



JEFFER MANGELS BUTLER & MITCHELL LLP

The premier hospitality practice in a full-service law firm

JMBM's Hotel Acquisition Checklist

Buying a hotel is usually a complex process with a lot of moving parts. Just keeping track of all the key people involved can be challenging in a fast-moving deal. And because a hotel involves both special purpose real estate and an operating business, there are many details requiring attention to successfully evaluate and transfer the hotel.

That's why the hotel lawyers in JMBM's Global Hospitality Group® usually start every hotel acquisition or hotel investment transaction by customizing a generic form of checklist to fit the specific transaction at hand. We use a generic form of checklist, such as the accompanying one, as a starting point in preparing a customized checklist for each unique transaction. The customized checklist helps us manage the acquisition or investment process, keep all the participants coordinated, and press forward to meet urgent milestones and deadlines.

We created the accompanying generic checklist based upon our extensive experience with more than \$71 billion of hotel acquisitions and investments, involving more than 3,800 properties all over the world. Through use of this checklist, we endeavor to identify all the people involved in the transaction (including the affected parties, advisors, and consultants) as well as all the major documents, tasks to be performed, and timing. By identifying all the tasks, due dates and responsible persons, we smooth the process and avoid overlooking something important as everyone rushes toward the closing of the deal.

The issues and concerns raised by this generic version of our various customized checklists apply to any hotel or other hospitality investment transaction -- whether a purchase or sale, a loan or financing. This checklist must obviously be adapted as appropriate.

The notes appearing at the end of the checklist are intended to illustrate some of the interwoven legal and business issues presented with a hospitality investment transaction. Most of the notes are related to Buyer concerns, because the Buyer must get what it pays for and bears the ongoing risk of the investment. The Seller's goal is always to limit liabilities after the sale and to give away as little as possible to realize the fair value of the hotel.

If you'd like to discuss how this checklist applies to your transaction, please contact us.

Jim Butler, Chairman
JMBM's Global Hospitality Group®
(310) 201-3526
jbutler@jmbm.com

JMBM's Hotel Acquisition Checklist

© 2013 Global Hospitality Group®. All rights reserved.

Purchase and sale of _____ Hotel

File No. _____ - _____

Updated as of _____, 201__

Parties	Address/Telephone/Fax/Email
Buyer	_____ _____ Telephone No. (____) ____ - ____ Attention: _____ Telephone No. (____) ____ - ____ Facsimile No. (____) ____ - ____ Email Address _____
Buyer's Counsel	Jeffer, Mangels, Butler & Mitchell LLP 1900 Avenue of the Stars, 7th Floor Los Angeles, CA 90067-5010 Attention: _____ Telephone No. (310) 203-8080 Facsimile No. (310) 203-0567 Email Address _____
Buyer's Local Counsel	_____ _____ Telephone No. (____) ____ - ____ Attention: _____ Telephone No. (____) ____ - ____ Facsimile No. (____) ____ - ____ Email Address _____
Buyer's Real Estate Broker	_____ _____ Telephone No. (____) ____ - ____ Attention: _____ Telephone No. (____) ____ - ____ Facsimile No. (____) ____ - ____ Email Address _____

JMBM's Hotel Acquisition Checklist

© 2013 Global Hospitality Group®. All rights reserved.

Parties	Address/Telephone/Fax/Email
Buyer's Senior Lender	_____ _____ Telephone No. (____) ____ - _____ Attention: _____ Telephone No. (____) ____ - _____ Facsimile No. (____) ____ - _____ Email Address _____
Senior Lender's Counsel	_____ _____ Telephone No. (____) ____ - _____ Attention: _____ Telephone No. (____) ____ - _____ Facsimile No. (____) ____ - _____ Email Address _____
Buyer's Mezzanine Lender	_____ _____ Telephone No. (____) ____ - _____ Attention: _____ Telephone No. (____) ____ - _____ Facsimile No. (____) ____ - _____ Email Address _____
Buyer's Mezzanine Lender's Counsel	_____ _____ Telephone No. (____) ____ - _____ Attention: _____ Telephone No. (____) ____ - _____ Facsimile No. (____) ____ - _____ Email Address _____
Seller	_____ _____ Telephone No. (____) ____ - _____ Attention: _____ Telephone No. (____) ____ - _____ Facsimile No. (____) ____ - _____ Email Address _____

JMBM's Hotel Acquisition Checklist

© 2013 Global Hospitality Group®. All rights reserved.

Parties	Address/Telephone/Fax/Email
Seller's Counsel 	 Telephone No. () - Attention: Telephone No. () - Facsimile No. () - Email Address
Seller's Local Counsel 	 Telephone No. () - Attention: Telephone No. () - Facsimile No. () - Email Address
Seller's Real Estate Broker 	 Telephone No. () - Attention: Telephone No. () - Facsimile No. () - Email Address
Ground Lessor 	 Telephone No. () - Attention: Telephone No. () - Facsimile No. () - Email Address
Escrow/Title Company 	 Telephone No. () - Attention: Telephone No. () - Facsimile No. () - Email Address

JMBM's Hotel Acquisition Checklist

© 2013 Global Hospitality Group®. All rights reserved.

Parties	Address/Telephone/Fax/Email
Buyer's Hotel Consultant	_____ _____ Telephone No. (____) ____ - _____ Attention: _____ Telephone No. (____) ____ - _____ Facsimile No. (____) ____ - _____ Email Address _____
Appraiser	_____ _____ Telephone No. (____) ____ - _____ Attention: _____ Telephone No. (____) ____ - _____ Facsimile No. (____) ____ - _____ Email Address _____
Buyer's Engineer/Physical Inspector	_____ _____ Telephone No. (____) ____ - _____ Attention: _____ Telephone No. (____) ____ - _____ Facsimile No. (____) ____ - _____ Email Address _____
Buyer's Surveyor	_____ _____ Telephone No. (____) ____ - _____ Attention: _____ Telephone No. (____) ____ - _____ Facsimile No. (____) ____ - _____ Email Address _____
Buyer's Environmental Consultant	_____ _____ Telephone No. (____) ____ - _____ Attention: _____ Telephone No. (____) ____ - _____ Facsimile No. (____) ____ - _____ Email Address _____

JMBM's Hotel Acquisition Checklist

© 2013 Global Hospitality Group®. All rights reserved.

Parties	Address/Telephone/Fax/Email
Buyer's Zoning/Entitlements Consultant	_____ _____ Telephone No. (____) ____ - _____ Attention: _____ Telephone No. (____) ____ - _____ Facsimile No. (____) ____ - _____ Email Address _____
Buyer's ADA Consultant	_____ _____ Telephone No. (____) ____ - _____ Attention: _____ Telephone No. (____) ____ - _____ Facsimile No. (____) ____ - _____ Email Address _____
Buyer's Liquor License Consultant	_____ _____ Telephone No. (____) ____ - _____ Attention: _____ Telephone No. (____) ____ - _____ Facsimile No. (____) ____ - _____ Email Address _____
Buyer's Insurance Consultant/Broker	_____ _____ Telephone No. (____) ____ - _____ Attention: _____ Telephone No. (____) ____ - _____ Facsimile No. (____) ____ - _____ Email Address _____
Current Management Company	_____ _____ Telephone No. (____) ____ - _____ Attention: _____ Telephone No. (____) ____ - _____ Facsimile No. (____) ____ - _____ Email Address _____

JMBM's Hotel Acquisition Checklist

© 2013 Global Hospitality Group®. All rights reserved.

Parties	Address/Telephone/Fax/Email
New Management Company	_____ _____ Telephone No. (____) ____ - _____ Attention: _____ Telephone No. (____) ____ - _____ Facsimile No. (____) ____ - _____ Email Address _____
New Management Company's Counsel	_____ _____ Telephone No. (____) ____ - _____ Attention: _____ Telephone No. (____) ____ - _____ Facsimile No. (____) ____ - _____ Email Address _____
Franchisor	_____ _____ Telephone No. (____) ____ - _____ Attention: _____ Telephone No. (____) ____ - _____ Facsimile No. (____) ____ - _____ Email Address _____
Franchisor's Counsel	_____ _____ Telephone No. (____) ____ - _____ Attention: _____ Telephone No. (____) ____ - _____ Facsimile No. (____) ____ - _____ Email Address _____

JMBM's Hotel Acquisition Checklist

© 2013 Global Hospitality Group®. All rights reserved.

Table Of Abbreviations

B	Buyer
BC	Buyer's Counsel
CIR	Circulated
DR	Draft
EC	Escrow Company
F	File
FIN	Final
INC	Incomplete
LC	Local Counsel
LEN	Lender
M	Manager
N/A	Not Applicable
R	Record
RCV	Received
S	Seller
SC	Seller's Counsel
TC	Title Company

Schedule Of Documents

	Document	Responsible party	Status
I.	<u>Organizational/Authorization Documents Of Seller</u> (Where Seller is a limited partnership with a corporate general partner)		
1.	Certified Copy of Partnership Agreement	S	
2.	Consent of Partners	SC	
3.	Certificate of Limited Partnership	S	
4.	Certificate of Good Standing-State of Organization	SC	
5.	Certificate of Good Standing-State in which Hotel is located	SC	
6.	Fictitious Business Name Statement	S	

JMBM's Hotel Acquisition Checklist

© 2013 Global Hospitality Group®. All rights reserved.

	Document	Responsible party	Status
7.	Certified Articles of Incorporation of General Partner of Seller	S	
8.	Certified Bylaws of General Partner of Seller	S	
9.	Certificate of Good Standing of General Partner of Seller	SC	
10.	Corporate Resolution of General Partner of Seller	SC	
11.	Incumbency Certificate of General Partner of Seller	SC	
12.	SS-4/TAX ID NUMBER	S	
II.	<u>Organizational/Authorization Documents Of Seller</u> (Where Seller is a limited liability company)		
1.	Certified Copy of Operating Agreement	S	
2.	Certified Copy of Articles of Organization/Certificate of Formation	S	
3.	Certificate of Good Standing-State of Organization	SC	
4.	Certificate of Good Standing-State in which Hotel is located	SC	
5.	Authorization of Members	SC	
6.	Authorization of Manager	SC	
7.	Incumbency Certificate	SC	
8.	SS-4/TAX ID NUMBER	S	
III.	<u>Conveyance And Closing Documents</u>		
1.	Purchase and Sale Agreement	BC/SC	
2.	Assignment of Purchase and Sale Agreement to Buyer's Nominee	BC	
3.	Ground Lessor's Estoppel Certificate and Consent	BC	
4.	Assignment of Ground Lease	BC	

JMBM's Hotel Acquisition Checklist

© 2013 Global Hospitality Group®. All rights reserved.

	Document	Responsible party	Status
5.	Deed in form used in State where Hotel is located	BC	
6.	Separate Documentary Transfer Tax Declaration/Affidavit of Value	TC	
7.	Preliminary Change of Ownership Report (for California) or its equivalent	TC	
8.	Other Affidavits/Requirements for Recordation of Deed-to be provided by Buyer's local counsel	TC	
9.	Tenant Estoppel Certificates	BC	
10.	Assignment and Assumption of Intangible Property	BC	
11.	Assignment of Claims (including insurance proceeds where applicable)	BC	
12.	Assignment and Assumption of Leases/Subleases (including consents of ground lessor)	BC	
13.	Service Contracts and Equipment Leases, Advanced Booking Agreements, Employment Contracts	BC	
14.	Assignment and Assumption of Union Contracts	BC	
15.	Bill of Sale	BC	
16.	Seller's Closing Certificate/Affirmation of Warranties, if required by Purchase and Sale Agreement	SC	
17.	Buyer's Closing Certificate/Affirmation of Warranties, if required by Purchase and Sale Agreement	BC	
18.	Post-Closing Holdback Escrow Agreement	BC	
19.	Occupancy Tax Clearance Certificate or Conditional Certificate	LC/SC/M	
20.	Sales Tax Clearance Certificate	LC/SC/M	
21.	Employee Withholding Tax Clearance Certificate or Conditional Withholding Certificate	LC/SC/M	

JMBM's Hotel Acquisition Checklist

© 2013 Global Hospitality Group®. All rights reserved.

	Document	Responsible party	Status
22.	Resale Certificate/Seller's Permit for inventory	BC/LC	
23.	Existing Management Agreement	BC	
	A. Manager's Estoppel Certificate and Consent and/or General Release	BC	
	B. Termination/Assignment of Management Agreement	BC	
24.	New Management Agreement	BC	
25.	Existing Franchise Agreement	BC	
	A. Franchisor's Estoppel Certificate and Consent and/or General Release	BC	
	B. Termination of Franchise Agreement	BC	
26.	New Franchise Agreement/PIP Requirements	SC	
27.	Franchise Default Notices	BC	
28.	Golf	BC	
	A. Estoppel Certificate re Golf Course Property Use Agreement	BC	
	B. Assignment and Assumption of Golf Course Property Use Agreements	BC	
	C. Notice re Assignment of Golf Course Property Use Agreements	BC	
29.	Off-Site Facilities and Amenities Agreements	BC	
	A. Estoppel Certificates and Consents for Off-Site Facilities and Amenities Agreements	BC	
	B. Assignment of Off-Site Facilities and Amenities Agreements	BC	
30.	Covenants, Conditions and Restrictions	BC/LC	

JMBM's Hotel Acquisition Checklist

© 2013 Global Hospitality Group®. All rights reserved.

	Document	Responsible party	Status
	A. Declarant or Owner's Association Estoppel	BC/LC	
	B. Assignment of Declarant's Rights	BC/LC	
31.	Account Transfer Letter	BC	
32.	Motor Vehicle Certificates of Ownership/Bills of Sale	M	
33.	Assignment of Trade Names/Trademarks and Other Intellectual Property	BC/LC	
34.	Payment of Conveyance Tax (Real and Personal)	B	
35.	Notices to Tenants of Assignment	B	
36.	Notices to Vendors of Assignment	B	
37.	Attorney Closing Instruction/Recording Letter	BC/SC	
38.	Prorations Schedule	B/S	
39.	Buyer's Settlement Statement	TC	
40.	Buyer's Exchange Documents with Qualified Intermediary	TC/BC	
41.	Title Requirements from Seller (see also separate Title section below)	TC/SC	
	A. Seller's Gap Indemnity to Title Company	TC/SC	
	B. Seller's Mechanic's Lien Indemnity to Title Company	TC/SC	
	C. Owner's Affidavit to Title Company	TC/SC	
	D. FIRPTA (in lieu of withholding tax on non-US Sellers IRC § 1445) and Equivalent State Certificate	TC/SC	
42.	Documents Permitting Continuation of Liquor Operations (temporary liquor license, assignment of liquor license, interim agreement for use of existing liquor license)	LC/BC/SC/M	
43.	Updated Rent Roll	S/M	

JMBM's Hotel Acquisition Checklist

© 2013 Global Hospitality Group®. All rights reserved.

	Document	Responsible party	Status
44.	Updated Personal Property Inventory	S/M	
45.	Updated List of Reservation Agreements and Bookings	S/M	
46.	Schedule of Stored Luggage	S/M	
47.	Tradename/Trademark filings/Transfers	S/SC	
48.	Buyer/Manager Property and Liability Insurance	BC/M	
49.	[Any other closing documents required by the Purchase and Sale Agreement]	BC/SC/M	
50.	Notice to Utility Companies re change in ownership	M	
51.	Payment of Deposits to Utility Companies re continuing service	S	
52.	Utility Meter Readings	LEN	
53.	House Funds	M	
54.	Tray Ledger (current guest accrued charges)	M	
55.	Delivery of Keys	M	
IV.	<u>Loan Documents</u>		
1.	Loan Agreement	LEN	
2.	Promissory Note	LEN	
3.	Mortgage or Deed of Trust	LEN	
4.	Cash Management Agreement	LEN	
5.	Assignment of Leases and Rents	LEN	
6.	Other Assignment Documents	LEN	
7.	Environmental Indemnity Agreement	LEN	
8.	Guaranty(ies)	LEN	

JMBM's Hotel Acquisition Checklist

© 2013 Global Hospitality Group®. All rights reserved.

	Document	Responsible party	Status
9.	Estoppel Certificates from Major Tenants	LEN	
10.	Franchise Comfort Letter	LEN	
11.	Assignment and Subordination of Management Agreement	LEN	
12.	Interest Rate Swap Agreement	LEN	
13.	UCC-1/UCC-1 Fixture Filing	LEN	
14.	[Other Loan Documents]	LEN	
15.	Borrower's Counsel's Legal Opinion	BC/LC	
16.	Escrow instructions from Lender to Title	LEN	
V.	<u>Due Diligence Items – Property</u>		LEN
1.	Appraisal	B	
2.	Physical Inspection Reports/Surveys	B	
A.	Structural	B	
B.	Seismic	B	
C.	MEP	B	
D.	Mold	B	
E.	ADA	B	
F.	Soils	B	
G.	Fire Systems and Health Inspection	B	
H.	Elevator Safety Inspections	B	
I.	LEED Certification/Survey	B	
3.	Copies of any current warranties (roof, hvac, etc)	B	

JMBM's Hotel Acquisition Checklist

© 2013 Global Hospitality Group®. All rights reserved.

	Document	Responsible party	Status
4.	Ground Lease		
5.	Tenant Leases	B	
6.	Subleases	B	
7.	Golf Course Property Use Agreements	B	
8.	Other Offsite Facility and Amenities Agreements	B	
9.	Phase 1 Environmental Site Assessment and Other Studies	B	
10.	Phase 2 Environmental Site Assessment, if recommended in Phase 1 report	B	
11.	List of Hazardous Materials Used or Stored	S	
12.	List of All Storage Tanks	S	
13.	Zoning/Permit/Entitlement Report by Consultant	B	
14.	Zoning Letter	B	
15.	List of Plans and Specifications and Copies	S	
16.	List of Accounts Receivable	S	
17.	List of Seller's Payables	S	
18.	List of Reservation Agreements and Deposits and Copies	S	
19.	Rent Roll	S	
20.	List of Space Leases	S	
21.	STAR Reports		
22.	List of Equipment Leases	S	
23.	List of Maintenance and Service Contracts	S	
24.	List of Employees	S	

JMBM's Hotel Acquisition Checklist

© 2013 Global Hospitality Group®. All rights reserved.

	Document	Responsible party	Status
25.	List of Employment Contracts	S	
26.	Union Contracts	S	
27.	Accrued Vacation/Sick Pay	S	
28.	WARN Act/Plant Closing Law Notification	S	
29.	Employee Benefit Plans (if Multi-Employer, then explore Withdrawal Liability upon change of employer)	S	
30.	Employee Withholding Tax Bills	S	
31.	UCC Search (State of Formation and State Where Hotel Located)	BC/TC	
32.	Litigation Search	BC/TC	
33.	List of Litigation (including potential claims and judgments)	S	
	A. Workers Compensation Claims	S	
	B. Other Pending/Potential Claims	S	
	C. List of Agency Notices to Comply/Violations	S	
	D. Unfair labor practice claims	S	
34.	Schedule of Construction Work in Progress	S/TC	
35.	Books and Records		
	A. Operating Reports and Financial Statements	S	
	B. FF&E Reconciliations	S	
	C. Current Annual Plan	S	
	D. Accrued/Prepaid Expenses	S	
	E. Bank Account Listing	S	

JMBM's Hotel Acquisition Checklist

© 2013 Global Hospitality Group®. All rights reserved.

	Document	Responsible party	Status
	F. Other correspondence, records and files, including guest information, marketing correspondence, etc.	S	
36.	Real Property Tax Bills	S	
37.	Sales/General Excise Tax Bills	S	
38.	Transient Occupancy Tax Bills	S	
39.	List of Tax Returns and Copies of Canceled Checks (Sales, Occupancy, Employee Withholding Tax)	S	
40.	List of Licenses and Permits (<i>See Section VI</i>)	S	
41.	Certificates of Occupancy	S	
42.	Building Permits/Entitlements	M/LC	
43.	Existing Liquor License	S	
44.	Inventory	S	
	A. Inventory of Owner's Personal Property	S	
	B. Inventory of Management Company's Personal Property	S	
	C. Liquor Inventory	S	
45.	Existing Insurance Policies (consider naming Buyer as additional insured)	S	
46.	Existing Management Agreement	S	
47.	Utility Bills	M	
48.	List of Motor Vehicles	M	
49.	Marketing Videos and Brochures	S	
50.	Reliance Letters for any existing reports Buyer is relying upon	S	

JMBM's Hotel Acquisition Checklist

© 2013 Global Hospitality Group®. All rights reserved.

	Document	Responsible party	Status
	51. Insurance Certificates required by Purchase and Sale Agreement for entries on Property	B	
VI.	<u>Title Matters</u>		
	1. ALTA Survey, including flood zone certification	TC/LC	
	2. Table A requirements for Survey	LC	
	3. Lender's Form of Survey Certificate	LEN	
	4. Lender's endorsement requirements	LEN	
	5. Preliminary Title Reports	TC	
	6. Underlying Title Documents	TC	
	7. Proforma Owner's Title Policy, including endorsements	TC	
	8. Proforma ALTA Loan Title Policy, including endorsements	TC	

	Document	Non-transferable must apply	Must transfer	No need to transfer
VII.	<u>PERMITS AND LICENSES TO BE OBTAINED BY NEW MANAGEMENT COMPANY AND/OR OWNER¹⁵</u>			
	1. Health Permits (State)			
	A. Food Service Permits	_____	_____	_____
	B. Sanitation Permits	_____	_____	_____
	C. Pool Permits	_____	_____	_____
	2. General Excise Tax License (State)	_____	_____	_____
	3. Transient Accommodations Tax Registration (State)	_____	_____	_____

JMBM's Hotel Acquisition Checklist

© 2013 Global Hospitality Group®. All rights reserved.

	Document	Non-transferable must apply	Must transfer	No need to transfer
4.	Elevator Permits (State)	_____	_____	_____
5.	Other Equipment Operating Permits (State/Local) (e.g., Air Permits)	_____	_____	_____
6.	Airport Permits (State)	_____	_____	_____
	A. Greeting Permit	_____	_____	_____
	B. Ground Transportation Permit	_____	_____	_____
	C. Permit for Use of Access Road	_____	_____	_____
7.	Harbor Permit (State)	_____	_____	_____
8.	Beach Maintenance Permit/Right-of-Entry (State)	_____	_____	_____
9.	Liquor License (County or State)	_____	_____	_____
10.	FCC Radio Permits	_____	_____	_____
11.	Postal Permit	_____	_____	_____
12.	Underground/Aboveground Tank Permit (County)	_____	_____	_____
13.	Solid/Hazardous Waste Disposal Records	_____	_____	_____
14.	Permit to Connect to Sewer System (County)	_____	_____	_____
15.	Diesel Oil and Liquefied Petroleum Gas Tax Exemption Certificate (State)	_____	_____	_____

Viii. Additional issues for consideration

1. A common error in drafting and negotiating purchase agreements is the failure of the parties to agree on exactly what is being purchased for the "purchase price." Is the Buyer acquiring the property and everything in it for a single gross

JMBM's Hotel Acquisition Checklist

© 2013 Global Hospitality Group®. All rights reserved.

sales price? Or is the Buyer merely purchasing the property with additional sums and adjustments owed for existing inventory, goods, licenses, permits, and other such matters that are the subject of a calculation at or before closing? The difference may amount to hundreds of thousands of dollars in a transaction.

The parties to a purchase and sale transaction should also give careful consideration to the representations and warranties that will be exchanged in the purchase agreement. The representations and warranties serve two important but separate functions: (1) creating liability and a claim for indemnity when the other party makes a representation that later proves to be untrue; and (2) flushing out the issues through disclosure required by the agreement and focusing the parties on important issues and facts. When a Buyer agrees to accept certain representations and warranties being made only to "Seller's knowledge," the Buyer should seriously consider requesting additional comfort in the form of representations and warranties from (or after the Seller's consultation with) the asset manager, the on-site property manager or general manager, the director of marketing, the controller, and the chief structural engineer.

2. JMBM has often been able to use the ground lessor's estoppel certificate as a vehicle to clean up deficiencies in the ground lease--a purpose for which the certificate is not really intended.
3. While an assignment of Seller's claims may seem innocuous, we have found that obtaining an assignment of the Seller's claims, or at least the right to share in those claims, has enabled our Buyer-clients to assert claims or raise various defenses they would not otherwise have, including cross-claims and counterclaims in connection with pre-Closing liabilities that result in the Buyer being named as a convenient defendant in the lawsuit.

For instance, in connection with an acquisition in Hawaii, we were able to use the Seller's assignment-of-claims provision to assert a claim against an insurance carrier for damage that occurred pre-Closing and was discovered significantly after the Closing of the transaction. This provision was critical because the Seller did not breach any of his representations or warranties and, therefore, the Buyer would not have had any rights to pursue the Seller or the Seller's insurance carrier without the contractual assignment of the Seller's claims.

4. It is important for the Buyer to obtain the tax clearance certificate as close in time to the Closing as possible. A number of counties or other taxing authorities will not issue an occupancy tax clearance certificate or equivalent; however, they

JMBM's Hotel Acquisition Checklist

© 2013 Global Hospitality Group®. All rights reserved.

are often willing to provide some form of verbal confirmation to a prospective Buyer. As a part of the due diligence, a cautious Buyer should also request copies of previous tax returns and copies of canceled checks evidencing payment.

5. We cannot tell you how often we have seen parties, proceeding without the benefit of The JMBM HIT List™, forget to transfer ownership of motor vehicles pursuant to the state transfer certificates. Many people just assume that, by virtue of the bill of sale, the transfer of ownership has been effectuated. However, for legal title to pass, the parties must comply with the specific certification requirements of the state in question.

We have also often found that Buyers assume that the vehicles are owned, but through our diligence often we have uncovered that they are subject to long-term leases, some of which may prohibit transfer. In such situations, we recommend obtaining a consent and estoppel certificate from the vehicle lessor.

In most states, the rules governing the transfer of pleasure boats and vessels are similar to those governing transfers of motor vehicles. In other words, an effective transfer requires appropriate specific certification from the relevant state agency often the same one that regulates motor vehicles.

6. It is particularly important for a Buyer to review and understand a preliminary schedules of accounts receivable, accounts payable, reservation agreements, and deposits. It is also important to update this review and analysis. A Buyer could be seriously prejudiced failing to require an update of these schedules immediately prior to Closing.

For example, a client came to us following the acquisition of a property that it handled "in house," because it realized that it had failed to ask for up-to-date reservation agreements and an up-to-date deposit list at Closing. Working off of old schedules, the Buyer did not obtain cash from the Seller or a credit against the purchase price at the Closing to cover additional deposits the Seller had received for some major events. For practical business purposes, the Buyer had to honor the significant banquet and other event reservations and give the customers credit for the deposits they paid to the prior owner, but this oversight turned profitable events into loss-leaders.

This is a good example of why it is important to require the Seller to represent and warrant the accuracy of the schedules both at the time of the agreement and as of the Closing. This is a standard representation that is used in JMBM agreement forms.

JMBM's Hotel Acquisition Checklist

© 2013 Global Hospitality Group®. All rights reserved.

7. You cannot believe how frequently Buyers fail to pay attention to equipment leases and the impact they can have on the operation of the property after the Closing. Many equipment leases are in fact long-term capital leases that may impose millions of dollars in liability over their terms. Often these equipment leases relate to telephone systems, televisions, computers, and related operational equipment, and may be non-assignable by their terms or result in a default and acceleration upon an unconsented transfer. Therefore, JMBM strongly recommends that the diligence review include a thorough analysis of the equipment leases themselves to determine whether they are assignable, understand the terms and the payment schedule, and obtain estoppel certificates from the equipment lessors and/or attempt to negotiate a buy-out of the same, if appropriate.
8. Every Buyer should understand each of the employment contracts (relating to the property in question) that may survive the Closing. It may enable the Buyer to negotiate for the Seller to arrange termination of certain contracts, to buy them out, or to give the Buyer a credit for certain burdensome contracts. Failure to deal with these issues could result in the Buyer assuming these liabilities under a general assumption clause in the purchase agreement.

Certain union contracts may, by their terms, also require that they be assumed, thus leaving the Buyer with no opportunity to renegotiate those terms. It is critical, as part of the diligence and underwriting process, that the Buyer understand the legal and economic impact of such contracts.

Moreover, even if the union contract does not require an assumption, a Buyer does have a duty under the National Labor Relations Act to "recognize" a union and negotiate in good faith to reach a new agreement with that union until an "impasse" is reached.

JMBM's Global Hospitality Group®'s transactional lawyers work very closely with the Group's labor lawyers to structure an acquisition for a Buyer in the manner most likely to minimize the Buyer's burdens and liabilities acquired through either an express assumption of union contract obligation or under the duty to bargain in good faith and recognize the existing union. It may not always be possible, or even the right thing, to be "union free," but you should always be "union smart." It is critical that one does not undertake any actions with respect to labor matters without consulting labor counsel, because the effects may be devastating--even from inadvertent and seemingly innocent statements and communications.

JMBM's Hotel Acquisition Checklist

© 2013 Global Hospitality Group®. All rights reserved.

9. A litigation search can be a very helpful protective tool for a Buyer. The search should include searches in both the state and federal jurisdictions, and should include a search under the property's formal and "common name," as well as under the name of the ownership entity and the management company.
10. The Buyer should obtain a schedule of prepaid expenses (or accrued liabilities) that are to be transferred. Consider the following: (1) production and other costs for shows and entertainment at the property; (2) real property taxes; (3) charges for water, gas, electricity, telephone, telegraph, and other liabilities; and (4) transferable license fees and other prepaid amounts on maintenance and rental contracts.
11. The Buyer should obtain a list of all inventory to be purchased. The location of the inventory should be ascertained. Consider counting and tagging certain inventory items in advance of the Closing date, provided the storage areas can be sealed or segregated to prevent removal of items. These items include reserve stocks of linen, china, glassware, and silver; certain slow-moving repair and maintenance items (engineering supplies); general stores; stationery and other paper supplies; and excess stocks of beverage inventory. The Buyer and Seller should agree on the method to be used in valuing the following inventory items: (1) opened packages or cartons; (2) inventories or supplies issued from storerooms to the various departments; and (3) open bottles of beverages. The Buyer should coordinate the planning for the physical inventories of all of the inventory to be purchased and determine who is to physically count, price, and extend the inventories. The Buyer should determine if an inventory will be taken of the furniture, fixtures, furnishings, appliances, equipment, improvements, and personal property that will be purchased. These items may be itemized on Exhibit A of the Bill of Sale. The Buyer should coordinate the planning for these physical inventories, if appropriate.
12. The Buyer should ascertain the method to be used in prorating the various utility charges. A cutoff statement should be requested from the various utility companies of their charges at the Closing date. Preferably, a written confirmation of such cutoff date should be obtained from the utility companies. If cutoff statements are not obtained, the utility bill that is received subsequent to the closing date should be prorated based on meter readings or on a time basis.
13. The Buyer should perform a count of cash on hand, including house banks, petty cash funds, and all other funds belonging to the property. Vouchers and gift

JMBM's Hotel Acquisition Checklist

© 2013 Global Hospitality Group®. All rights reserved.

certificates should also be listed and the unredeemed amounts should either be paid to the Buyer or credited against the purchase price.

14. Some Buyers focus on what they believe to be the major transactional aspects of an acquisition, such as the purchase agreement, the revenues and expenses of the property, the physical and structural aspects of the property, the terms of management and franchise arrangements, and similar items. While these items are certainly critical to the transaction, one should not fail to understand the importance of obtaining or retaining the various permits and licenses that are necessary for the property to continue to operate as a going concern. Failure to maintain any one of the operational permits that were in place with the Seller prior to Closing may have an adverse effect on the operation of the property after Closing.

For instance, if there is a lapse in the liquor license, the property will be prevented from selling liquor to its guests. A great deal of customer goodwill may be lost as weddings, group meetings, conventions, and other profitable business is put in jeopardy. The results may be a dip in beverage revenue, but the net negative guest experience during that time may have repercussions far beyond the period that the property was unable to serve liquor. After all, a major component of a property's value is the goodwill established. The same is true if the property fails to maintain or obtain a cabaret license, for instance, which could result in having the nightclub at the property shut down. Depending on the type of property, this may have a devastating effect.

These are obvious examples of permits and licenses that a property might have, but there are others less obvious, which may include the PUC (public utilities commission) permit to allow the pick-up and drop-off of guests at the local airport. Again, while it may not affect the property's revenue immediately, it may affect the guest experience, and therefore the property's reputation.

Another such example is FCC permits, which are required to communicate over the airwaves (i.e., walkie-talkie radio transmission to and from limousines, vans, busses, and boats). For example, in one transaction that JMBM handled, one of the more difficult things in closing the deal was assuring the maintenance of the FCC permits so that the resort property would continue to have the ability to take its guests out on snorkeling and scuba dives off the coast where the property was located.

15. The Buyer should obtain a schedule of accrued wages and salaries of property employees as of the Closing date, together with accruals for vacation pay, sick

JMBM's Hotel Acquisition Checklist

© 2013 Global Hospitality Group®. All rights reserved.

pay, holidays, etc., and any other employee benefits such as management bonuses. The accuracy of these various accruals should be tested. The Buyer should also: (1) obtain a calculation of the accrued payroll taxes and test the accuracy of the calculation; (2) obtain copies of the physical inventories (priced and extended) and test the accuracy of the price of the extensions on a test basis; and (3) complete all proration calculations that require the receipt of a subsequent billing, as follows: (a) electricity, (b) telephone, (c) water, (d) fuel, and (e) gas. The calculations of the prepaid expense prorations (real property taxes and any other items) should be reviewed. The Buyer should obtain a schedule summarizing the concession rent and fees due to the property at the beginning of the month and the minimum and percentage rent and fees due for the month of Closing, then calculate the prorated rent and fees. The Buyer should review the following closing adjustments: (1) payments made pursuant to any subleases, leases, contracts, or agreements pertaining to the property; and (2) all lease, security, deposit, or advance rents. The Buyer should obtain a detailed listing of the travel agent commissions payable for the guests that were in-house on the night of Closing and test the calculation of the prorated commissions. The Buyer should inquire if additional prorations are appropriate for such items as follows: (1) retroactive premium adjustments for workmen's compensation insurance; and (2) trade-out agreements. The Buyer should prepare a proration schedule of the amounts due from (to) the Buyer and Seller. The Buyer should obtain the aged accounts receivable listing as of the Closing date as provided for in the Purchase Agreement.