

Basic Negotiation Points and Market Terms; Key Business Terms at the LOI Stage

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What is an LOI?

- Generally Non-Binding, But May Contain Some Binding Provisions
- Expression of Intent of Parties
- Broad Outline of Key Business Terms
 - What is key for your client?
 - Assess “match”
- Broad Outline of Business Terms
- Binding Provisions

LOI OR NOT?

- Why have an LOI?
- Does it ever make more sense to skip the LOI go directly to the “definitive agreements”?

Key LOI Terms

- Facts regarding the Hotel and its status – bases for negotiating certain points
- Parameters of Management Company Services
- Fees
 - Base vs. Incentive vs. License
 - Other Fees
- Management Company Financial Enhancement Required?

Key Terms – Continued

- Term
 - Length
 - Renewal Term Conditions
- Early Termination Provisions
 - Performance Test
 - Termination Upon Sale
 - For Other Reasons
- FF&E Reserve Percentages

Key Terms - Continued

- Services.
 - Assess Negotiability
 - Technical Services
 - Pre-Opening/Transition
 - Centralized Services
 - Purchasing
 - Renovation

Key Terms – Continued

- Authority
 - Determine desired level of authority of manager; restraints on that authority
 - Budget input/approval
 - Brand Standards maintenance and determination
 - Expenditure Thresholds
 - Decisions requiring owner approval
 - Selection of key employees

Other Negotiated Provisions

- Non-Disturbance Agreements/Comfort Letters
- Territorial Restrictions/Exclusivity
- Right of First Refusal
- Governing Law
- Insurance
- Indemnification – risk allocation

Non-Branded Management Agreements

- Without the brands, the fees will be less; the owner is also paying franchise fees for a franchised brand
- The Management Company must be approved by the franchisor
- Some management companies are “pre-approved”
- Manager covenants to manage per the requirements of the franchisor

THANK YOU

FOR YOUR ATTENTION

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