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STRUCTURING NEVADA HOTEL CASINO DEALS

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One of the first questions clients ask when considering a hotel casino acquisition or the development of a new hotel casino project in Nevada is whether they have to obtain a gaming license. Since applying for a gaming license requires the disclosure of extensive, private personal information — and obtaining a gaming license can take several months — buyers and developers often want to learn about alternatives to the license.

Those alternatives are briefly summarized below.

Sale-Leaseback: The sale-leaseback structure involves the current hotel casino owner and/or operator selling substantially all of the assets to the buyer. The buyer, in turn, then leases all of such assets back to the seller. The seller retains the gaming assets and liabilities, utilizes the other assets per the lease and continues to operate the hotel casino for the lease term. The advantage of this structure is that the sale transaction can be closed quickly since the parties do not have to wait for the buyer to obtain its gaming license. A potential disadvantage to the seller is that it still has to operate the property. Possible disadvantages to the buyer are that the buyer assumes the future licensing risk and, generally speaking, cannot share in the gaming revenues. Further, if the buyer or its designee cannot obtain a gaming license prior to the end of the lease term, the seller will have to close down the casino.

In the short-term, this structure is used to permit a faster close of the sale transaction and give the buyer some additional time to obtain a gaming license. In the long-term, this structure is used where the buyer does not desire to obtain a gaming license. An example of this long-term use is where certain gaming companies like Caesars Entertainment and MGM Resorts sell their hotel casinos to REITs and then lease their properties back in order to continue operating them.

Third-Party Operator Lease: The buyer or developer in a third-party operator lease structure leases the casino to a third-party operator who obtains a gaming license. These third-party operators have often previously been licensed and are licensed at multiple locations. As such, this operator can get licensed faster than someone who has not previously been licensed. The advantage of this structure to the seller is that it provides more deal certainty over a buyer who has not been licensed before and may not be able to obtain a license. The advantage to the buyer is that it mitigates the licensing risk. A potential disadvantage to the seller is that the closing will not be able to happen as quickly as in the sale-leaseback structure. The disadvantage to the buyer is that the buyer cannot, generally speaking, share in the gaming revenues.

In the short-term, this structure is used to close the sale transaction quickly and to give the buyer some additional time to obtain a gaming license. In the long-term, this structure is used where the buyer does not desire to ever obtain a gaming license. For example, some of the large hotel chains eschew operating gaming at their properties and prefer to contract with an operator to provide this amenity to their guests.

The foregoing two structures may also be combined such that in a sale-leaseback transaction, a third-party operator, rather than the buyer, can use the leaseback period to obtain its gaming license. Once the operator obtains

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its gaming license, the lease expires and the operator assumes operation of the casino from the seller.

Management Agreement: The management agreement structure involves the buyer or developer entering into a management agreement with an experienced manager who will operate the casino on the owner's behalf. With this structure, both the owner and the manager have to obtain gaming approvals. For this reason, this structure is not often used and it does not generally have a short-term application. In the long-term, this structure is used where the owner wants to utilize the manager's casino expertise and the owner and the manager each want to share in the gaming revenue generated from the casino.

In summary, a buyer or developer does not have to obtain a gaming license in order to have gaming at its hotel casino. If, however, the buyer or developer desires to retain or share in the gaming revenues, then it must obtain and maintain the applicable gaming approval. Further, in a competitive bidding sales process, a buyer that is familiar with the alternative ways these deals can be structured may be able to set itself apart from the other buyers by proposing a transaction that can be closed quickly, which would be more attractive to a seller.