

A pineapple with its green crown sits in a field of vibrant green grass. The background is a clear blue sky with soft, white clouds. A white rectangular box with a dark teal border is centered over the image, containing the event title.

# THE HOSPITALITY LAW CONFERENCE: SERIES 2.0

January 11, 2018 • San Diego, CA

# CHALLENGES IN HOTEL AND RESTAURANT MANAGEMENT AGREEMENTS

2018 HOSPITALITY  
LAW CONFERENCE:  
SAN DIEGO

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JANUARY 11



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- Real estate lawyer who represents companies that develop, own, operate and finance hotels and resorts around the world.
- Represents luxury and boutique hotel and resort brands, operators and management companies, developers, private equity and other investors in their highest profile projects.



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# FOR WHOSE ACCOUNT AND AT WHOSE RISK IS THE PROPERTY BEING OPERATED?

## MANAGEMENT AGREEMENTS VS LEASES

- Management: base + incentive + other (accounting; revenue management)
- Lease: results of operations net of rent (base + percentage + cam, taxes, insurance and utilities)



# WHAT DOES IT TAKE TO WIN A DEAL TODAY?

## SKIN IN THE GAME

- Key money
- Equity
- Debt
- Performance or deficit guaranties



# AREN'T WE IN THIS DEAL TOGETHER?

## ALIGNMENT OF RISKS/REWARDS

- Fee structures
- Base fees
- Incentive fees
- Value creation/success fees



# HOW CAN WE GET OUT OF THIS DEAL?

## TERMINABILITY

- For cause/default
- Without cause
- Performance tests
  - Thresholds (multi-pronged, multi-year)
  - Excuses
- On sale
- Agency issues
  - Absolute power to terminate (if wrongful, with damages)
    - N.Y. Eden Rock case – personal services (because manager had too much discretion)
    - Agency coupled with an interest (coupled as to time, subject matter, persons) and not insubstantial



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# “THEY WHO HAVE THE GOLD MAKE THE RULES”

## FINANCING MATTERS

- Recognition
- Subordination
- Access to cash
  - Lock boxes and account control agreements



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# I WORK FOR WHO?

## EMPLOYMENT MATTERS

- Who is the employer – certain liabilities
- Joint employer issues
- WARN issues



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# NO, THEY ARE MINE!

GUEST/CUSTOMER  
DATA

- The age old question:  
who “owns” the  
guest/customer



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# OH YES, AND THERE ARE THE BRANDS...

BRAND ISSUES;  
FRANCHISES;  
LICENSES; CELEBRITY  
CHEFS

- New brands
- Brand standards
- Territorial restrictions
- Operational matters
- Capital expenditures, exceptions and the exceptions to the exceptions
- Intellectual property



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# WHAT'S NEXT?

TECHNOLOGY/SOCIAL  
MEDIA/ARTIFICIAL  
INTELLIGENCE

- Mobile check in
- Table top ordering
- Reviews



# AND I DO HAVE SOME MISCELLANEOUS ITEMS THAT DID NOT FIT ANYWHERE ELSE.

## MISCELLANEOUS

- Resort fees
- OTAs
- Airbnb



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