

**STANDARD FORM OF HOTEL SECURITY AGREEMENT
(INCLUDING TRADEMARKS) (ANNOTATED WITH
INTRODUCTION)**

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Current Issues in the Negotiation of Hotel Security Agreements

The issues in the documentation of security interests in hotel personal property remain traditional issues of defining and classifying the collateral and determining the appropriate steps to create and perfect the security interests. Hotel-related personal property interests predictably include property within the scope of the UCC and property outside the UCC in which lien interests must be created by possession, control, etc. Hotels also involve more complex property interests, such as intangible intellectual property.

The more uncertain and complex issues in hotel-related security agreements are those of the functional relationship of the collateral property to the true value and actual operation of the hotel. Almost without comment, many of the crucial operating assets have shifted in the last decade from ownership by the borrower to ownership and/or control by some undefined entity within the affiliated group of the management company or even elsewhere. Software, reservation systems, database compilations of employee and business information, operating systems, and accounting information are now often off-site and used by a hotel through the internet or a private system controlled by affiliates of the management company or by an out-sourced supplier. In many situations, the use of these assets lacks any legal formality and is highly vulnerable to disruption or termination in the event of a dispute with the management company or service provider. Similarly, the lender and borrower are vulnerable to the insolvency or other business risks of the service provider, introducing a credit risk not usually underwritten in making a hotel loan.

Thus, perfect and fully exhaustive documentation that grants an interest in all of the borrower's right, title and interest in its own assets may not in fact convey essential operating assets and may not permit the lender to recover the value that it has anticipated in underwriting the loan. A lender who has obtained full security interests from the borrower must still examine whether the borrower in fact owns

the relevant property. The growth of chain and centrally provided services, and the corresponding decrease in on-site equipment, books and records and personnel, continue to create new issues for lenders.

TABLE OF CONTENTS

Page

1. Defined Terms	4
2. Grant of Security Interest	3
3. Rights of Lender; Limitations on Lender's Obligations.	4
4. Representations and Warranties	5
5. Covenants	7
6. Lender's Appointment as Attorney-in-Fact.	10
7. Performance by Lender of Borrower's Obligations	12
8. Proceeds	12
9. Remedies	12
10. Limitation on Duties Regarding Preservation of Collateral	13
11. Powers Coupled with an Interest	13
12. Severability	13
13. Paragraph Headings	13
14. No Waiver; Cumulative Remedies	13

15. Waivers and Amendments; Successors and Assigns; Governing Law 13

16. Notices 14