

# Hospitality Real Estate Guide

A Practical Guidance® Practice Note by Larry Welch, Frankfurt Kurnit Klein & Selz PC; and Damian P. Conforti, Mandelbaum Barrett PC



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This practice note is a practical guide to hospitality real estate arrangements, including leases, licenses, and management/franchise agreements. This practice note discusses key considerations for hospitality properties that include restaurants, bars, and hotel food and beverage (F&B) in mixed-use environments. It also integrates key diligence, construction, financing, and exit planning considerations that often determine the success or failure of hospitality projects.

For a full listing of key content regarding hotel and hospitality properties, see [Hotel and Hospitality Property Resource Kit](#).

For a full listing of key content regarding restaurant leasing, see [Restaurant Leasing Resource Kit](#).

## Overview

### Why Hospitality Is Different

Hospitality real estate embeds a 24/7 public-facing business into the premises. Even when the business is not open, it is still operating—taking in supplies, cleaning, and

preparing for the next day. Lease, management, franchise, and financing terms must integrate with brand standards, landlord requirements, local laws, capital cycles, life safety, and operating cost volatility. The result is agreements that look like conventional real estate documents on the cover but behave like operating contracts inside.

Real estate is typically the third-largest expense category for hospitality businesses, after labor and cost of goods. That ranking does not include major capital items ancillary to real estate such as furniture, fixtures, and equipment (FF&E), kitchen systems, or mandated renovations or Property Improvement Plan (PIP) cycles. Because these real-estate-linked obligations directly influence operating costs, revenue, and your client's chance of success (whether you represent the operator, the real property owner, the lender, or the franchisor), the issues outlined in this practice note are critical for any attorney advising companies in the hospitality sector, even those attorneys who do not specialize in real estate.

### Questions to Consider Before Drafting Any Agreements

- Where will the business be located? (i.e., address) Before engaging substantively, counsel should visually review the site online and, if feasible, visit in person to understand street conditions, neighboring uses, visibility, and on-site constraints.
- Is the location a communal space like a food hall or shopping mall, or is it a free-standing location? Is it in a condominium or other multi-user building?
- What services does the business intend to provide at the location, and what resources and utilities does it need? How many employees and customers will be in the location at one time?

- Does the location have the services and utilities that the business needs to adequately serve its customers? (e.g., street access, gas, water, and electricity)
- What governmental agency approvals will be required? (e.g., building permits, drive-through permits, signage, and landmark approvals). Which party in the deal is responsible for obtaining such approvals?
- Has the client considered the Americans with Disabilities Act (ADA) compliance requirements? (e.g., entrance ramps, elevators, and restrooms)
- Does the location have enough parking spaces for customers and staff, and loading docks and freight elevator access for suppliers?
- What are the building's insurance requirements?
- Which services will be provided by the building owner, and which must be obtained by the operator? (e.g., cleaning, extermination, maintenance and repairs, and rubbish)
- Does the operator's lender or franchisor have additional real estate requirements to consider? (e.g., occupancy requirements, radius restrictions, and lien rights)
- What constitutes success for your client? What is the time horizon for their involvement in this hospitality business or building ownership? What are their reinvestment, expansion, sale, and exit strategies?

## Term Sheet Fundamentals for Hospitality Assets

### Why the Term Sheet Matters

In hospitality, the term sheet or letter of intent (LOI) is not just about the rental price and length of term—it is the project plan. The first draft of a lease or other hospitality agreement should closely track the term sheet's business points. Before drafting or negotiating any agreements, make sure that you have reviewed and confirmed all of the LOI terms with your client, their broker, and other consultants, and make sure you all understand the expected timing and scope of the project.

### Core Hospitality LOI and Term Sheet Elements (Beyond Economics)

- **Premises plus adjacent rights.** Include back-of-house (BOH) corridors, loading docks, roof/mechanical pads, sidewalk and curb frontage, terraces, pool decks, event lawns, and any other shared or adjacent spaces critical to operations.
- **Delivery condition.** Detail the delivery condition to include, as applicable, "restaurant-ready"/"hotel-ready"

specifications (i.e., gas, electrical, exhaust and grease duct paths stubbed to the premises, make-up air, condenser water, telecommunications, shaft/roof rights). Tie the delivery condition to defined outside dates with rent abatement and/or termination rights if there are delays.

- **Use and ancillary operations.** Identify ancillary uses and operations, including alcohol, late hours, live music, cabaret/dancing and other entertainment, outdoor dining and events, room service, third-party delivery, and takeout. Note that violations of liquor license restrictions on the sale or use of alcohol can result in suspension of the license and, in serious cases, forced closure of the business. It can also impact on the principals' ability to get liquor licenses in the future.
- **Products and services scope.** Clarify the core offering (e.g., on-premise dining, bar, and/or lounge) and ancillary services (e.g., banquet/catering, private dining, third-party delivery, takeout windows, retail/merchandising, ticketed events, and classes and/or demonstrations). If the services will affect occupancy, noise, or place of assembly thresholds, then consider the business's impact on the overall real estate property and other users.
- **Exclusives and radius.** Protect core food and brand concepts while carving out hotel banquets and/or catering, lounge service, and in-room dining. If there is revenue sharing between the parties (e.g., percentage rent), then you need to precisely draft the mechanics of what amounts are included in or excluded from the calculation.
- **Revenue protection.** Protect revenue streams through rent abatement or self-help remedies for critical service outages (i.e., utilities, venting, BOH routes, outdoor dining rights). For center-based or mixed-use projects, evaluate co-tenancy, anchor store, or opening-date protections, where appropriate.
- **Agency/permitting dependencies.** Address permitting requirements for intended uses (i.e., landmarks, sidewalk café licensure, local department of transportation and traffic rules, local department of buildings, place of assembly, liquor licensing feasibility). Note that any LOI that does not reference outdoor areas, exhaust/venting paths, utility capacity, or roof rights can significantly delay the agreement negotiation process—or an opening delay—once technical realities surface.
- **Confidentiality terms.** The LOI and term sheet should include binding confidentiality provisions that protect all proprietary and trade secret information. They should also provide meaningful remedies for any breach or misuse of sensitive information obtained during the negotiation phase.

## Hospitality-Specific Use Restrictions (Often Overlooked in Term Sheets)

Hospitality concepts face operational limits that do not appear in standard retail or office leasing. These restrictions—often buried in building rules and regulations or imposed by the landlord’s lender, hotel brand, condominium board, or neighboring uses—can materially affect revenue models and may need to be raised at the LOI stage if they are material to the operator’s business plan. Clarifying them early prevents opening-day disputes, protects core revenue streams, and reduces the likelihood of post-occupancy conflict.

- **No overnight sleeping or lodging activity.** Restaurants, lounges, private dining rooms, and bars may be prohibited from being used for ‘sleeping accommodations,’ even on a temporary basis. This matters for late-shift staff, security and contractors resting on-site, private events that run late, and activation spaces used during temporary and seasonal events such as fashion week, film shoots, or promotional load-ins. Confirm whether the restriction is absolute or whether such use may be allowed on a case-by-case basis.
- **No smoke, vapors, or odors beyond premises.** Many buildings impose strict ‘no odor’ standards on office and retail uses that may not be applicable or achievable in a restaurant setting. For hospitality operators, this can require expensive odor mitigation installations, duct paths to the roof and exterior of the building, cuisine-specific limitations, and quiet-hours venting restrictions. Tie odor-control obligations to the landlord’s delivery condition (i.e., shaft availability, roof rights, and power capacity), not solely to operational covenants, and make sure that the potential costs are understood.
- **No long queues or exterior lineups.** Hotels, shopping centers, and mixed-use developments frequently prohibit exterior queuing for sidewalk management, noise sensitivity, egress protection, or guest-experience reasons. The parties should negotiate designated queue zones and noise/traffic management plans in the agreement terms. Consider highlighting the plans with a diagram exhibit. Operators should consider how their expected crowds fit into a multi-user environment, as applicable.
- **No animals (subject to ADA and local law carve-outs).** Many property owners restrict animals due to health-code, guest-experience, and insurance considerations. Clarify distinctions between ADA service animals and emotional support animals, rights and limits for dog-friendly outdoor dining, insurance impacts, and permissions for pet-themed or promotional events in outdoor or semi-enclosed areas. The parties should address how these restrictions interact with health department rules to avoid inconsistent enforcement. Note

that the pet hospitality business is a distinct and growing category of hospitality properties. The additional concepts and considerations for pet hospitality businesses are outside the scope of this practice note.

- **Operating hours, quiet hours, and blackout dates.** Define baseline operating hours, quiet-hour limits (i.e., sound and/or lighting near guestrooms or residences), and blackout periods for building or brand events. Note that supplies and food are often delivered during off-hours. Where hours require agency approvals (i.e., place of assembly, liquor service), you should tie obtaining such approvals to outside dates and abatement or termination if approvals are not obtained within defined timeframes. Limit the landlord’s right to unilaterally reduce hours.

Note that “use” concepts in hospitality are elastic and constantly changing (i.e., banquet service, prix-fixe events, private tastings, delivery/takeout operations, chef’s table programming, ghost-kitchen supplements, and late-night disc jockey activation) and can all fall into ambiguous territory if the use clause is drafted too narrowly. If the property owner incorporates use restrictions by reference to “building rules and regulations” that can be changed unilaterally, the operator risks losing core revenue streams mid-term. The operator should negotiate for static rules at signing or require that any amendment to the building rules and regulations will not materially impair the permitted use. It is best practice for the parties to address “use” concepts at the LOI and term sheet stage.

## Physical Site and Building Considerations—the “Outside-In Approach”

Many hospitality disputes and delays stem from issues outside the demised premises (i.e., sidewalks, curb access, façade and roof rights, utilities, deliveries, and refuse/grease). Address these issues in the LOI and lease exhibits early in the process. Start by thinking about the outside elements of the hospitality project and then work your way inside to the operating areas, kitchen and BOH, especially in mixed-use environments.

### Outside Footprint

- **Arrival, curb, and valet.** Define arrival sequences, curb cuts, and valet operations at the outset. Address ride-share staging areas, ADA-compliant curb access, and safe, well-lighted ingress and egress routes for customers, employees, and suppliers. Confirm whether curb access is exclusive or shared and whether municipal permits or building approvals are required. Consider the signage available at the entrance to the project.

- **Parking and shuttles.** Clarify whether parking will be on-site, shared within a mixed-use development, or located off-site. Determine whether the operator requires reserved parking spaces for its staff and special guests. Specify whether the arrangement is documented as a lease, license, or easement, and address operational needs during peak periods (i.e., weddings, conferences, and seasonal surges). If shuttle service is required, allocate responsibility for scheduling, cost, insurance, and branding.
- **Outdoor dining and/or events.** Determine whether outdoor dining or event space will be held pursuant to a leasehold interest or a revocable license, and identify all required agency approvals (i.e., local departments of buildings or transportation) for sidewalk cafés or roadway service. Address alcohol service rules, sound and queue management plans, and responsibility for maintaining, securing, and storing furniture, heaters, umbrellas, and seasonal installations. Confirm compliance with zoning, building rules, and insurance requirements applicable to outdoor functions.
- **Deliveries and loading protocols.** Define truck routes, staging areas, and quiet-hours near guestrooms/residences. If the site uses a shared dock, allocate time blocks, priority rules, and cost-sharing for dock management. Union bargaining agreements may also need to be reviewed and coordinated with the hospitality agreements. Request landlord cooperation on signage and security to keep delivery vehicles out of guest zones.
- **Sidewalk obligations.** Allocate responsibility for sidewalk cleaning, snow removal, and compliance with local requirements. Confirm coordination with building rules, insurance obligations, and indemnity provisions, particularly where sidewalks are shared with residential or retail components. If there are multiple entrances to the building, consider diagramming the parts of the sidewalk maintained by each party.

## Building Exterior

- **Advertising, signage, and branding.** Establish clear rights for exterior signage, including blade signs, marquee signage, and digital displays. Confirm whether the building imposes “match neighbor” aesthetic standards that require modification of the operator’s standard brand signage. Also, determine whether landmark or historic district restrictions limit size, placement, materials, or hours of illumination. Evaluate sightlines to ensure that the hotel’s signage is not subordinate to or visually obstructed by competing tenants. Where the hotel operates under a franchise, reconcile brand-mandated signage standards with the building owner’s signage

criteria and obtain written approvals necessary to avoid post-execution conflicts. If the operator has a drawing of the proposed signage, consider having it reviewed and pre-approved by the property owner prior to execution of the real estate agreement, and attach the pre-approved drawing to the agreement as an exhibit.

- **ADA entrances.** Clarify whether the required accessible entrance is located within the leased premises or in a common area of the building. Allocate responsibility for design, construction, cost, and ongoing maintenance of ramps, lifts, automatic doors, and related improvements. Coordinate any façade or grade modifications with landmark authorities or other applicable regulatory bodies and ensure that access routes comply with applicable ADA and local accessibility codes.
- **Ductwork and roof.** Define rights to install and route “black iron” and other exhaust ductwork, kitchen hood paths, and related systems, including required lot-line clearances and code-compliant shaft construction. Address scrubbers, odor mitigation systems, roof fans, compressors, satellite equipment, and other rooftop installations, and confirm structural capacity and access rights. Allocate responsibility for installation, screening, maintenance, and utility connections, and clearly specify end-of-term removal and restoration obligations for specialty alterations to the façade, roof, or structural systems.

## Inside the Building Footprint and Common Areas

- **Utilities.** Confirm the availability, capacity, and installation timelines for all required utilities, including gas service (with attention to potential moratoria or utility-company delays), domestic cold and hot water, sanitary sewer, electrical capacity, internet and fiber connectivity, and chilled water loops where applicable. If utility lines must cross neighboring premises or common areas, secure the necessary easements and access rights. Tie utility readiness to the applicable outside date in the lease, license, or purchase agreement, with appropriate rent abatement or termination rights if the required utility capacity is not delivered on time.
- **Freight and BOH.** Verify that freight elevators are pallet-capable and sized appropriately for hospitality operations and confirm loading windows and routing that avoid conflict with guests and residential occupants in mixed-use properties. Establish vendor access protocols, including service entrances, security procedures, and permitted hours of operation. Operators should clearly understand any incremental costs, staffing requirements, union rules, or time restrictions associated with use of freight, dock, or BOH facilities.

- **Food supplies and deliveries.** Confirm permitted loading windows, truck size limitations, vertical clearances, and dock priority rules, particularly where loading facilities are shared. Map the BOH circulation path from loading areas to cold and dry storage to minimize guest interface and ensure compliance with health code separation requirements. For perishable goods, verify adequate walk-in refrigeration and freezer capacity, dedicated condenser units and electrical loads, and temperature monitoring systems with alarm capability. Require an integrated pest-control protocol and a spill response plan for loading docks and BOH corridors. Where deliveries must occur during off-hours, confirm security screening procedures, access control, and insurance requirements for vendors.
- **Output, refuse, and grease.** Allocate responsibility for wet and dry trash handling, refrigerated trash rooms (if required), grease interceptors, sewer capacity, and composting/recycling programs. In mixed-use settings, address “coming to the nuisance” acknowledgments to mitigate future disputes with residential or office users. Ensure that outdoor refuse areas, venting and rooftop exhaust rights, utility capacity, and BOH logistics are clearly depicted in agreement exhibits, including approval pathways, responsible parties, and implementation timelines. Identify applicable local laws governing trash, recycling, composting, hazardous materials disposal, and exhaust or ducting requirements and include flexibility in the hospitality property agreements to accommodate future regulatory changes without triggering default or onerous restoration obligations.

### **Drive-Through Lanes, Stacking, and Traffic Circulation**

Drive-through elements are typically restricted or prohibited in hotel, mixed-use, and urban hospitality settings due to traffic, noise, light spill, and queuing concerns. Where drive-through service is permitted or contemplated—whether for mobile-order pickup, or hybrid fast-casual concepts—practitioners should evaluate the applicable zoning and land use allowances governing drive-through operations. They should also confirm compliance with curb-cut regulations and any department of transportation requirements affecting access and roadway modifications. Capacity constraints, including required stacking depth and on-site vehicle circulation, must be analyzed to determine whether the site can safely accommodate anticipated demand. Ingress and egress points should be studied to identify potential conflicts with pedestrian pathways, hotel arrivals, valet operations, or residential traffic. Noise, light spill, and signage controls should be reviewed to ensure compliance with local ordinances and to mitigate impacts on guestrooms or adjacent residential uses.

Validate drive-through feasibility early with the operator’s architect, traffic engineer, and brand representatives, as these

considerations can determine the operational success or failure of the restaurant component. Note that drive-through configurations can create access barriers for individuals with physical disabilities who cannot drive or cannot operate a vehicle independently. Confirm whether federal, state, or local disability-access laws require alternative ordering methods, walk-up windows, curbside service, or other pickup accommodations to ensure equal access.

## **Alterations, Build-Out, and Capital Planning**

### **Alterations and Specialty Installations**

Kitchen build-outs, hoods, black iron, roof fans, interceptors, and mechanical, electrical, and plumbing (MEP) are specialty alterations. The parties should synchronize the alterations, end-of-term, and surrender sections so that the end-of-term obligations are known and budgeted years in advance. Unexpected removal or restoration requirements can cause a late-term financial shock.

### **Capital and Allowances (Tenant Improvement (TI)/PIP Coordination)**

Align TI allowances, brand (franchise) PIP requirements, and operator capital plans up front, both from a monetary perspective and for time scheduling. Define disbursement mechanics (progress vs. completion), lien-free requisitions, retention and retainage, and a punch-list closeout. Clarify whether allowances may fund MEP upgrades that benefit the base building and whether unused allowance may be applied to soft costs (permitting/design), FF&E, or rent credits. Reserve requirements and lender consent over capital changes are discussed below.

### **Construction Insurance (Builder’s Risk and Contractor Coverage)**

For any landlord’s work or TI’s, confirm early which party is responsible for construction-phase insurance, including builder’s risk, contractor’s general liability, workers’ compensation, and any required installation floater coverage. Hospitality build-outs involve specialty MEP, black-iron ductwork, grease systems, roof penetrations, and structural modifications. These exposures must be insured appropriately. Counsel should coordinate with the operator’s and landlord’s architects, engineers, and general contractor teams to confirm coverage requirements, identify gaps, and ensure that the construction contract, lease, and indemnity provisions align. Operators should consult their insurance broker or risk consultant early to confirm appropriate coverage levels and identify exclusions that may affect construction-phase work.

# Due Diligence for Hospitality Real Estate

## “As Is” Means “As Is”

Courts in many jurisdictions give substantial weight to “as-is” acceptance clauses in purchase agreements and leases. In some states, such as New York, courts routinely dismiss claims relating to undisclosed violations, zoning constraints, or physical conditions where the information was publicly available and the contract allocates compliance responsibility to the tenant or purchaser. See *Landucci v. De La Rosa*, 54 Misc. 3d 1224(A) (Civ. Ct. 2017); and *Purmil Co., LLC v. Chuk Dey India Too, Inc.*, 20 Misc. 3d 1136(A), 2008 NY Slip Op 51766(U). An “as-is” provision, particularly when paired with merger and non-reliance language, can significantly limit post-closing or post-commencement remedies.

The practical takeaway for counsel is to not rely on assumptions or informal representations. Make sure the client conducts in-person inspections and assist the client to verify zoning, obtain certificates of occupancy, and ensure code compliance. Review public records for violations or open permits and clearly document in the contracts which party is responsible for curing existing conditions, securing approvals, and bearing associated costs. If the business plan depends on a specific regulatory status or physical configuration, that requirement should be affirmatively stated in the agreement rather than assumed.

## Intended Use Must Drive the Diligence Scope

Hospitality practitioners must begin with a clear understanding of the intended use of the premises—restaurant, lounge, rooftop, entertainment venue, banquet facility, hotel F&B outlet, or mixed-use hybrid. The viability of that use depends heavily on regulatory permissions and building-level constraints. The diligence scope should be tailored accordingly.

Early in the process, review the building permits and alteration history to understand what was lawfully constructed and approved. Confirm the existing certificate of occupancy and identify whether amendments, variances, or special permits would be required to accommodate the proposed concept. Analyze zoning permissions, overlays, and any conditional use requirements. At the same time, determine which party—the owner/landlord or the tenant/operator—bears responsibility for representations, warranties, agency filings, construction work, and the costs necessary to ensure that the intended use is either currently permitted or will become permitted through landlord’s work, TIs, or coordinated regulatory approvals.

Many disputes arise when the tenant assumes that a prior similar use of the premises by a similar concept or a

landlord’s representation of “restaurant-ready” premises implies full regulatory compliance. The agreement should expressly state what the landlord warrants, what the tenant accepts on an as-is basis, which party funds required upgrades, and what happens if the intended use cannot legally be achieved in the required time frame. Risk allocation mechanisms may include outside dates tied to permit approvals, rent abatement during cure periods, price adjustments, or termination rights if approvals are denied or cannot be obtained within a defined time frame.

Parties should consider and include dispute resolution mechanics in their agreement. The parties should carefully evaluate the anticipated costs of dispute resolution, including the impact of forum selection, choice of law, and venue provisions. The decision to require litigation or arbitration—whether before a single mutually agreed-upon arbitrator, a panel of retired judges, or an organization such as Judicial Arbitration and Mediation Services or American Arbitration Association—can significantly affect both expense and strategy.

## Construction Coordination

At every stage involving physical work (i.e., evaluating delivery condition, planning TIs, confirming MEP capacity, or negotiating restoration obligations), counsel should involve the operator’s and property owner’s architects, engineers, and building contractors early in the process. Hospitality projects turn on technical feasibility, and these professionals are best positioned to identify mechanical, structural, utility, venting, and code issues before they become legal disputes. It is part of the lawyer’s role to coordinate these professionals, gather their input, and ensure that their findings are accurately reflected in the agreements. Counsel should include applicable delivery standards, approval procedures, outside dates, cure mechanics, and defined responsibilities for costs, permitting, and compliance. Early alignment of responsibilities and scheduling significantly reduces redesign risk, change-order disputes, and opening-day delays.

## Diligence Workstreams

Hospitality diligence should be organized into coordinated workstreams so that legal, design, operational, and brand considerations are evaluated in parallel rather than sequentially. The following categories provide a practical framework.

- **Title and survey.** Order and review a current title report and survey to identify easements, restrictive covenants, encroachments, and access issues that may affect the project. Confirm that legal rights align with on-the-ground conditions, particularly for access, loading, rooftop areas, and shared facilities.
- **Zoning and licensing.** Confirm that the proposed use (i.e., restaurant, hotel, entertainment venue, or hybrid concept)

is permitted as-of-right or determine what discretionary approvals are required. Evaluate early the feasibility and timing of sidewalk cafés, outdoor dining, place of assembly permits, and/or liquor licenses.

- **Building/MEP.** Assess exhaust routes, gas capacity, electrical load, cold water and hot water supply, sewer capacity, and chilled water availability. Confirm structural loads for kitchen equipment, rooftop units, and event spaces, and identify any required infrastructure upgrades.
- **ADA and accessibility.** Review guest circulation, accessible entrances, ramps, elevators, restrooms, and pool lifts, and allocate responsibility between the premises and common areas. If a drive-through is included, confirm whether alternative ordering or pickup accommodation is required for accessibility compliance.
- **Landmarks and overlays.** Determine whether landmark or special district controls apply and what approvals are required for façade changes, signage, rooftop visibility, lighting, and materials. Build approval timelines into the project schedule.
- **Brand standards alignment.** Compare the existing condition against brand standards, including elevators, BOH segregation, signage, lobby configuration, and life safety systems. Consider whether any exclusive signage rights are needed in connection with competing brands.

When drafting the hospitality property agreements, counsel should consider using diagrams in addition to written descriptions when preparing exhibits to clearly depict rights, routes, and responsibility allocations.

## Key Contract Terms: Transfers, Good Guy Guaranties, and Exit Planning

### Assignments and Subleases

Hospitality concepts evolve over time, and agreements should anticipate change rather than restrict it unnecessarily. The agreements should include objective consent standards (i.e., net worth, years of relevant experience, number of keys or seats operated) to reduce uncertainty in future transfer or assignment requests. Where feasible, consider preapproving certain categories of transferees or successor profiles, particularly for anticipated chef, key person, or brand transitions.

Transfer and assignment rights should be aligned with the permitted use clause and any operating covenants so that future rebranding, repositioning, or concept pivots remain contractually viable. The parties should also evaluate how the agreement affects their respective ability to sell, finance,

recapitalize, or restructure their businesses, and adjust consent and transfer provisions accordingly.

### Landlord Transfer Restrictions – Recapture, Change-of-Control, and Renewal/Option Rights

Landlord transfer restrictions can significantly impair the value of a hospitality business, particularly where goodwill, location, operational continuity, and long-term branding matter. Overly restrictive assignment and transfer provisions can depress enterprise value and limit exit flexibility. A transfer clause that permits recapture in ordinary-course transactions, treats minor equity shifts as assignments, or extinguishes renewal rights upon transition can undermine going-concern value and destabilize long-term operations. These provisions should be negotiated with the same rigor as economic terms.

- **Recapture rights.** Recapture provisions under which a landlord may terminate the lease and retake the premises upon a proposed assignment or sublease—are particularly disruptive in hospitality settings. If counsel for the operator cannot negotiate to delete recapture, they should seek to narrowly limit such rights to bona fide, third-party sales of the entire business as a going-concern and to expressly exclude subleases, transfers to affiliates, internal restructurings, and transfers to pre-approved operator profiles that satisfy objective financial and operational criteria. The mere existence of a recapture right can prevent a sale or refinancing.
- **Change-of-control.** Change-of-control provisions require similar discipline. Many leases treat equity transfers as deemed assignments, even where day-to-day operations and management remain unchanged. “Control” should be tied to operational authority rather than passive ownership percentages. Carveouts for the operator should address ordinary-course recapitalizations, internal reorganizations, upstream or fund-level transfers, and equity issuances that do not alter the operating team or brand standards.
- **Renewal and option rights.** Renewal options, expansion rights, rights of first offer or refusal, and other negotiated options should be protected by the operator in connection with any permitted transfer. If such rights are drafted as “personal” to the original tenant and extinguished upon assignment, the value of the leasehold may be significantly impaired, and a buyer or successor brand may decline to proceed. The agreement should provide that renewal, expansion, and other options run with the lease and remain exercisable by any transferee that meets the agreed objective approval standards.

When drafting renewal terms, counsel for the operator should cross check the expansion options, right of first offer

or right of first refusal rights, or purchase options, alongside the transfer section to ensure that these rights survive assignment and are not “personal” to the original tenant unless expressly intended. Confirm the interplay between transfers and the renewal/option mechanics to prevent inadvertent loss of term or expansion rights during a sale or re-tenanting event.

## **Security Deposits, Letters of Credit, and Guaranties**

The agreements should define the form and amount of any security deposit (i.e., cash vs. standby letter of credit (LOC)), draw conditions (i.e., objective triggers for applying the security deposit), notice, and replenishment timelines. For LOCs, specify issuer ratings, auto-renew or “evergreen” features, and transfer rights on landlord sale or financing. Consider burn-down schedules tied to rent commencement, debt service coverage ratio and/or net operating income tests, or other objective standards. Upon transfer to a pre-approved operator profile, set up a mechanism to replace or decrease the security deposits and adjust guaranties consistent with the transferee’s credit.

## **Good Guy Guaranties and Personal Exposure**

Personal guaranties concentrate financial risk on individual principals, and even “good guy” guaranties only provide limited protection if their conditions are strictly satisfied. Release from liability typically hinges on a valid surrender in full compliance with the lease. Courts in several jurisdictions (e.g., New York) have interpreted surrender requirements broadly, sometimes holding guarantors liable where tenants vacated and returned keys but failed to meet technical conditions such as restoration standards or obtaining the landlord’s written acceptance. See, e.g., *Elk 33 E. 33rd LLC v. Sticky’s Corp. LLC*, 228 A.D.3d 455 (App. Div. 1st Dept. 2024); *122 E. 42nd St., LLC v. Scharf*, 211 A.D.3d 517, 518 (App. Div. 1st Dept. 2022); and *Empire LLC v. Sharapov*, 192 A.D.3d 417 (App. Div. 1st Dept. 2021). The lease and guaranty should therefore clearly define what constitutes an effective surrender, including notice requirements, physical condition of the premises, payment of accrued sums, and whether written acknowledgment from the landlord is required.

Guaranty provisions should also be evaluated alongside transfer, change-of-control, and restructuring rights. Align guaranty triggers with negotiated transfer rights so that personal exposure does not unintentionally impede future ownership transitions or operational pivots.

## **Surrender and Restoration**

Counsel for the operator should review and negotiate the alterations and surrender provisions together. This is particularly important where hospitality buildouts involve

significant infrastructure (i.e., kitchen hoods, exhaust ducts, roof curbs, grease interceptors, and specialty MEP installations). For initial installations that may benefit the base building, the landlord may consider granting the tenant the option—but not the obligation—to remove such improvements at the end of the term. To avoid uncertainty years later, attach a detailed restoration matrix exhibit at signing that identifies item-by-item, whether each installation must be removed, capped, or left in place, especially for installations that were purchased with a TI allowance or would be used by another future tenant. Front-end clarity on restoration obligations materially reduces end-of-term disputes and unexpected capital exposure.

## **Exculpation**

Mutual exculpation provisions can limit each party’s recourse to the assets of the contracting entity and prevent unintended personal liability for officers, directors, members, managers, or partners. In hospitality transactions, where special purpose entities and layered ownership structures are common, clear exculpation language helps align risk with the negotiated guaranties and avoids backdoor personal exposure through indemnity or default provisions.

## **Franchisor Restrictions**

In franchised hospitality operations, lease assignments and changes of control typically require separate franchisor consent, which may be conditioned on transfer fees, operator qualification standards, or PIP-driven upgrades. Franchise selection itself carries meaningful financial and operational risk, such as long-term fee structures, mandated capital improvements, and performance standards can significantly affect cash flow and exit value. Therefore, counsel for the operator should coordinate transfer and exit provisions in both the lease and franchise agreement to preserve flexibility, protect going-concern value, and minimize friction at transition.

## **Special Structures—Mixed-Use Condominiums**

In mixed-use condominium projects, the condominium declaration and related governing documents function like a private zoning code. They allocate rights and obligations relating to curb access and valet operations, loading docks, security protocols, elevator usage, BOH corridors, utilities, trash and grease rooms, roof and mechanical pads, signage zones, and cost-sharing.

Hotels within the condominium structure often require heightened guest protection, including separation, odor mitigation, queue control, and security screening. These requirements can materially constrain restaurants, rooftop

bars, or entertainment uses if circulation paths, operating hours, and mechanical systems are not coordinated early. Counsel should review the declaration, bylaws, and house rules with the same rigor applied to zoning and land use diligence, and consider addressing the following in the hospitality agreements:

- **Access and circulation.** Clearly define elevator allocations (guest vs. service), permitted loading paths, and after-hours egress for event venues. Confirm that accessible routes are ADA compliant and do not depend on discretionary building management approvals.
- **Noise, light, and vibration.** Establish objective performance standards and testing criteria rather than subjective “nuisance” language. If quiet hours apply near guestrooms or residential units, ensure they are compatible with the intended hospitality operations and reflected in the business plan.
- **Common area maintenance (CAM) and costing.** Hospitality users often consume disproportionate utilities, security, cleaning, and vertical transportation resources. Negotiate fixed shares, submetering, or weighted consumption formulas to avoid open-ended cost exposure for intensive users.
- **Brand consents.** Where a hotel brand is involved, confirm that brand review and approval rights are coordinated with condominium approval processes and lender requirements. Misalignment in timing or design authority can delay openings or refinancings.
- **Competing uses and exclusivity.** Review the declaration and any existing exclusivity provisions to determine whether prior operators hold use protections that could restrict your client’s concept. Conversely, consider negotiating appropriate exclusivity protections where the hospitality component is central to the project’s identity.

## Financing and Lender Expectations

Expect lenders to scrutinize lease economics, delivery risk, remedy frameworks (i.e., abatement, self-help, and/or termination triggers), and any exclusivity provisions that could impair alternative F&B concepts or constrain future repositioning. Lenders also review management and franchise agreements, require comfort letters or subordination non-disturbance and attornment agreements, and impose no adverse amendment covenants to preserve the value of the loan collateral.

Many lender concerns will overlap with the operator’s due diligence focus. Counsel should ensure that definitions, cure periods, outside dates, and approval standards are

harmonized across credit documents and hospitality agreements to avoid unintended cross-defaults. Lenders, and also franchisors, often require lien rights on equipment, trade fixtures, and personal property, as well as cure and step-in rights, all of which must be coordinated with and reflected in the landlord’s agreements.

## Jurisdictional Nuances—New York Spotlight

Hospitality transactions are highly jurisdiction-specific, and local regulatory frameworks can materially affect feasibility, timing, and risk allocation. New York City is often cited as a complex example, but the broader lesson applies in any major market: agency rules, enforcement practices, and evolving legislation must be integrated into both diligence and drafting.

- **Sidewalks and outdoor dining.** New York City’s rules for sidewalk maintenance, including the sidewalk café and roadway dining permissions are highly specific and have changed since the COVID-19 pandemic. Leases should clearly allocate maintenance and compliance responsibility and reference applicable agency guidance and checklists. The parties should also incorporate queue management, sanitation, composting, and trash staging requirements into operating plans and coordinate with landlord obligations.
- **Landmarks and façades.** In landmark districts, exterior modifications (i.e., signage, awnings, lighting, and entrance alterations) may require approvals beyond landlord consent, and in some cases are not allowed at all. The parties should set realistic approval timelines and consider deemed consent, where appropriate, while acknowledging planning committee control.
- **Utilities and gas.** In certain locations, gas service constraints, installation delays, and periodic moratoria in certain neighborhoods can materially affect restaurant and hotel F&B concepts. The parties should structure outside dates, rent abatement provisions, and TI schedules around actual utility lead times rather than aspirational target dates.
- **Place of assembly.** Large restaurants, entertainment venues, and hotel ballrooms may require “place of assembly” permits depending on occupancy thresholds. These approvals should be identified early and integrated into construction sequencing, delivery obligations, and contingency planning. See New York City Buildings Place of Assembly Certificate of Operation information [here](#) (place of assembly permits required for occupancies of 75 or more persons gathering indoors, or 200 or more gathering outdoors).

- **Health grading system.** In New York City, restaurant sanitary grades can be affected by conditions originating outside the premises (e.g., pests, vermin, leaks, or shared-building deficiencies). Counsel for the operator should negotiate provisions requiring the landlord to use commercially reasonable or best efforts to remediate building-wide issues that could negatively impact inspections, grades, or public perception, and to allow for lengthy cure periods for the operator to improve its operations prior to reinspection. Property owners, conversely, will want the right to compel prompt improvements in the sanitary grade, and even to terminate the operator's occupancy agreement, especially where the sanitary grade diminishes the reputation of the building or other tenants.

## Red Flags and Closing Observations

Certain recurring issues in hospitality transactions warrant early attention because they can undermine feasibility, financing, or long-term value if left unaddressed. One common pressure point is broad "as-is" acceptance language without landlord representations regarding lawful use and building-level defects, particularly where compliance risk is shifted entirely to the operator. The parties should clearly diagram outdoor dining and activation rights, including identifying table layouts, barriers, queue areas, operating hours, and noise parameters. These should be expressly tied to applicable agency approvals. Likewise, the parties must commit to exhaust paths and roof rights in writing. The absence of documented duct routes or rooftop access can be fatal for restaurant and hotel kitchen concepts. The parties should specifically define utility capacity (i.e., kW, CFH, GPM, and chilled water availability) and avoid "as available" service language without delivery deadlines or outside dates. Counsel should also guard against rules and regulations

provisions that allow unilateral landlord modifications to override negotiated rights. Counsel should also ensure that "good guy" guaranty release conditions are clearly stated and realistically achievable under time-sensitive surrender scenarios.

Throughout the transaction, practitioners should actively coordinate with the operator's and owner's consultants, including insurance advisors, brokers, architects, engineers, contractors, and brand representatives. Their technical analysis—covering insurance requirements, venting paths, utility capacity, structural supports, ADA compliance, and brand standards—must inform the drafting of delivery conditions, TI provisions, approval mechanics, and remedies. Translating operational and technical realities into clear contractual language is a core part of the lawyer's role in hospitality real estate.

## Related Content

### Resource Kits

- [Hotel and Hospitality Property Resource Kit](#)
- [Restaurant Leasing Resource Kit](#)

### Practice Notes

- [Hotel Franchise Agreements](#)
- [Hotel Mortgage Financing \(Lender and Borrower Considerations\)](#)
- [Hotel Purchase and Sale Agreements](#)
- [Restaurant Lease Agreements](#)

### Templates

- [Hotel Acquisition Letter of Intent](#)
- [Hotel Management Agreement](#)
- [Purchase and Sale Agreement \(Hotel\)](#)

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### **Larry Welch, Partner, Frankfurt Kurnit Klein & Selz PC**

He handles leases, purchases, sales, construction, and financings of diverse commercial properties such as retail stores, restaurants, and office spaces nationwide. Mr. Welch supports clients throughout their real estate ventures, from starting businesses to acquiring investment properties and personal residences.

In addition to his real estate transactions practice, Mr. Welch works with the Frankfurt Kurnit [Litigation Group](#) to resolve real estate-related disputes, and with the Frankfurt Kurnit [Hospitality Group](#) to provide legal advice to restaurateurs and their business partners.

He chairs the New York City Bar Association's Hospitality Law Committee and has spoken on real estate topics for various organizations. Mr. Welch is an active member and former Chair of the "Prep in Real Estate" Alumni Committee for "Prep for Prep."

He holds a J.D. from Fordham University School of Law and a B.A. from Vassar College and is admitted to practice in New York.

### **Damian P. Conforti, Partner, Mandelbaum Barrett PC**

From the courtroom to the boardroom: Damian Conforti draws from decades of trial experience to provide strategic guidance to executives facing complex legal and operational challenges.

Damian brings the unique perspective of a former prosecutor to his role as corporate counsel to various closely held and publicly traded companies. He seamlessly blends dispute resolution skills with corporate strategy to deliver real-time solutions to company leaders tasked with addressing critical governance issues. Over the past 20+ years, he has successfully litigated in the court room all types of complex commercial disputes, including those involving real estate claims, bank and wire fraud, unlawful employment practices, oppressed shareholder claims, and shareholder derivative actions. Damian also routinely advises corporate leadership on a multitude of legal issues, including mergers and acquisitions, debt and equity financing, internal investigations and other operational issues.

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