

# Negotiating a Restaurant Management Agreement

Philip M. Colicchio, Esq.  
Robert W. Keddie, III, Esq.  
Colicchio Consulting, LLC  
Taylor Colicchio & Silverman, LLP  
502 Carnegie Center, Suite 103  
Princeton, New Jersey 08505  
(609) 987-0022

# Presenters



- Phil Colicchio, Founding partner and leader of the firm's Commercial Law and Hospitality Practice Groups.
  - Member of The Board of Advisors at the Auburn University School of Hotel and Restaurant Management in Auburn, Alabama.
  - Recently appointed by Gov. Chris Christie to serve as a Member on the New Jersey Council on the Arts.
  - In 2004, established Colicchio Consulting, LLC, to provide strategic and curating services to the hospitality industry, including hotels, resorts, private clubs and professional sports franchises.
- Lectures regularly on the topics of restaurant development, the negotiation of licensing and management agreements between accomplished chefs/restaurateurs and mixed use real estate/hotel/casino owners, as well as on restaurant leasing.
- Also speaks frequently on the subject of private REIT investments, as serves as general counsel to REIT Capital Solutions LLC, of Short Hills, New Jersey and Los Angeles, California.

# Presenters



- Rob Keddie, is partner of Taylor Colicchio & Silverman, LLP and a principal in Colicchio Consulting, LLC.
  - Millersville University of Pennsylvania (B.A. 1991)
  - New York Law School (1994)
  - Board Member for the Vetri Foundation for Children.
- Primarily focuses on representing renowned chefs, developers and hospitality professionals in the structuring of specialty consulting, partnership and joint venture agreements.
- Advises chefs and developers on restaurant placement, consults with hotels and casinos on food and beverage strategies, curates the intelligent placement of food and beverage professionals, and functions as a "turn around" consultant on hospitality projects.

# Presenters



- Brian Stys, is President of Stys Hospitality Initiative.
  - Bachelor of Science in Civil Engineering from the University of Rhode Island
  - Attended Harvard Extension School for Business Administration
  - Has twenty-five plus years of construction operations knowledge
- Developed and managed construction teams on a national level from restaurant concept development to post-construction.
- Frequent speaker at industry events and is often used as a resource for many industry articles in national trade publications, newspapers and other media outlets.
- Cultivated relationships with prestigious clients including Nobu, The Cheesecake Factory, P.F. Chang's China Bistro, Union Square Hospitality Group, Jimmy Buffet's Margaritaville, McCormick and Schmick Seafood Restaurants, Tom Colicchio's Craft, Ruth's Chris Steakhouse, Dave and Buster's, Yard House, Thomas Keller's Bouchon and Hard Rock Café to name a few

# Basic Assumptions

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- The Chef is a James Beard award winning chef with four (4) other restaurants in major metropolitan areas. She also serves as a judge on a popular television food competition show.

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- The Management Company, a nationally renowned hotel management company, is looking for a third party Food and Beverage provider to generate an upscale Food and Beverage experience and bring cache to a new Miami project.

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- The Miami project is owned by a recognized boutique hotel developer with other locations in New York, Los Angeles, and Las Vegas.

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- The Miami Project food and beverage operations contain a 125 seat restaurant and bar, lobby bar, pool grill and bar, catering and meeting rooms to accommodate up to 150 people, room service, and mini bar.



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- Renovation of the hotel has a capped budget of \$1.5 million for construction and rehab of food and beverage spaces.
  - Form of agreement will be a Management Agreement.

# Assumptions known only to Management Company

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- Management Company has had poor performance results on its last two (2) projects and needs to succeed to re-establish itself in a very competitive marketplace.

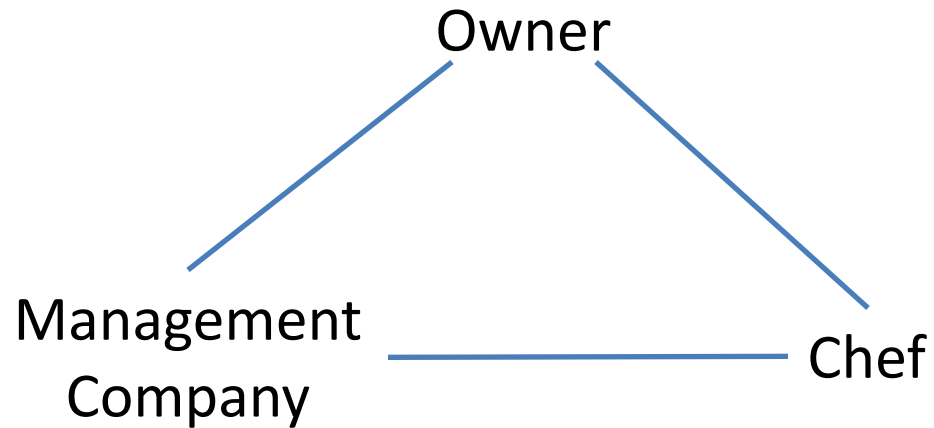
# Assumptions known only to Chef

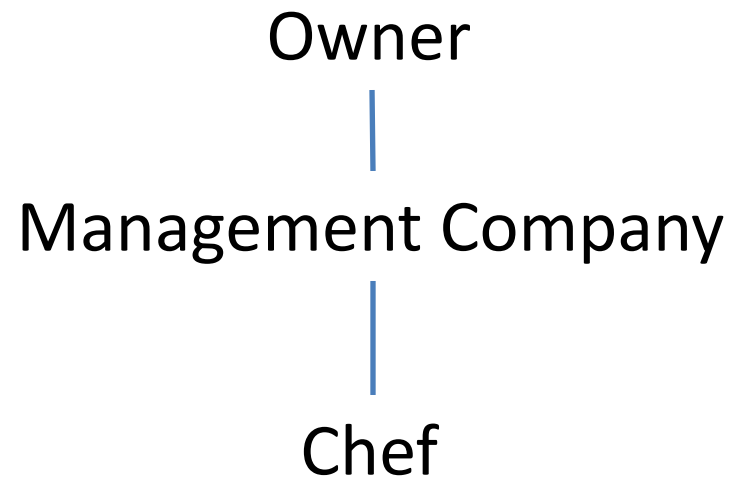
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- Chef has multiple sexual harassment claims, all of which have been settled out of court prior to any publicity. These issues have created a strain on cash flow and need for additional infusion.

# Contractual Arrangement

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# Factors

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- Capital issues/budget
- Design
- Construction oversight
- Operational standards
- Day to day operations
- Risk assumptions/insurance/indemnity
- Compensation payment source
- Ownership of IP
- Future development opportunity
- Marketing budget/approvals
- Terms of Management Company Agreement with Owner

# Scope of Chef Services

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Who operates the restaurant?

Joint

# Factors

Design/construction of space	Joint
Menu	Chef
Chef time on site	Chef
Use of Chef's name/concept/recipes	Chef
Kitchen operations	Chef
Operational procedures FOH	Management Company
Day to day operations FOH	Management Company
Day to day management overall	Management Company
Operational/capital requirements	Management Company
Insurance/risk management/ legal approval/safety	Management Company



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Who operates the lobby bar?

Management Company

# Large revenue generator

Concept/menu

Chef

Day to day operations

Management Company

Capital/budget issues

Management Company

Insurance/liability issues

Management Company

Liquor license

Management Company

ownership/control

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# Who operates the pool bar?

Management Company

# Another good revenue generator

Concept/menu

Chef

Day to day operations

Management Company

Insurance/liability issue

Management Company

Liquor license

Management Company

ownership/control

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Who operates the catering and meeting rooms?

Joint

# Factors

Concept/menu	Chef
Upscale offerings	Chef
Kitchen operation	Chef
Day to day operations FOH	Management Company
Budgeting and costing	Management Company
Insurance/liability	Management Company
Advertising and sales	Management Company

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Who operates room service?

Management Company

# No good can come once food leaves the kitchen

Concept/menu

Chef/Management  
Company

Day to day operations

Management Company

Insurance/liability

Management Company

Coordination with Hotel  
employees

Management Company



# Employees (yours or mine?)

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- Develop and execute vision
- Maintain control of product
- Minimize liability issues –systems in place
- Insurance protection
- Oversight and operation day to day
- Budget/capital issues
- Advertising, planning, and marketing

# Employed by the Chef

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- Chef de Cuisine
- General Manager
- Beverage Director
  - Key personnel for control
  - Allow Chef to develop and execute his vision
  - Risk/insure/employment --- minimal for Chef
  - Minimal capital investment

# Employed by Management Company

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- All other employees
  - FOH
  - BOH
  - Subject to oversight from GM –Chef employee
- Operational systems in place
- Economy of scale on costs
- Better suited to assume risk/insurance placement/indemnification

# Compensation to Chef

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- License/Development Fee
- Management Fee
- Performance Bonus

# License/Development Fee

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- Upfront payment
- Payment over time
- Blended payment
- Investment of Owner/Management Company in Chef
- What is market rate?
- What is Owner/Management Company receiving for the fee?

# Management Fee

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- Set fee per month
- Percentage of Gross Sales
- How do you define Gross Sales?
  - All Food and Beverage operations
  - Segregate parts of Food and Beverage
- Benefits of top line compensation
  - For Chef
  - For Management Company
- Shift of Percentage based on sales level or term of agreement
- Yearly minimum for Chef
- Tied to Hotel performance – occupancy minimums

# Performance Bonus

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- Percentage of net profits
- Definition on net profits
  - Fit out amortization
  - Preferred return
  - Rent
  - Other costs to Management Company/Owner
- Shift of percentage based on profit levels or time of agreement
- Tied to Management Company performance threshold

# Session Evaluation

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