retail uses has been significantly narrowed by the categories of uses that are expressly prohibited.

When shopping center landlords and tenants originally entered into leases with these traditional shopping center provisions, they had a relatively static vision of the future evolution of shopping centers. They certainly did not foresee the need to reimagine the shopping center as a mixed-use development or that office, residential, hotel, entertainment, governmental, educational, civic and other service uses would become significant complementary uses.

While Landlords and tenants understood that various consents might need to be obtained by landlords from tenants for certain changes from time to time, these requests were often limited in scope: allowing a specific new use in a specific location, reconfiguring of an existing building footprint or the addition of a parking deck. The inclusion of a clause in a lease that “consent was not to be unreasonably withheld, delayed or conditioned by tenant” with respect to these limited changes was often sufficient to resolve the issue.

Where a shopping center was not originally fully built-out, landlords often carved-out future building areas. To address these future building areas, some leases included a well-negotiated future building area provision similar to that attached as Schedule A hereto. Such a provision was tailored to the specifics of the contemplated future development. If a landlord wanted to make a material change to what had been planned, it would have to re-negotiate with the tenant.

Today, shopping center landlords are thinking much more expansively and creatively about redevelopment of their shopping centers. Landlords also understand that delays in timely implementing a redevelopment plan may result in the redevelopment losing momentum and even not moving forward. Similarly, shopping center tenants are more receptive to granting landlords broader rights to change and rebrand their projects to adjust to market conditions and trends. In many cases, this change in attitude and approach are the result of the hard lessons learned by both landlords and tenants when once vibrant shopping centers begin to decline. Tenants want landlords to reinvest and are willing give landlords more latitude provided tenants are given some protection on the potential downsides to redevelopment, both during redevelopment and after the redevelopment is completed. While it may be difficult to predict if a redevelopment will succeed, it is not too difficult to build-in to leases exit strategies for both landlords and tenants.

History of Redevelopment Clause – Office Buildings

Redevelopment clauses in office buildings have generally been more limited than those in shopping centers and have focused on a landlord’s right to alter and change common areas (such as parking areas, lobbies, conference centers and other building amenities), construct additional stories or additions to a building, upgrade building systems (such as elevators and mechanical equipment), run pipes, conduits and ducts through a tenant’s space, and relocate a smaller tenant for the benefit of a larger tenant.

Office building redevelopment clauses generally did not address use changes. In fact, to obtain the highest market rent, office building owners typically marketed their buildings as first-class office buildings, represented in their leases that their buildings would be maintained as first-class office buildings, and banned certain classes of office tenants, such as medical offices and governmental offices, as not being first-class. Certainly few office building leases contained

provisions that would permit a landlord to convert significant portions of the building to residential or hotel use, co-working spaces, medical or biotechnology uses, entertainment use or to computer server or telecommunication equipment uses.

Technological, environmental and amenity requirements of the modern office have resulted in many older office buildings no longer being first-class. This has caused office building owners to seek to widen the uses permitted in their office buildings in order to fill space. This is not limited to urban high rise office buildings, but also applies to aging suburban office parks and headquarter campuses. Landlords see the value in many of these underperforming properties and are reimagining their use (without complete demolition) often as mixed-use developments. Tenants are more open to the value of such redevelopments as they are looking to be in vibrant live, work and play projects that enhance their ability to connect to customers and provide an inviting work environment for their employees.

Today's Challenge

Landlords and tenants understand that the life cycle of a project today may be significantly shorter than what it was in the past. Significant changes, including in use, layout, density and character, may be needed to keep a project viable. Landlords have attempted to get ahead of the challenges by inserting broad rights of redevelopment in leases, lease amendments and related documents, including declarations, reciprocal easement agreements and development agreements.

Unmodified, these broad rights give tenants little control over, or certainty as to, what the project will be going forward and need to be tempered.

In addition, the breadth of the redevelopment rights that landlords seek often require changes to the underlying legal structure of a project. Attached as Schedule C hereto is a provision that landlords often add to leases giving them the right to create a condominium regime or new fee parcels, including by way of vertical plats. Both the condominium regime and the vertical plat are often most helpful in redeveloping high-rise office buildings, and enable the developer to easily separate various use components, such as retail, office, residential and hotel.

Typical New Landlord Shopping Center or Mixed-Use Project Redevelopment Clause

A typical new landlord redevelopment clause in a lease or lease amendment in a retail or mixed-use project might read as follows:

Notwithstanding anything in the Lease to the contrary, Tenant hereby consents to the redevelopment, from time to time, of the project in accordance with applicable laws, including (a) the demolition of existing buildings and improvements, and the construction of new buildings and improvements (including the construction of multi-story buildings and parking decks), in such locations, configurations and layouts as Landlord shall determine, (b) the re-configuration of the common areas of the project, including the location of entrances, driveways and parking areas, (c) the change of use of all or a portion of the project to any lawful uses (such as entertainment, restaurant, residential, office, hotel, medical, warehouse, industrial or otherwise), and (d) the relocation, at Landlord's expense,

of the Premises to another premises comparable in size to the Premises within the project. Tenant agrees not to object to any zoning or other governmental submissions that Landlord elects to make in connection with any redevelopment. Tenant acknowledges that the redevelopment (including construction activities during redevelopment and the reconfigured project after redevelopment) may materially adversely impact Tenant's business in the Premises, including due to reconfigured access, visibility and/or pedestrian or vehicle traffic within the project and, notwithstanding such material adverse impact, Tenant shall have no right on account thereof to abate rent, terminate the Lease or seek any other remedies at law or in equity.

Tenant Concerns

Tenants should break-down their concerns with the foregoing redevelopment clause into three time periods: (1) pre-redevelopment, (2) during redevelopment and (3) post-redevelopment.

Pre-Redevelopment. Pre-redevelopment, tenants want assurances from landlords that the project as currently operated, or at least the portions of the project that are critical to such tenants' business operations, will continue to be maintained and operated at an acceptable level.

If a redevelopment is contemplated and the general outlines of the redevelopment are known, then the lease should include as much specificity about the redevelopment as possible, with the tenant agreeing not to unreasonably withhold its consent to changes to the redevelopment plan that are a natural evolution of the general redevelopment plan or that do not materially adversely affect the tenant. The tenant may want to specify limited protected areas that are critical to the tenant's continued operations. Schedule D attached hereto provides an example of a redevelopment clause where the general location of the redevelopment is known, but not the specifics of the redevelopment.

If the tenant is committing to remain in a project in anticipation of a redevelopment and the redevelopment does not occur within a certain time frame, the tenant may need an early termination right, including in some instances reimbursements for unamortized leasehold improvements made in anticipation of the redevelopment.

If the landlord does not have any current redevelopment plans and is just wanting to maintain flexibility, then considering the length of time necessary to develop a redevelopment plan and obtain governmental approvals for a redevelopment, the tenant may request that the lease contain one or more of the following provisions: (a) the landlord's commitment to maintain the project substantially as it currently exists for a certain number of years, (b) the landlord's commitment to discuss with tenant annually any landlord redevelopment plans, (c) the landlord's commitment to discuss with tenant any potential plans for redevelopment during an upcoming option period prior to the tenant's exercise of such option period, (d) the right of tenant to terminate the lease prior to the commencement of a redevelopment based on certain criteria that landlord and tenant agree are likely to have a material adverse effect on the tenant. Such criteria might include landlord's need to relocate tenant's premises to a location that is not suitable for tenant, or, if tenant is a retail tenant, the elimination of retail square footage in the project below a minimum square footage threshold.

During Redevelopment. Major redevelopments take time and are often done in phases over a period of years. As a consequence, if the staging of the redevelopment is not carefully thought through and competently executed, the tenants remaining in the project during redevelopment may be materially affected. Schedule B attached hereto is an example of a demolition, fencing, parking and access plan that was proposed for a theatre remaining open during the demolition of a shopping center and its redevelopment as a new urbanism block development. The plans provides for flexibility in location of parking and access as different portions of the project are redeveloped over time.

The tenant's goal during a redevelopment is to minimize interference with its business while the redevelopment is occurring around it. A provision similar to the following is typical of what tenants request:

All construction work within the Redevelopment Area shall be performed (i) in a good and workmanlike manner, (ii) in compliance with all laws, good construction practices and the Construction Access Requirements, (iii) only between the hours of 7:00 a.m. to 4:00 p.m., Monday through Friday, (iv) in a manner that minimizes interference with the operation and use of the Remaining Project by tenants and occupants and their customers and employees, (v) in accordance with a construction staging plan prepared by Landlord and approved by Tenant, which approval shall not be unreasonably withheld, and which construction staging plan shall be updated monthly by mutual agreement of Landlord and Tenant, each acting reasonably and in good faith, and (vi) only within the Redevelopment Area (and not on any portion of the Remaining Project).

While the covenants of the landlord under the above clause are important, it is also important to have meaningful remedies if the above covenants are breached. Injunctive relief and self-help may be appropriate in limited circumstances where harm is immediate or in an emergency, but the important remedies for the tenant are rent abatement and, under certain egregious circumstances, a termination right for breaches that continue for any meaningful length of time.

Post-Redevelopment. Post-redevelopment tenants have two concerns. First, tenants want landlords to commit to an operating covenant standard for the redeveloped project. Sometimes this is broken down into a more general operating covenant for the overall project and a more targeted operating covenant for the component of the project in which the tenant is located. An example of such a bifurcated operating covenant is attached hereto as Schedule E.

Second, tenants want a lease termination exit strategy if the redeveloped project does not positively impact tenant. It is not easy to predict how a more open-ended redevelopment project will affect a tenant and the most meaningful remedy for a tenant is the ability to terminate its lease if certain agreed upon metrics demonstrate that the redeveloped project is no longer a successful project for the tenant. For a retailer, the metrics might be based on sales. In an office building redevelopment that adds residential or other non-office uses, the trigger may be the percentage of the building that continues to be occupied by a certain quality of office tenant.

Landlords may also want a lease termination exit strategy. A landlord may have done a partial redevelopment to hedge its bets. If the partial redevelopment is successful, it may want to

redevelop the remainder of the project and to do so it may need to terminate existing leases.

Conclusion

Today's expansive redevelopment clauses require thoughtful consideration and careful drafting to address relevant issues pre-, during- and post-redevelopment. There is typically not a one size fits all solution and landlords and tenants need to be flexible in their approach and take in account site specific circumstances. Because the parameters of the future redevelopment may not be fixed and the effect of the redevelopment on a tenant may be hard to predict, both landlords and tenants may want to incorporate termination exit strategies in the lease documents that are triggered if certain metrics are not achieved post-redevelopment.

SCHEDULE A

Typical Future Building Area Language.

(A) Future Buildings. “**Future Buildings**” shall mean (a) the one-story building containing not more than _____ square feet of Floor Area which Landlord may construct or cause to be constructed within “Outparcel 1” identified on Exhibit A to this Agreement (“**Outparcel 1**”), and (b) the one-story building containing not more than _____ square feet of Floor Area which Landlord may construct or cause to be constructed within “Outparcel 2” identified on Exhibit A to this Agreement (“**Outparcel 2**”).

(B) Future Building Areas. “**Future Building Areas**” shall mean Outparcel 1 and Outparcel 2 identified on Exhibit A to this Agreement.

(C) Construction Staging. Notwithstanding anything to the contrary contained in the Lease, Landlord shall have the right, subject to the terms of this Paragraph and Paragraphs (D) through (H) below, to construct the Future Buildings within the Future Building Areas. Landlord shall not commence construction of the Future Buildings until Landlord has submitted to Tenant and Tenant has approved in writing (which approval shall not be unreasonably withheld, delayed or conditioned) (1) a construction staging plan for the Future Buildings, including (a) the location of any construction staging area and construction trailers (which Landlord covenants will be located outside “Tenant’s Protected Area” [defined below] and outside any driveways within the Project providing vehicular access to Tenant’s Protected Area and the Leased Premises), (b) the fencing and screening plan for the staging and work area, (c) the construction delivery route, (d) the location of parking for the construction workers (which Landlord covenants will be located outside Tenant’s Protected Area and outside any driveways within the Project providing vehicular access to Tenant’s Protected Area and the Leased Premises), (e) the construction phasing schedule, and (f) the changes in access and parking within the Common Areas during construction and after construction (collectively, the “**Construction Staging Plan**”), and (2) a site plan for the Future Building Areas showing (a) the building footprint of the Future Buildings and the view corridors to Tenant’s Building that will not be affected (the “**Protected View Corridors**”), which Protected View Corridors will be shown on Exhibit A to this Agreement, (b) the floor area of the Future Buildings, (c) that there are sufficient parking spaces within the Project to comply with the Car Parking Ratio and the Minimum Number of Parking Spaces (taking in account the proposed uses for the Future Buildings), and (d) that there are sufficient parking spaces within each Future Building Area for such Future Building Area to self-park in compliance with Laws and without reliance on any parking spaces outside such Future Building Area (taking in account the proposed uses for the Future Building on such Future Building Area).

(D) Future Buildings Work. All work related to the construction of the Future Buildings and related improvements on the Future Building Areas shall be (1) performed in a good and workmanlike manner, with due diligence, in compliance with all Laws and good commercial construction practices, and in a manner that does not adversely affect the operation of Tenant’s business in the Leased Premises or use of the Common Areas within Tenant’s Protected Area, and (2) with regard to each Future Building as and when constructed, such

Future Building shall be completed within one year after the earlier to occur of the following: (i) any construction fencing or screening is placed around the applicable Future Building Area, (ii) any construction materials or equipment is placed on the applicable Future Building Area, (iii) any utility or pad preparation work commences with respect to the applicable Future Building Area or (iv) the commencement of any other work within any portion of the applicable Future Building Area.

(E) Minimum Parking Requirements and Future Building Uses.

Notwithstanding anything to the contrary contained in this Agreement, (a) the Project, after construction of the Future Buildings, shall be required at all times during the term of the Lease to comply with the Car Parking Ratio and the Minimum Number of Parking Spaces required to be maintained on the Project pursuant to the Lease (taking in account the proposed uses for the Future Buildings), and (b) each Future Building Area, after construction of any Future Building thereon, shall be required at all times during the term of the Lease to maintain a sufficient number of parking spaces within such Future Building Area for such Future Building Area to self-park in compliance with Laws and without reliance on any parking spaces outside such Future Building Area (taking in account the proposed uses for the Future Building on such Future Building Area). Landlord represents, warrants and covenants that the Future Buildings will only be used for retail uses, including restaurants, typically found in good quality shopping centers comparable to the Project as of the date of this Agreement; provided, however, in no event will the Future Buildings be used in violation of any REA or Declaration.

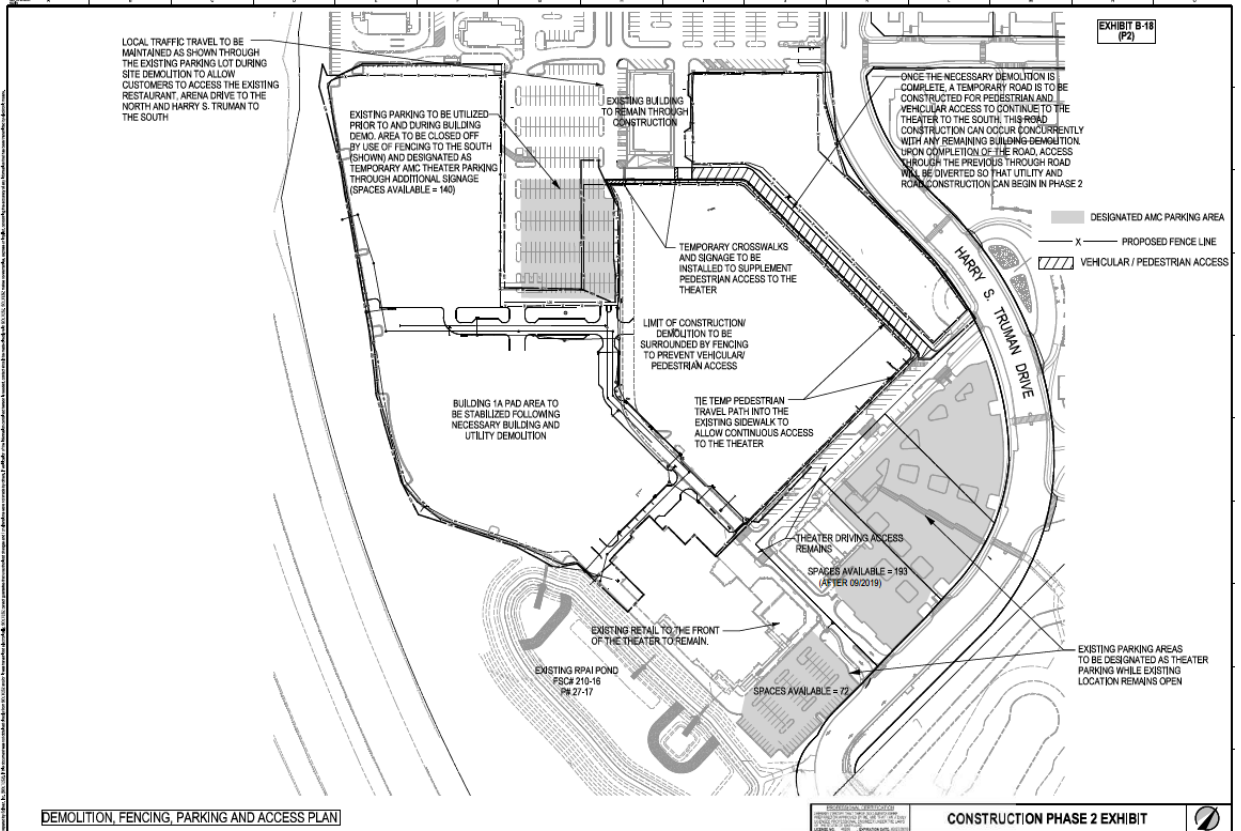
(F) Tenant's Protected Area. Notwithstanding anything to the contrary contained in the Lease, Landlord agrees that (a) there shall be maintained at all times not fewer than ___ parking spaces within the area identified as "Tenant's Protected Area" on Exhibit A attached hereto ("**Tenant's Protected Area**") for the non-exclusive use by Tenant and Tenant's customers and employees, (b) no portion of Tenant's Protected Area shall be used as a construction staging area for any construction work related to the Future Buildings or any other construction within the Project, (c) no buildings or improvements (other than Common Areas) may be constructed on Tenant's Protected Area and (d) Tenant's Protected Area shall be maintained by Landlord substantially as shown on Exhibit A.

(G) Governmental Approvals. Landlord, at Landlord's expense, will be responsible for obtaining all governmental approvals for the development of the Future Buildings. Tenant has no obligation to cooperate with, or help, Landlord obtain such governmental approvals for the Future Buildings; however, Tenant will not oppose Landlord's applications for such governmental approvals.

(H) Remedies. In the event Landlord breaches its covenants and representations under this Section and such breach materially adversely affects the operation of Tenant's business in the Leased Premises, then, in addition to Tenant's other rights and remedies, upon notice by Tenant to Landlord, the Rent shall abate in full retroactive to the commencement of such breach, and in lieu thereof, Tenant shall pay to Landlord, as substitute Rent during the duration of such breach, the following: _____.

SCHEDULE B

Example of a Site Plan Showing the Continued Operation of a Theatre during the Demolition and Redevelopment of a Project



SCHEDULE C

Right to Create Condominiums and New Fee Parcels

Landlord, in its sole discretion and without the approval of Tenant, shall have the right at any time and from time to time during the Lease Term, to (i) cause all or a portion of the Project to be subject to a condominium regime pursuant to the applicable condominium laws of the State in which the Project is located (the condominiums so created being herein referred to as the “**Condominiums**”), and/or (ii) create different fee parcels (including air rights parcels) for the different components of the Project in accordance with the applicable zoning laws of the State in which the Project is located (the fee parcels so created being herein referred to as the “**Fee Parcels**”). Subject to the other terms of this Section, Tenant agrees that (a) Tenant’s approval shall not be required in order to create any Condominiums or Fee Parcels, (b) Tenant shall not object to any governmental proceedings initiated to create any Condominiums or Fee Parcels and (c) Tenant, to the extent required and without expense to Tenant, shall cooperate with Landlord in obtaining all approvals required in order to create any Condominiums or Fee Parcels, including executing any documents required by the applicable governmental authority, and (d) when created, this Lease shall be subject and subordinate to all of the documents creating such Condominiums or Fee Parcels (collectively the “**Ownership Structure Documents**”) with the same force and effect as if this Lease (and any Memorandum of Lease executed in connection with this Lease) had been executed after the execution of the Ownership Structure Documents. Such subordination shall be upon the condition that in no event shall the creation of any Condominiums or Fee Parcels (A) diminish Landlord’s obligations under this, (B) diminish Tenant’s rights under this Lease, (C) increase Tenant’s obligations under this Lease, or (D) obligate Tenant to increase Tenant’s monetary obligations under this Lease.

SCHEDULE D

Redevelopment of a Major Portion of a Shopping Center Project

(A) Redevelopment. Tenant approves the demolition and redevelopment of the portion of the Project identified on the Site Plan as the “**Redevelopment Area**” with a mixed-use project which may include multi-level buildings and improvements and which may include one or more of the following uses: retail, restaurant, entertainment, office, educational, residential and/or hotel uses, and surface and underground parking and other common areas (the “**Redevelopment**”). The redevelopment plans for the redevelopment (the “**Redevelopment Plans**”) have not been finalized and may change as Landlord proceeds through the governmental approval plan process and/or due to market conditions, and Landlord shall have the right to make changes to the Redevelopment Plans, without Tenant’s consent, subject to the terms of this Section.

(B) Demolition. Landlord shall give Tenant not less than 30 days prior written notice of the date on which Landlord will commence demolition of buildings and improvements within the Redevelopment Area. Prior to commencing any demolition work, Landlord shall install a construction fence around the Redevelopment Area, construct a construction vehicle entrance and access point to the Redevelopment Area directly from an adjacent public road, and install signage directing all construction vehicles to use such construction vehicle entrance and access point (the “**Construction Access Requirements**”). All demolition work shall be performed in a good and workmanlike manner, in compliance with all laws and good construction practices, only between the hours of 7:00 a.m. to 4:00 p.m., Monday through Friday, and in a manner that minimizes interference with the operation and use of the remainder of the Project (the “**Remaining Project**”) by tenants and occupants and their customers and employees. All construction vehicles shall use only the construction vehicle entrance and access point.

(C) Self-Parking Requirement. The Redevelopment shall at all times self-park in compliance with all applicable laws without reliance on, or use of, any parking spaces on the Remaining Project.

(D) Separate Tax Parcel. The Redevelopment Area will be reassessed as a separate tax parcel, and from and after the demolition commencement date, no taxes or assessments attributable to, or separately levied and/or assessed on the Redevelopment Area will be included in the taxes and assessments allocated to tenants and occupants of the Remaining Project.

(E) Common Areas. Although tenants and occupants of the Remaining Project and their customers, employees and invitees may be granted rights to use all or a portion of the common areas constructed on the Redevelopment Area, any and all operating, maintenance, repair and other costs incurred with respect to the buildings, common areas and other improvements on the Redevelopment Area shall be separately accounted for from and after the demolition construction date, no such costs will be included in any common area charge, operating expenses charge or other similar charge allocated to tenants and occupants of the Remaining Project.

(F) Permitted Uses in Redevelopment Area and Compliance with Tenant’s Exclusive Use. Notwithstanding anything to the contrary contained in this Section, the Redevelopment Area shall be operated at all times in a first-class manner as a first-class mixed use development comparable to other first-class mixed-use developments in the Metropolitan Area for one or more of the following uses (and for no other use or purpose): retail, restaurant, entertainment, office, educational, residential

and/or hotel uses, and in no event shall any of such permitted uses violate Tenant's Exclusive Use under this Lease.

(G) No Change to Redevelopment Area. The Redevelopment Area shall not be modified or changed without the prior written approval of Tenant, which approval shall not be unreasonably withheld; provided, however, Landlord may makes changes to the buildings and improvements within the Redevelopment Area subject to the terms of this Section.

(H) Performance of Redevelopment Area Work. All construction work within the Redevelopment Area shall be performed (i) in a good and workmanlike manner, (ii) in compliance with all laws, good construction practices and the Construction Access Requirements, (iii) only between the hours of 7:00 a.m. to 4:00 p.m., Monday through Friday, (iv) in a manner that minimizes interference with the operation and use of the Remaining Project by tenants and occupants and their customers and employees, (v) in accordance with a construction staging plan prepared by Landlord and approved by Tenant, which approval shall not be unreasonably withheld, and which construction staging plan shall be updated monthly by mutual agreement of Landlord and Tenant, each acting reasonably and in good faith, and (vi) only within the Redevelopment Area (and not on any portion of the Remaining Project).

(I) Remedies. Notwithstanding anything to the contrary contained in this Lease, if Tenant's business in the Premises is materially adversely interfered with on account of any of Landlord's demolition or redevelopment work, or if Landlord breaches any of Landlord's covenants under this Section, then, in addition to Tenant's other rights and remedies, upon notice by Tenant to Landlord, the Rent otherwise payable under this Lease shall abate in full retroactive to the commencement of such material adverse interference or material breach, and in lieu thereof, Tenant shall pay to Landlord monthly _____% of the Rent otherwise payable by Tenant.

SCHEDULE E

Example of a Loose Landlord Operating Covenant in a Mixed-Use Project, with a Stricter Landlord Operating Covenant in Tenant's Protected Area

Except when prevented from doing so by Force Majeure, during the Term (a) Landlord will continuously operate or cause to be operated the Project as a first-class mixed-use development in a first-class manner consistent with first-class mixed-use development standard operating practices; provided, however, Landlord makes no representations at any time (i) about the occupancy level of the Project, or (ii) that the Project will contain any specific uses or concentration of uses; and (b) subject to the terms of the REA, no portion of the Project shall be used for any use other than one or more of the following uses: retail, restaurant, entertainment, office, medical office, service, residential and hotels. Notwithstanding the foregoing, Tenant's Protected Area shall at all times contain a minimum of _____ square feet of Floor Area devoted to retail, restaurant and entertainment uses.