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Workshop #9

That's Entertainment! How Retail Entertainment Leases Differ From Other Retail Leases

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by:

Allen Hubsch
Principal
Law Office of Allen W. Hubsch
8549 Wilshire Blvd, Suite 3220
Beverly Hills, California 90211
ahubsch@hubschlaw.com

Bryan D. McCrory
Associate General Counsel
Dave & Buster's
1221 South Beltline Road #500
Coppell, Texas 75019
bryan.mccrory@daveandbusters.com

I. BACKGROUND RE ENTERTAINMENT USES

A. PROJECT TYPES

1. Stand Alone Entertainment Uses

- (a) Traditional Project. Standalone movie theatres were at one time customary. Even if entertainment uses were part of a larger retail center, they were often separated from the main improvements of the retail center. For example, at regional malls that included entertainment uses, the entertainment uses were often located outside the "ring road." Among other things, LLs of retail centers concluded that customers of entertainment uses occupied parking for too long with insufficient spending.
- (b) Less Common Today. Because of LLs' desire to drive traffic to retail centers, entertainment uses have more recently been located or re-located in or contiguous to the main improvements of the retail center or mixed use project.

2. Retail Centers

- (a) Regional Retail. Entertainment uses are often part of regional retail or other large retail center. Entertainment uses are not typically part of grocery-anchored retail or small retail centers.
- (b) Experiential. Entertainment uses are a central part of the focus on experiential retail. Experiential retail involves cultivating experiences in a retail setting, which is different than ordinary commerce. The drive toward experiential retail has led to movie theatres, restaurants, fitness centers and specialized grocers being invited into the main retail improvements, where they were not previously as welcome.
- (c) Competition. Retail centers that offer experiential tenants and amenities to customers are more likely to attract customers, attract other tenants, command higher rents and survive changes in the bricks and mortar environment.

- (d) Synergies. In addition to the general benefits that experiential tenants like movie theatres provide, some entertainment uses have particular synergies with restaurants.
 - (e) Parking Revenue. Where LLs are able to charge for parking, parking by customers of entertainment uses (and having a meal and/or shopping) provides an additional source of revenue for LLs.
 - (f) Anchor or Quasi-Anchor. The benefits to LLs of entertainment uses, and the loss of other traditional anchors has made entertainment uses not just welcome into the central portion of the retail center, but has made them anchor or quasi-anchor tenants.
3. Concert Venues. Movie theatres are more common in retail centers than concert venues. Concerts are less consistently held, and as a result may be less synergistic with restaurants and other retail and generate less parking revenue. But they also provide excitement, and less parking demand may also be a benefit.
 4. Eatertainment. The entertainment experience has broadened to the now called "eatertainment" which combines the dining and entertainment in various formats. Dave & Buster's was one of the groundbreaking brands to expand this concept beyond the local or small regional chain. The segment contains the likes of TopGolf, Dave & Buster's, Main Event, Punch Bowl Social, Bowlero, as well as several local and small regional brands. This growth has even affected the movie theatre industry with brands like Alamo Drafthouse, Movie Studio Grill, and Look, as well as big brands – AMC, Regal and Cinemark developing their own version. The Eatertainment use has been added to the mix of developers looking for increased synergies in revamped regional malls and inner city mixed use redevelopments.

B. ACCESS AND VISIBILITY ISSUES

1. Movie Theatres

- (a) Visibility of Theatre. A movie theatre is large and usually conspicuous. The theatre itself is a quasi-sign. Considerable thought is often given to placement of the theatre in a retail center to emphasize its visibility, size, lighting, signage and overall attractiveness. Sightlines from major vehicular intersections and parking is important. (The foregoing is sometimes but not always less true in urban cores, where sightlines may be more limited). Ts require that sightlines be respected during construction and maintained during the term of lease, including limitations on landscaping.
- (b) Vehicular and Pedestrian Access. Ts require convenient vehicular and pedestrian access. Auditoriums fill and empty in short intervals, and sometimes concurrently. Ts require a parking plan, and require that the parking plan be followed during construction and maintained during the term of the lease. Ts require parking in reasonable proximity to the Theatre, and require that the path of travel be protected during the term of the lease.
- (c) No Change Area/Restricted Change Area. Ts generally require a No Change Area and a Restricted Change Area.
- (d) Other Events. Ts prohibit or limit the occurrence of events immediately in front of the movie theatre, or in the protected parking area or in the path of travel from parking to the theatre.

Sample provisions for a theatre lease, edited for this presentation including brevity:

Events. Landlord shall not conduct, or suffer or allow any tenants or licensees of Landlord to conduct, any event in the Common Area that could reasonably be expected to (a)

materially adversely affect visibility of or pedestrian or vehicular access to the Theatre or the Parking Protection Area; or (b) otherwise materially adversely affect the use of the Theatre by Tenant for the Permitted Uses.

Signage. Landlord shall not suffer or allow the visibility of any of Tenant's signs on the exterior of the Theatre or on any Multi-Tenant Sign Structure to be materially adversely affected by any improvement at the Center.

General Restrictions. Notwithstanding anything herein to the contrary, Landlord shall not suffer or allow any change within the Center that could reasonably be expected to (a) materially adversely affect visibility of or pedestrian or vehicular access to the Theatre or the Parking Protection Area; or (b) materially adversely affect the use of the Theatre by Tenant for the Permitted Uses. Prior to the installation of any landscaping in the Center that could reasonably be expected to materially adversely affect visibility of or access to the Theatre in the future, Landlord shall submit the plan therefor to Tenant for Tenant's approval, not to be unreasonably withheld, conditioned or delayed.

2. Concert Venues. Ts are usually less concerned about the visibility or appearance of a venue, or vehicular or pedestrian access. The offering at a concert venue on any given night is more unique than it is at a movie theatre. The offering at a concert venue on any given night is not being offered that day or night anywhere else in the world, and may not be repeated in the vicinity for months or years. Convenience is less of a concern. Customers will find the venue.
3. Eatertainment. Ts are similarly concerned as theaters. Both offer an immersive experience and need both visibility, parking and access. Often if part of a mixed-use or larger retail development, hours run longer than the hours of the related use or development resulting in additional requirements for access.

C. PROTECTED USES.

1. Movie Theatres.
 - (a) Primary Use. T wants protection against showing all or any substantial portion of any feature length-film anywhere for any reason, including in restaurants, bars, bowling alleys, fitness centers, common areas, etc. In mixed use projects, extends to community centers, museums, offices, residential common areas, rooftops, schools, adult education, etc. Ts usually ask for protection from LL's other projects within a radius.
 - (b) Concessions. T typically requires protection for sale of popcorn because it is an iconic motion picture concessions product. T typically requires protection from certain other products within a specified area from customer entrance to the motion picture theatre. Protections include hot dogs, ice cream, frozen yogurt, candy and soda. Hot dogs and candy are associated with motion picture theatres. Ice cream, frozen yogurt and sodas are difficult maintenance issues. From T's perspective, maintenance issue cannot be addressed by confronting customers at entry. Ts usually require limits on carts, kiosks and vending machines in proximity to parking areas or motion picture theatre.
 - (c) T's Remedies. T requires Special Rent for violation of protected uses. Special Rent is usually a form of percentage rent, in lieu of Base Rent, Percentage Rent, CAM and/or Taxes. T requires a termination right if violation persists, with shorter fuse for violation of Primary Use protection. T usually objects to "rogue tenant" carve-outs that favor LL.

Sample provisions for a theatre lease, edited for this presentation including brevity:

x.x.1. Primary Use Protection. Landlord shall not suffer or allow any tenant or other occupant of the Center to operate a motion picture theatre within the Center, or to

otherwise display motion pictures, movies and films within the Center including without limitation motion pictures, movies and films that include multiple dimension, motion simulation or virtual reality processes (the "Primary Use Protection"). The Primary Use Protection does not preclude:

(a) The display of motion pictures, movies and films by a tenant whose primary use is as a restaurant if (a) the audio of such motion picture, movie and film is not audible generally to customers of such restaurant; and (b) no fee, subscription, membership, minimum purchase or other amount is charged for admission to such premises.

(b) The display of media by a tenant whose primary use is as a retailer of electronic equipment if (a) such media is displayed only on electronic equipment that such retailer offers for sale at such premises and at a majority of its retail locations in the United States, and that it regularly maintains in stock at such premises; and (b) no fee, subscription, membership, minimum purchase or other amount is charged for admission to such premises.

x.x.2 Popped Popcorn Protection. Landlord shall not suffer or allow any tenant or other occupant of the Center to sell popped popcorn within the Center (the "Popped Popcorn Protection"). The foregoing does not preclude:

(a) The service, without charge, of popped popcorn for on-premises consumption in any restaurant within the Center.

(b) The sale of popped popcorn in vacuum-sealed bags in any full-service grocery store within the Center.

x.x.3. Carts, Kiosks and Vending Machines. Landlord shall not suffer or allow any tenant or other occupant of the Center to sell or serve ice cream, frozen yogurt, hot dogs, candy, alcoholic beverages or soft drinks from any cart, kiosk or vending machine located within xxx feet of the main customer entrance of the Theatre, or otherwise within any Common Area located within xxx feet of the main customer entrance of the Theatre.

x.x.4. Concessions Protection Area. Landlord shall not suffer or allow any tenant or other occupant of the Center to sell or serve ice cream, frozen yogurt, hot dogs, soft drinks or candy within the area designated as "Concessions Protection Area" on the Center Site Plan (the "Concessions Protection Area"). The foregoing does not preclude:

(a) The sale or service of ice cream, frozen yogurt or hot dogs for on-premises consumption in any full-service, sit-down restaurant within the Concessions Protection Area.

(b) The sale or service of soft drinks for on-premises consumption in any restaurant within the Concessions Protection Area, if such tenant does not overtly market to theatre customers through, for example, use of signage stating "theatre customers, buy your soft drinks here" or words to that effect.

x.x.5. Violation. The protections afforded by Section x.x.2, Section x.x.3 and Section x.x.4 are sometimes collectively referred to herein as the "Concessions Protection." If a violation of the Primary Use Protection occurs, then Tenant may elect to pay Special Rent in respect of any calendar month or portion thereof during the period from the date the violation first occurred through the day on which the violation ends. If a violation of the Concessions Protection continues for more than 30 calendar days, then Tenant may elect to pay Special Rent in respect of any calendar month or portion thereof during the period from such 30th calendar day through the day on which the violation ends. If a violation of the Primary Use Protection continues for 60 calendar days, or if a violation of the Concessions Protection continues for more than 180 calendar days, then Tenant may elect in its sole and absolute discretion to terminate this Lease by delivering to Landlord a written termination notice at any time prior to the day the violation ends, which notice shall specify

an effective date of termination, and which notice shall be final and binding. For the purposes hereof, a violation shall be deemed to be continuing, and not ended, if another violation of the same kind occurs within 30 calendar days after any calendar day on which any prior violation occurred or was continuing.

2. Concert Venues. T wants protection for ticketed live music for comparable venue size. T also concerned about sponsorships, naming rights and use of names and marks. A radius restriction is sometimes used, and is sometimes reciprocal.
3. Eatertainment. T wants protection against other eatertainment uses and will use similar techniques as do movie theaters to protect against competing uses whether by a LL or rogue tenant. In addition, many existing leases contain prohibitions against entertainment uses, arcades and gaming or limit alcoholic beverages; waivers or modifications will be required to permit the T use.

D. SECURITY

1. Motion Picture Theatres. Ts resist security outside motion picture theatres. This issue has become less important as advance ticket sales have become common, and queuing is no longer common. Exterior areas are LL's common area, not T's premises. Compromise usually reached involving consultation.
2. Concert Venues. Ts resist security outside concert venues. Queuing is becoming less common with advance ticket sales, but general admission still happens. Queuing still occurs typically in LL's common area. LLs also concerned about drunk and loud patrons, particularly after shows. From T's perspective, it can be difficult to determine origin of drunk and loud people in common areas. For legal reasons, T's recourse outside a concert venue is 911. Compromise usually involves reasonable discretion, within specified areas.
3. Eatertainment. Ts resist security outside premises. Exterior areas are LL's common area and not T's premises. Adequate lighting is critical due to employees leaving with cash tips. Alcoholic beverage, gaming or local law enforcement agencies may impose security requirements on Ts. This requires coordination with LL's security. LLs are increasingly more sensitive to security requirements and attempt to shift risks to Ts.

E. PARKING

1. Movie Theatres
 - (a) Overall Quantity. Ts require that LL maintain minimum overall parking for the entire center or project, not just the theatre, to try to avoid an overall parking shortage that could affect theatre customer parking. The minimum is often expressed as a mathematical ratio based on T's own experience, but not less than the parking required by zoning laws. Ts will not rely upon zoning alone. These issues become more difficult in mixed-use projects, where LLs are often relying on shared parking arrangements between complementary parking uses to obtain variances from zoning laws. These issues are also affected by uncertainty about the future of ride-sharing services, autonomous vehicles, electric scooters, traditional mass transit, etc. These issues are also affected by LL's firm or fanciful plans for future development of the center or project, which can either result in removal of existing parking or increased parking demand, or both.
 - (b) Protected Parking. Ts require that LL maintain certain protected parking proximate to the theatre. This is not exclusive parking, but protected parking, meaning that all of the spaces must remain available on a non-exclusive basis for use by Tenant's customers (and customers of other retail tenants) for the term of the lease. The minimum number is usually sufficient for T's customers, at full capacity, or more, but use is not limited to T's customers. In large retail projects, Ts require that parking be limited to retail use. In mixed use projects, Ts require that LLs

make commercially reasonable efforts to limit parking through retail use, including through use of gates, signage, parking access cards and parking charges.

- (c) Quality. Proximity of protected parking to motion picture theatre is important. Entry and exiting to parking is important, particularly in multi-level parking structures.
- (d) Mixed-Use Projects
 - i. Other Retail. Ts willing to share protected parking area with other retail tenants. Protected parking area then benefits all retail tenants.
 - ii. Office. Ts reluctant to share with office tenants. Office employees arrive early and stay until 5 pm or later.
 - iii. Residential. Ts also reluctant to share with residential tenants. Residential tenants usually have dedicated parking.
 - iv. Hotel. Ts reluctant to share with hotel guests. Hotel guests arrive in early evening and stay overnight.
- (e) Parking Charges. Ts prefer that customers of motion picture theatres park for free, either by no charge generally or by validation. If not free, then Ts prefer that customers be entitled to validations which provide for free initial period, followed by MFN pricing with respect to other tenants in retail center and/or with respect to other motion picture theatres nearby.
- (f) Valet Parking. Usually optional. If offered, then Ts require MFN pricing and that drop off/pick up and storage be located outside protected parking area.
- (g) Employee Parking.
 - i. Location. LLs often request designated employee parking. Ts have concerns about employees working later at night. Ts also have concerns about empty parking lot in front of theatre. LLs and Ts sometimes compromise, either based on holiday periods or visible problem.
 - ii. Charge. Ts require employee parking for free. Where parking is validated, either requires use of validations or use of parking access cards.
- (h) Ride Share Services. Ts are interested in proximity of pick-up and drop-off for ride share services.

Sample provisions for a theatre lease, edited for this presentation including brevity:

x.x. Parking.

(a) Parking Areas. Landlord shall, throughout the Rent Term, make available within the Common Area a number of paved and striped automobile parking spaces no fewer than the greater of (a) the sum of (1) 1.00 space for every three auditorium seats in the Theatre plus (2) 4.00 spaces for every 1,000 square feet of the GLA of the Center other than the GLA of the Theatre; and (b) the number of spaces required for the Center by the zoning code of the City of **Error! Reference source not found.** or the County of **Error! Reference source not found.** Landlord shall, throughout the Rent Term, provide within the Common Area the number of handicapped parking spaces required by Legal Requirements, and with accessible paths of travel for persons with disability, in locations and with sizes and other characteristics satisfying Legal Requirements applicable to the Center, including without limitation Legal Requirements applicable to the Permitted Uses. Landlord shall, throughout the Rent Term, provide within the Common Area the number and types of other parking spaces satisfying Legal Requirements

applicable to the Center. Landlord shall not make any improvements within the Parking Protection Area that would reduce the number of parking spaces therein below such number. Landlord shall cause the areas designated as "**Pick Up and Drop Off Areas**" on the Center Site Plan to be available solely for the stopping of automobiles while passengers in such automobiles are being dropped off and picked up.

(b) Parking Protection Area. Landlord shall, throughout the Rent Term, make available within the Parking Protection Area not fewer than ___ paved and striped automobile parking spaces. Landlord shall not make or allow any person to make any improvements within the Parking Protection Area that would reduce the number of parking spaces therein below such number, or otherwise suffer or allow any reduction in the number of parking spaces therein below such number.

(c) Use of Parking Areas. Throughout the Rent Term, each of Tenant's employees, customers, contractors and invitees shall have the non-exclusive right to use the vehicular parking spaces within the Common Area without charge on a first-come, first-served basis, at any time during the business hours of Tenant, and for a period not less than one hour before and after such business hours. Landlord shall not restrict the use of the vehicular parking spaces within the Common Area by Tenant's employees, customers, contractors and invitees without the prior written consent of Tenant, not to be unreasonably withheld, conditioned or delayed. If any restriction is shown on the Center Site Plan, such restriction shall not be changed, expanded, contracted or removed without the prior written consent of Tenant, not to be unreasonably withheld, conditioned or delayed. Landlord shall not enter into any agreement that would allow persons other than employees, customers, contractors and invitees of tenants of the Center to use the vehicular parking spaces within the Common Area

(d) Maintenance of Parking Areas. Throughout the Rent Term, Landlord shall maintain the parking areas of the Common Area in a properly lit, reasonably secure and fully accessible condition, with appropriate cleanliness, proper striping, traffic controls and timely repairs. Landlord shall provide such lighting until the later of (a) one hour after completion of the showing of the last motion picture, movie or film in the Theatre each night and (b) 2:00 am local time.

(e) Parking Charges. If a fee, tax, imposition or other charge is imposed by any person for use of any vehicular parking spaces within the Common Area, then Tenant shall have no liability therefor and Landlord shall, throughout the Rent Term, (a) cause the operator of such parking spaces to accept validations issued by Tenant to its customers as payment in full for parking in such spaces for the first five hours of such parking; (b) cause such operator to accept validations issued by Tenant to its employees, contractors and invitees as payment in full for parking in such spaces for any period while such employees and contractors are working at the Theatre (including without limitation meal periods and other similar break periods, and a reasonable time to enter the Parking Protection Area and travel to the employee's work, and vice versa); (c) issue or make available to Tenant, at no cost to Tenant, validations in sufficient quantities from time to time to serve all of Tenant's customers, employees, contractors and invitees; (d) cause the operator to otherwise establish and use a validation system with methods, equipment and technologies designed to minimize the burden on Tenant and its customers, employees, contractors and invitees of obtaining and using such validations.

(f) Valet Parking. Landlord may operate, or cause to be operated, a valet parking service at the Center for the benefit of those customers of Tenant and other tenants in the Center who elect to use it, whereby those who voluntarily use such service are charged a fee or fees for such service. Landlord shall cause such service to be operated in a first-class manner by a reputable and experienced valet parking contractor. The pickup and drop off areas and the vehicle storage

areas used for such valet parking service shall not be located within the Parking Protection Area. If a charge is imposed for use of such service by Tenant's customers, then the rate structure for Tenant's customers shall be consistent with that for customers of other motion picture operators in similar retail centers in the City of xxx or the County of xxx, as the case may be, and not more than the charges and rates for customers of other tenants of the Center.

2. Concert Venues. Ts are usually concerned, but less concerned about number, quality and location of automobile parking spaces. Ts are concerned about compliance with zoning laws. Ts are concerned about parking for buses and trucks for load in and load out for shows. Ts are interested more than movie theatres in proximity of pick-up and drop-off for ride share services. Ts are interested in revenue sharing for parking, including with respect to so-called VIP packages.
3. Eatertainment. Parking for eatertainment uses is similar to movie theaters. Mixed use developments with adequate parking are often perceived as an enhancement to the Ts use by providing additional access to guests within walking distance of the location. Ts primary concern is quantity of parking and access to it by guests and employees.

F. LIQUOR LICENSES

1. Movie Theatres. Sale of alcohol has become increasingly common in movie theatres, and an increasing important source of revenue. Ts usually require commercially reasonable efforts/cooperation.
2. Concert Venues. Sale of alcohol is critical for concert venues. Laws vary considerably from jurisdiction to jurisdiction. Sometimes multiple licenses are required for a single venue. Ts usually retain concessionaires to serve food and beverages, and licenses are then issued in name of concessionaire, but concessionaires are not retained until closer to opening. Ts want LL to obtain any discretionary permits that are available and necessary to serve alcohol. Ts want termination right in event liquor license(s) are not obtained, but timing issues can make termination right problematic.
3. Eatertainment. Sale of alcohol is critical for eatertainment locations. Laws vary considerably from jurisdiction to jurisdiction. Sometimes multiple licenses are required for a single location. Additionally, there may be additional licensing related to the entertainment portions of the locations (amusements, gaming, etc.). Ts will obtain all licenses but need up front timing to obtain the same or have the right to terminate if not available.

G. MIXED-USE PROJECTS

1. Movie Theatres.
 - (a) Urban Areas. Mixed-used projects are complicated and expensive. Mixed-use projects are more common in urban areas.
 - (b) Multi-Level or Podium Projects. In newer mixed use projects, the entertainment use is often not on the ground level. Entertainment uses don't use or need traditional storefronts, so other retail tenants may occupy the ground levels with storefronts, and entertainment uses can occupy upper levels. Pedestrian traffic to entertainment uses can then be drawn through the retail center to the entrance to the entertainment use.
 - (c) Parking Issues. Mixed use projects usually involved multi-level parking structures which are expensive to build, and call for layering and segregation. The best parking for customers of entertainment uses is often also the best parking for other users, but in mixed-use projects non-retail users often arrive first and stay longer.

- (d) CAM. Mixed use projects often involve or should involve CAM pools, where different uses pay for maintenance of different types of common area.
- 2. Concert Venues. With a mix of office and a concert venue, the parking demand is almost completely complementary.
- 3. Eatertainment. Similar to movie theaters, eatertainment locations can be in a variety of projects or free standing. Some uses are by their nature part of a development but stand alone (TopGolf).

H. PERCENTAGE RENT

1. Movie Theatres

- (a) Gross vs. Net. Percentage Rent is generally calculated on gross. Easier to calculate, less susceptible to manipulation, avoids disclosure of business model. Differs from Broadway, where Participation Rent is generally calculated on net. Gross means amounts actually received by T (not by others), and excluding sales tax.
- (b) Box Office. Some exclusions for IMAX, 4DX, ScreenX. In many cases, box office is public information anyway.
- (c) Concessions. Includes food and beverages. Sometimes a discussion about game machines, vending machines, public telephones, bathroom dispensers, advertising.
- (d) Breakpoint. Percentage rent is payable only if and to extent that Gross Revenue exceeds Breakpoint. Breakpoint is usually sized so that Percentage Rent is payable only if Gross Revenues exceed expectations.
- (e) Payable. Usually annually, sometimes monthly with annual true up. Usually academic.
- (f) Reporting. Usually annually, sometimes monthly.
- (g) Other Issues. LLs often want protection from T operating another theatre in same market. In such cases, LLs sometimes ask that other theatre's gross revenues be included in Gross Revenue. Ts sometimes ask for protection if competitive theatres are built in same market, especially those which are believed to be coming in foreseeable future.

Sample provisions for a theatre lease, edited for this presentation including brevity:

x.x Percentage Rent.

x.x.1 Definitions. As used herein, the following terms shall have the following meanings.

(1) "Applicable Exclusions and Deductions" means, to the extent otherwise included in Gross Sales: (1) federal, state and local admission, sales, value-added, excise, luxury, rent and receipts taxes, (2) amounts paid or remitted by Tenant to charitable organizations in connection with collections made for them, (3) etc.

(2) "Box Office Receipts" means, for any calendar year, the amounts received by Tenant in such calendar year from the sale of tickets for admission to motion pictures, movies or films at the Theatre, except that with respect to so-called "four-wall deals" at the Theatre, such term means the amount received by Tenant for the display of motion pictures, movies or films. For the purposes hereof, four-wall deals means the rental of one or more auditoriums at the Theatre for an event or for a limited engagement or purpose.

Box Office Receipts shall not include (a) amounts paid by Tenant's customers as agency or ticketing fees for booking electronically through xxx or similar services, as such services may expand, change or evolve over time through technology or otherwise; or (b) proceeds of admissions for showings of motion pictures in auditorium using xxx.

(3) "Breakpoint" means, for any calendar year, an amount equal to xxx.

(4) "Concessions Receipts" means, for any calendar year, the amounts received by Tenant in such calendar year from the sale of food and beverages at the Theatre.

(5) "Gross Sales" means, for any calendar year, (1) the aggregate of Box Office Receipts and Concessions Receipts, less (2) Applicable Exclusions and Deductions. Gross Sales shall include redemptions of gift cards and gift certificates at the Theatre, as and when redeemed.

(6) "Percentage Rent" means, for any calendar year, an amount equal to xxx.00% of the Gross Sales for such calendar year, but only if and to the extent that Gross Sales for such calendar year exceed the Breakpoint for such calendar year.

x.x.2 Payment. During the Rent Term, except for any period during which Substitute Rent, Special Rent or Co-Tenancy Deficiency Rent is payable hereunder, Tenant shall pay Percentage Rent to Landlord in addition to Base Rent. Percentage Rent for any calendar year shall be paid in arrears, within 120 calendar days after the last day of such calendar year.

x.x.3 Reporting. Within 90 calendar days after each calendar year, Tenant shall deliver to Landlord a statement certified by an officer of Tenant, setting forth in reasonable detail the Gross Sales during such calendar year and the Percentage Rent, if any, payable for such calendar year.

x.x.4 Rent or Fiscal Year. Notwithstanding anything to the contrary herein, Tenant may elect at any time during the Rent Term to account for and pay Percentage Rent on a Rent Year or fiscal year basis, rather than on the basis of calendar years, or to change its fiscal year. If Tenant makes such election, then Tenant shall deliver to Landlord a statement pursuant to this Section within 90 calendar days after each such calendar or fiscal year, and within 90 calendar days after each partial calendar or fiscal year during the Rent Term resulting from such election.

x.x.5 Confidentiality. Landlord shall only disclose Gross Sales Information to those of its officers, employees and Representatives who Landlord determines have a bona fide need to know such Gross Sales Information in connection with the ownership or financing of the legal parcel on which the Theatre is located, and then only to the extent of such need to know. Landlord shall not, without the prior written consent of Tenant, disclose Gross Sales Information to any other person or entity whatsoever, without the prior written consent of Tenant, which consent may be given or withheld in Tenant's sole and absolute discretion. Landlord shall cause each of its officers, employees and Representatives to maintain the confidentiality of all Gross Sales Information in accordance with the terms of this Lease. Landlord shall be responsible for any breach of this Lease by any of its officers, employees and Representatives. As used herein, the term "Gross Sales Information" means any and all information about Gross Sales, including amounts and types thereof, that Tenant makes available to Landlord including without limitation any copies, summaries, analyses, compilations, studies, reports or documents prepared by Landlord or its Representatives that contain, in whole or in part, any Gross Sales Information. As used herein, the term "Representative" means any person who is a consultant, attorney, accountant or other representative for Landlord or any person who is an officer, employee, consultant, attorney accountant or other representative of any actual or prospective lender, investor or successor in fee title of Landlord.

2. Concert Venues. Also based on Gross Revenues. Sometimes no breakpoint. More often than for motion picture theatres, breakpoint is sized with expectation that Percentage Rent

will be paid. Gross means amounts actually received by T (not by others). Gross Revenues often excludes sales of alcohol because alcohol is sold by third-party concessionaire. And tickets are often sold by ticket agencies. So, while Percentage Rent is more often paid, the amounts are calculated on a smaller base.

3. Eatertainment. Largely dependent on the negotiated deal, but percentage rent is often included and calculated on some form of modified gross sales. Some deductions will be unique to the offerings. LLs can pressure for a radius restriction of some form to protect against the impact of siphoning with another T location. Timing of payment and reporting is largely dependent on the strength of the T in negotiations.

I. FORCE MAJEURE

1. Movie Theatres.

- (a) Covid. Importance of provisions governing force majeure have been made more relevant by experience with Covid.
- (b) Construction. Parties tend to agree that force majeure may affect both LL's and T's construction obligations.
- (c) Operation. Parties tend to agree that operations may be affected by governmental orders.
- (d) Rent. Each party wants rent protection. Unfortunately, it's difficult to protect both parties.

Sample provisions for a theatre lease, edited for this presentation including brevity:

If a Force Majeure Event results in the closure of the Theatre, then Rent shall be abated for the period of such closure, and the then-current Term shall be extended by one day for each day of such closure.

2. Concert Venues. Ts do not operate every day even in the absence of force majeure, when tends to make them more somewhat more flexible than movie theatre tenants when it comes to inability to operate.
3. Eatertainment. No different than movie theaters. Both are immersive experiences and FM events can have drastic implications.

J. OTHER ISSUES

K. CONCLUSION