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Manatt Rolls Out its Latest Strategic Partnership

Timi A. Hallem

Michael Polentz

The hotel industry survived the savings and loan crisis in the late 1980s, and it will survive the subprime lending crisis and implosion of Wall Street as well. But, not every borrower, owner, operator or lender will survive these difficult economic times. The key is to be agile enough to be one of the survivors.

Recognizing the need to work with clients not only to ensure long-term survival, but also to capitalize on new opportunities as they arise, Manatt, Phelps & Phillips, LLP, is pleased to announce the creation of its latest strategic partnership. The attorneys in Manatt's Hospitality Practice Group and the consultants at Warnick+Company remember the lessons of previous industry downturns, have experience in restructuring, repositioning, and quick, creative response garnered during years of responding to the challenges and opportunities that resulted from the RTC, FIRREA, and that \$480 billion¹ bailout.

To give our clients maximum benefit from Manatt's and Warnick's collective experiences, Manatt and Warnick have teamed up to give lenders, borrowers, owners, operators and investors comprehensive business and legal strategies for highly leveraged assets that are not making pro-forma or cannot repay their loans.

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OUR PRACTICE

The attorneys in Manatt's Hospitality Practice Group have the knowledge and experience required to give our clients the edge to succeed. Our professionals are among the premier practitioners in the nation, with proficiency in virtually every aspect of the hospitality industry ... [more](#)

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Manatt's and Warnick's strategic team has the ability to answer all of the complex questions and assist its clients in understanding and evaluating the intricacies and implications of the answers: Is it a market problem? Is it a brand or management problem? Is more time the answer? Do you need to restructure your debt? Do you need to file bankruptcy? Do you need to find an angel? Do you need to replace management? How long do you wait before you decide that a loan cannot be worked out? How do you protect or perfect your interest? How do you survive, when many will not?

To quote a radio commentator from the 1970s, "At times like these, it is important to remember that there have always been times like these."

¹ *New York Times*, July 13, 1996.

FOR ADDITIONAL INFORMATION ON THIS ISSUE, CONTACT:



Timi A. Hallem Ms. Hallem's expertise focuses on all areas of real property and land use, including hospitality, commercial, industrial, residential, public/private development and mixed-use projects. Her practice covers all aspects of real property and hotel ownership and development, including acquisition, entitlement, development, financing, leasing and disposition.



Michael Polentz Mr. Polentz's practice focuses on leasing, acquisition, disposition, financing, land use, development, construction, operation and business and commercial law for hospitality, commercial, industrial, residential, public/private development and mixed-use projects.

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Sustainable Development—Why Hospitality Developers Are Going Green

Matthew A. Dombroski

Like many other sectors of the economy, the hospitality industry is in the midst of an increased focus on environmentally sound development and operation practices. A confluence of many conditions has contributed to this focus, including ever-increasing energy costs, the preferences of environmentally aware guests (a growing segment of the population), lower costs associated with the ever-expanding

range of “green” materials and construction methods, and the establishment of government requirements and incentive programs for environmentally sustainable developments and operations. As a result of these various forces, “green” hospitality development is best thought of not as admirable but costly, but instead as a pragmatic (and still admirable) way to reap valuable economic dividends.

The most traditional means by which “going green” in the hospitality industry yields economic benefits is via efficiency gains and associated cost savings. A now-ubiquitous example is the practice of inviting guests to reuse their towels in order to save energy and water. While there is certainly nothing wrong with this well-established practice (except that it is sometimes cynically viewed as greenwashing for those operations that do not otherwise prioritize environmental goals), many more (and more sophisticated) products and processes have been developed to promote green goals, including energy control systems that enable the operation of HVAC and other guest room systems only when the room’s key card is inserted into a wall-mounted slot, water recycling systems that enable the reuse of the vast majority of water used for laundry purposes (leading to potential conservation of tens of millions of gallons of water each year), and solar-powered water-heating systems that save both energy and associated greenhouse gas emissions, among other innovations. Other low-hanging fruit includes low-flow showerheads, energy efficient lighting solutions, and consideration of the types (and production life cycle) of foods/ingredients, cleaning products, and groundskeeping methods employed by the operator.

Not only do these innovations yield efficiency gains and direct cost savings, but they may also garner federal and (in some cases) state tax incentives. For example, on October 3, 2008, the Energy Efficient Commercial Building Tax Deduction and the Solar Investment Tax Credit were renewed as part of the Emergency Economic Stabilization Act of 2008. Many of the innovations discussed above, as well as many other green approaches employed by the hospitality industry, may qualify for both of these tax incentives, along with many other tax incentive programs at all levels of government.

In addition to (and in conjunction with) green innovations and tax incentives, much of the environmental focus in the hospitality industry has been on the LEED (Leadership in Energy and Environmental Design) Green Building Rating System, a voluntary standard to evaluate and certify green building design, construction, and operation. The LEED standard, first established in 1998, is administered by the

U.S. Green Building Council (the USGBC is a nonprofit organization focused on sustainability in the design, construction, and operation of buildings) and has developed into the nationally accepted standard. Notably, the federal General Services Administration found the LEED system to be preferable to competing green rating systems, which is significant because the federal government is a major owner and operator of commercial buildings.

The LEED standard covers new commercial construction, major renovation projects, interior renovation projects, and existing building operations. While there currently exists no hospitality-specific LEED standard, hotels may seek certification under the more general LEED standards described above. The LEED system provides a framework for evaluating new and existing development projects and awarding one of four levels of LEED certification—"Certified," "Silver," "Gold," or "Platinum"—based on the number of points awarded for attaining various green benchmarks, including with respect to water efficiency, energy use and conservation, and indoor environmental quality, among others. The benefits of LEED certification are many and continue to grow. LEED certification serves as reliable evidence to guests/customers, the media, investors, government entities, and the public at large that your hotel has the green characteristics that you are claiming. This can generate increased positive interest in your project from these same persons.

Although LEED certification triggers eligibility for many federal and state tax incentives, in some instances, LEED certification is not optional. For example, California, Illinois, Michigan, and New York, among others, require certain state-owned buildings to achieve LEED certification. These laws may impact hotel development projects that involve public funding or the lease of government-owned property for hospitality projects. Finally, green innovations incentivized by LEED certification are also inherently valuable in that they promote more efficient use of fuel, water, and other materials. As these green technologies mature, and as more are developed, they gain a greater foothold in the marketplace, are cheaper to produce, and are an even better investment.

After a hotel has expended effort in achieving LEED compliance and/or engaging in other efforts to minimize environmental impact, one final consideration is how to ensure that the hotel reaps the greatest possible reward. As mentioned above, materials and energy reduction reap obvious economic benefits, as do the various tax incentives that may be available. But another consideration is creating goodwill and generating interest in your operation by

communicating your efforts to your guests and the public at large. This includes not only traditional advertising, but also instructing your staff on how to speak knowledgeably with guests regarding your environmental initiatives, as well as other means of communicating to your guests that you are indeed a good environmental citizen.

While some question the viability of sustainable development practices in an industry that is already taking significant adverse economic hits, looking long term, as we are so often forced to do, there is no doubt that "green" is here to stay.

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Matthew A. Dombroski Mr. Dombroski's practice focuses on environmental corporate compliance counseling, environmental issues in connection with real estate financing transactions, corporate dispositions, and real estate development projects, as well as regulatory compliance and toxic tort litigation. Mr. Dombroski has extensive experience in advising clients on environmental matters arising under federal and state statutes, including the Clean Water Act, the Resource Conservation and Recovery Act (RCRA), and the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), as well as state analogues thereto.

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