EXTENDED REALITY TOOLKIT

**Maintaining the Building’s Intellectual Property Rights**

XR content has potentially meaningful implications for a building’s intellectual property (IP). Owners and managers may wish to broadly consider how they claim and maintain ownership of their digital rights and should discuss these issues with legal counsel. For example:

* Building Development: are owners claiming the rights to a building’s design in their contracts with architects, or might an architect argue that it owns the rights to a building’s design as it may be reflected in XR?
* Building Sales: how do buildings’ purchase and sale agreements contemplate the transfer of ownership in IP rights? In some cases, it may be that the rights to income derived from XR licensing may be worth more than the building’s income from tenant leases.

A buyer-oriented digital rights clause in a purchase and sale agreement may look something like this, but consult with legal counsel regarding the specific language for any particular agreement:

All “Digital Rights” (as defined below) arising from, in connection with or in any way otherwise related to the [Property] [NOTE: “Property”, “Assets” or whatever similar defined term is used should include Digital Rights as part of its definition] shall be the sole and exclusive property of Buyer from and after [Closing], and shall specifically be deemed part of the [Property] to be conveyed pursuant to this Agreement. As used herein, “Digital Rights” means the right to copy, recreate, advertise, market, distribute, display, digitize, render, morph, duplicate, scan, model, or

otherwise use or depict the [Property] in any and all forms of digital media, now known or hereafter created. The terms of this [provision] shall survive [Closing] without limitation, shall be binding on Seller and its successors and assigns, and Buyer may enforce the rights granted herein by seeking injunctive relief.

* Platform Registration: DRM’s registration agreement reserves a building’s IP rights to the building owner. If you are registering a building on other platforms, evaluate whether the fine print implicates the building’s IP.
* XR Engagement Licensing: consider a provision in any XR content licenses that makes clear the building maintains its ownership of all IP rights.

Other IP-related considerations for content licenses:

* 1. Information sharing. Users may be voluntarily sharing useful data to the content creators as part of their engagement with the content.
		1. What data may be derived from the engagement that could reveal information about the building’s operations that you may be sensitive about?
		2. What data may be derived from the content that the building would want access to? Make sure you consult with legal counsel to ensure that receipt of such data would not trigger a violation of Illinois’ Biometric Information Privacy Act.
	2. Confidentiality: is there any information obtained during the engagement that needs to be held confidential? From whom?
* Tenant Leases: do your tenant leases include any restrictions on what ownership can do with a building’s digital IP rights? For example, can the owner authorize XR content in tenant spaces? Is the owner restricted from any XR content that may speak to the tenant’s business (for example, can the building advertise a product that competes with a tenant’s?)

An owner-oriented digital rights clause in a lease may look something like this, but consult with legal counsel regarding the specific language for any particular agreement:

All “Digital Rights” (as defined below) arising from, in connection with or in any way otherwise related to the [Premises] [Building] and/or [Project] shall be deemed the sole and exclusive property of [Landlord] and shall not be used in any manner by Tenant without [Landlord’s] express prior written consent, which may be withheld in its sole and absolute discretion. As used herein, “Digital Rights” means the right to copy, recreate, advertise, market, distribute, display, digitize, render, morph, duplicate, scan, model, or otherwise use or depict the [Premises] [Building] and/or [Project] in any and all forms of digital media, now known or hereafter created.