

HOSPITALITYLAWYER.COM PRESENTS:

**THE** **HOSPITALITY LAW**  
**CONFERENCE**

FOCUSING ON LEGAL, SAFETY & SECURITY SOLUTIONS

**FEBRUARY 10th - 12th, 2014**

# HOTEL ACQUISITIONS

**CURRENT HOTEL TRANSACTION  
ENVIRONMENT AND  
LEGAL ISSUES**

Steen Petri, HEI Hotels & Resorts

Suzanne Amaducci-Adams, Bilzin Sumberg

# PRESENTERS



## **Steen Petri – Vice President, Investments**

- Responsible for all aspect of capital transactional underwriting, contract negotiations, due diligence and deal execution
- Instrumental in hotel real estate deal sourcing through an extensive network of brokers, institutional investors and other stakeholders
- Formerly, he spent over 10 years in hospitality operations, leading various management teams at assets including the W Hotel Union Square NYC, the Lotos Club in NYC and the Hotel Jerome in Aspen, CO



## **Suzanne Amaducci-Adams – Partner**

- Extensive experience in handling all aspects of commercial real estate and finance transactions
- Consistently recognized by legal publications including Chambers USA, The Best Lawyers in America, Florida Super Lawyers, and the South Florida Legal Guide.
- Active member of Commercial Real Estate Women (CREW), Suzanne is the Co-Chair of the national CREW Network Convention and Marketplace being held in Miami in 2014. She served on the Board of Directors of CREW Miami for over 6 years and is a past President of the organization

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# AGENDA – ONE PRIVATE EQUITY GROUP'S POINT OF VIEW

## The Current Hotel Transaction Environment

1. HEI – Company Profile and Investment Strategy
2. Hotel Market Observations
  - Compelling Lodging Industry Fundamentals
    - Supply
    - Demand
    - ADR
    - RevPAR
  - Historical Hotel Transaction (1990-2013)
3. Expectations for 2014

# 1. HEI – COMPANY PROFILE AND INVESTMENT STRATEGY

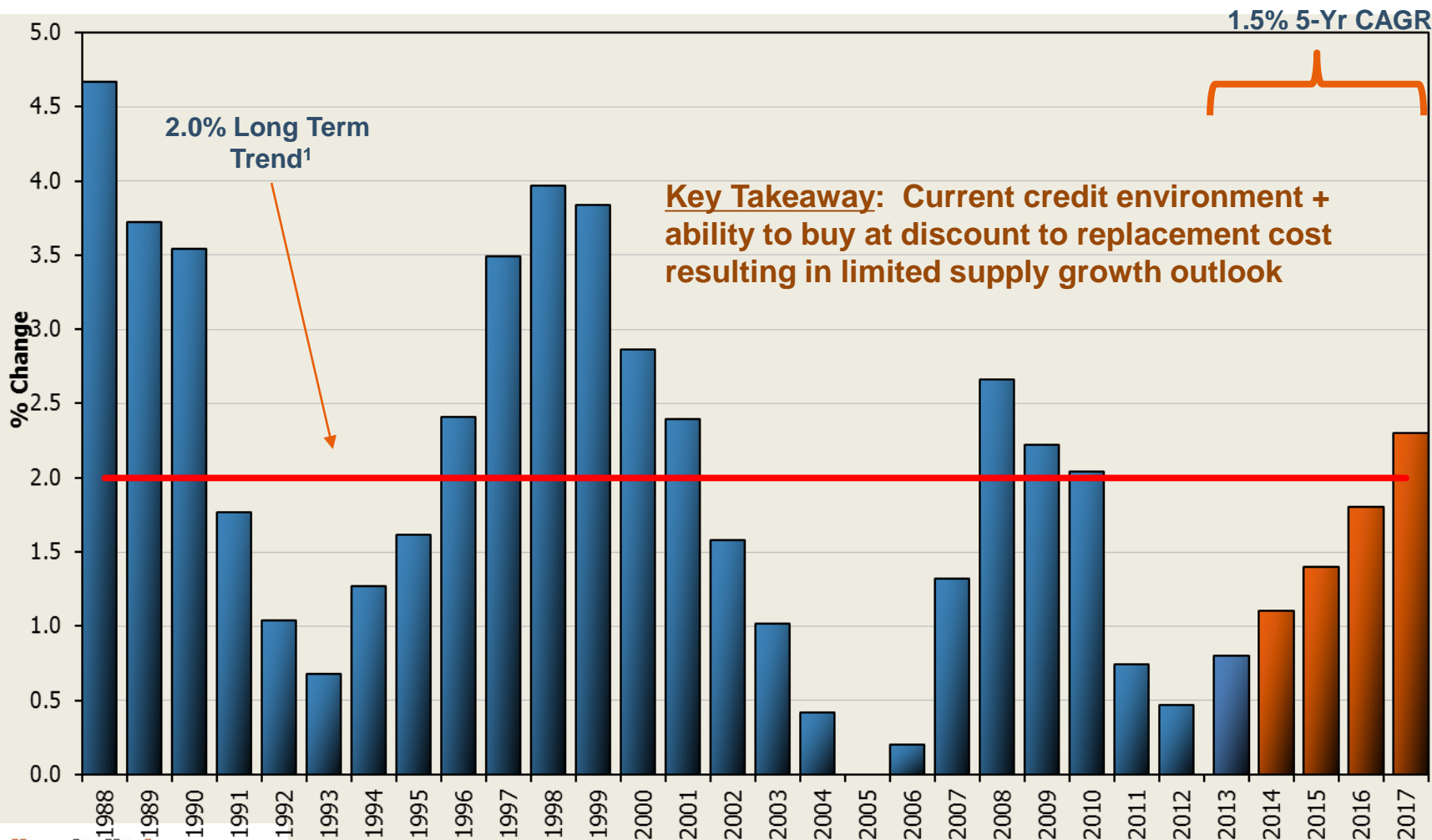
- **Founded in 1985 (Gary and Steve Mendell)**
- **Private Equity – Owner-Operator**
- **Focus strictly on hotel real estate in the US**
  - 38 hotels in current portfolio
  - Invested in 83 hotel assets since inception
- **Fully Discretionary Funds**
  - Three funds fully deployed - \$2.5B of real estate under management
  - Currently raising Fund IV
- **Value-add Investors**
  - Fully integrated owner/operator platform
  - Operate all owned assets (except W Hollywood)
  - Brand relationships/focus
- **Leveraged investor underwriting to a risk-adjusted 20% LIRR, 2x ERM**

# 2. HOTEL MARKET OBSERVATIONS - Q1 2014

- **Abundance of private equity funds flush with cash looking for deals**
- **Public REIT appetite strengthening, focused on very Top MSAs**
- **General uncertainty about the overall economy due to continued global economic instability and fiscal dead-lock in Washington**
  - **Flight to quality (assets, markets, brands)**
  - **Widened pricing between Top MSAs and all others markets**
  - **Growing institutional interest in select-service segment**
- **Increased values**
  - **Vastly improved operating fundamentals since 2008/2009**
  - **Anemic new supply pipeline (lack of new construction financing)**
  - **Limited number of quality assets in Top MSAs being brought to market**

# COMPELLING LODGING INDUSTRY FUNDAMENTALS

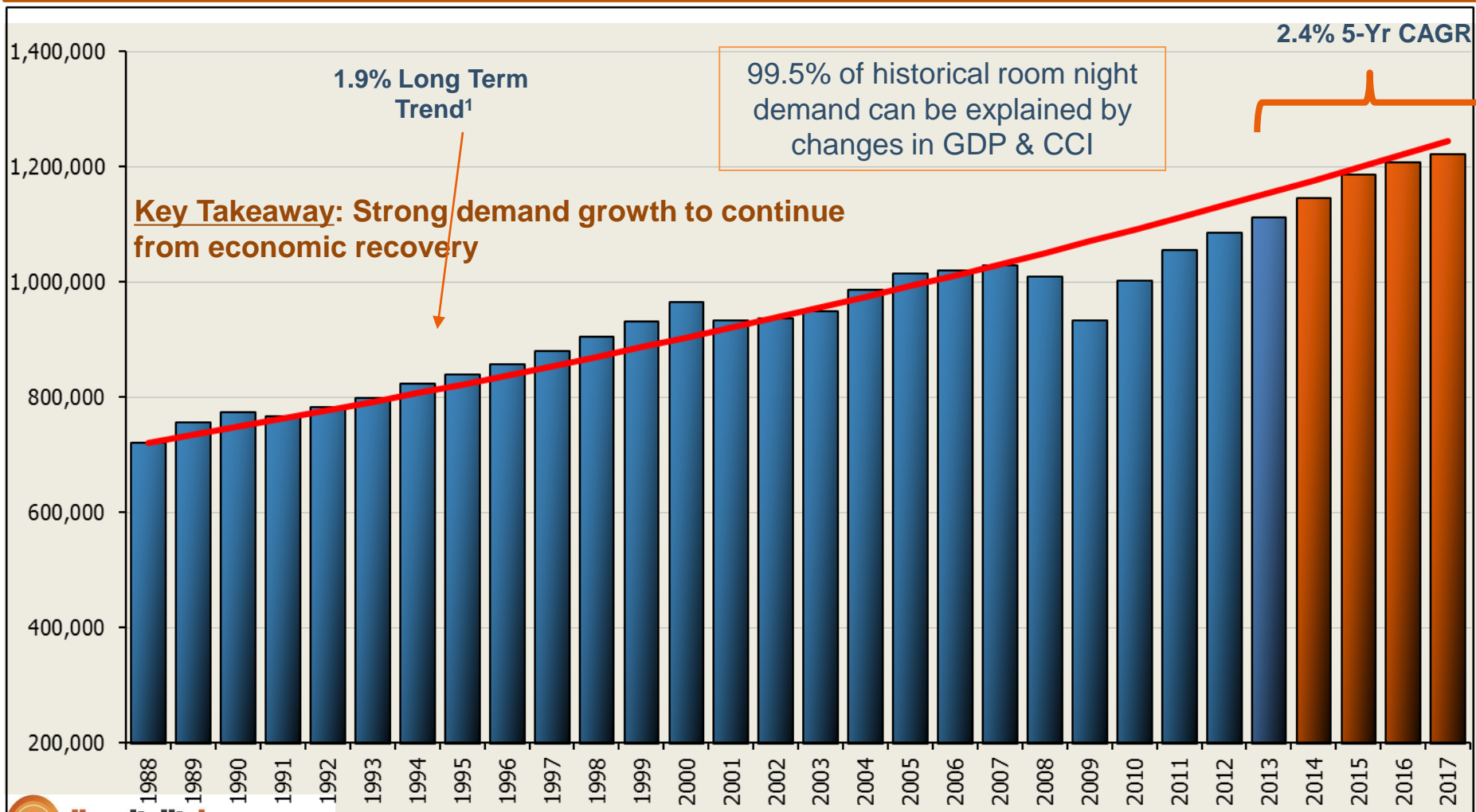
## SUPPLY: Historical and Projected Supply Growth



(1) Reflected by average annual supply growth for all US hotels from 1988-2012. Source: Smith Travel Research (Historical); PKF (Forecast as of Q3 2013).

# COMPELLING LODGING INDUSTRY FUNDAMENTALS

## DEMAND: Historical and Projected Occupied Room Nights

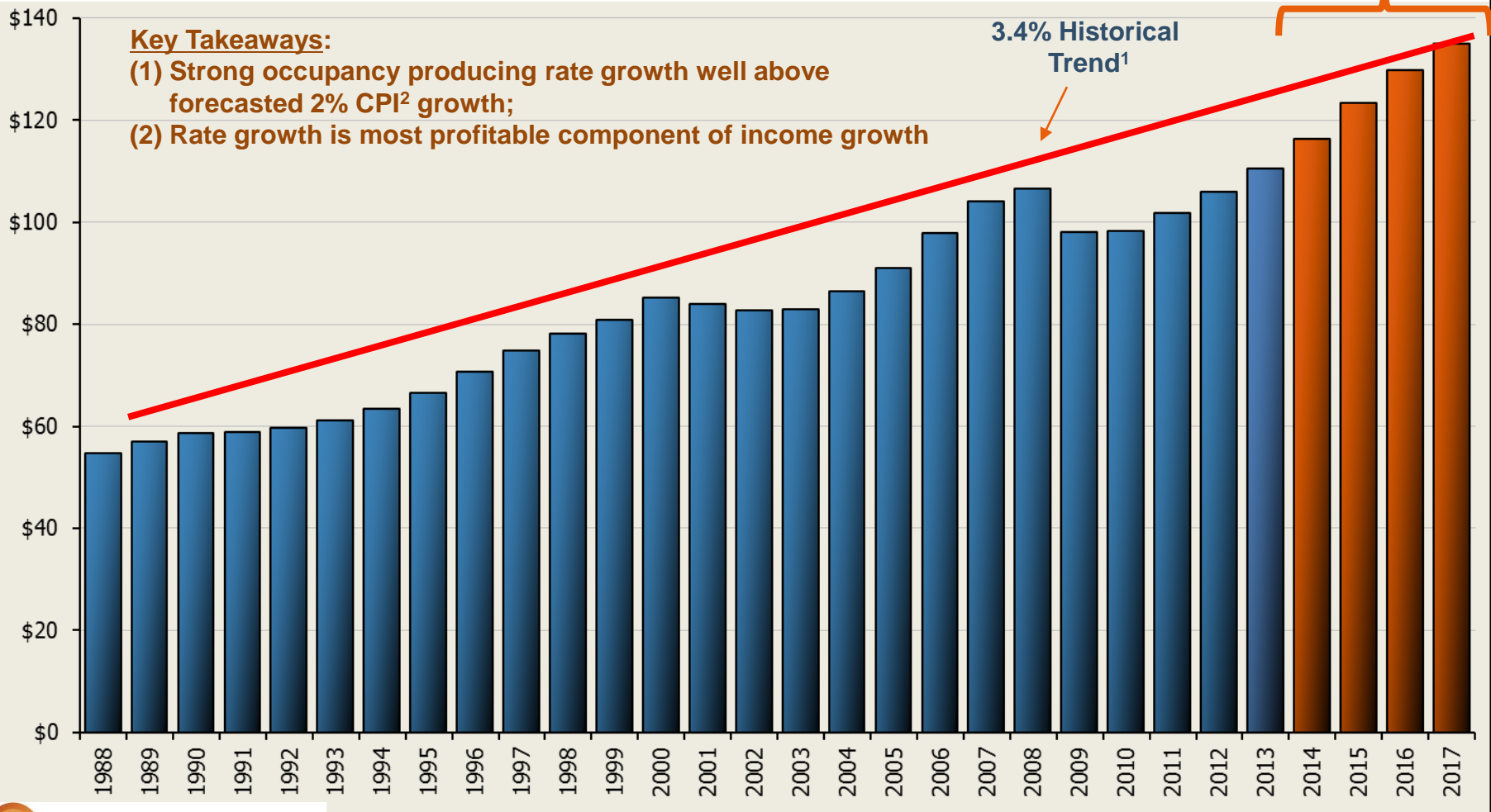




# COMPELLING LODGING INDUSTRY FUNDAMENTALS

## Average Daily Rate (ADR): Historical and Projected Average Daily Rate

4.9% 5-Yr CAGR

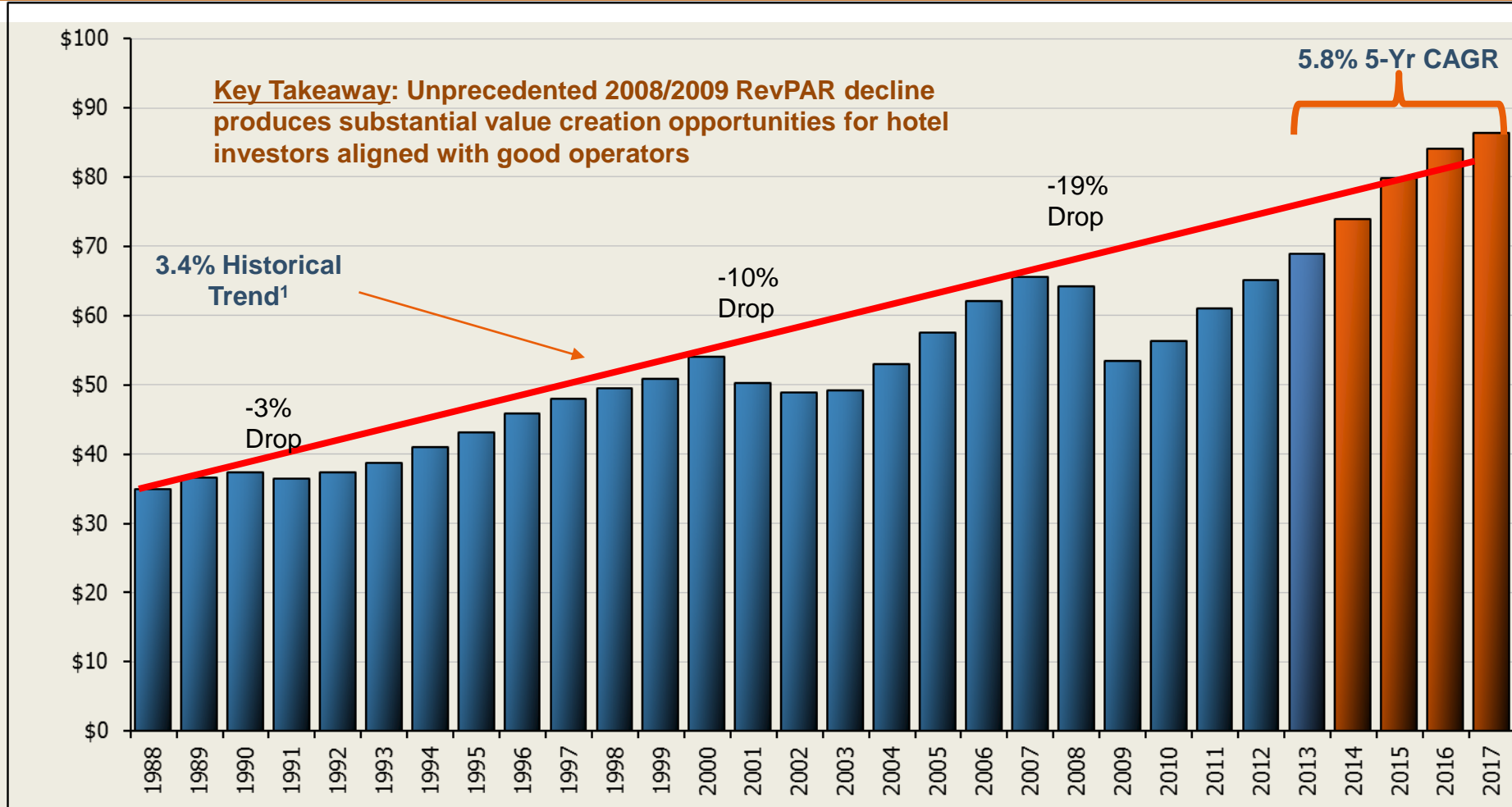


1) Reflected by ADR growth achieved during last two economic cycles for all US hotels (1990-2008); 2) Moody's average annual CPI growth for 2013-2017 (as of May 2013).

Source: Smith Travel Research (Historical); PKF (Forecast as of Q3 2013).

# COMPELLING LODGING INDUSTRY FUNDAMENTALS

## Revenue per Available Room (RevPAR): Historical and Projected RevPAR

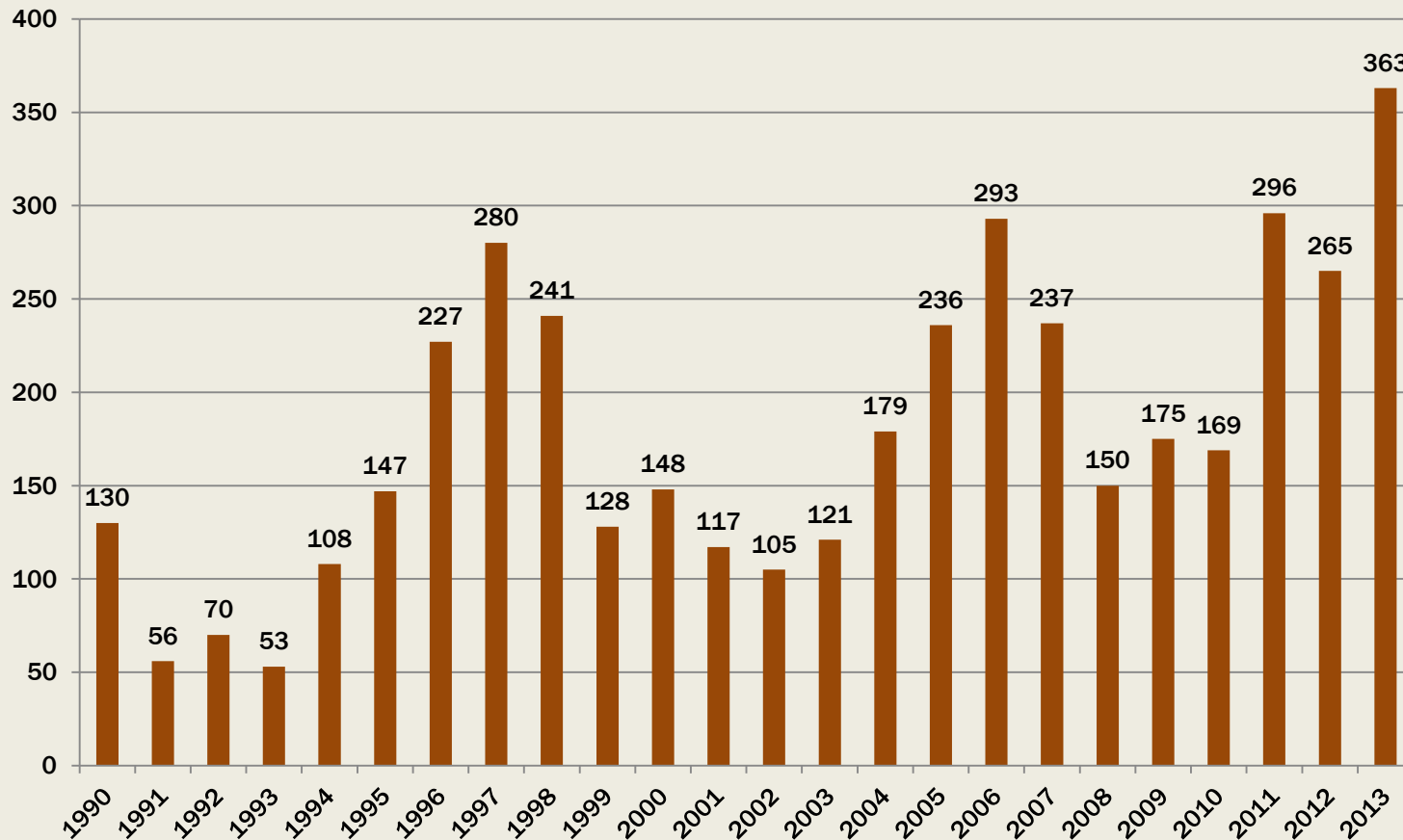


# 2. HOTEL MARKET OBSERVATIONS - Q1 2014

- **Significantly improved availability of debt in major markets to qualified sponsors for new acquisitions and performing assets**
  - Debt Yields in the 10-12% range, LTVs 65-75%
  - CMBS market is back
  - Favorable debt terms driving up values
  - Limited debt for repositioning projects outside Top MSAs – hampering value growth in those markets
- **Anticipated increase in deal flow for 2014, driven by debt maturities (no more extend and pretend; lenders are forcing sales) and equity fund life expirations.**
  - Approximately \$350 Billion in commercial real estate debt maturities in each of next five years
- **Opportunities of the past:**
  - Loan-to-own opportunities
  - Distressed assets/capital stacks
  - Failed HTC deals

# HISTORICAL TRANSACTION MARKET (1990-2013)

## Total Number of Hotel Transactions over \$10M



# 3. EXPECTATIONS FOR 2014

## Positive Industry Outlook

- Strong operating fundamentals with positive outlook for continued growth
- Attractive debt terms
- Limited supply pipeline

## What it Takes

- Low cost of capital
- Competitive advantages
  - Ability to identify markets with strongest outlook and remaining growth path
  - Prudent and detailed underwriting to account for all known metrics
  - Operational expertise and cost controls
  - Revenue management tools and strategies
  - Integrated platform (ownership, asset management, operations, design & construction)
- Balance disciplined investment strategy with opportunistic tactics

## Challenges

- Limited number of quality assets available for acquisition
- Leverage shifting to Sellers (of quality assets in top MSAs)

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**WHAT IS MISSING?  
ISSUES WITH AUCTION  
AND SEALED BID  
CONTRACTS**

**Hospitality Law  
Conference  
February 10,  
2014  
Houston, Texas**

# BACKGROUND

In today's world, transactions are happening at a faster pace and buyers are given much less opportunity to negotiate a purchase contract.

With an auction or sealed bid situation, a buyer typically hesitates to negotiate the seller's form purchase contract in an effort to make its bid more competitive.

It is true that sellers tend to ignore extensive comments or refuse to negotiate with overly zealous buyers who may be offering the highest price. However, buyers may regret their decision not to negotiate when they find themselves without important information or many typical contract protections.

# FOCUS

This presentation is focused on understanding the elements missing from auction and sealed bid contracts so a buyer can make an educated decision about whether to ignore an issue or negotiate it in the purchase contract.



# COLLATERAL (REAL ESTATE)

- **Will the seller convey everything needed to operate the property?**
- **Determine if parking sufficient?**
- **Are there any adjacent buildings or property owned by an affiliate of seller?**
- **Determine easements/REA issues**
- **Determine mixed use/condo issues**
- **Identify liens and encumbrances and contractually obligate seller to remedy same prior to closing**

# COLLATERAL (PERSONAL PROPERTY)

- Is it clearly identified?
- Who actually owns the personal property?
- Was the personal property foreclosed upon properly?
- Determine if subject to any liens/barter agreements/equipment leases?
- Identify vehicles specifically
- Determine if purchasing computers, reservation systems, computer records and software

# COLLATERAL (INTANGIBLE PROPERTY)

- Who owns the name?
- Who owns the website/email address?
- Are the phone numbers being transferred?

# INSPECTIONS

- Typically no representations and warranties are provided by seller so inspections are critical
- Need complete access to all information--war rooms are typically deficient--know what is missing--ask questions
- Ability to interview employees/management
- Need complete access to property
- Ability to perform full property condition reports and environmental testing--most contracts prohibit invasive testing without seller consent--what if seller says no?

# INSPECTIONS (CONTINUED)

- Disclosure of insurance claims
- Disclosure of existing litigation
- Disclosure of pending condemnation/assessments
- Disclosure of agreements with affiliates of seller
- Ability to access seller records after closing--audits
- Ability/requirement to deliver estoppels (i.e. ground lease, key tenants)

# TIMING

- **Is a quick closing really feasible?**
- **Determine franchise/brand issues and timing**
- **Delivery of third party reports**
- **Ability to obtain financing**

# CONVEYANCE DOCUMENTS

- Typically attached to contract and no one reads them
- Do they convey everything?
- Is title affidavit sufficient to delete ALL standard exceptions-- gap, municipal liens?
- Do documents meet state requirements?
- Will buyer take assignment of all records, permits, plans, etc.?

# COVENANTS & OPERATIONS

- **Continuous operation**
- **Disclosure of new information/remedy for buyer if new item is problematic**
- **Advance bookings**
- **On-line travel agreements**
- **Vendor agreements**
- **Employees/Key Employees/Unions**
  - **Who employs employees and is that entity a party to purchase contract?**
  - **Can key employees be hired by buyer?**
  - **Any union agreements?**



# PERMITS AND LIQUOR LICENSES

- Who holds permits--seller, manager or third party?
- Are any operating permits missing?
- Who holds liquor license and is that entity a party to purchase contract?
- Can liquor license be transferred? What is the timing?
- Is a temporary permit available in the applicable jurisdiction?
- Determine if any need for an interim beverage arrangement?

# PRORATIONS

- **Post-closing true up?**
- **Real estate taxes and assessments**
- **Transfer of reservation and security deposits**
- **A/R and A/P--how accurate are records?**

# SUCCESSOR LIABILITY

- Sales tax liability--can it be limited?
- Employee liability

# FRANCHISE & MANAGEMENT ISSUES

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- **Are agreements assumable?**
- **What if franchisor fails to approve buyer or requires unreasonable conditions?**
- **Determine amount of deferred or required PIP**
- **Can seller terminate the agreement? If so, what are the penalties/termination fees?**
- **ROFO, ROFR & Purchase Options-- have they been disclosed? Have they expired?**
- **What if buyer is a "Competitor?"**

# LIMITATION OF LIABILITY & REMEDIES

- Return of deposit
- Specific performance
- Reimbursement of due diligence costs
- Seller's limitation of liability and buyer's waiver of ability to sue
- "As-Is"
- Will Seller have any assets post-closing?

# STATE SPECIFIC PROVISIONS

- If state specific provisions not included in contract it may not be enforceable
- Waivers
- Radon gas

# MISCELLANEOUS

- **Assignability--at a minimum need ability to transfer to an SPE controlled by buyer with no release of buyer**
- **Attorneys' fees for prevailing party in a dispute**
- **Governing law and venue should match state in which property is located**
- **Business days vs. calendar days--what does contract provide?**
- **Consider limiting ability of seller to enter into back up contracts**
- **Authority of seller to consummate transaction--not subject to investment committee, senior management, servicer or other approval**

# QUESTIONS & COMMENTS

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## THANK YOU

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