

Anchor Lease Negotiation: Negotiating Without Getting Sunk

How to Efficiently and Effectively Resolve Problem Clauses in an Anchor Lease

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HYPOTHETICAL

TENANT: “Wholesale Haven” a massive retail warehouse

- Customers pay an annual membership fee
- Typical stores are approximately 100,000 square feet
- Wholesale Haven builds its own building
- Wholesale Haven prefers to be in-line in the center
- Wholesale Haven is expanding its business rapidly
- This is a new market for Wholesale Haven

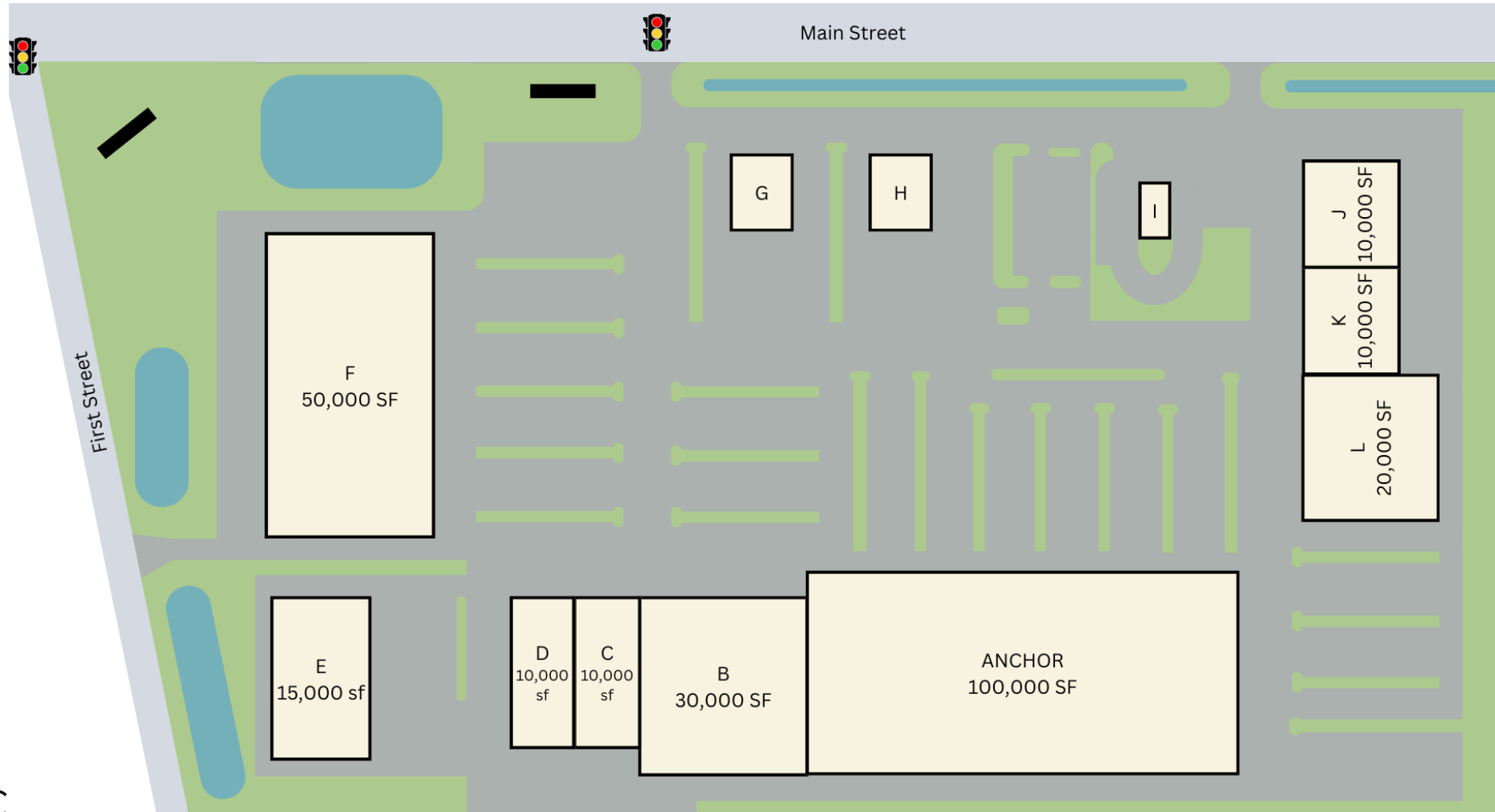
LANDLORD: “Metropolitan Management”

- A well-known, sophisticated shopping center developer and owner with centers all over the Midwest

SHOPPING CENTER: “Serenity Square”

- Metro’s newest development
- 30-acre retail development in the Midwest
- Several big box anchors, multiple junior anchors, and several shops.
- Several tenants have already signed leases at the development
- Many existing tenants are difficult to deal with

SERENITY SQUARE

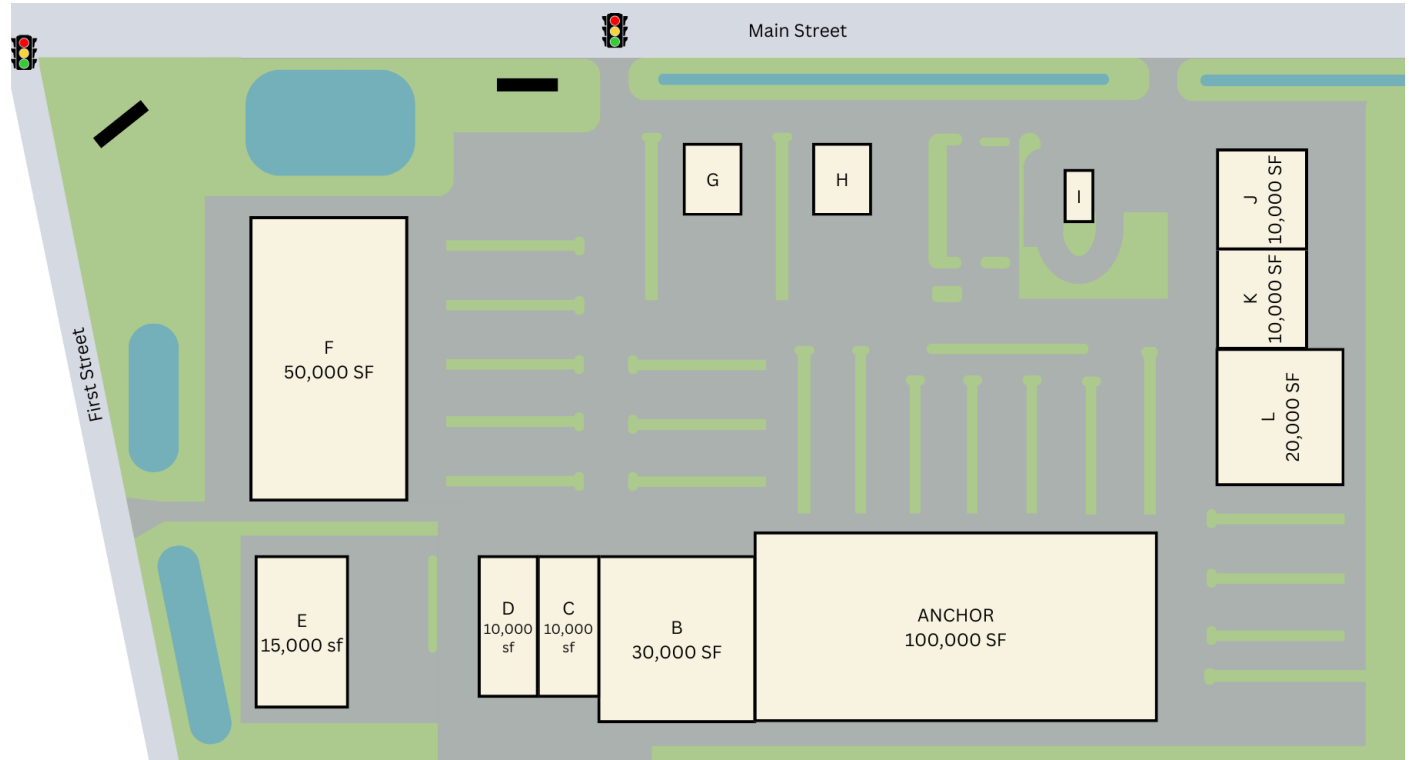


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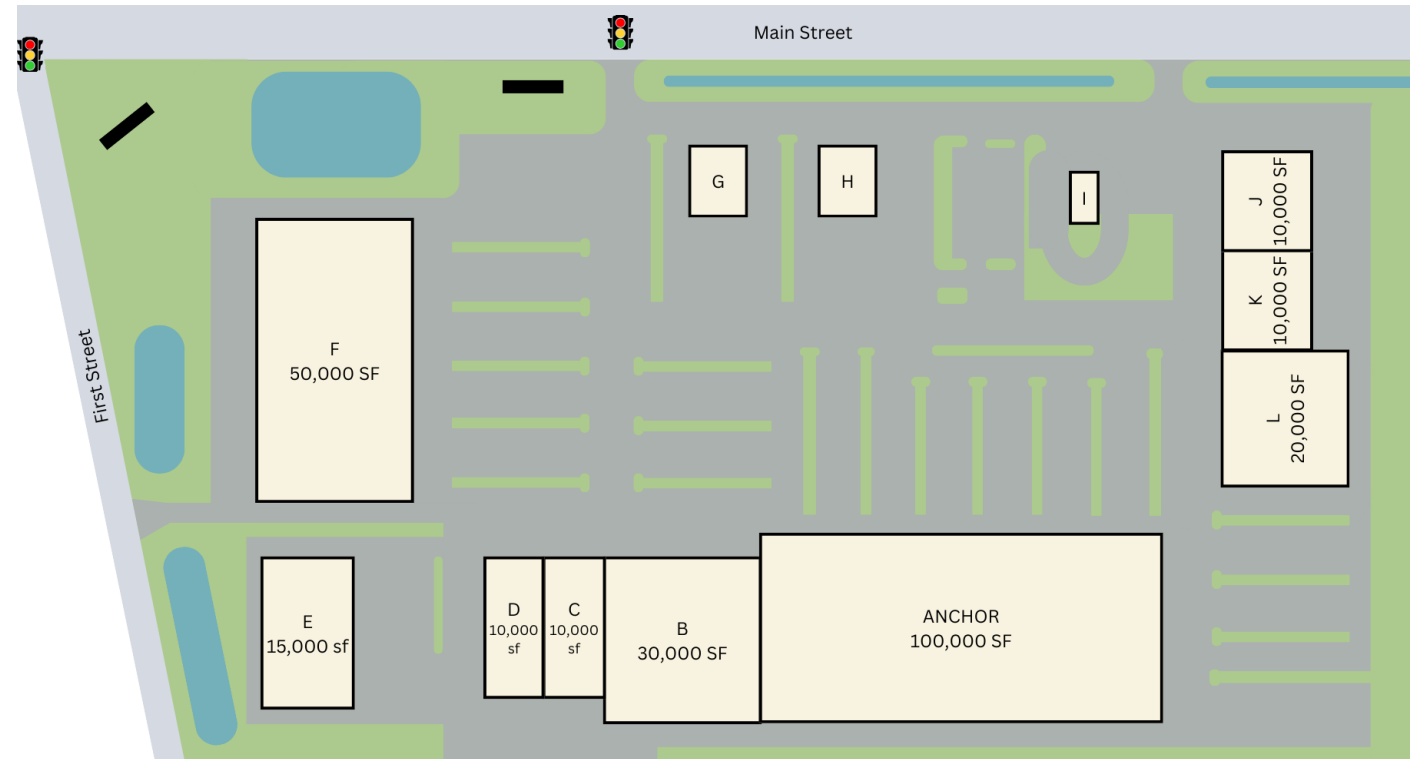
OPERATING COVENANT

- Exceptions
- Conditions
- Grace and Cure Periods
- Penalty



GO DARK RECAPTURE

- Default? Or just termination?
- Payment of Unamortized Costs
 - Is there an allowance?
- Loss of Exclusives



PERMITTED USE

- Broad language permitted by law (OR)
- Narrow trade name operates like other stores as of today

NOTE:

Assignment and subletting
Retail Evolves Fast

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EXCLUSIVE USES

- Product-based vs Use-based
 - Ancillary / secondary uses
 - Future uses?
- Exceptions: Do you control by:
 - Size
 - Location
 - Pre-Existing (and replacements)
 - Relocation
 - Springing exclusives
- Remedies
 - Rogue Tenant
 - Landlord Error / Intentional

1. Competing Use.

During the Lease Term, Landlord shall not hereafter lease any space in the Shopping Center for (i) the operation of a wholesale club (as defined by the trade from time to time), (ii) the sale of liquor for off premises consumption, or (iii) the sale of food for off premises consumption (each, a "Competing Use") or permit any Person to use any portion of the Shopping Center for a Competing Use.

2. Exclusive Violation.

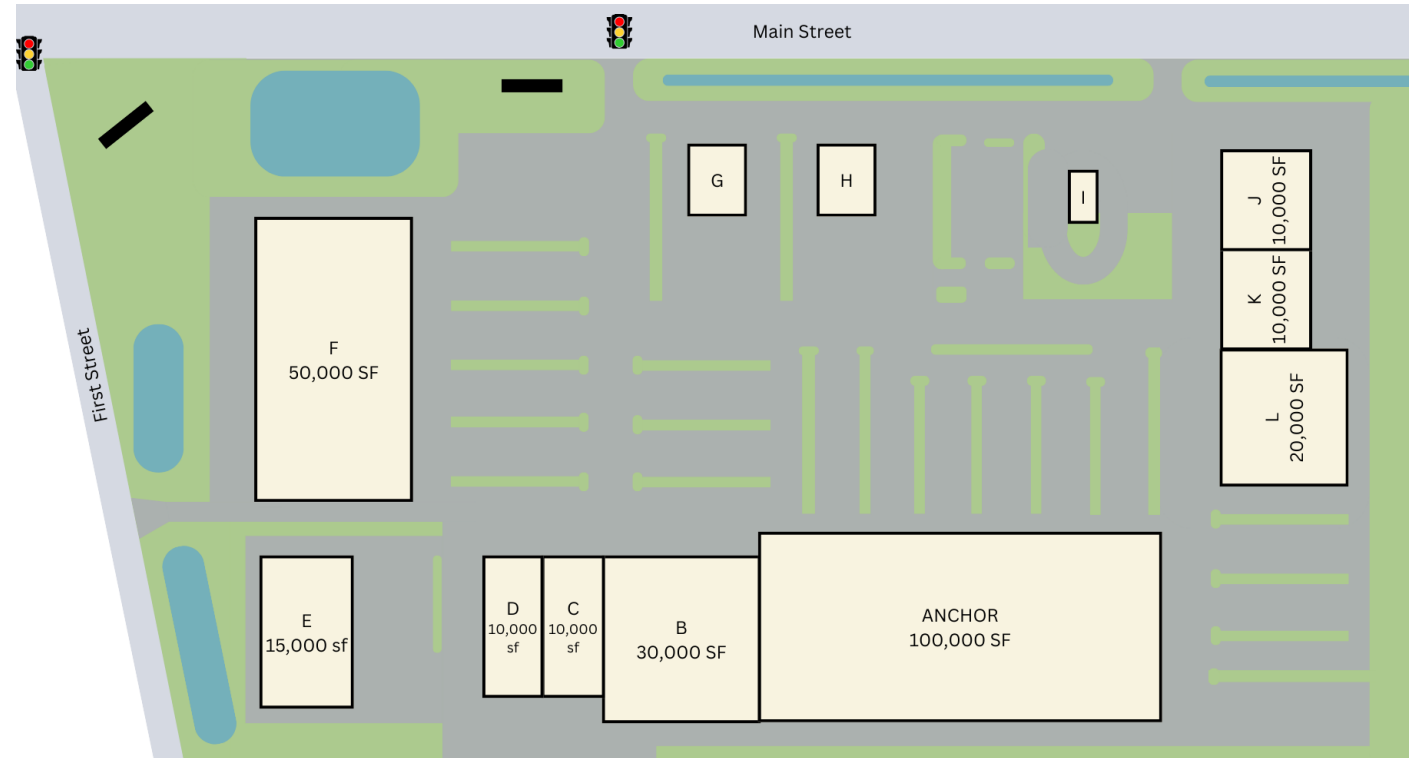
If Landlord violates the terms of Section 1 above (an "Exclusive Violation"), in addition to its other remedies available at law or in equity, Tenant may pay reduced Minimum Rent ("Reduced Rent") equal to fifty percent (50%) of the Minimum Rent otherwise due for each month or portion thereof during which such violation continues.

3. Tenant's Right to Terminate.

If the Exclusive Violation continues for six (6) months, then Tenant shall have the right, in addition to its other remedies available at law or in equity, to terminate this Lease at any time thereafter prior to cure.

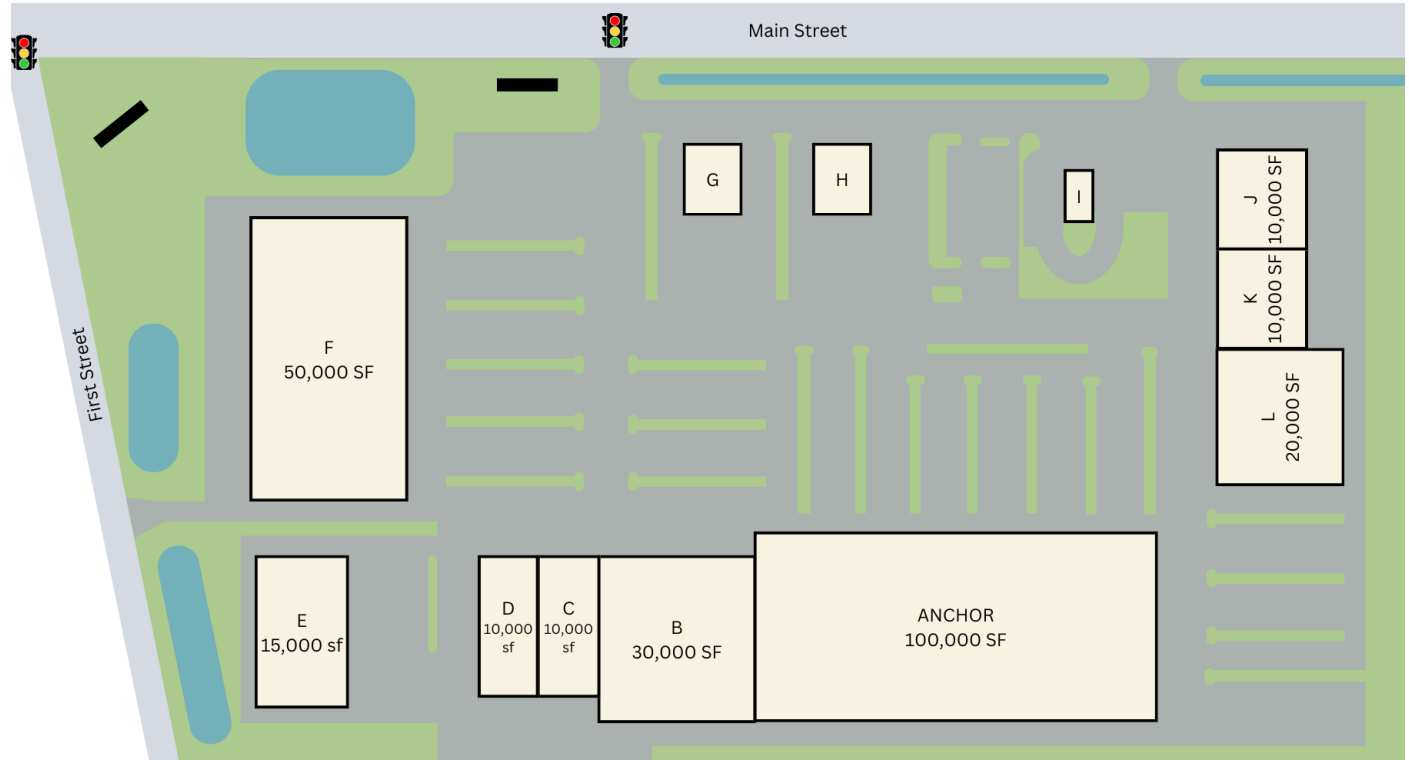
TERMINATION RIGHTS FOR CASUALTY

- Ongoing? Or at end of Term?
- Uninsured v. insured?
- Extent of damage?
- Time to repair?
- Right to rescind by Tenant extension?
- Allocation of proceeds?



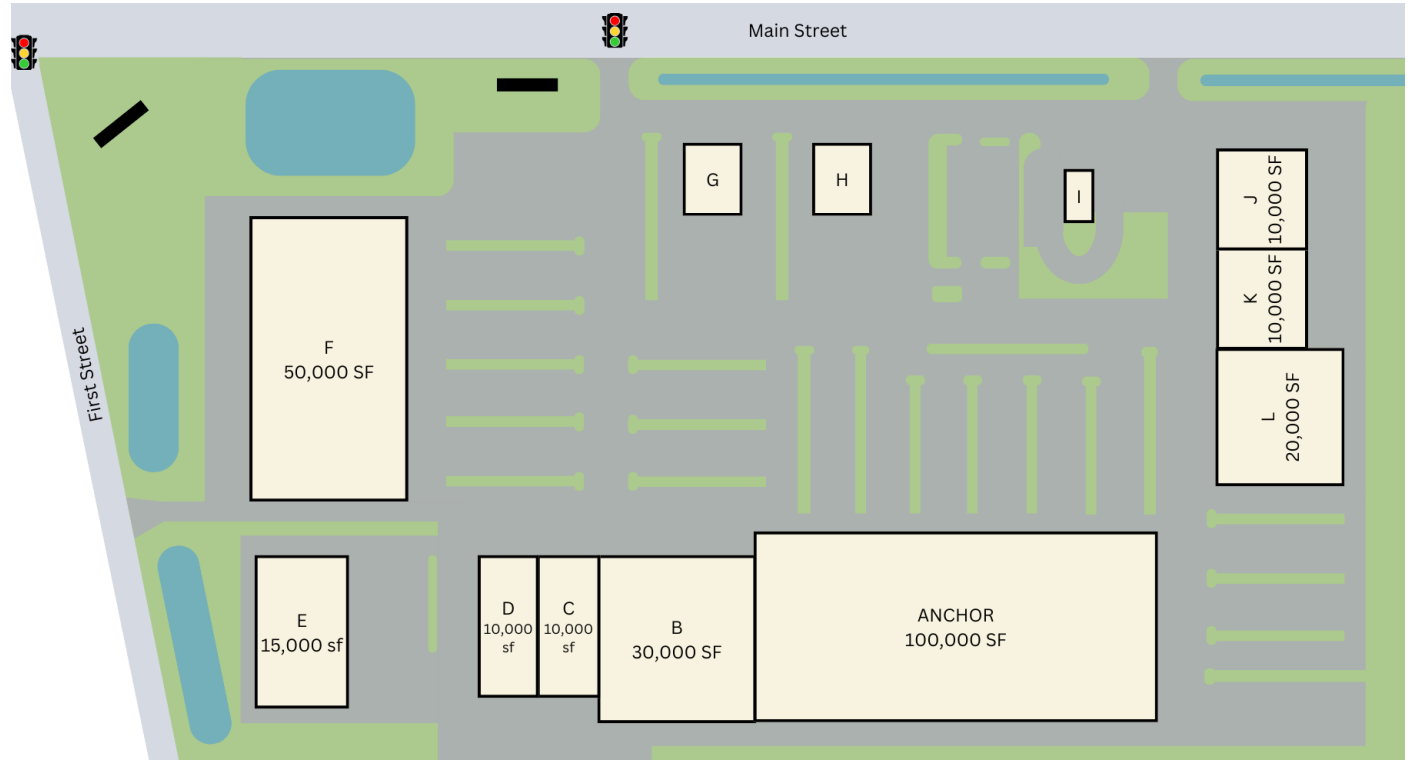
COMMON AREA PROTECTIONS

- Scope of Control Area
- Protected Area
- Visibility
- Parking Ratio
- Access
- Landlord's rights to modify Common Area



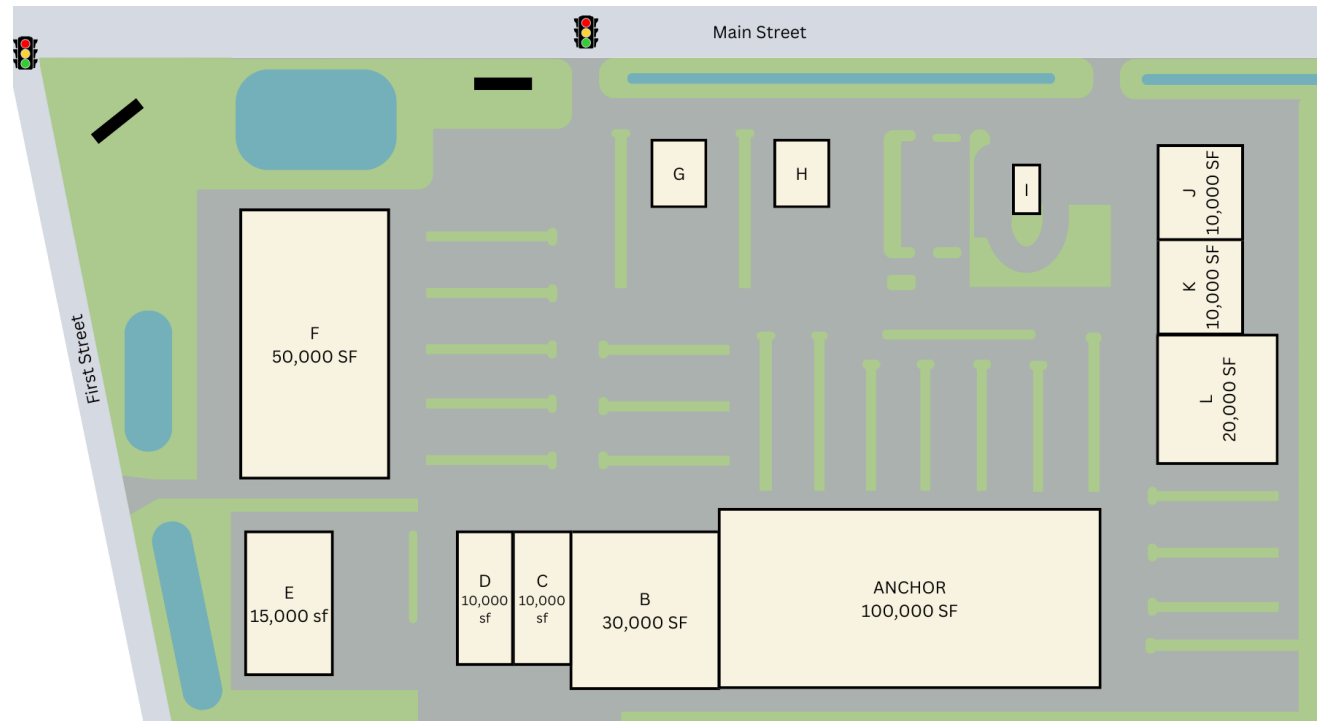
PARKING RIGHTS

- Right to time limits
- Right to reserve
- Employee parking
- Control of other tenants' employees
- Pick-up and delivery spaces
- Off-site shuttle service
- Policing / towing obligations



PROHIBITED USES

- Parking Intense Users (day spas, gyms, white tablecloth restaurants, movie theaters, arcades, bars)
- Noxious or offensive (sexually explicit, drug paraphernalia, marijuana)
- Safe Harbor (Landlord wants to know what it can do without Tenant's approval)



RADIUS RESTRICTIONS

- Duration
- Exceptions
 - Different Format
 - Affiliate Owned
 - Acquired Store
- Remedy

