

**Hospitality Industry Management Agreement Update;  
The Owner-Manager Relationship in a Pandemic and Post-Pandemic World  
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1. For Whose Account and at whose risk is the property being operated?

Management Agreements v. Leases

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

2. What does it take to win a deal today?

Skin in the game

- Equity
- Debt
- Performance or deficit guaranties
- COVID related changes in new agreements – the buzzword is “alignment”

3. Aren't we in this deal together?

Alignment of risks/rewards

- Fee structures
- Base fees
- Incentive fees
- Value creation/success fees
- The buzzword is still “alignment”; minimum fees not based on revenues or performance

4. How can we get out of this deal?

Terminability

- For cause/default
- Without cause
- Performance Tests
  - Thresholds (multi-pronged, multi-year)
  - Excuses

- On sale
- Franchise conversion
- Agency Issues
  - Absolute power to terminate (if wrongful, with damages)
    - N.Y. Eden Rock case – personal services (because manager had to much discretion)
    - Agency coupled with an interest (coupled as to time, subject matter, persons) and not insubstantial
- Force majeure and its applicability to various issues and provisions
- The “trailing 12” months in light of 2020 results and various calculations

5. They who have the gold make the rule.

Financing Matters

- Recognition
- Subordination
- Access to cash
  - Lock boxes and account control agreements
- COVID related cash issues
  - Cap ex deferrals
  - Waiver of brand standards
  - New “cleanliness” standards
  - Use of reserves

6. I work for who?

Employment Matters

- Who is the employer – certain liabilities
- Joint employer issues
- WARN issues
- Work rules
- Health & safety protocols
- Getting employees back to work

7. What's next?

Technology/Social Media/Artificial Intelligence

- Mobil check in
- Table top ordering
- Reviews
- Reduced housekeeping schedules; anything that reduces human interaction

8. Oh yes, and there are the brands....

- New brands
- Brand standards
- Territorial restrictions
- Capital expenditures, exceptions and the exceptions to the exceptions
- Intellectual property
- Operational matters; how the world has changed