

# Cliff Risman

## Partner and Co-Chair Hospitality and Leisure Team



- A veteran real estate lawyer who represents companies that develop, own, operate and finance hotels and resorts around the world.
- Described by clients in the *Chambers USA Guide* as “very practical and always accessible.”
- Cliff speaks the language and fully understands every aspect of the hospitality industry.

A background image of the Houston skyline, featuring several prominent skyscrapers like the Bank of America Tower and the JP Morgan Chase Tower. The image is overlaid with a semi-transparent brown filter. The title text is centered over the middle of the image.

# CURRENT ISSUES AND CHALLENGES IN HOTEL MANAGEMENT AGREEMENTS

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THE HOSPITALITY LAW CONFERENCE: SERIES 2.0 - HOUSTON

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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

# “THEY WHO HAVE THE GOLD MAKE THE RULES”

## Financing Matters

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

# I WORK FOR WHO?

## EMPLOYMENT MATTERS

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



# **NO, THEY ARE MINE!**

## **GUEST/CUSTOMER DATA**

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

# 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

# WHAT'S NEXT?

## TECHNOLOGY/SOCIAL MEDIA/ARTIFICIAL INTELLIGENCE

- Mobil check in
- Table top ordering
- Reviews

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

## **MISCELLANEOUS**

- Resort fees
- OTAs
- Airbnb