www.REBusinessOnline.com June 2019 · Volume 16, Issue 10

WESTERN REAL ESTATE BUSINESS®

Connecting Real Estate in the West

Black Fire Innovation will reside within a four-story, 111,000-square-foot building at the master-planned UNLV Harry Reid Research & Technology Park.

NEW INCUBATION SPACE SET TO ADVANCE LAS VEGAS' GAMING, HOSPITALITY INDUSTRIES

A new crop of travelers, gamblers and consumers means the city's lifeblood must remain relevant.

By Nellie Day

The University of Nevada, Las Vegas (UNLV) has partnered with Caesars Entertainment to create Black Fire Innovation, a 43,000-square-foot tech hub that will serve as an incubation space of sorts for two of the city's biggest industries: gaming and hospitality.

"This collaboration with Caesars Entertainment will strengthen UNLV's role as a research and innovation leader and further elevate Las Vegas as the global intellectual capital for gaming and hospitality," says Marta Meana, president of UNLV. "Collaborations like Black Fire Innovation also give our students unparalleled access to experts at the forefront of the industry. It's an experience unique to Las Vegas."

The partnership envisions a space that houses mock hotel rooms, a casino floor and sportsbook, an esports arena and virtual reality facilities that will serve as a catalyst to unite business, research and technology. It will also be used as a way to advance economic development efforts throughout Southern Nevada. Black Fire Innovation will be situated within a four-story, 111,000-square-foot building at the master-planned UNLV Harry Reid Research & Technology Park that is currently under development. The complex is expected to open by the end of the year.

see LAS VEGAS, page 37

CALIFORNIA CANNABIS 101

The facts retail landlords should be aware of regarding the legality of cannabis operations throughout the state.

By Nellie Day

Though cannabis licensing can be a complex process for would-be retailers and shopping center owners, these storefronts can be popular with consumers. Pictured above is the Vapor Room in San Francisco, one of the more cannabis-friendly counties in California.

The state may have begun issuing cannabis licenses, but that doesn't mean it's full speed ahead for retailers, landlords or users in California. In fact, it's actually quite a complex landscape to navigate, as David Wensley, partner at Cox, Castle & Nicholson in Irvine, Calif., can attest.

Are there any risks for shopping center landlords when it comes to leasing space to a cannabis company in California?

It depends on the nature of the "cannabis company." A fully licensed, adult-use cannabis dispensary is quite different from a more traditional retail operator that may sell some limited cannabis as an ancillary part of its more traditional retail operation. For example, CBD products containing less than 0.3 percent of THC (tetrahydrocannabinol, which causes the psychoactive effects of marijuana), are sometimes sold at a women's clothing and accessories boutique, a beauty products store like Sephora or a shoe store like DSW Shoes.

see CANNABIS, page 38

INSIDE THIS ISSUE

CANNABIS from page 1

An adult-use cannabis dispensary may cause certain 'perceptions' and legitimate concerns among other tenants at the center. Concerns include types of customers who frequent a cannabis dispensary, on-property use of cannabis, odors from cannabis products, loitering and the safety issues attendant to being a largely cash-based business. The other risk to the owner is that cannabis use may be a violation of other tenants' leases or of private covenants, conditions and restrictions that encumber the center, either of which may prohibit cannabis or other uses which are not "legal" under federal, state and local laws.

Finally, the owner's lender and/or capital partners may be averse to or impose an outright prohibition on leasing to cannabis operators. The additional risk to the owner is that the dispensary tenant will run afoul of newly evolving California state and local cannabis laws, or that the federal government will take a position in the future enforcing federal laws designating cannabis as an illegal substance at the federal level. Any of these outcomes could result in the cannabis operator being shut down and the landlord losing revenue and potentially its investment in the cannabis dispensary lease.

So, how can a landlord mitigate some of these risks?

The first step is to confirm the property is in a designated, approved cannabis area of the city or county and that the city or county has approved and implemented a cannabis licensing program and that additional cannabis licenses are available for the intended cannabis use. If that is the case, the owner should complete a full review of all private covenants, conditions and restrictions that govern the center, along with all leases — particularly those of larger regional and national tenants, if any — which may contain prohibitions against cannabis operations at the center.

Next, the owner should review its loan documents and joint venture agreements regarding its rights and obligations relative to its lender(s) and joint venture partner(s), if any.

Assuming all of these contracts are not a bar to leasing to a cannabis operator, the owner needs to then consider the practical concerns, legitimate or otherwise, of its existing tenants and whether the owner can provide adequate measures to mitigate risks of cannabis dispensary operation at the center through its lease with the operator.

The lease can certainly contain provisions controlling hours of operation and prohibiting use of cannabis products anywhere at the center, including within or near the dispensary. The lease can also prohibit loitering and can authorize the landlord to employ additional security or require the tenant to do so, should there be any perceived added security risks due to the dispensary or should other tenants file such complaints.

The lease may contain termination rights in favor of the landlord should the tenant lose its licenses and permits for any reason. The landlord can also try to obtain greater security or collateral for any cannabis operators as compared to traditional retail tenants in an effort to mitigate potential costs and losses that the landlord may suffer by reason of these perceived additional operational risks and risks of termination by state, local or federal authorities.

What are the biggest misconceptions you see among shopping center landlords regarding CBD or cannabis retailers?

Adult-use cannabis dispensaries are highly regulated operations requiring licenses that are location-specific and controlled by the State of California and the local city or county government.

Retailers that have begun selling CBD products from their traditional retail outlets are doing so, for the most part, in reliance on the federal 2018 Farm Bill and on SB 1409, the California Improvement Act of 2018 (aka the 2018 Farm Bill) which went into effect January 1, 2019. These new federal and California regulations have essentially classified 'industrial hemp' (i.e., parts of the cannabis plant, whether growing or not, containing less than 0.3 percent THC) as NOT marijuana and NOT a Schedule 1 illegal drug under federal law.

However, federal and California regulators have not clarified whether the application of this classification of industrial hemp allows the use of industrial hemp in the production of CBD products, such as oils and edibles. Most retailers, including many national chain retailers that have announced their intent to stock CBD products in 2019, are relying on the 'perception' that both federal and state authorities are softening their stance on CBD. They are interpreting the federal and California farm bills of 2018 as providing 'legalization' for CBD. But this remains to be seen and everyone in the cannabis arena is waiting for further direction from the federal Food and Drug Administration and the California Department of Public Health Food and Drug Branch as to whether or not industrial hemp-derived CBD oil and CBD products are truly 'legal' under both federal and California state laws, regulations and rulings.

What is the biggest misconception among consumers?

One of the biggest misconceptions among consumers is that CBD products containing less than 0.3 percent THC have 'mind-altering' marijuana-like effects and that all cannabis is marijuana.

What advice would you give to a cannabis company looking to lease retail space?

It is a very time-consuming licensing and permitting process at both the state and local levels and it is site specific. One cannot simply find a vacant retail space and hope to open a cannabis retail dispensary there. The operator needs to find a suitable location that is situated within a city or county that has existing approved cannabis areas, has a licensing protocol in place and has remaining licenses to issue.

What advice would you give to a landlord who has been sought out by a cannabis company?

There are a number of risks to identify, mitigate and address. Most importantly, the landlord needs to be sure the cannabis operator knows what they are doing and how to get all the requisite licenses and permits. Otherwise, the landlord may find themselves wasting a lot of time and money with its property tied up while its prospective cannabis operator tenant tries to obtain its required licenses and permits.

Wensley

Do you think we'll see a day where CBD and cannabis products are widely accepted by both shopping center landlords and the general public?

Yes, I'm certain of it for CBD products. This is because there are many medicinal qualities to non-THC CBD that are beginning to become recognized by the general (i.e, non-marijuana using) public, including seniors and even pet owners.

Where have most of the cannabis retailers successfully secured shop space in California?

Most of the 'successful' adult-use cannabis dispensaries we have seen have not been in traditional retail centers per se, but more typically have been street-front, single-tenant buildings or street-front buildings located in small strip centers.

We have had numerous institutional real estate owners consider cannabis operators of one kind or another (retailer, manufacturer or distributor) as prospective tenants. Most have elected not to proceed based on some or all of the perceived risks listed above, including lack of operator experience or financial capability, or lender or capital partner resistance. ■

[Editor's Note] This article is not intended as advice, opinion or counsel on the subject of cannabis real estate. As with any real estate deal, we suggest you seek counsel from experienced and specialized real estate and legal professionals to make your own informed judgments.

continued from page 16

for San Diego and its future. We anticipate there to be added ripple effect in the market as a result. Meanwhile, the life science sector is performing at an all-time high, which has resulted in the growth and expansion of the life science tenant base. San Diego's biotechnology community has a legacy of building and maintaining a strong entrepreneurial base. According to Crunchbase, venture capital funding for tech and biotech companies in 2018 surged to \$3.43 billion. This is compared to \$1.9 billion in 2017. The first quarter of 2019 also finished with a respectable \$539.5 million of overall funding, largely driven by tech and biotech.

Office investors remain active with a few sizable, high-profile properties trading during the first quarter of 2019. Pricing also remains stable. According to Real Capital Analytics, office sales totaled nearly \$345 million through March 2019. Looking annually, the past four years saw sales volumes of \$2.8 billion (2018), \$2.4 billion (2017), \$2.6 billion (2016) and \$3.1 billion (2015).

We maintain a positive outlook for San Diego's office sector. Our business-friendly region continues to add jobs at a steady pace, which is key to any real estate growth. Our tenant tracking pipeline remains strong with more than 3 million square feet of active requirements. The market is also expected to see multiple significant vacancies absorbed from leases signed in previous quarters, while we have a solid level of pre-leased activity on many of our most significant new construction projects. Barring any major catastrophe, overall continued economic and job growth, in combination with increasing tenant demand, should provide continued office occupancy and rent growth throughout 2019 and into 2020. ■