

ONTARIO RESTAURANT HOTEL & MOTEL ASSOCIATION PRESENTS



# NAVIGATING UNCERTAINTY IN HOSPITALITY AGREEMENTS:

*LESSONS FOR EVERY LEVEL OF  
YOUR OPERATION*

Sheraton Parkway Toronto North | October 20 & 21, 2025

[www.ontariohospitalityconference.com](http://www.ontariohospitalityconference.com)

## Speaker Session Spotlight



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# AGENDA

Topics covered

1. Overview of Hotel Acquisition Process
2. Transaction Structure
3. Due Diligence and Deliverables
4. Liquor Licence
5. Management/ Franchise Contracts
6. Licensing and Operational Issues
7. Employment Matters
8. Readjustments and Assignments

**Q&A and Practical Takeaways**

# Foundational Decision:

## Asset vs. Share Purchase

Feature	Asset Purchase	Share Purchase
<b>What is Acquired?</b>	Specific list of assets (e.g., land, equipment, contracts) and <i>selected</i> liabilities.	The entire legal entity (the Corporation or Partnership) that owns the assets.
<b>Liability</b>	<b>Selective:</b> Buyer only assumes liabilities explicitly listed or related to the purchased assets.	<b>Comprehensive:</b> Buyer assumes <i>all</i> liabilities of the entity (known and unknown, historical, tax, legal).
<b>Tax Basis (Buyer)</b>	<b>"Step-Up":</b> Buyer's tax cost of assets is the purchase price. Higher depreciation/CCA potential.	<b>No Change:</b> Buyer inherits the entity's existing, usually lower, historical tax cost of assets. Lower depreciation/CCA potential.
<b>Complexity</b>	Higher administrative burden (re-titling, re-negotiating contracts/permits).	Lower administrative burden (ownership changes, entity and contracts remain).

# ASSET

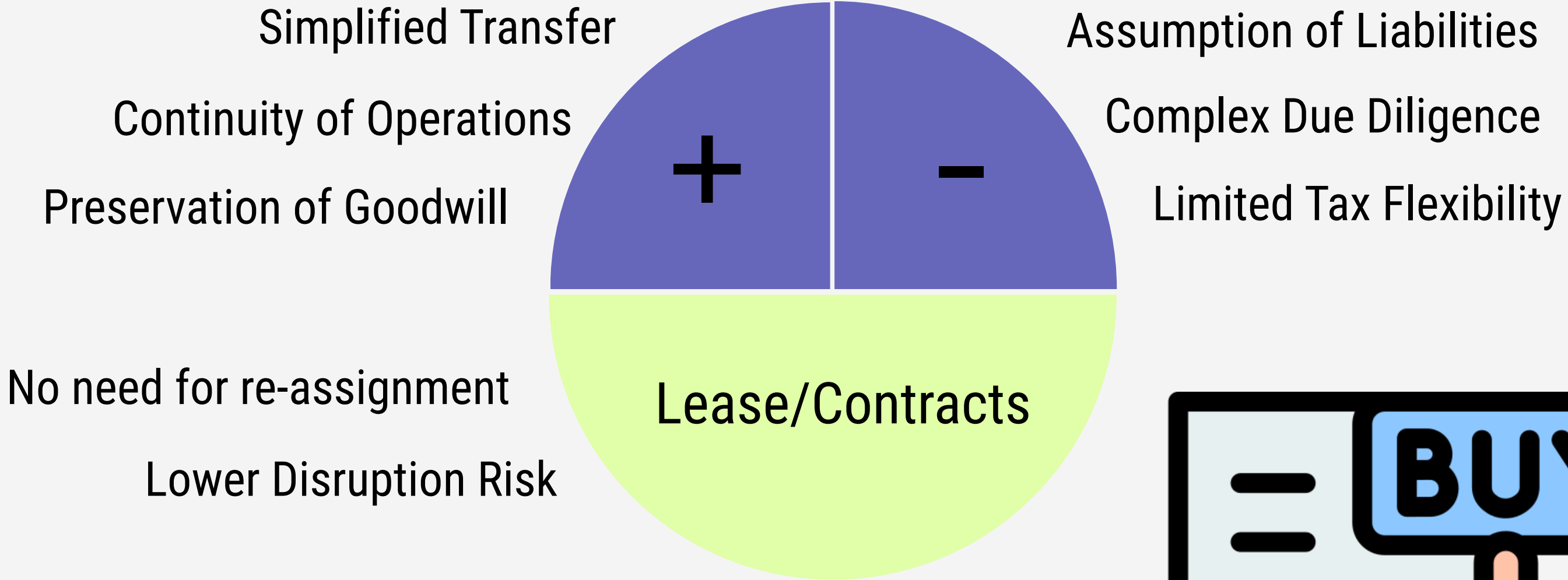
Flexibility  
Clean Start  
Tax Advantages  
Selective Acquisition



Transfer Complexity  
Employee and Contract Disruption  
Tax on Transfer: Double Taxation

Potential Delays  
Assignment Required  
Opportunity to Renegotiate

# SHARE



# YOUR STRUCTURE

## CORPORATE

The buyer acquires the **shares of a corporation**, taking ownership of the entity that holds the hotel.

Allowing for **continuity of operations**, with contracts, employees, and licences typically remaining in place. The buyer also inherits all corporate liabilities, making **due diligence** essential.

## PARTNERSHIP

The buyer acquires an **interest in a partnership** that owns or operates the hotel.

This structure offers flexibility in profit allocation and management, but can introduce joint liability between partners. The **purchase agreement** must carefully address **transfer restrictions** and the rights of existing partners.

## LIMITED PARTNERSHIP

The buyer may acquire either the **general or limited partner's interest**.

This allows for liability limitation (for limited partners) and tax flow-through treatment, which can be advantageous. However, the buyer must review the partnership agreement closely to confirm transfer rights and profit distribution terms.

## OpCo/PROPERTY OWNER

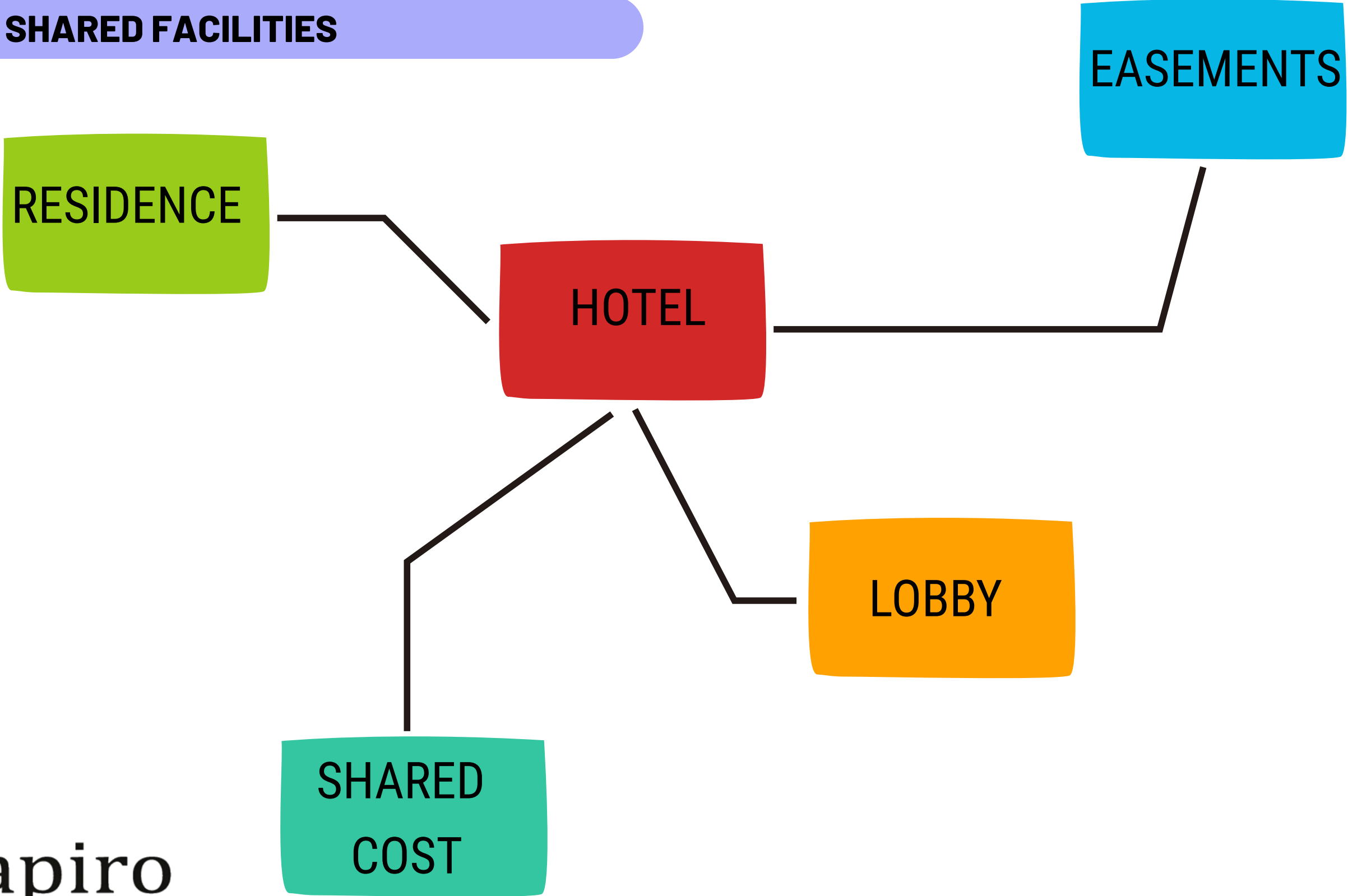
A dual-entity structure where the operating company (OpCo) runs the hotel business, and a property-owning company (PropCo) holds the real estate.

A purchase may involve acquiring both entities or just one, depending on the deal. This separation provides liability insulation and financing flexibility, but adds complexity in coordination and due diligence.



# DUE DILIGENCE

## SHARED FACILITIES



# DUE DILIGENCE

## EASEMENTS

- **Encumbrance on Title:** Easements are permanent legal interests registered on the property's title. They can affect the ability to expand, build new structures, or securely fence the property.
- **Appraisal Impact:** An easement that burdens the hotel property (allowing others to use the land) can negatively impact its value, whereas an easement that benefits the hotel (giving the hotel access over another's land) can be a positive feature.

## SHARED COST

- **Complex Allocation:** Costs for shared assets must be allocated according to a pre-defined formula in the Shared Facilities Agreement(s) or reciprocal agreement. These formulas can be complex (e.g., based on square footage, proportionate use, or fixed percentages).
- **Risk and Budgeting:** The buyer inherits the responsibility to pay their allocated share, regardless of their management efficiency. The due diligence process must verify the accuracy and fairness of past cost allocations.



## RENTAL HOUSING

- Legal Complexity
- Condo-Hotel Structure
- Financing and Exit

# DUE DILIGENCE

## "As Is, Where Is" Clause and Waivers

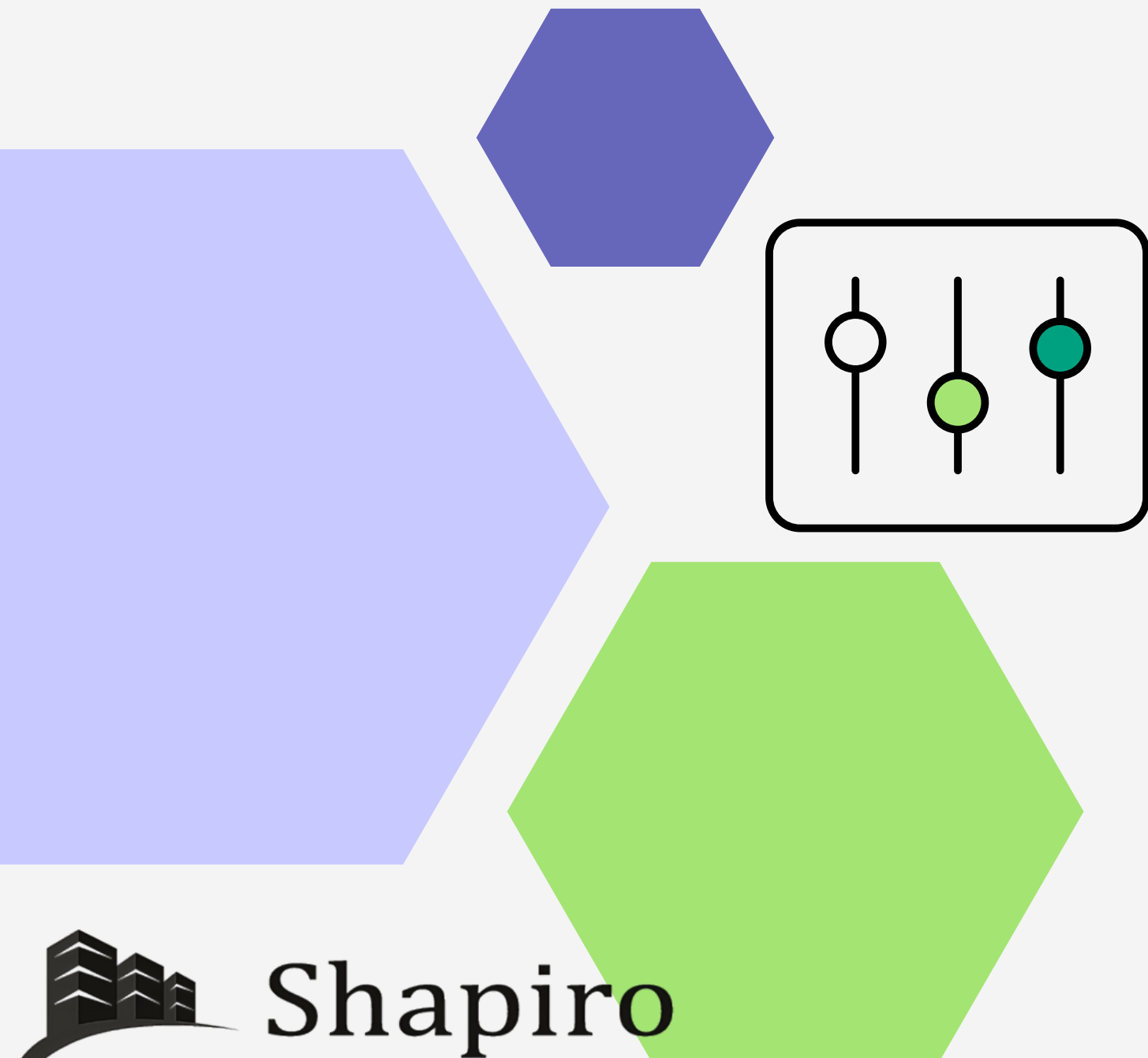
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**ABSOLUTE NECESSITY FOR INSPECTIONS:** THIS CLAUSE SHIFTS THE ENTIRE BURDEN OF RISK AND INVESTIGATION ONTO THE BUYER. A THOROUGH AND EXPERT DUE DILIGENCE PERIOD IS THE BUYER'S ONLY PROTECTION.

### Waiver of Claims

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**MAXIMAL DUE DILIGENCE PERIOD:** THE BUYER MUST NEGOTIATE A SUFFICIENTLY LONG TIME FRAME TO COMPLETE ALL NECESSARY INSPECTIONS AND INVESTIGATIONS BEFORE WAIVING THE RIGHT TO TERMINATE THE AGREEMENT.



# DUE DILIGENCE

## Insurance Review and Requirements

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- **REVIEW OF SELLER'S COVERAGE**

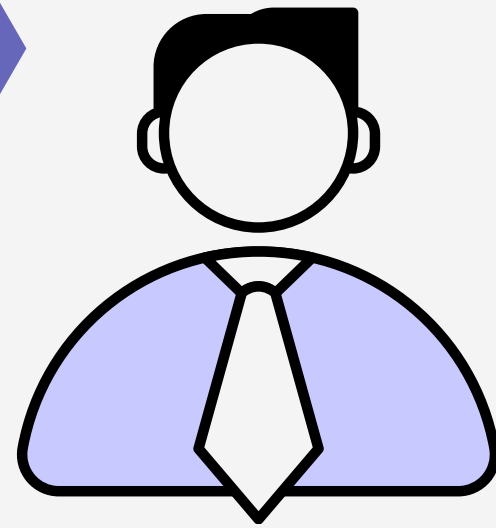
Request the seller's current and past insurance policies and a Loss Run Report (claims history) for the last 5-7 years.

- **OBTAIN BINDERS FOR NEW COVERAGE**

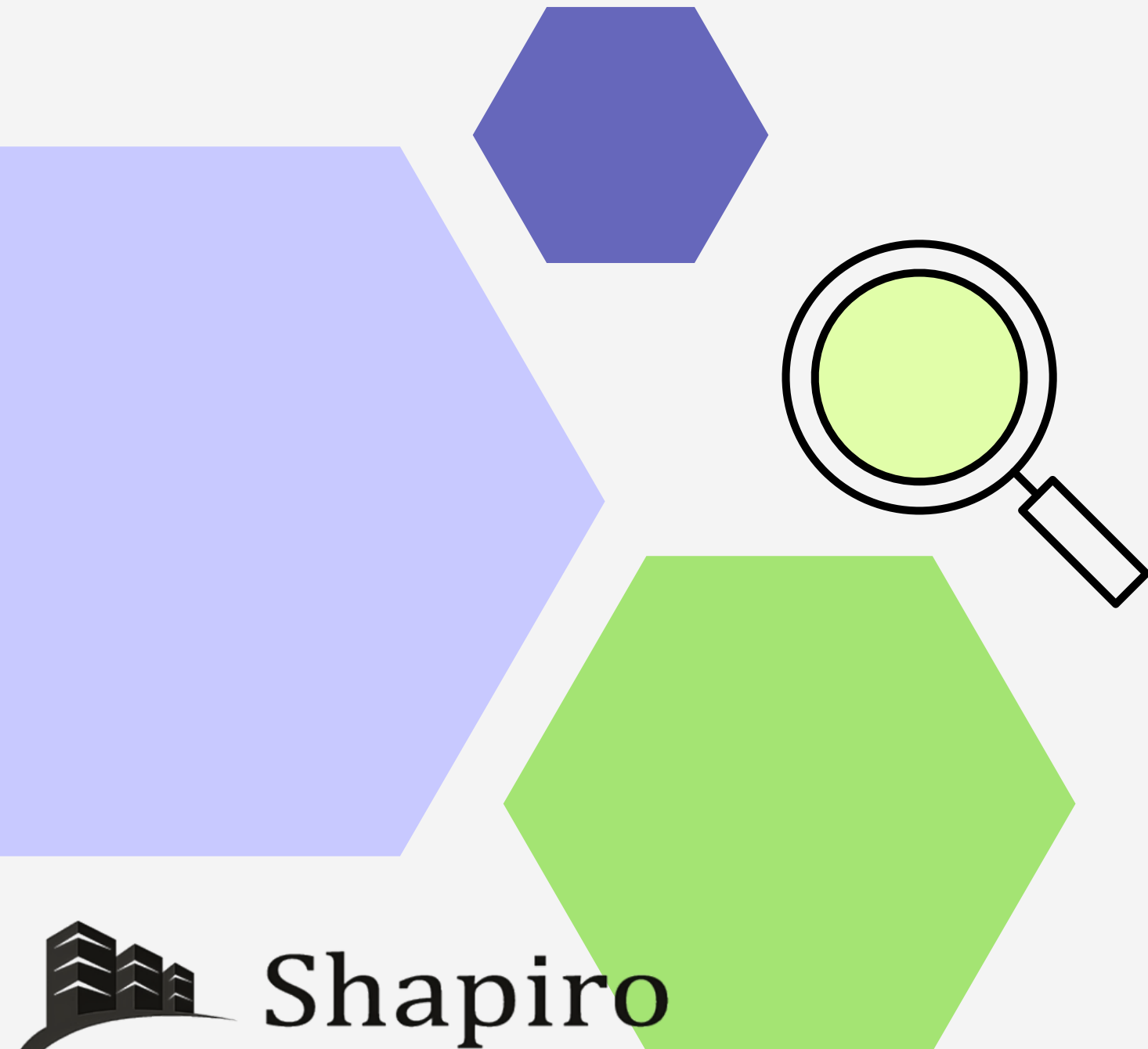
The buyer's broker must obtain firm quotes and a commitment (binder) for all required commercial insurance: Commercial Property, General Liability, Liquor Liability (mandatory if serving alcohol), Business Interruption, and Equipment Breakdown coverage.

- **TITLE INSURANCE**

Protects the buyer against title defects, zoning issues, and existing easements and encumbrances not disclosed or discoverable by a standard title search.



# DUE DILIGENCE



## Inspection Type

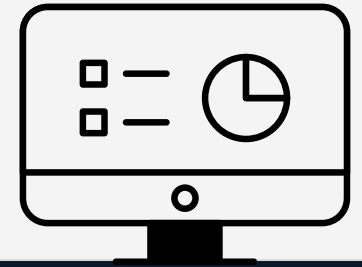
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- PROPERTY CONDITION ASSESSMENT / BUILDING INSPECTION
- ENVIRONMENTAL SITE ASSESSMENT
- SYSTEM/EQUIPMENT INSPECTION
- LIFE SAFETY AND CODE COMPLIANCE
- IT & SECURITY AUDIT

# CONTRACTS



# CONTRACTS



## Strategy & Required Document Action

### 1 Automatic Renewal

Due diligence must identify all service contracts and their termination/renewal clauses. Often, these contracts require a specific **30-day return notice before cancellation/rollover**. Missing this window obligates the buyer to a new term.

### Non-performance Clause/Liability

The goal is to avoid inheriting a claim or liability under the assigned contract. Instead of relying on a non-performance clause (which invites a dispute), the ideal strategy is a **Mutual Termination Agreement** signed by the vendor, the service provider, and the buyer.

### Mutual Termination

This agreement explicitly terminates the vendor's contract effective at closing. This uses the service provider's desire to keep the business to agree to **mutually release all parties from past or future non-performance liability**. The buyer then enters a new, favorable contract post-closing.

# LIQUOR LICENCE

## SELLER'S ROLE

- **Expires/Cancelled** upon transfer approval; cannot be used by the Buyer.
- Must sign **Authorization to Contract Out** to allow the Buyer to operate pre-approval
- Must provide **Consent to Transfer** and confirm there are **no outstanding fines or compliance issues** that would block the transfer.
- Any compliance issues (fines, violations) under the Seller's name can **delay or block** the Buyer's transfer approval.

## BUYER'S ROLE

- Must apply for a formal Transfer of Licence (or new licence) to the AGCO.
- **Authorization to Contract Out** to sell liquor between closing and final AGCO approval.
- Must submit full **Personal & Entity Disclosure** (background checks) and obtain **Municipal Clearance** (Fire, Building, Zoning)
- Operating without authorization or failing disclosure requirements can lead to licence refusal and fines.



# MANAGEMENT CONTRACT

**Brand  
Standards**

**Renovations  
(PIP)**

**Fees**

**Assignment/  
Transfer**

# FRANCHISE CONTRACT

## **Brand Standards**

Strict, non-negotiable rules governing quality, service, and appearance. The Owner must comply to avoid default.

## **Fees**

Includes an Initial Fee, ongoing Royalty Fees (a percentage of rooms revenue), and System Fees for marketing, reservations, and loyalty programs.

## **Renovations (PIP)**

The Franchisor has the right to mandate significant capital improvements (e.g., Property Improvement Plan or PIP) at the Owner's expense to keep with the brand.

## **Assignment/Transfer**

The agreement is personal and non-transferable without the Franchisor's consent, which they will only grant after approving the new owner.

# EMPLOYEES

Employment Continuity

New Employment Contract

Termination Liability

Key Employee Protection



# READJUSTMENTS:

## Realty Tax Adjustments

**Realty taxes** (property taxes) are the most common item requiring adjustment. The goal is to ensure the Buyer pays for the period after closing, and the Seller pays for the period before closing.

**Adjustment Method:** Taxes are typically adjusted based on the current year's assessment. The Seller credits the Buyer for any portion of the taxes the Seller has already paid that cover the period on or after the closing date. Conversely, the Buyer is responsible for taxes that were due before closing but remain unpaid.

**Basis for Adjustment:** Taxes are adjusted based on the most recent actual levy for the current year. If the current year's taxes have not been finalized, the parties agree to adjust based on the previous year's taxes, or a blend of the previous and current estimated amounts.



# READJUSTMENTS:

## Tax Appeals and Future Re-adjustments



Due to the size and complexity of hotel assessments, tax appeals are common. The PSA must explicitly allocate the benefits and liabilities of current and future appeals.

- Appeals for the Period Prior to Closing:
  - The Seller retains the right to pursue appeals for any tax year before the closing date.
  - The Seller retains 100% of any refund generated by those appeals.
  - However, if a pre-closing appeal results in an increase to the taxes payable for a period the Buyer now owns, the Seller often has to indemnify (protect) the Buyer for that increase.
- Appeals Spanning the Closing Date:
  - If a successful appeal results in a refund for the tax year in which closing occurs, the refund is generally apportioned (split) between the Seller and the Buyer based on the number of days each party owned the hotel during that tax year.
- Cooperation: The Buyer must agree to cooperate with the Seller (at the Seller's cost) by signing any necessary forms or documentation required to finalize or receive refunds from the Seller's pre-closing appeals.

# READJUSTMENTS: Pre-Paid and Accrued Items

## Pre-Paid Items



**Credit to Seller.** The Buyer reimburses the Seller for any expenses paid in advance that cover services provided on or after the closing date.

## Accrued Items



**Credit to Buyer.** The Seller reimburses the Buyer for liabilities incurred before the closing date but not yet paid (which the Buyer will pay after closing).

## Accrued Guest Revenue



**Critical Hotel Item.** Any revenue (e.g., room payments, deposits) collected by the Seller before closing for guest stays on or after the closing date is credited to the Buyer.

## Inventory



**Separate Payment.** Inventory (food, beverages, operating supplies, retail stock) is typically purchased by the Buyer under a separate agreement but is included in the final adjustments as a closing price component.

# Lender Collateral

The Buyer (Borrower) provides security by executing a Lender Collateral and Security over Material Agreements in favour of the Lender.



This is a **security interest**, granting the Lender conditional rights, but not outright ownership, unless the Owner defaults on the loan.



The Lender's rights include the power to cure any Owner default under the assigned agreements and the ability to assume the contracts upon foreclosure to maintain operations and preserve resale value.

# Franchise Agreement

- **Franchisor Consent:** The transfer of the hotel requires the Franchisor's written consent to the assignment (or a new agreement) and approval of the Buyer's financials. This is a crucial closing condition.
- The **Comfort Letter** (Tri-Party Agreement): This document formalizes the Lender's security with the Franchisor. It requires the Franchisor to:
  - Acknowledge the Lender's Collateral Assignment.
  - Give the Lender notice of any Owner default and a chance to cure it.
  - Agree to recognize and deal with the Lender as the new owner/franchisee if a foreclosure occurs.



**PIP:** The Franchisor often mandates a Property Improvement Plan (PIP) as a condition of consent, which the Buyer must agree to fund.

# ASSIGNMENT

## Management Contract

The **Hotel Management Agreement (HMA)** governs the daily operation of the hotel by a professional management company (the Manager).



### ISSUES

- **Subordination:** The Manager agrees that the HMA is subordinate to the Lender's mortgage.
- **Non-Disturbance:** The Lender agrees not to terminate the HMA upon foreclosure, provided the Manager continues to perform its obligation.
- **Attornment:** The Manager agrees to recognize the Lender (or a new buyer) as the Owner after a foreclosure, ensuring uninterrupted hotel operation.

# DISCLAIMER

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Any  
*questions?*

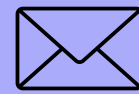


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