

# Third Party Arrangements (F&B, Spas, Retail, Rooftop Antennas)

# Presenters

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- Provides advice on hotel and resort development and hospitality law including hotel acquisitions and dispositions, development and finance, mixed-use development projects, hotel management agreements, branded residential projects, restaurant agreements and general hotel operation matters throughout the U.S., Latin America and the Caribbean

# I. Overview - Common Examples of Third-Party Arrangements

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- Food and Beverage Outlets
- Spas
- Retail Shops
- Rooftop Antennas

# I. Overview - Common Examples of Third-Party Arrangements

## A. Why Enter into Third Party Arrangements

- Important services or amenities are made available to hotel's guests
- Third-Party providers may have expertise and name recognition that can also draw locals to the hotel (e.g., well known chef/restaurateur; nightclub, spa and fitness facilities)
- Greater financial certainty for hotel's bottom line (for example - a fixed lease payment)
- Risk allocation to the third-party provider that is more experienced than hotel operator in providing such services

# I. Overview - Common Examples of Third-Party Arrangements

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## B. General Legal and Business Considerations

- Length of the term of the agreement with the third-party provider
- Hotel owner/operator's rights to terminate the agreement
- Use of the hotel's marks by the third-party provider for advertising and on the internet and in other marketing material
- Exclusivity
- Performance Termination
- Insurance/Indemnification issues

# I. Overview - Common Examples of Third-Party Arrangements

## C. Threshold Issues

- Will hotel owner or hotel manager negotiate the agreement?
- Lender consents or approvals?
- Will hotel owner or hotel manager enter into the agreement with provider?
- Which party will be responsible for build-out costs? On-going maintenance?
- How closely will third-party provider be required to follow hotel's standards?
- What are the hours that the establishment must be open?
- Will hotel have audit rights over the books and records of third-party provider?
- Under what instances may third-party provider terminate the arrangement?

# I. Overview - Common Examples of Third-Party Arrangements

## D. Labor and Employment Issues and Concerns

- Are hotel employees unionized?
- Are employees of third-party provider unionized?
- Hotel access issues of employees of third-party provider (from a security perspective and union concerns)
- Background checks on employees of third-party provider
- Employee training (e.g., acceptable spa treatments, hotel brand standards and employee's failure to adequately reflect such standards)
- From hotel owner/operator perspective – guest and associate safety is of paramount concern
- Access within hotel for third-party provider employees
- Background Checks – Depending on local law and custom and the course of dealing of third-party provider, whether employees of third party provider can be a heavily negotiated point

# II. Third Party Arrangements

## A. Restaurants

- Is there another 3 meal-a-day restaurant within hotel?
- Are there brand standard food items that must be served?
- Will hotel guests be permitted to charge the cost to their room?
- How much input will hotel owner/operator have related to menu and pricing?
- Are there certain exclusives that govern what brands of merchandise may or may not be sold within hotel (e.g., certain coffee or soda brands)
- Licenses and permits
- Will the restaurant provide room service?



# II. Third Party Arrangements

## B. Spas

- Does the agreement cover hotel's pool and fitness center?
- Can cover typical spa-type procedures (manicure/pedicure) but often also includes massage, waxing and other "medical" type procedures such as botox
- Third-party provider employees must be properly trained and licensed
- Age requirements for certain treatments
- Will spa employees be permitted to go to guest's room to perform services?
- Will memberships be sold to general public?

## II. Third Party Arrangements

### C. Retail

- What happens to existing retail merchandise?
- Are there certain exclusives that govern what types/brands of merchandise must or must not be sold within hotel (e.g., certain coffee or soda brands, sundries, etc.)
- Does hotel brand restrict what types of adult materials may be sold in a third-party retail outlet (e.g., alcohol, tobacco, adult reading materials)
- Proper licenses and permits
- How much input will hotel owner/operator have related to pricing?

## II. Third Party Arrangements

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### D. Rooftop Antennas

- Antenna carriers pay market rates to place specified antenna equipment on the rooftop of taller structures
- Good additional income source for hotels
- Important to require antenna carriers to adhere to any legal requirements regarding the types of equipment present on the rooftop
- Lighting and marking concerns
- Third-party approvals

### III. Case Study - Food and Beverage

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When you think of great food and beverage experiences, hotels were traditionally lumped together with airline food, hospital food and college cafeterias. You ate at a hotel restaurant because you were a captive audience with limited dining options.

# III. Case Study - Food and Beverage

What changed in the hospitality industry?

- Brand Segmentation
- Cost and Profit Considerations
- Guest Expectations
- Boutique/Lifestyle Hotel Experience
- Celebrity Chef and Food Network Effect
- Branded Residences

“Entrepreneurs and impresarios are racing to develop a new generation of hotel brands with top-notch restaurants, thumping bars and lively lobbies to cater to stylish travelers.” *The Wall Street Journal, Tuesday, February 22, 2011.*

# III. Case Study - Food and Beverage

There are predominantly three methods of operating hotel food and beverage outlets, each with its own business and legal considerations:

- **Managed:** Hotel employees operate restaurant using one of hotel brand's food and beverage concepts.
- **Leased:** Hotel owner or manager leases space in hotel to unaffiliated third party to operate restaurant using tenant's food and beverage concept.
- **Licensed:** Hotel manager operates restaurant using licensee's food and beverage concept.

In addition, there exist various hybrids of the above which may evolve with different deals.

# III. Case Study - Food and Beverage

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## A. Managed

- Business Considerations
  - Utilize hotel employees
  - Brand consistency
  - Maintain control
  - Ability to streamline food and beverage operations (restaurants, in-room dining, catering and banquets)
  - No business case or modeling/pro formas
  - Owner resistance

# III. Case Study - Food and Beverage

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## A. Managed

- Legal Considerations
  - Labor and employment issues
  - Unionization concerns
  - Food borne illness
  - Insurance and liability issues
  - Loss of control/Manager's ability to enforce rights
  - ADA concerns



# III. Case Study - Food and Beverage

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## B. Leased

- Business Considerations
  - Loss of control/Manager's ability to enforce rights
  - Maintaining brand standards
  - Term/Options
  - Flexibility with menu
  - Impact on existing employees
  - Competition with hotel food & beverage outlets
  - Shared or separate kitchens
  - Refreshing space

# III. Case Study - Food and Beverage

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## B. Leased

- Legal Considerations
  - Avoiding employee/employer issues
  - Use of hotel/brand trademarks
  - Termination concerns/Landlord v. Tenant
  - Insurance and indemnity
  - Liquor liability
  - Rent
  - Maintenance/Cost Recovery
  - Assignment/Subletting
  - Owner financing

# III. Case Study - Food and Beverage

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## C. Licensed

- Business Considerations
  - Ownership of concept and name
  - Fees
  - Services
  - Consultant/Chef participation
  - Use in connection with residential sales
  - Control issues

# III. Case Study - Food and Beverage

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## C. Licensed

- Legal Considerations
  - Work product and intellectual property concerns
  - Consultant standards and enforcement
  - Performance termination
  - Personnel and union issues
  - Limitations on owner and manager obligations
  - Insurance and indemnity

# IV. Conclusion

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## Questions and Comments

# Session Evaluation

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