BEYOND THE FRANCHISE AGREEMENT

A LOOK AT THE “OTHER” AGREEMENTS
BETWEEN THE FRANCHISOR AND FRANCHISEE
Your Speakers

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Note on Disclosure

- FTC Franchise Rule requires certain ancillary agreements to be disclosed in the FDD

- Item 22: Must attach “all proposed agreements regarding the franchise offering, including the franchise agreement and any lease, options, and purchase agreements”

- Broad in scope
Hypothetical

- Sal operates a hotel in Sleepy Eye, MN, at a location which he leases from the property owner and landlord, Lori.

- Sal has a franchise agreement with ZZZ Hotel Group, the Franchisor, and has been operating the hotel as a Slumber Inn (ZZZ’s flagship brand) for 5 years.

- Sal is looking to sell his hotel, and Bev is interested in buying the hotel and keeping it as a Slumber Inn.
Hypothetical

- Bev is in negotiations with Sal to purchase the franchise rights, FF&E, and goodwill for the Slumber Inn.

- Bev is in talks with ZZZ about entering into a new franchise agreement.

- Bev is in discussions with Lori about assuming Sal’s lease for the hotel property.

- Finally, Bev is trying to secure a loan from Len, a regional Minnesota bank. The loan will be used to both purchase the business and perform certain upgrades that ZZZ will require.
The “Core” Agreements

- Purchase and Sale Agreement (Sal <-> Bev)
- Franchise Agreement (Bev <-> ZZZ)
- Lease (Bev <-> Lori)
- Loan Agreement (Bev <-> Len)
The “Other” Agreements

- Letter of Intent (Bev <-> ZZZ)
- Minnesota State Addendum (Bev <-> ZZZ)
- Personal Guaranty (Bev <-> ZZZ)
- Exemption Certification (Bev)
The “Other” Agreements

- Transfer Agreement (Sal <-> ZZZ)
- Collateral Assignment of Lease (Bev <-> ZZZ <-> Lori)
- Lender Comfort Letter (Bev <-> ZZZ <-> Len)
Letter of Intent (Bev <-> ZZZ)

- Non-binding
- Sets out basic terms of franchise agreement
- Exclusive bargaining period
Letter of Intent (Bev <-> ZZZ)

- Confidentiality – Shared business information should be confidential but not LOI itself
- Deposit fee
- Disclosure requirements
Minnesota State Addendum (Bev <-> ZZZ)

- Termination and non-renewal rights; notice
- No release language
- No consent to liquidated damages
Minnesota State Addendum (Bev <-> ZZZ)

- Franchisor must protect trademarks; indemnify franchisee

- Choice of law does not reduce rights under Minn. Franchise Law
  - Dickey’s Barbeque

- Addendum to FDD also required
Personal Guaranty (Bev <-> ZZZ)

- Financial guaranty

- Performance guaranty

- Spousal guaranty – Risk Factor

- Alternatives
  - Net worth covenant
  - Limited guaranty
Exemption Certification (Bev)

- Different State and Federal exemptions and requirements
- Franchisor due diligence
- Advantages/disadvantages
- Avoid legal conclusions
Transfer Agreement (Sal <-> ZZZ)

- Consent to transfer
- Assignment/assumption
- Release of seller
- Termination of prior agreement
- Disclosure requirements
Collateral Assignment of Lease (Bev <-> ZZZ <-> Lori)

- Who owns the real estate?

- Does ZZZ want to be in the real estate game?

- Collateral assignment is between Bev and ZZZ with Lori’s consent
  - Right to cure defaults
  - Right to take over lease upon termination
  - Right to re-assign lease to new franchisee
Lender Comfort Letter (Bev <-> ZZZ <-> Len)

- Tri-party agreement
- Good standing representation
- Lender’s right to cure defaults, assume franchise rights
- Lender’s right to exit the brand
Questions?

Thank You!