Checking In, Checking Out: The Financial Issues in Buying or Selling a Hotel

BY KEITH T. ZIMMET

The purchase or sale of a hotel in many ways is like buying or selling multiple businesses.

In addition to real estate, hotels often include restaurants, gift shops, retail stores, resort amenities such as golf and tennis, and if located on a lake, river, or ocean, aquatic amenities such as fishing, boating, and sailing. In some locations a casino, concert venue, or convention space may also be included within the "hotel business". This article describes several key items that should be considered when buying or selling a hotel.

Traditional Real Property Concerns

If the buildings and/or land are being sold, then many traditional real estate issues need to be carefully considered. Is the property owned in fee simple, or is there a ground lease? Are there title issues such as rights of way or shared easements? Is the hotel and resort amenities owned by different entities? Are there any environmental issues such as underground storage tanks or the presence of asbestos; structural, roof, elevator, or parking lot problems?

Retail Shops and Restaurants

Many hotels have leases involving retail shops and restaurants. These leases will need to be assigned to a buyer and most likely will need to be subordinated to any lender financing the buyer's acquisition. If the hotel is actually operating the retail shops or restaurants, rather than leasing to other operators, then additional issues arise such as making certain the buyer assumes or acquires the necessary permits and licenses, including one or more California State Board of Equalization Seller's Permit.

Liquid Assets

Hotels typically have sizable liquor operations, including the sale of liquor, wine, beer, and other alcoholic beverages. The California Department of Alcohol Beverage Control will need to be involved in processing any application by the buyer for a license to sell such items.

The sale of such liquor inventory and the coordinated effort between seller and buyer in ensuring that the buyer is properly licensed under California liquor law is usually transacted through a Liquor Purchase and Sale Agreement, completely separate and apart from the main Hotel Purchase and Sale Agreement.

Management Agreements

Hotels today are often owned by one entity and managed by another. Many hotels which bear the name Marriott, Four Seasons, Hyatt, etc., are actually owned by one entity and managed by such globally known hoteliers.

These management agreements will need to be carefully reviewed to confirm that such agreements are assignable and that the long term benefits and obligations coincide with the buyer's long-term strategic plans for the property. It is possible that the buyer wants to bring in new management, in which case the existing management agreement will need to be reviewed to determine the expiration date or termination provisions.

Employee Liabilities

Such management agreements often have a major impact on employee issues. Hotels tend to be very labor-intensive operations. Hotels often employ hundreds of workers in housekeeping, front desk, concierge, food and beverage, valet parking, maintenance, security, sales and marketing, accounting, human resources, and general management. Whose employees are these, the hotel owner's or the management company's?

The transfer of ownership of the hotel could give rise to many employment law issues, including notice requirements under the federal Worker Adjustment and Retraining Notification Act (the "WARN Act"), and under similar laws in California. Accrued vacation and sick time, health, life, and disability insurance liability, and pension plan liability, all must be considered by both seller and buyer.

Furniture, Fixtures & Equipment

Hotels usually have large holdings of furniture, fixtures, and equipment. Hundreds of beds, couches, dressers, televisions, tables, and artwork fill a hotel. In addition, large amounts of expensive restaurant equipment, computer hardware, and security systems are commonplace.

Hotels often finance the acquisition of such equipment, whether through conventional financing or lease financing. In either event, like the management agreements, a buyer of a hotel will need to review the applicable financing documents to assure that such agreements are assignable, particularly with respect to lease financing. In addition, seller representations and warranties relating to such equipment are often the subject of much negotiation.

Accurate inventories and allocations of expenses and revenues become even more problematic in the sale of any business which operates twenty-four hours a day. The timing of the closing must be carefully planned and coordinated between seller and buyer. Adjustments will need to be made for deposits held, as well as for food and beverages purchased days prior to a closing for an event post-closing.

As one can imagine, the added dimension

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of resort amenities, casinos, and convention centers bring even further complexity to the purchase and sale of a hotel.

Being prepared, in advance, to address the many legal and business issues which arise during such a transaction will save time and money, and will assist everyone involved in getting a good night's sleep.

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