Financing Hotels in the United States: Key Considerations

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Hotels differ from other types of stabilized properties in several major ways. The purpose of this article is to highlight how the distinguishing factors impact the way that owners and lenders approach the negotiation of key elements of hotel financings in the United States.

2016 hotel real estate transaction volume in the United States totaled an impressive $31 billion,[1] which shows that significant liquidity still exists in the U.S. hotel market. While many industry observers believe that the market will, on the whole, soften throughout 2017, material transaction levels should continue to be driven by additional consolidation in the industry and continued investment by foreign and other private capital and institutional investors. Lenders are likely to support these continued investments although as the market softens, their underwriting requirements will likely become more conservative and their pricing higher. As pricing rises, debt investment funds and other non-bank lenders may well become the lenders most active in the hospitality sector.

Hotels differ from other types of stabilized properties in several major ways:

(a) revenues are derived principally from hotel guest room charges and not from leases,

(b) room rates fluctuate daily based upon general market conditions, specific demand and seasonality, and

(c) branding and management is important, if not critical, to performance of the asset.

These differences are fundamental to the way lenders underwrite the financing of hotels in the United States. The purpose of this article is to highlight how these distinguishing factors impact the way that owners and lenders approach the negotiation of key elements of hotel financings in the United States.

Role of the Hotel Agreements

General

The Hotel Management Agreement and related ancillary agreements such as license

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agreements and centralized services agreements (collectively, the "Hotel Agreements") between the hotel owner (the "Owner") and the hotel operator (the "Operator") govern the rights and obligations of the Owner and the Operator with respect to the management and operation of the hotel, including:

- The term of the arrangement;
- The scope of the Operator's authority;
- The compensation payable to the Operator;
- The ability of the Owner to finance the hotel;
- The Operator's reporting requirements;
- The annual budget review process;
- The obligation of the Owner to fund cash flow shortfalls;
- The right of the Owner to use the Operator's intellectual property; and
- The termination rights of the Owner and the Operator.

Generally speaking, the Hotel Agreements are personal services contracts and do not create in favor of the Operator any interest or estate in the Owner's real estate. As such, the Hotel Agreements may, subject to any damages claimed by the Operator from any contractual breach, be terminated by the Owner at any time. Moreover, absent an agreement by a lender to the contrary, the foreclosure of a mortgage lien would "wipe out" the Hotel Agreements given that post-foreclosure the hotel would no longer be owned by the Owner.

Hotel Agreements in Hotel Financings — Owner's Perspective

In connection with negotiating the Hotel Agreements, the Owner must take into consideration the requirements of any prospective future lender or buyer. If the Hotel Agreements do not adequately address these requirements it may be difficult for the Owner to finance or sell the hotel.

First, the Hotel Agreements should permit the Owner to finance the hotel and grant a mortgage (and related security interests) to the lender. In this regard, it is not uncommon for the Hotel Agreements to limit the Owner's ability to finance the hotel by only permitting the Owner to obtain financing from certain "institutional" lenders who are not competitors of the Operator and by including loan-to-value restrictions. The Owner must ensure that these limitations are not too restrictive in light of the Owner's anticipated sources of debt financing and the Owner's capital structure, and also what future buyers of the hotel may expect.

The Hotel Agreements are generally long term in nature with terms in some cases of up to forty years, and, as highlighted by the significant changes in the debt markets since the start of the 21st century, financing sources and their requirements can change rather dramatically, even over short periods of time. For example, following the tightening of the credit markets in the wake of the financial crisis, the use of funds raised through the EB-5 program became an important part of the capital structure of many Owners, and there is talk that this program may soon be subject to change. Also, so-called "shadow banks" that may not meet the historical definition of an "institutional" lender have become an increasingly large percentage of the debt market.

Second, the Hotel Agreements should obligate the Operator to provide the lender with:

(a) estoppel certificates from time to time, and

(b) a recognition agreement (sometimes referred to as a non-disturbance or "step-in" agreement).

In an estoppel certificate, the Operator certifies certain matters to the lender regarding the status of the Hotel Agreements, including that:

- the Owner has paid all fees that are due and payable to the Operator;
- the Owner is not in default under the Hotel Agreements (or if the Owner is in default, a description of each default);
- the Operator has not delivered any notice of termination;
- the Hotel Agreements are in full force and effect;
- there are no set-offs, counterclaims or defenses to the performance of the parties to the Hotel Agreements; and
- the Operator has not previously assigned the Hotel Agreements.

The Operator will usually attempt to limit the number of times in each calendar year or other time period that it is obligated to provide estoppel certificates and to qualify certain of the certifications to its knowledge. A recognition agreement is a tripartite agreement among the Owner, the Operator and the lender which, in general terms, addresses the ability of the lender to:

(a) approve amendments to the Hotel Agreements,

(b) cure defaults by the Owner under the Hotel Agreements and

(c) assume or terminate the Hotel Agreements following a default by the Owner under the loan documents.

Recognition agreements are often the subject of contentious negotiations and are discussed in greater detail below.

Third, the Owner should take care to negotiate Hotel Agreements that are generally consistent with then applicable market standards. The reason for this is twofold:

(a) a lender will carefully review the Hotel Agreements as part of its due diligence on the basis that, if the Owner is in default, the lender or its designee or any purchaser that the lender sells to in connection with the exercise of its remedies, may assume the rights and obligations under the Hotel Agreements, and

(b) lenders typically require certain "standard" provisions in Hotel Agreements which help protect their interests, e.g., limited additional cure rights of the Operator and, as discussed, the obligation of the Operator to deliver estoppel certificates and a recognition agreement.

Accordingly, any provisions in the Hotel Agreements which put an undue onus on the Owner or lack of such "standard" provisions may adversely affect the ability to finance and sell the hotel. Examples of onerous provisions include above-market management fees, restrictions on the Owner terminating the Hotel Agreements after material defaults by the Operator, limited budget approval rights, and provisions that permit self-dealing by the Operator to the Owner's detriment. In addition, there are certain provisions that a lender would

expect to see which, if absent, may impact the marketability of the Hotel Agreements. These may include the lack of a radius restriction binding on the Operator and the lack of an Operator performance test.

Finally, the Hotel Agreements provide that the hotel will be operated exclusively by the Operator, and thus the Owner may have very limited rights to undertake property related actions. Of course, the loan documents will be replete with property related covenants, requirements and limitations. Hence, for example, if the Operator fails to pay the real estate taxes or repair the hotel to the standard required under the loan documents, the Owner may find itself in default under the loan documents.

There are two ways that the Owner typically addresses this issue:

(a) negotiating for a covenant to be included in the Hotel Agreements requiring the Operator to comply with the loan documents and perform any covenants related to the operation of the Hotel contained in them, especially in respect of cash management, and

(b) qualifying each covenant in the loan documents relating to the operation of the Hotel with language that the Owner will use its commercially reasonable efforts to cause the Operator to perform such covenants.

Such commercially reasonable efforts may well include enforcement of the Hotel Agreements against the Operator. Obviously, there are opposing objectives between the Operator and the lender, and the Owner must find an appropriate balance.

Hotel Agreements in Hotel Financings — Lender's Perspective

For the reasons stated above, as part of its due diligence, the lender will seek to determine that:

(a) the proposed financing is permitted by the terms of the Hotel Agreements,

(b) the Hotel Agreements obligate the Operator to provide to the lender estoppel certificates and a recognition agreement, and

(c) the Hotel Agreements do not impose undue onerous obligations on the Owner.

Invariably, given the importance of the Hotel Agreements, the lender will provide in the loan documents that the Owner is not permitted to amend, modify or terminate the Hotel Agreements without the lender's approval.

The lender will also review the Hotel Agreements to determine how the cash generated from the hotel flows to the Operator and the Owner. Usually, the Operator pays to the Owner any cash ("Excess Cash") remaining after the Operator has received its fees and reimbursement of expenses, paid the hotel operating expenses and funded the hotel reserves. The lender will seek to gain a security interest in all Excess Cash by requiring the Operator to pay all Excess Cash into a bank account controlled by the lender. This is discussed below.

If the particular hotel brand is important to the hotel's success, then the continued effectiveness of the Hotel Agreements will be important to the lender. However, in some cases, the continued effectiveness of the Hotel Agreements is less critical to the lender. This is particularly true in construction loans where

the Owner has entered into long-term Hotel Agreements with a flag before or during the construction period. In those circumstances, the lender may view the existence of the Hotel Agreements as an encumbrance on the basis that, if the project faces difficulties and the Owner defaults on the loan, the lender may wish to have the ability to terminate the Hotel Agreements and sell the property free of those agreements. The lender's ability to assume or terminate the Hotel Agreements is often a key point in the negotiation of the recognition agreement. This issue is discussed in greater detail below.

Recognition Agreements

When financing a property that is subject to Hotel Agreements, the lender will require a recognition agreement as a condition to closing the loan.

While many of the same issues addressed in a hotel recognition agreement would also be covered in a recognition agreement with the manager of an office building or retail mall, given the fundamental importance of the Hotel Agreements, the negotiation of a hotel recognition agreement is typically more contentious.

From the lender's perspective, the recognition agreement should provide the following:

Loan in Compliance

Lender's Request: An agreement from the Operator that the financing complies with the requirements of the Hotel Agreements or that the Operator waives such requirements if the financing does not so comply.

Operator's Position: Operators often push back on this requirement because their view is that the Owner should provide the lender with this comfort. Regardless, the Operator will likely only be willing to agree that any financing requirements in the Hotel Agreements have been satisfied after the lender or the Owner has provided further information to the Operator about the identity and credit of the lender and the terms of the proposed financing. Not all Owners will be willing to share full unredacted copies of the loan documents with the Operator.

Amendments

Lender's Request: An agreement from the Operator that the Operator will not, without the lender's consent:

(i) reduce or permit the reduction of the term of any Hotel Agreement (except that, subject to the terms and conditions of the recognition agreement, the Operator may terminate the Hotel Agreements in accordance with their respective terms in effect on the date of the recognition agreement),

(ii) increase or permit the increase of the amount of any fees or other compensation under the Hotel Agreements (except in accordance with the express terms thereof in effect on the date of the recognition agreement), or

(iii) otherwise amend, modify or supplement any Hotel Agreement.

Operator's Position: If the Operator has a lot of leverage (for example,

the major "flag" of a successful hotel in a gateway city), the Operator will not agree to this provision and will require the lender to deal with this as between the Owner and lender in the loan documents. Otherwise, the Operator will typically try to limit the applicable amendments to material amendments so as to avoid having to seek the lender's consent for amendments entered into in the ordinary course of business which do not materially affect the operation of the hotel.

Waiver of Purchase Options

Lender's Request: An agreement from the Operator that no right of first offer, right of first refusal, purchase option or similar right set forth in any Hotel Agreement shall apply to any transfer of title to lender or its designee or a third party purchaser following an exercise of the lender's remedies by virtue of foreclosure, deed in lieu of foreclosure, bankruptcy sale, or otherwise.

Operator's Position: This is not usually a contentious issue for the Operator.

Excess Cash

Lender's Request: An agreement from the Operator that the Operator shall deposit all Excess Cash into the lender's controlled account.[2]

Operator's Position: This is not usually a contentious issue for the Operator; however, to the extent the Owner has an obligation to fund working capital, the Operator may require additional reserves to ensure that sufficient funds will be available if and when necessary.

No Proprietary Interest

Lender's Request: An agreement from the Operator that the Hotel Agreements do not create any estate or interest in the property in favor of the Operator and constitute contracts for personal services only.

Operator's Position: This will not be a contentious issue for the Operator unless the Hotel Agreements are structured as a lease arrangement in which case the Operator may not agree to make this acknowledgement.

Termination; Continued Performance

Lender's Request: An agreement from the Operator that, following an event of default under the loan documents, the lender may, within a certain time period, either terminate the Hotel Agreements or elect for the Operator to continue performance under the Hotel Agreements.

Operator's Position: This is usually the most significant point of negotiation. Most operators are unwilling to allow lenders the right to terminate the Hotel Agreements and will require that the Hotel Agreements continue in effect notwithstanding any default by the Owner under the loan documents. The lender may accept this position if the

hotel brand is important to the success of the hotel but will likely contest this position if, as mentioned above, the hotel is under construction on the basis that an inability to terminate the Hotel Agreements may adversely affect the marketability of the lender's collateral. If the Operator is an affiliate of the Owner, then the lender will also insist on the right to terminate the Hotel Agreements following a default under the loan documents, and this position would normally be acceptable to both the Owner and Operator. If the Hotel Agreements do not create an interest in the land, then the lender may accept the Operator's position that the lender not have a direct termination right. In such a case, following an event of default by the Owner, the lender may cause the Owner to terminate the Hotel Agreements. Although the Owner would be liable for breach of contract and the payment of any termination compensation, the lender would be in a position to sell the property free and clear of the Hotel Agreements. The Owner's liability for breach of contract and payment of any termination compensation may not be a significant issue from a practical perspective if the Owner is otherwise insolvent. In such circumstances, the Operator may be willing to enter into a transition services agreement with the lender providing for management of the hotel by the Operator on a temporary basis, thus allowing time for ownership to step in following a foreclosure and for an orderly transition of management responsibilities to a new operator.

Affiliated Transactions

Lender's Request: An agreement from the Operator that the Operator will not engage in affiliated transactions without the lender's approval. Hotel Agreements typically permit the Operator to engage in affiliated transactions (such as purchasing and centralized services), provided that the services are performed on an arms' length basis. However, given that the Owner may not have any right under the Hotel Agreements to monitor these transactions by, for example, requesting a report from the Operator of all affiliated transactions, the Operator may take advantage of these provisions and engage in profitable affiliated transactions to the detriment of the Owner.

Operator's Position: The Operator is unlikely to agree to this provision on the basis that current market practice permits affiliated transactions on an arms' length basis and that the Owner ostensibly benefits from the transactions because of the creation of economies of scale. In such a case, the lender may include covenants in the loan documents requiring the Owner to report to it on all Operator affiliated transactions. The Owner should only agree to this if it has the right to monitor the Operator under the Hotel Agreements,

which would be unusual. In addition, the Owner should take care in negotiating the Hotel Agreements to ensure that the Operator is not charging the Owner more for these services than the Operator charges any other owner.

Liability for Accrued Fees and other Amounts

Lender's Request: An agreement from the Operator that, if the lender elects for the Operator to continue its performance under the Hotel Agreements, the lender is not responsible for any fees or liability arising prior to the date that the lender elected for the Operator to continue its performance.

Operator's Position: It is unusual for the Operator to agree to allow the lender to "step in" clean under the Hotel Agreements. The Operator will usually require the lender or the Owner to make any payments of fees and other compensation that are due and payable to the Operator as of the date the lender "steps in" under the Hotel Agreements as a condition to the Operator continuing its performance. The Operator may also require the lender to fund any working capital which is required to be funded by the Owner at the time the lender assumes control. Generally speaking, most lenders are willing to accept the Operator's position.

Lender Notice and Cure Periods

Lender's Request: An agreement from the Operator that the Operator will not terminate the Hotel Agreements following a default by the Owner without providing notice to the lender and allowing the lender an additional period of time to cure the default if the Owner does not.

Operator's Position: This is not usually a contentious issue for the Operator; however, the Operator tends to make the additional cure period as abbreviated as possible for both monetary and non-monetary defaults.

Recognition agreements will be negotiated like any other loan document. As most of the issues relate to the relationship of the lender with the Operator, the Owner will not usually have extensive comments. However, the Owner often acts as an intermediary between the lender and the Operator given that it has a direct relationship with both and it is in the Owner's interest to get the deal done as expeditiously as possible. How favorable the final executed recognition agreement is from each party's perspective depends largely on the relative bargaining powers of the parties, which is influenced by, among other things, how important the particular hotel operator is to the success of the hotel and the general state of the financial markets at the time of the negotiation.

Hotel Revenues

Lender Controlled Accounts

The Hotel Agreements will likely prevent the Owner from granting a security interest in any of the hotel bank accounts that are operated by the Operator. This is often acceptable to

lenders so long as the Operator is one of the major hotel management companies and is obligated in the recognition agreement to pay all Excess Cash directly into an account controlled by the lender.

When the loan is made, the Owner, the lender and a depository bank enter into a tripartite account control agreement granting the lender "control" over the controlled account for the purposes of the Uniform Commercial Code and thereby granting the lender a perfected security interest in such account. If the Operator is not responsible for paying all of the hotel expenses or if the Owner has an obligation to contribute working capital to the operation of the Hotel, which is often required if there is insufficient cash flow or unexpected expenditures, the lender may require a working capital account or other expense reserve accounts to be established as part of the distribution waterfall under the loan documents. Such reserve accounts may include a "property improvement plan" reserve if work is required at the hotel to remain in compliance with the applicable brand standards.

Cash Flow Shortfalls

Given the volatility and possible seasonality of cash flow from the operation of a hotel, there may be situations where there is insufficient cash to pay the hotel's operating expenses and fund the hotel reserves. Subject to the non-recourse provisions of the loan documents, the lender's usual starting position is that the Owner must be obligated to fund any shortfalls from sources unrelated to the hotel. However, the Owner is unlikely to agree to an unlimited obligation to fund shortfalls (especially if the lender is trapping all Excess Cash) and also because it is not likely that the Hotel Agreements will require the Owner to fund cash shortfalls in all cases. For example, under the Hotel Agreements, the Owner may only be obligated to fund shortfalls if a failure to fund would have one or more of the following effects:

(a) adversely impact the good and safe operating condition of the hotel,

(b) adversely impact the operation of the hotel in accordance with defined operating standards,

(c) result in the inability of the Operator to comply with any applicable law in operating the hotel, or

(d) adversely impact the liability insurance coverage maintained for the hotel.

Accordingly, the Owner will attempt to limit its obligation to fund shortfalls under the loan documents and to make this obligation consistent with the Owner's obligation to fund shortfalls under the Hotel Agreements.

Other Considerations Relevant to Hotel Financings

Franchised Hotels: Comfort Letters

In recent years, franchised hotels have become more and more prevalent in the market and in the case of a franchised hotel, the lender needs to ensure that during a receivership or after a foreclosure of its mortgage lien it will have the legal right to continue to operate the hotel under the franchisor's brand name. The loss of the right to operate the hotel under the brand name and participate in the franchisor's hotel systems may adversely affect the hotel and its goodwill. To protect against this, the lender will require any franchi-

sor to execute a "comfort letter." In general terms, a "comfort letter" will:

- Evidence the franchisor's consent to the collateral assignment by the Owner to the lender of the franchise agreement;
- Permit the lender to either terminate the franchise agreement or assume the same upon an exercise of its remedies;
- Waive the payment by the lender of any franchise application fees if the lender elects to assume the franchise agreement;
- Waive the payment by the lender of any termination fees if the lender elects to terminate the franchise agreement;
- Grant the lender notice of any defaults under the franchise agreement and extended cure rights; and
- Provide a mechanism for any buyer from the lender to obtain direct rights from the franchisor to continue to operate the hotel under the franchisor's brand name.

A franchisor will typically have its own form of "comfort letter" and generally will not be willing to make any significant changes. As in the case of recognition agreements, the Owner will often be required to act as an intermediary in the negotiations between the franchisor and the lender.

Environmental Matters

The risk of adverse environmental issues at hotels tends to be higher than at other categories of stabilized properties. This is because of the constant use of chemicals, solvents and fuel at hotels for cleaning, gardening and equipment operation purposes.

To mitigate this risk, lenders can be expected to require the Owner to obtain and maintain environmental insurance, and a creditworthy entity to provide an environmental indemnity.

Reporting

The reporting requirements in loan documents for hotels are usually different from those in loan documents for other types of stabilized properties. This is because of the existence of the Uniform System of Accounts for Hotels (the "Uniform System"). The Uniform System does not change any of the fundamental accounting principles of GAAP, but instead supplements GAAP by standardizing the presentation of financial reports and the classification of accounts as they relate to the hotel industry.

Loan documents used in hotel financings typically require the Owner to provide to the lender detailed budgets and reports, as well as general hotel industry reports relating to the applicable market (for example, Smith Travel Accommodations Reports, ("STAR Reports") which track occupancy rate, revenue per room, average room rate and market share). A lender typically requires the annual budget to include projections of daily room rates and occupancy levels and projections by month of furniture, fixtures, and equipment ("FF&E") expenditures. In addition to annual budgets, lenders may require the Owner to submit annual business plans for the succeeding several fiscal years which include a description of the Owner's objectives for the hotel as well as the marketing plan for the hotel.

Additionally, whereas most loan documents used in the financing of office properties

require quarterly reports, lenders in hotel financings usually require monthly reports given the volatility of hotel revenues. Lenders are also likely to require the Owner to provide to the lender copies of any reports prepared by the Operator. All of this is aimed, from the lender's perspective, at improving the quality of the lender's understanding of the cash flow so that the lender may identify issues with the performance of the hotel, and hence its loan, before the issue ripens into a default.

Financial Covenants

Lenders who finance hotels tend to be more interested in debt yields rather than loan-to-value ratios. This is due to the seasonality of the cash flow. This differs from lenders who finance office properties where the value of the property is underwritten largely by discounting the annualized rental stream from the existing leases.

Tax, Insurance, and Seasonality Reserves

Given the seasonality of cash flow, hotel owners often argue that fixed monthly deposits of amounts for taxes and insurance, which are standard in loans for stabilized properties, are not reasonable in the hotel context and that such reserves should only apply during the continuance of an event of default under the loan documents. Depending on the projected cash flow of the particular hotel, lenders may be sympathetic to that position.

Depending on the anticipated cash flow of the applicable hotel and the impact of seasonal fluctuations, the lender may require that the Owner maintain and fund a seasonality reserve under the loan documents to ensure that there are sufficient funds available to pay debt service and other expenses during periods when the hotel is yielding less revenue. The Owner may be willing to agree to such a reserve but if a similar seasonality reserve already exists under the Hotel Agreements, the Owner should try to reduce any amount required to be funded under the seasonality reserve related to the loan by what the Owner is required to fund to the seasonality reserve maintained under the Hotel Agreements.

Liquor and Gaming Licenses

The Owner may need a liquor license to operate the hotel. Further, depending on the location and nature of the hotel, gaming licenses may also be required. The requirements and formalities for taking and foreclosing upon security interests in liquor and gaming licenses vary significantly from state to state. In some states, liquor licenses are considered privileges and cannot be used as collateral.

In other states where security interests are permitted, the Owner is required to file a notice with the state department responsible for issuing the license, informing it of the name and other details of the lender. In some states, the customary practice is for the Operator, rather than the Owner, to hold the liquor or gaming license. In such cases, a lease arrangement may be established whereby bar areas and gaming facilities are leased to the appropriate licensee.

The market value of liquor and gaming licenses varies depending on the location of the hotel and whether the number of licenses is limited in the location of the hotel. Where the license has real value, the lender should seek to confirm the identity of the license holder and obtain a security interest in the

license, if permitted by applicable law. With the assistance of specialized local counsel, the lender should determine all relevant requirements and formalities for taking, perfecting and enforcing security interests in such licenses.

Hotel Employees

While other categories of stabilized properties may not require many on-site employees, hotels clearly require on-site staff to operate and provide service to hotel guests. Depending on the terms of the Hotel Agreements, the hotel employees may be employed by the Owner or by the Operator at the Owner's cost.

From an early stage in its underwriting process, a lender should ascertain the number of hotel employees and the type and terms of any employment arrangements because these factors may significantly affect the marketability of the hotel in the event that the lender forecloses on its mortgage lien.

Importantly, the lender should determine if the particular hotel is subject to a collective bargaining agreement and what would be the consequences under any collective bargaining agreement of a change of ownership of the hotel. Typically, a collective bargaining agreement would remain in effect following a foreclosure and the successor owner of the hotel would assume all accrued pension obligations thereunder. Depending on the size and location of the property, this may be a very significant liability. If a hotel is not subject to a collective bargaining agreement, but subsequently becomes subject to a collective bargaining agreement, such change may also impact the hotel's cash flows.

Additionally, there is a federal labor law known as the Worker Adjustment and Retraining Notification Act and various state law equivalents. These laws require that hotels employing more than a minimum number of employees provide advance notice to employees before the hotel is closed or a certain number of employees are made redundant. These requirements may operate to delay the transfer of a hotel in the event that the lender wishes to exercise its remedies.

Conclusion

The fact that hotels are more akin to operating businesses than other forms of stabilized properties means that lenders will need to consider a number of additional issues when underwriting hotel loans. From the lender's perspective, it is important that the loan documents accurately address these issues to ensure that the loan is adequately secured and to enable the lender to properly administer and syndicate the loan and, if necessary, to exercise remedies.

From the Owner's perspective, an appreciation of these issues should increase the efficiency of the negotiation and the closing and funding of the loan. In all cases, the involvement in the loan closing process of the Operator, and in the case of a franchised hotel, the franchisor, must be taken into consideration.

The Operator of a hotel where the hotel brand is important to the lender will have significantly more leverage than another property manager that is less unique and more easily replaced. Accordingly, the Operator and any franchisor may be key players in financing negotiations and if their issues and concerns are not anticipated and addressed in a pragmatic manner, the closing of the loan may be delayed.

NOTES:

[1]Source: Jones Lang LaSalle Incorporated.

[2]If the Operator is not a major company, then the lender may also insist that all operating and reserve accounts be collaterally assigned to secure the loan.