

MANAGEMENT AGREEMENT

This Management Agreement ("Agreement") is made and entered into on this 17th day of September, 1999 ("Effective Date") between Landmark Hotels, LLC., a California limited liability company, whose address is 450 Newport Center Drive, Suite 480, Newport Beach, CA 92660 ("Owner") and Promus Hotels, Inc., a Delaware corporation, whose address is 755 Crossover Lane, Memphis, TN 38117 ("Manager").

ARTICLE 1 THE HOTEL

Section 1.01. The Hotel. The subject matter of this Agreement is the management of the "Hotel," as defined in the Embassy Suites License Agreement attached hereto as Exhibit "A" (hereinafter collectively referred to as the "License Agreement"), by Manager. The License Agreement shall exclusively govern Owner's right to use the Embassy Suites "System" (as defined in the License Agreement) in the operation of the Hotel. Owner hereby expressly acknowledges that it shall not derive any rights in or to the use of the "Embassy Suites" name or the Embassy Suites System from this Agreement. In the event that the License Agreement covers the same matter (for example, insurance) as set forth in this Agreement, the provisions of the License Agreement shall apply and prevail over the comparable provisions contained in this Agreement.

ARTICLE 2 TERM

Section 2.01. Opening Date. Manager shall open the Hotel to the public and commence doing business as a Embassy Suites hotel on the date all the conditions precedent in this Agreement and the License Agreement to the opening of the Hotel as a Embassy Suites hotel have been satisfied ("Opening Date"), which date shall be confirmed in an addendum to this Agreement.

Section 2.02. Term. The term shall commence on the Effective Date and continue for the term of years from the Opening Date set forth on Exhibit "B" ("Term").

Section 2.03. Extension of Term. The Term of this Agreement may be extended in the manner set forth on Exhibit "B." If Manager desires to so extend, Manager shall provide written notice of the exercise of each renewal option prior to 180 days before the end of the Term of the Agreement, as the same may have been extended.

ARTICLE 3
MANAGER'S OBLIGATIONS

Section 3.01. Manager's Obligations. Manager shall, on behalf of Owner and at Owner's expense, direct the operation of the Hotel pursuant to the terms of this Agreement and the License Agreement. Manager shall be exclusively responsible for directing the day-to-day activities of the Hotel and establishing all policies and procedures relating to the management and operation of the Hotel. Except as specifically otherwise provided, all cost(s) and expense(s) incurred by Manager in association with the performance of the obligations hereinafter set forth shall be pre-opening expenses if incurred prior to the Opening Date and operating costs if incurred after the Opening Date and shall accordingly be paid from the Pre-Opening Bank(s) Account as hereinafter defined in Section 3.01(i) or the Bank Account(s) as hereinafter defined in Section 3.01(iv) below. Manager, during the Term, shall have the following obligations:

- (i) **Pre-Opening.** Six (6) months prior to the scheduled Opening Date, Manager shall commence implementation of a pre-opening program which shall include all activities necessary to financially and operationally prepare the Hotel for opening. To implement the pre-opening program, Manager shall prepare a comprehensive pre-opening budget which shall be submitted to Owner for Owner's approval ninety (90) days after the Effective Date ("Pre-Opening Budget"). All costs and expenses of the pre-opening program shall be paid from a special bank account(s) opened by Manager in the name of Owner upon which only Manager's designees shall be authorized to draw ("Pre-Opening Bank Account(s)"). After all pre-opening expenses have been paid, the balance in the Pre-Opening Bank Account(s) shall be returned to Owner and the Pre-Opening Bank Account(s) closed. Manager shall have no authority to incur any pre-opening cost or expense (including but not limited to use of Off-Site Personnel) except as provided for in the approved Pre-Opening Budget; this limitation shall apply to all pre-opening costs and expenses. In preparing the Pre-Opening Budget, Manager shall confer with licensor under the License Agreement regarding any of its pre-opening requirements in order for the Pre-Opening Budget to reflect any requirements under the License Agreement.
- (ii) **Personnel.** Manager shall be the sole judge of the fitness and qualification of all personnel working at the Hotel ("Hotel Personnel") and shall have the sole and absolute right to hire, supervise, order, instruct, discharge and determine the compensation, benefits and terms of employment of all Hotel Personnel. All Hotel Personnel shall be employees of Manager. Manager shall also have the right to use employees of Manager, Manager's, parent and subsidiary and affiliated companies, not located at the Hotel to provide services to the Hotel ("Off-Site Personnel"). All expenses, costs (including, but not limited to, salaries, benefits and severance pay), liabilities and claims which are related to Hotel Personnel and Off-Site Personnel shall be pre-opening expenses or operating expenses as appropriate.

Manager shall provide Owner an opportunity to interview each proposed general manager for the Hotel prior to the appointment of said individual to the position of Hotel general manager. Manager shall solicit and seriously consider the opinions of Owner on said individual prior to making a final decision on the appointment of such individual to the position of Hotel general manager.

- (iii) Hotel Policies. Manager shall determine the terms of guest admittance to the Hotel, establish room rates, and use of rooms for commercial purposes;
- (iv) Bank Accounts. Manager shall open and operate the Hotel's bank accounts. All sums received from the operation of the Hotel and all items paid by Manager arising by virtue of Manager's operation of the Hotel shall pass through bank account(s) established by Manager in Owner's name at such banks as Manager and Owner shall mutually agree ("Bank Account(s)"); only Manager's designees shall be exclusively authorized to operate and draw from the Bank Account(s). Each fiscal month Manager, on behalf of Owner, shall disburse funds from the Bank Account(s) in the order of priority and to the extent available in accordance with the priority schedule set forth on Exhibit "B." Notwithstanding anything herein to the contrary, except for management fees and fees due under the license agreement, no funds shall be disbursed except those authorized in the Pre-Opening Budget, the Operating Budget or authorized in writing by Owner.
- (v) Operating Budgets. Manager shall, not less than forty-five (45) days prior to the scheduled Opening Date submit to Owner, for Owner's approval, a proposed operating budget for the ensuing full or partial fiscal year, as the case may be ("Operating Budget"). Thereafter, Manager shall, not less than forty-five (45) days prior to the commencement of each full fiscal year, submit to Owner, for Owner's approval, a proposed Operating Budget for the ensuing full or partial fiscal year, as the case may be.

Owner's approval of the Operating Budget shall not be unreasonably withheld and shall be deemed given unless a specific written objection thereto is delivered by Owner to Manager within fifteen (15) days after submission. Owner shall review the Operating Budget on a line-by-line basis. To be effective, any notice which disapproves a proposed Operating Budget must contain specific objections in reasonable detail to individual line items.

If the initial Operating Budget contains disputed budget item(s), said item(s) shall be deemed adopted until Owner and Manager have resolved the item(s) objected to by Owner or the Accountant(s) (hereinafter defined in Section 10.02) have resolved the item(s) objected to by Owner. Thereafter, if Owner disapproves or raises objections to a proposed Operating Budget

In the manner and within the time period provided therefore, and Owner and Manager are unable to resolve the disputed or objectionable matters submitted by Owner prior to the commencement of the applicable fiscal year, the undisputed portions of the proposed Operating Budget shall be deemed to be adopted and approved and the corresponding line item contained in the Operating Budget for the preceding fiscal year shall be adjusted as set forth herein and shall be substituted in lieu of the disputed items in the proposed Operating Budget. Those line items which are in dispute shall be determined by increasing the preceding fiscal year's corresponding line items by an amount determined by Manager which does not exceed the Consumer Price Index for All Urban Consumers published by the Bureau of Labor Statistics of the United States Department of Labor, U.S. City Average, all items (1984-1986=100) for the fiscal year prior to the fiscal year with respect to which the adjustment to the line item is being calculated or any successor or replacement index thereof. The resulting Operating Budget obtained in accordance with the preceding sentence shall be deemed to be the Operating Budget in effect until such time as Manager and Owner have resolved the items objected to by Owner.

Manager shall revise, subject to Owner's written consent which shall not be unreasonably withheld, the Operating Budget from time to time, as necessary, to reflect any unpredicted significant changes, variables or events or to include significant, additional, unanticipated items of income or expense. Manager shall be permitted to reallocate part or all of the amount budgeted with respect to any line item to another line item providing a line item from which money is being transferred shall not be reduced by more than 5% of the original budget for such line item without the Owner's written consent which shall not be unreasonably withheld; Manager shall be permitted to make such other modifications to the Operating Budget as Manager deems necessary and for which Manager obtains Owner's written consent which shall not be unreasonably withheld. Owner acknowledges that the Operating Budget is intended only to be a reasonable estimate of the Hotel's income and expenses for the ensuing fiscal year. Manager shall not be deemed to have made any guarantee, warranty or representation whatsoever in connection with the Operating Budget;

- (vi) Operating Statement. Manager shall prepare and furnish Owner, on or before the fifteenth (15th) day of the fiscal month immediately following the close of a fiscal month, with a detailed operating statement setting forth the results of the Hotel's operations. Within ninety (90) days after the end of each fiscal year, Manager shall furnish Owner with a detailed operating statement setting forth the results of the Hotel's operations for the fiscal year.

- (vii) Capital Budgets. Manager shall, not less than forty-five (45) days prior to the commencement of each fiscal year, submit to Owner a recommended "Capital Budget" for the ensuing full or partial fiscal year, as the case may be, for furnishings, equipment, and ordinary Hotel capital replacement items as shall be required to operate the Hotel in accordance with the standards referred to in the License Agreement. Upon approval of the Capital Budget by owner or in accordance with Section 10.02.1(e), Manager shall be limited in terms of expenditure on capital items by the Capital Budget. If Owner does not approve the Capital Budget, Manager will be entitled to spend up to two percent (2%) of Adjusted Gross Revenue for capital expenditures in the second full year after Opening; three percent (3%) of Adjusted Gross Revenue in the third full year after Opening, and four percent (4%) of Adjusted Gross Revenue during the fourth full year after Opening and (5%) thereafter until the disputed Capital Budget item(s) have been resolved in accordance with Section 10.02.1(e);
- (viii) General Maintenance Non-Capital Replacements. Subject to the Operating Budget, Manager shall supervise the maintenance, repair and replacement of non-Capital Replacements;
- (ix) Operating Equipment. Subject to the Operating Budget, Manager shall select and purchase all operating equipment for the Hotel such as linens, utensils, uniforms and other similar items;
- (x) Operating Supplies. Subject to the Operating Budget, Manager shall select and purchase all operating supplies for the Hotel such as food, beverages, fuel, soap, cleansing items, stationery and other consumable items;
- (xi) Accounting Standards. Manager shall maintain the books and records reflecting the operations of the Hotel in accordance with the accounting practices of Manager in conformity with generally accepted accounting practices consistently applied and shall adopt and follow the fiscal accounting periods utilized by Manager in its normal course of business. The Hotel level generated accounting records reflecting detailed day-to-day transactions of the Hotel's operations, shall be kept by Manager at the Hotel and if desired by Manager, at Manager's regional offices or corporate headquarters, or at such other location as Manager shall reasonably determine. Manager shall receive a monthly fee for accounting services provided to the Hotel ("Accounting Fee"). The current Accounting Fee is set forth on Exhibit "B." The Accounting Fee shall be adjusted by Manager from time to time and set forth in the annual Operating Budget provided such adjustment is consistent or comparable with the adjustments in the Accounting Fees of other Embassy Suites;

- (xii) Marketing and Advertising. Manager shall advertise and promote the Hotel in coordination with the sales and marketing programs of Manager and other Embassy Suites hotels. Manager may participate in sales and promotional campaigns and activities involving complimentary rooms. Manager, in marketing and advertising the Hotel, shall have the right to use marketing and advertising services of employees of Manager and its parent and affiliated companies not located at the Hotel;
- (xiii) Permits and Licenses. Manager shall assist Owner in obtaining the various permits and licenses required to operate the Hotel in accordance with the terms of this Agreement and the License Agreement;
- (xiv) Goods and Services Contracts. Management Agreement to name owner as a third party beneficiary in all goods and services contracts entered into to the extent owner can be named.
- (xv) Owner Meetings. The Hotel's general manager shall meet with Owner's Representative [as hereinafter defined in Section 4.01 (viii)] monthly to review and discuss the previous and future month's operating statement, cash flow, budget, capital expenditures, important personnel matters and the general concerns of Owner and Manager ("Monthly Owner's Meeting"). In addition, a representative of Manager's corporate staff shall meet with Owner's Representative quarterly to review and discuss the previous and future quarter's operating statement, cash flow, budget, capital expenditures, important personnel matters and the general concerns of Owner and Manager ("Quarterly Owner's Meeting"). Except to the extent otherwise mutually agreed upon by Owner and Manager, all Monthly Owner's Meetings and Quarterly Owner's Meetings shall be held at the Hotel; and
- (xvi) Insurance. Manager shall procure and maintain throughout the Term the insurance coverages set forth on Exhibit "D."

ARTICLE 4 OWNER'S OBLIGATIONS

Section 4.01. Owner's Obligations. During the Term, Owner shall have the obligations set forth below:

- (i) License Agreement. Subject to Manager's obligation set forth in Section 3.01 hereof to direct the operation of the Hotel pursuant to the terms of the License Agreement, Owner shall comply with all the terms and conditions of the License Agreement (specifically including, but not limited to, Licensee's obligation to pay the fees, charges and contributions set forth in paragraph

3.C. of the License Agreement) and keep the License Agreement in full force and effect from the Effective Date through the remainder of the Term. Nothing in this Agreement shall be interpreted in a manner which would relieve Owner of any of its obligations under the License Agreement;

- (ii) Licenses and Permits. Owner shall obtain and maintain, with Manager's assistance and cooperation, all governmental permissions, licenses and permits necessary to enable Manager to operate the Hotel in accordance with the terms of this Agreement and the License Agreement;
- (iii) Insurance. Owner shall procure and maintain throughout the Term the insurance coverages set forth on Exhibit "E;"
- (iv) Pre-Opening Funds. Seven (7) days prior to the commencement of the pre-opening program described in Section 3.01(i), Owner shall make an initial deposit of the sum specified on Exhibit "B" in the Pre-Opening Bank Account(s). Thereafter, Owner shall deposit such funds in the Pre-Opening Bank Account(s) as are set forth in the funding schedule attached to the Pre-Opening Budget;
- (v) Operating Funds. Owner shall provide all funds necessary to enable Manager to arrange and operate the Hotel in accordance with the terms of this Agreement, subject to the Operating Budget, and the License Agreement. Owner agrees to deliver to Manager for deposit into the Bank Account(s) on the Opening Date the amount specified on Exhibit "B" which amount shall be the "Minimum Balance" to be maintained by Owner during the first year of the Hotel's operation. The Minimum Balance thereafter shall be no less than the Hotel's operating costs for the preceding fiscal month. The Minimum Balance shall serve as working capital for the Hotel's operations. Owner agrees, upon Manager's written request, to immediately furnish Manager with sufficient funds to make up any deficiency in the Minimum Balance.
- (vi) Capital Funds. Subject to the Capital Budget. Owner shall expend such amounts for renovation programs, furnishings, equipment and ordinary Hotel capital replacement items as are required from time to time to (a) maintain the Hotel in good order and repair; (b) comply with the standards referred to in the License Agreement; and (c) comply with governmental regulations and orders. Owner shall cooperate fully with Manager in establishing appropriate procedures and timetables for Owner to undertake capital replacement projects;
- (vii) Payments to Manager. Owner shall promptly pay to Manager all amounts due Manager under this Agreement;

- (viii) Owner's Representative. Owner shall appoint a representative to represent Owner in all matters relating to this Agreement and/or the Hotel ("Owner's Representative"). Owner's initial Owner's Representative shall be the individual named on Exhibit "B." Manager shall have the right to deal solely with the Owner's Representative on all such matters provided, however, no such statement or representation shall otherwise amend or modify this Management Agreement, the Operating Budget, or the Capital Budget nor shall it replace the need for any "written" consent called for under the Management Agreement. Manager may rely upon statements and representations of Owner's Representative as being from and binding upon Owner. Owner may change its Owner's Representative from time to time by providing written notice to Manager in the manner provided for herein. Owner shall cause the Owner's Representative to attend all Monthly Owner's Meetings and Quarterly Owner's Meetings;
- (ix) Owner's Audits. Owner shall have the right to have its independent accounting firm examine the books and records of the Hotel at any reasonable time upon forty-eight (48) hours notice to Manager. Owner, at its own expense, may reproduce or copy any of the books and records. Manager shall retain each year's books and records for at least eight years after the year covered by each book and each record.
- (x) Quiet and Peaceable Operation. Owner shall ensure that Manager is able to peaceably and quietly operate the Hotel in accordance with the terms of this Agreement, free from molestation, eviction and disturbance by Owner or by any other person or persons claiming by, through or under Owner. Owner shall undertake and prosecute all reasonable and appropriate actions, judicial or otherwise, required to assure such quiet and peaceable operations by Manager.

ARTICLE 5 MANAGEMENT FEE

Section 5.01. Management Fee. On the fifteenth (15th) day of each fiscal month after the Opening Date, Manager is authorized by Owner to pay itself from the Bank Account(s) the Management Fees calculated in the manner set forth on Exhibit "C." The calculation of each month's Management Fees shall be included as part of the Statement given by Manager to Owner the next month pursuant to Section 3.01(vi) hereof.

ARTICLE 6 CLAIMS AND LIABILITY

Section 6.01. Claims and Liability. Owner and Manager mutually agree for the benefit of each other to look only to the appropriate insurance coverages in effect

pursuant to this Agreement in the event any demand, claim, action, damage, loss, liability or expense occurs as a result of injury to person or damage to property regardless whether any such demand, claim, action, damage, loss, liability or expense is caused or contributed to, by or results from the negligence of Owner or Manager or their subsidiaries, affiliates, employees, directors, officers, agents or independent contractors and regardless whether the injury to person or damage to property occurs in and about the Hotel or elsewhere as a result of the performance of this Agreement. Nevertheless, in the event the insurance proceeds are insufficient or there is no insurance coverage to satisfy the demand, claim, action, loss, liability or expense and the same did not arise out of the gross negligence or willful misconduct of Manager, Owner agrees, at its expense, to indemnify and hold Manager and its subsidiaries, affiliates, officers, directors, employees, agents or independent contractors harmless to the extent of the excess liability was the result of the gross negligence, willful misconduct or breach of this Management Agreement by Owner. Further, nevertheless, in the event the insurance proceeds are insufficient or there is no insurance coverage to satisfy the demand, claim, action, loss, liability or expense and the same did not arise out of the gross negligence or willful misconduct of Owner, Manager agrees, at its expense, to indemnify and hold Owner and its subsidiaries, affiliates, officers, directors and employees harmless to the extent of the excess liability was the result of the gross negligence or willful misconduct by Manager.

Section 6.02. Survival. The provisions of this Article 6 shall survive any cancellation, termination or expiration of this Agreement and shall remain in full force and effect until such time as the applicable statute of limitation shall cut off all demands, claims, actions, damages, losses, liabilities or expenses which are the subject of the provisions of this Article 6.

ARTICLE 7 CLOSURE, EMERGENCIES AND DELAYS

Section 7.01. Events of Force Majeure. If at any time during the Term of this Agreement it becomes necessary, in Manager's opinion, to cease operation of the Hotel in order to protect the Hotel and/or the health, safety and welfare of the guests and/or employees of the Hotel for reasons beyond the reasonable control of Manager, such as, but not limited to, acts of war, insurrection, civil strife and commotion, labor unrest, governmental regulations and orders, shortage or lack of adequate supplies or lack of skilled or unskilled employees, contagious illness, catastrophic events or acts of God ("Force Majeure"), then in such event or similar events Manager may close and cease operation of all or any part of the Hotel, reopening and commencing operation when Manager deems that such may be done without jeopardy to the Hotel, its guests and employees.

Manager and Owner agree, except as otherwise provided herein, that the time within which a party is required to perform an obligation and Manager's right to manage the Hotel under this Agreement shall be extended for a period of time equivalent to the period of delay caused by an event of Force Majeure.

Section 7.02. Emergencies. If a condition of an emergency nature should exist which requires that immediate repairs be made for the preservation and protection of the Hotel, its guests or employees, or to assure the continued operation of the Hotel, Manager is authorized to take all actions and to make all expenditures necessary to repair and correct such condition, regardless whether provisions have been made in the applicable budget for such emergency expenditures. Expenditures made by Manager in connection with an emergency shall be paid, in Manager's sole discretion, out of the Bank Account(s). Owner shall immediately replenish such funds paid from the Bank Account(s). Manager shall promptly attempt to notify Owner by telephone or other appropriate means if an emergency condition occurs.

ARTICLE 8 CONDEMNATION AND CASUALTY

Section 8.01. Condemnation. If the Hotel is taken in any eminent domain, expropriation, condemnation, compulsory acquisition or similar proceeding by a competent authority, this Agreement shall automatically terminate as of the date of taking or condemnation. Any compensation for the taking or condemnation of the physical facility comprising the Hotel shall be paid to Owner. Manager, however, with the full cooperation of Owner, shall have the right to file a claim with the appropriate authorities for the loss of Management Fee income for the remainder of the Term and any extension thereof because of the condemnation or taking. If only a portion of the Hotel is so taken and the taking does not make it unreasonable or imprudent, in Manager's and Owner's opinion, to operate the remainder as a hotel of the type immediately preceding such taking, this Agreement shall not terminate. Any compensation shall be used, however, in whole or in part, to render the Hotel a complete and satisfactory architectural unit as a hotel of the same type and class as it was immediately preceding such taking or condemnation.

Section 8.02. Casualty. In the event of a fire or other casualty, Owner shall comply with the terms of the License Agreement and this Agreement shall remain in full force and effect so long as the License Agreement remains in full force and effect.

ARTICLE 9 TERMINATION RIGHTS

Section 9.01. Bankruptcy and Dissolution. If either party is voluntarily or involuntarily dissolved or declared bankrupt, insolvent, or commits an act of bankruptcy, or if a company enters into liquidation whether compulsory or voluntary otherwise than for the purpose of amalgamation or reconstruction, or compounds with its creditors, or has a receiver appointed over all or any part of its assets, or passes title in lieu of foreclosure, the other party may terminate this Agreement immediately upon serving notice to the other party, without liability on the part of the terminating party. Notwithstanding anything in this Section 9.01 to the contrary, if Manager continues to be paid promptly on a

monthly basis its Management Fees and if the operation of the Hotel is not materially impaired, in Manager's opinion, then Manager shall not have the right of termination under this Article 9.

Section 9.02. Manager's Termination Right Upon the Termination of License Agreement. If the License Agreement is terminated for any reason, Manager may terminate this Agreement immediately upon serving notice to Owner, without liability on the part of Manager. Upon such termination, unless specifically provided otherwise herein, Manager shall be entitled to receive the Termination Fee calculated in the manner set forth on Exhibit "B." Notwithstanding anything contained herein, Manager shall not be entitled to receive the Termination Fee if the License Agreement is terminated because of Manager's failure to perform its obligations hereunder and Manager's failure was not caused by the failure of Owner to perform its obligations hereunder.

Section 9.03. Breach. If either party, during the Term of this Agreement, commits a breach of this Agreement by failing to keep, perform or observe any covenant, obligation or agreement required to be kept, performed or observed by such party under the terms of this Agreement, and the defaulting party fails to remedy or correct such breach within thirty (30) days after receipt of notice of such breach from the non-defaulting party, then the non-defaulting party may terminate this Agreement, without prejudice to its right to seek damages or other remedies available to it at law or in equity, at the expiration of such thirty (30) day period; provided, however, that if the breach is non-monetary and is of a nature that it cannot reasonably be remedied or corrected within such thirty (30) day period, then such thirty (30) day period shall be deemed to be extended for such additional period as may reasonably be required to remedy or correct the same if the party committing the breach promptly commences to remedy the breach upon receipt of the other party's notice and continues therewith with due diligence. Manager's right to a "termination fee" will be waived in the event that Manager is terminated because of a breach.

Section 9.04. Owner's Early Termination Right. Owner, at its option, may terminate this Agreement upon sixty (60) days written notice to Manager provided, along with said notice, Owner pays Manager the Termination Fee calculated in the manner set forth on Exhibit "B."

Section 9.05. Manager's Right to Terminate Upon Sale. If there is to be a "Change in Ownership" as defined in the License Agreement and the new owner of the Hotel has not received an Embassy Suites License Agreement for the operation of the Hotel (for purposes of this Section 9.05, said agreement shall be referred to as the "License Agreement"), Manager shall have the right upon giving notice to Owner to terminate this Agreement on the date the Change of Ownership occurs. If there is a Change of Ownership and the new owner of the Hotel receives a License Agreement, but does not enter into an assumption agreement, pursuant to which the new owner assumes all of Owner's obligations hereunder which accrue from and after the date the Change of Ownership occurs, with Manager prior to the date the Change of Ownership occurs, Manager shall have the right, upon giving notice to Owner, to terminate this Agreement

on the date the Change of Ownership occurs. If Manager terminates this Agreement pursuant to this Section 9.05, (in addition to payment of all other fees and reimbursable sums due to Manager to the date of termination), Manager shall have the right to receive the Termination Fee calculated in the manner set forth on Exhibit "B." If a Change of Ownership occurs, and the new owner obtains a License Agreement and the new owner and Manager enter into an assumption agreement pursuant to which this Agreement remains in full force and effect, Manager shall not receive a Termination Fee.

Section 9.06. Delays. Notwithstanding any other provision of this Agreement, (i) if Owner fails to deliver to Manager a completed Hotel ready for operation on or before the date specified on Exhibit "B," or (ii) if any event of the type described in Article 7 or 8 occurs after Manager receives possession of the Hotel and Manager is unable to operate the Hotel for a period of ninety (90) days, Manager shall have the option to terminate this Agreement upon thirty (30) days prior written notice to Owner, without liability on the part of Manager, its parent or their subsidiaries or affiliates.

Section 9.07. Employment Solicitation Restriction Upon Termination. Owner and its affiliates and subsidiaries and their successors hereby agree not to solicit the employment of the Hotel general manager or assistant general manager at any time during the term of this Agreement without Manager's prior written approval. Furthermore, Owner and its affiliates and subsidiaries and successors agree not to employ the Hotel's general manager or assistant general manager for a period of twelve (12) months after the termination or expiration of this Agreement, without Manager's prior written approval.

ARTICLE 10 **APPLICABLE LAW AND ARBITRATION**

Section 10.01. Applicable Law. The interpretation, validity and performance of this Agreement shall be governed by the procedural and substantive laws of the state of California and any and all disputes, except those specifically referred to below, shall be brought and maintained within that state. If any judicial authority holds or declares that the law of another jurisdiction is applicable, this Agreement shall remain enforceable under the laws of that jurisdiction.

Section 10.02. Arbitration of Financial Matters.

Subsection 10.02.1. Matters to be Submitted to Arbitration. In the case of a dispute with respect to any of the following matters, either party may submit such matter to arbitration which shall be conducted by the Accountants (as hereinafter defined in Subsection 10.02.2):

- (a) computation of the Management Fees;
- (b) reimbursements due to Manager under the provisions of Section 11.15;
- (c) any adjustment in the Minimum Balance under the provisions of

- (d) Section 4.01 (v); any adjustment in dollar amounts of insurance coverages required to be maintained; and
- (e) any dispute concerning the approval of an Operating Budget or the Capital Budget.

All disputes concerning the above matters shall be submitted to the Accountants. The decision of the Accountants with respect to any matters submitted to them under this Subsection 10.02.1 shall be binding on both parties hereto.

Subsection 10.02.2. The Accountants. The "Accountants" shall be one of three (3) firms of certified public accountants of recognized national standing in the hotel industry. Until otherwise agreed to by the parties, the three (3) firms shall be Arthur Andersen & Co., Coopers and Lybrand, and Pannell Kerr Forster, notwithstanding any existing relationships which may exist between Owner and such accounting firms or Manager and such accounting firms. The party desiring to submit any matter to arbitration under Subsection 10.02.1 shall do so by written notice to the other party, which notice shall set forth the items to be arbitrated and such party's choice of one of the three (3) accounting firms. The party receiving such notice shall within fifteen (15) days after receipt of such notice either approve such choice, or designate one of the remaining two (2) firms by written notice back to the first party, and the first party shall within fifteen (15) days after receipt of such notice either approve such choice or disapprove the same. If both parties shall have approved one of the three (3) firms under the preceding sentence, then such firm shall be the "Accountants" for the purposes of arbitrating the dispute; if the parties are unable to agree on an accounting firm, then the third firm, which was not designated by either party, shall be the "Accountants" for such purpose. The Accountants shall be required to render a decision in accordance with the procedures described in Subsection 10.02.3 within fifteen (15) days after being notified of their selection. The fees and expenses of the Accountants will be paid by the non-prevailing party if the prevailing party's issues are wholly substantiated by the Accountants. Otherwise, the fees and expenses of the Accountants shall be divided equally.

Subsection 10.02.3. Procedures. In all arbitration proceedings submitted to the Accountants, the Accountants shall be required to agree upon and approve the substantive position advocated by Owner or Manager with respect to each disputed item. Any decision rendered by the Accountants that does not reflect the position advocated by Owner or Manager shall be beyond the scope of authority granted to the Accountants and, consequently, may be overturned by either party. All proceedings by the Accountants shall be conducted in accordance with the Uniform Arbitration Act, except to the extent the provisions of such act are modified by this Agreement or the mutual agreement of the parties. Unless otherwise agreed, all arbitration proceedings shall be conducted at the Hotel.

Section 10.03. Performance During Disputes. It is mutually agreed that during any kind of controversy, claim, disagreement or dispute, including a dispute as to the validity of this Agreement, Manager shall remain in possession of the Hotel as Manager;

and Owner and Manager shall continue their performance of the provisions of this Agreement and its exhibits. Manager shall be entitled to injunctive relief from a civil court or other competent authority to maintain possession in the event of a threatened eviction during any dispute, controversy, claim or disagreement arising out of this Agreement.

ARTICLE 11 GENERAL PROVISIONS

Section 11.01. Authorization. Owner and Manager represent and warrant to each other that their respective corporations have full power and authority to execute this Agreement and to be bound by and perform the terms hereof. On request, each party shall furnish the other evidence of such authority.

Section 11.02. Relationship. Manager and Owner shall not be construed as joint venturers or partners of each other by reason of this Agreement and neither shall have the power to bind or obligate the other except as set forth in this Agreement.

Section 11.03. Manager's Contractual Authority in the Performance of this Agreement. Manager is authorized to make, enter into and perform in the name of and for the account of Owner any contracts deemed necessary by Manager to perform its obligations under this Agreement.

Section 11.04. Further Actions. Owner and Manager agree to execute all contracts, agreements and documents and to take all actions necessary to comply with the provisions of this Agreement and the intent hereof.

Section 11.05. Successors and Assigns. Provided a majority of the Embassy Suite management agreements are being assigned to another entity or entities, Owner's consent shall not be required for Manager to assign any of its rights, interests or obligations as Manager hereunder to any parent, subsidiary or affiliate of Manager or Promus Hotels, Inc., provided that any such assignee agrees to be bound by the terms and conditions of this Agreement. The acquisition of Manager or its parent company by a third party shall not constitute an assignment of this Agreement by Manager and this Agreement shall remain in full force and effect between Owner and Manager. Except as herein provided, Manager shall not assign any of its obligations hereunder without the prior written consent of Owner, which shall not be unreasonably withheld or delayed. Owner shall be deemed to have consented to such an assignment of this Agreement if Owner has not notified Manager in writing to the contrary within fifteen (15) days after Owner has received Manager's request for Owner's consent to an assignment. Manager shall have the right to pledge or assign its right to receive the Management Fees hereunder without the prior written consent of Owner. In the event of any such pledge or assignment, Owner shall have no right of set off, counterclaim or defense of payment against assignee. Owner's sole remedy for breach of Manager's obligations under this Agreement shall be suit for damages or specific performance against Manager.

Owner shall have the right to assign this Agreement to the person or entity which has obtained title to the Hotel and a Embassy Suites License Agreement for the Hotel. Except as hereinabove provided, Owner shall not have the right to assign this Agreement.

Section 11.06. Notices. All notices or other communications provided for in this Agreement shall be in writing and shall be either hand delivered, delivered by certified mail, postage prepaid, return receipt requested, delivered by an overnight delivery service, or delivered by facsimile machine (with an executed original sent the same day by an overnight delivery service), addressed as set forth on Exhibit "B." Notices shall be deemed delivered on the date that is four (4) calendar days after the notice is deposited in the U.S. mail (not counting the mailing date) if sent by certified mail, or, if hand delivered, on the date the hand delivery is made, or if delivered by facsimile machine, on the date the transmission is made. If given by an overnight delivery service, the notice shall be deemed delivered on the next business day following the date that the notice is deposited with the overnight delivery service. The addresses given above may be changed by any party by notice given in the manner provided herein.

Section 11.07. Documents. Owner shall furnish Manager copies of all leases, title documents, property tax receipts and bills, insurance statements, all financing documents (including notes and mortgages) relating to the Hotel and such other documents pertaining to the Hotel as Manager shall request.

Section 11.08. Defense. To the extent there is insurance to pay for the cost of defense and to pay liability, Manager shall defend and/or settle any claim or legal action brought against Manager or Owner, individually, jointly or severally in connection with the operation of the Hotel. Subject to the right of any insurance company to defend and subject to California legal restrictions on the amount of fees to be paid by insurance companies reserving rights, but having a duty to defend, Manager shall retain and supervise legal counsel, accountants and such other professionals, consultants and specialists as Manager deems appropriate to defend and/or settle any such claim or cause of action covered by insurance. All liabilities, costs and expenses, including attorneys' fees and disbursements, incurred in defending and/or settling any such claim or legal action which are not covered by insurance or if insurance is not sufficient shall be handled in the manner described in Section 6.01 above.

Section 11.09. Waivers. No failure or delay by Manager or Owner to insist upon the strict performance of any covenant, agreement, term or condition of this Agreement, or to exercise any right or remedy consequent upon the breach thereof, shall constitute a waiver of any such breach or any subsequent breach of such covenant, agreement, term or condition. No covenant, agreement, term, or condition of this Agreement and no breach thereof shall be waived, altered or modified except by written instrument. No waiver of any breach shall affect or alter this Agreement, but each and every covenant, agreement, term and condition of this Agreement shall continue in full force and effect with respect to any other then existing or subsequent breach thereof.

Section 11.10. Changes. Any change to or modification of this Agreement including, without limitation, any change in the application of this Agreement to the Hotel, must be evidenced by a written document signed by both parties hereto.

Section 11.11. Captions. The captions for each Article and Section are intended for convenience only.

Section 11.12. Severability. If any of the terms and provisions hereof shall be held invalid or unenforceable, such invalidity or unenforceability shall not affect any of the other terms or provisions hereof. If, however, any material part of a party's rights under this Agreement shall be declared invalid or unenforceable, (specifically including Manager's right to receive its Management Fees) the party whose rights have been declared invalid or unenforceable shall have the option to terminate this Agreement upon thirty (30) days written notice to the other party, without liability on the part of the terminating party.

Section 11.13. Interest. Any amount payable to Manager or Owner by the other which has not been paid when due shall accrue interest at the lesser of: (a) the highest legal limit in the state in which the Hotel is located, (b) the highest legal limit in the state of Tennessee, or (c) two percentage points (2%) over the published base rate of interest charged by Citibank, N.A., New York, New York, to borrowers on ninety (90) day unsecured commercial loans, as the same may be changed from time to time.

Section 11.14. Reimbursement. The performance by Manager of its responsibilities under this Agreement are conditioned upon Owner providing sufficient funds to Manager on a timely basis to enable Manager to perform its obligations hereunder. Nevertheless, Manager shall be entitled, at its option, to advance funds or contribute property, on behalf of the Owner, to satisfy obligations of Owner in connection with the Hotel and this Agreement. Manager shall keep appropriate records to document all reimbursable expenses paid by Manager, which records shall be made available for inspection by Owner or its agents upon request. Owner agrees to reimburse Manager with interest upon demand for money paid or property contributed by Manager to satisfy obligations of Owner in connection with the Hotel and this Agreement. Interest shall be calculated at the rate set forth in Section 11.13 from the date Owner was obligated to remit the funds or contribute the property for the satisfaction of such obligation to the date reimbursement is made.

Section 11.15. Travel and Out-of-Pocket Expenses. Subject to the Operating Budget, Manager shall be reimbursed for all travel and out-of-pocket expenses of Manager's employees reasonably incurred in the performance of this Agreement. Manager shall have sole discretion, which shall not be unreasonably exercised, to determine the necessity for such travel or other expenses.

Section 11.16. Set off. Without prejudice to Manager's right to terminate this Agreement pursuant to the provisions of this Agreement, Manager may at any time and without notice to Owner set off or transfer any sum or sums held by Manager or other

member of Promus Hotels, Inc. to the order or on behalf of Owner or standing to the credit of Owner in the Pre-Opening Bank Account(s) or Bank Account(s) in or towards satisfaction of any of Owner's liabilities to Manager in respect of all sums due to Manager under the terms of this Agreement.

Section 11.17. Third Party Beneficiary. This Agreement is exclusively for the benefit of the parties hereto and it may not be enforced by any party other than the parties to this Agreement and shall not give rise to liability to any third party other than the authorized successors and assigns of the parties hereto.

Section 11.18. Brokerage. Manager and Owner represent and warrant to each other that neither has sought the services of a broker, finder or agent in this transaction, and neither has employed, nor authorized, any other person to act in such capacity. Manager and Owner each hereby agrees to indemnify and hold the other harmless from and against any and all claims, loss, liability, damage or expenses (including reasonable attorneys' fees) suffered or incurred by the other party as a result of a claim brought by a person or entity engaged or claiming to be engaged as a finder, broker or agent by the indemnifying party.

Section 11.19. Survival of Covenants. Any covenant, term or provision of this Agreement which, in order to be effective, must survive the termination of this Agreement, shall survive any such termination.

Section 11.20. Estoppel Certificate. Manager and Owner agree to furnish to the other party, from time to time upon request or at the request of Owner, to a Lender holding a security interest in the Hotel, an estoppel certificate in such reasonable form as the requesting party may request stating whether there have been any defaults under this Agreement known to the party furnishing the estoppel certificate and such other information relating to the Hotel or the Management Agreement as may be reasonably requested.

Section 11.21. Other Agreements. Except to the extent as may now or hereafter be specifically provided, nothing contained in this Agreement shall be deemed to modify any other agreement between Owner and Manager with respect to the Hotel or any other property.

Section 11.22. Periods of Time. Whenever any determination is to be made or action is to be taken on a date specified in this Agreement, if such date shall fall on a Saturday, Sunday or legal holiday under the laws of the state of Tennessee and/or the state in which the Hotel is located, then in such event said date shall be extended to the next day which is not a Saturday, Sunday or legal holiday.

Section 11.23. Preparation of Agreement. This Agreement shall not be construed more strongly against either party regardless of who is responsible for its preparation.

Section 11.24. Exhibits. All exhibits attached hereto are incorporated herein by reference and made a part hereof as if fully rewritten or reproduced herein.

Section 11.25. Attorneys' Fees and Other Costs. The parties to this Agreement shall bear their own attorneys' fees in relation to negotiating and drafting this Agreement. Should Owner or Manager engage in litigation to enforce their respective rights pursuant to this Agreement, the prevailing party shall have the right to indemnity by the non-prevailing party for an amount equal to the prevailing party's reasonable attorneys' fees, court costs and expenses arising therefrom.

Section 11.26. Counterparts. This Agreement may be executed in two (2) or more counterparts, each of which shall be deemed an original.

The parties have respectively caused this Agreement to be executed as of the respective dates shown below.

OWNER:

LANDMARK HOTELS, LLC., a California limited liability company

By: Richard H. Packard *Richard H. Packard Family Limited Partnership, Member*

Its: General Partner

Date: 9/17/99
David B. Sherf g.p. of David Investments Ltd., managing member
MANAGER:

PROMUS HOTELS, INC.

By: David A. Sherf

Its: DAVID A. SHERF
SENIOR VICE PRESIDENT

Date: SEPTEMBER 17, 1999

[Signature]
Witness

[Signature]
witness

[Signature]
Witness

SENT BY:

9-17-99 : 2:13PM :

PROMUS HOTEL LAW-
ID:

949 833 7958:#19/27
PAGE 20/20

SEP-07-99 10:10 FROM:

EXHIBIT "A"

LICENSE AGREEMENT

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EXHIBIT "B"**DEAL SPECIFIC TERMS**

TERM: Ten (10) years from the Opening Date

EXTENSION TERM: TWO FIVE YEAR RENEWAL OPTIONS

INITIAL DEPOSIT IN PRE-OPENING BANK ACCOUNT(S):

INITIAL MINIMUM BALANCE FOR THE BANK ACCOUNT(S):

INITIAL OWNER'S REPRESENTATIVE:

DISBURSEMENT PRIORITY SCHEDULE:

Each fiscal month Manager, on behalf of Owner, shall disburse funds from the Bank Account(s) in the following order of priority and to the extent available:

- (a) all fees, assessments and charges due and payable under the License Agreement when issued;
- (b) the Management Fee;
- (c) all reimbursable expenses due Manager;
- (d) all other Hotel operating costs, as such costs and expenses are defined under the accounting practices of Manager in conformity with generally accepted accounting practices consistently applied, specifically including, but not limited to, (i) the cost of operating equipment and operating supplies, wages, salaries and employee fringe benefits, advertising and promotional expenses, the cost of personnel training programs, utility and energy costs, operating licenses and permits, grounds and landscaping maintenance costs and equipment rentals approved by Manager as an operating cost; (ii) all expenditures made for maintenance and repairs to keep the Hotel in good condition and repair, specifically excluding expenditures for Capital Replacements; and (iii) premiums and charges on the insurance coverages specified in Exhibit "D" incurred after the Opening Date. There shall be excluded from the operating costs of the Hotel the following, which shall be ownership costs of the Hotel:

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(i) depreciation of the Hotel, furnishings, fixtures and equipment; (ii) rental pursuant to a ground lease, if any, or any other lease payments; (iii) debt service (interest and principal) on any mortgage(s) encumbering the Hotel; (iv) property taxes and assessments; (v) amortization of pre-opening expenses; (vi) expenditures for Capital Replacements; (vii) audit, legal and other professional or special fees; (viii) premiums for insurance coverages specified in Exhibit "E"; (ix) equipment rentals approved by Manager as an ownership cost; (x) administrative and general expenses and disbursements of Owner, including compensation of employees of Owner; (xi) Federal, State and local Franchise and Income Taxes; (xii) amortization of bond discounts and mortgage expenses; and (xiii) such other costs or expenses which are normally treated as ownership costs under the accounting practices of Manager in conformity with generally accepted accounting practices consistently applied;

(e) the following ownership costs, disbursed in the following order of priority and to the extent available:

- (i) debt service upon any mortgage(s) encumbering the Hotel;
- (ii) an amount (annualized) to satisfy land, building and personal property taxes and assessments;
- (iii) an amount (annualized) to satisfy the premiums for the insurance required to be obtained by Owner in accordance with Exhibit "E"; and
- (iv) any lease payments.

After the disbursements set forth above, any excess funds remaining in the Bank Account(s) over the Minimum Balance shall be distributed to Owner. If after making the disbursements set forth above, there shall be a deficiency in the Minimum Balance, Owner shall immediately provide such funds as may be required to maintain the Minimum Balance in the Bank Account(s).

NOTICES: Owner:
 Landmark Hotels LLC
 450 Newport Center Dr.-Ste. 480
 Newport Beach, CA 92660
 Fax: 714/640-5058
 Attn: Mark B. David
 General Partner

Manager:
 Promus Hotels, Inc.
 755 Crossover Lane
 Memphis, TN 38117
 Fax: 901/374-5050
 Attn: Corporate Secretary

TERMINATION FEE:

The "Termination Fee" shall be: (i) Seven Hundred Fifty Thousand (\$750,000) if the termination of this Agreement occurs between the Effective Date and sixty (60) months after the Opening Date; (ii) Five Hundred Thousand (\$500,000) if the termination of this Agreement occurs after the sixtieth (60) month after the Opening Date. Notwithstanding anything contained herein, there shall be no Termination Fee paid upon the expiration of this Agreement.

OUTSIDE OPENING DATE:

ACCOUNTING FEE: \$3,000 per month.

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EXHIBIT "C"
MANAGEMENT FEES

The "Management Fee" shall mean and refer to: (i) a base management fee equal to two percent (2%) of adjusted gross revenues (as hereinafter defined), for years one and two; two and one-half percent (2.5%) of adjusted gross revenues for year three; and three percent (3%) of adjusted gross revenues thereafter plus (ii) an incentive management fee equal to four percent (4%) of net operating income (as hereinafter defined) with respect to each fiscal month during the term of this Agreement.

The term "Gross Revenues" shall be defined as all revenues and income of any nature derived directly or indirectly from the Hotel or from the use or operation thereof, whether on or off the Site, including total room sales; food and beverage sales, if any, laundry, telephone, telegraph and telex revenues, other income, rental or other payments from lessees, sublessees, licensees and concessionaires (but not the gross receipts of such lessees, sublessees, licensees or concessionaires) and the proceeds of business interruption, use, occupancy or similar insurance.

The term "Adjusted Gross Revenues" shall be defined as Gross Revenues less the following revenues actually received by the Hotel and included in Gross Revenues: (i) any gratuities or service charges added to a customer's bill or actually paid by any person within the Hotel; (ii) any credits or refunds made to customers, guests or patrons; (iii) any sums and credits received by Owner for lost or damaged merchandise; (iv) any sales taxes, excise taxes, gross receipt taxes, admission taxes, entertainment taxes, tourist taxes or charges and any transit occupancy taxes including taxes which would otherwise have normally been paid but for provisions of the owners development and disposition agreement with the City of Garden Grove; (v) any proceeds from the sale or other disposition of the Hotel, furnishings and equipment or other capital assets; (vi) any fire and extended coverage insurance proceeds; (vii) any condemnation awards; (viii) any proceeds of financing or refinancing of the Hotel; and (ix) any interest on the Bank Account(s).

The term "Net Operating Income" shall be defined as Adjusted Gross Revenues less (i) all departmental operating expenses, and (ii) all undistributed operating expenses including "Property Taxes", Insurance, Capital Replacement Reserve, and Debt Service.

EXHIBIT "D"
INSURANCE

In accordance with Section 3.01(xv), Manager shall, on behalf of Owner and at Owner's expense, procure the insurance coverages hereinafter set forth and ensure that they are in full force and effect at the time the pre-opening program commences and that they remain in full force and effect throughout the Term of this Agreement. All cost(s) and expense(s) incurred by Manager in procuring the following insurance coverages shall be pre-opening expenses if incurred prior to the Opening Date and operating costs if incurred after the Opening Date and shall be paid from the Pre-Opening Bank Account(s) and the Bank Account(s) respectively:

<u>Coverages:</u>	<u>Amounts Of Insurance:</u>
<u>Comprehensive General Liability</u>	\$10,000,000 per location
Including -	
Premises - Operations	
Products/Completed Operations	
Contractual	
Personal Injury	
Liquor Liability/Dram Shop (if applicable)	
Elevators and Escalators	
<u>Automobile Liability</u>	\$10,000,000
Owned Vehicles	
Non-Owned Vehicles	
Uninsured Motorist where Required by Statute	
<u>Automobile Physical Damage (Optional)</u>	
Comprehensive	(To Value
Collision	if insured)
<u>Workers' Compensation</u>	Statutory
<u>Employer's Liability</u>	\$1,000,000
<u>Fidelity (Employee Dishonesty)</u>	As required
<u>Money and Securities</u>	As required

All insurance coverages provided for under this Exhibit "D" shall be effected by policies issued by insurance companies (i) that are authorized to do business in the state in which the Hotel is located; and (ii) that are of good reputation and of sound and adequate financial resopnating

standards or procedures.

Manager shall deliver to Owner duly executed certificates of insurance with respect to all of the policies of insurance procured, including existing, additional and renewal policies.

Each policy of insurance maintained in accordance with this Exhibit "D," to the extent obtainable, shall specify that such policies shall not be cancelled or materially changed without at least thirty (30) days prior written notice to Owner and Manager.

Except as otherwise provided in the Agreement, Manager and Owner each waives, releases and discharges the other from all claims or demands which each may have or acquire against the other, or against each other's subsidiaries, affiliates, directors, officers, agents, employees, independent contractors or partners, with respect to any claims for any losses, damages, liabilities or expenses (including attorneys' fees) incurred or sustained by either of them on account of injury to persons or damage to property or business arising out of the ownership, management, operation and maintenance of the Hotel, regardless whether any such claim or demand may arise because of the fault of negligence of the other party or its subsidiaries, affiliates, officers, employees, directors, agents or independent contractors. Each policy of insurance maintained in accordance with this Exhibit "D" shall contain a specific waiver of subrogation reflecting the above.

All policies of insurance provided for under this Exhibit "D" shall be carried in the name of the Manager. Owner's interest and that of any other applicable party will be included in the coverage by an additional insured endorsement.

All such policies of insurance shall be written on an "occurrence" basis, with no per location aggregate limitation.

Either Manager or Owner, by notice to the other, shall have the right to require that the minimum amount of insurance to be maintained with respect to the Hotel under this Exhibit "D" be increased to make such insurance comparable with prudent industry standards and to reflect increases in liability exposures, taking into account the size and location of the Hotel.

Owner hereby authorizes Manager to utilize the services of and/or place the insurance set forth in this Exhibit "D" with (i) any subsidiary or affiliated company of Promus Hotels, Inc. in the insurance business as Manager deems appropriate; or (ii) a third party insurance carrier meeting the specifications set forth above.

EXHIBIT "E"

INSURANCE

In accordance with Section 4.01(iii), Owner agrees, at its expense, to procure and maintain the following insurance coverages, as reasonably adjusted from time to time, throughout the Term of this Agreement:

Coverages:

Amounts Of Insurance:

Builders Risk

Completed value of the Hotel

All risk for term of the initial and any subsequent Hotel construction and renovation.

Real and Personal Property

100% replacement value of building and contents

Blanket Coverage
Replacement Cost - all risk
Boiler Machinery - written on a comprehensive form

Business Interruption

Calculated yearly based on estimated Hotel revenues.

Blanket Coverage for the perils insured against under Real and Personal Property in this Exhibit "E." This coverage

2/17/98

MANAGEMENT AGREEMENT

This Management Agreement ("Agreement") is made and entered into on this 27th day of Feb, 1998 ("Effective Date") between Landmark Hotels, LLC., a California limited liability company, whose address is 450 Newport Center Drive, Suite 480, Newport Beach, CA 92660 ("Owner") and Promus Hotels, Inc., a Delaware corporation, whose address is 755 Crossover Lane, Memphis, TN 38117 ("Manager").

ARTICLE 1 THE HOTEL

Section 1.01. The Hotel. The subject matter of this Agreement is the management of the "Hotel," as defined in the Embassy Suites License Agreement attached hereto as Exhibit "A" (hereinafter collectively referred to as the "License Agreement"), by Manager. The License Agreement shall exclusively govern Owner's right to use the Embassy Suites "System" (as defined in the License Agreement) in the operation of the Hotel. Owner hereby expressly acknowledges that it shall not derive any rights in or to the use of the "Embassy Suites" name or the Embassy Suites System from this Agreement. In the event that the License Agreement covers the same matter (for example, insurance) as set forth in this Agreement, the provisions of the License Agreement shall apply and prevail over the comparable provisions contained in this Agreement.

ARTICLE 2 TERM

Section 2.01. Opening Date. Manager shall open the Hotel to the public and commence doing business as a Embassy Suites hotel on the date all the conditions precedent in this Agreement and the License Agreement to the opening of the Hotel as a Embassy Suites hotel have been satisfied ("Opening Date"), which date shall be confirmed in an addendum to this Agreement.

Section 2.02. Term. The term shall commence on the Effective Date and continue for the term of years from the Opening Date set forth on Exhibit "B" ("Term").

Section 2.03. Extension of Term. The Term of this Agreement may be extended in the manner set forth on Exhibit "B." If Manager desires to so extend, Manager shall provide written notice of the exercise of each renewal option prior to 180 days before the end of the Term of the Agreement, as the same may have been extended.

ARTICLE 3
MANAGER'S OBLIGATIONS

Section 3.01. Manager's Obligations. Manager shall, on behalf of Owner and at Owner's expense, direct the operation of the Hotel pursuant to the terms of this Agreement and the License Agreement. Manager shall be exclusively responsible for directing the day-to-day activities of the Hotel and establishing all policies and procedures relating to the management and operation of the Hotel. Except as specifically otherwise provided, all cost(s) and expense(s) incurred by Manager in association with the performance of the obligations hereinafter set forth shall be pre-opening expenses if incurred prior to the Opening Date and operating costs if incurred after the Opening Date and shall accordingly be paid from the Pre-Opening Bank(s) Account as hereinafter defined in Section 3.01(i) or the Bank Account(s) as hereinafter defined in Section 3.01(iv) below. Manager, during the Term, shall have the following obligations:

- (i) **Pre-Opening.** Six (6) months prior to the scheduled Opening Date, Manager shall commence implementation of a pre-opening program which shall include all activities necessary to financially and operationally prepare the Hotel for opening. To implement the pre-opening program, Manager shall prepare a comprehensive pre-opening budget which shall be submitted to Owner for Owner's approval ninety (90) days after the Effective Date ("Pre-Opening Budget"). All costs and expenses of the pre-opening program shall be paid from a special bank account(s) opened by Manager in the name of Owner upon which only Manager's designees shall be authorized to draw ("Pre-Opening Bank Account(s)"). After all pre-opening expenses have been paid, the balance in the Pre-Opening Bank Account(s) shall be returned to Owner and the Pre-Opening Bank Account(s) closed. Manager shall have no authority to incur any pre-opening cost or expense (including but not limited to use of Off-Site Personnel) except as provided for in the approved Pre-Opening Budget; this limitation shall apply to all pre-opening costs and expenses. In preparing the Pre-Opening Budget, Manager shall confer with licensor under the License Agreement regarding any of its pre-opening requirements in order for the Pre-Opening Budget to reflect any requirements under the License Agreement.

- (ii) **Personnel.** Manager shall be the sole judge of the fitness and qualification of all personnel working at the Hotel ("Hotel Personnel") and shall have the sole and absolute right to hire, supervise, order, instruct, discharge and determine the compensation, benefits and terms of employment of all Hotel Personnel. All Hotel Personnel shall be employees of Manager. Manager shall also have the right to use employees of Manager, Manager's, parent and subsidiary and affiliated companies, not located at the Hotel to provide services to the Hotel ("Off-Site Personnel"). All expenses, costs (including, but not limited to, salaries, benefits and severance pay), liabilities and claims which are related to Hotel Personnel and Off-Site Personnel shall be pre-opening expenses or operating expenses as appropriate.

Manager shall provide Owner an opportunity to interview each proposed general manager for the Hotel prior to the appointment of said individual to the position of Hotel general manager. Manager shall solicit and seriously consider the opinions of Owner on said individual prior to making a final decision on the appointment of such individual to the position of Hotel general manager.

- (iii) Hotel Policies. Manager shall determine the terms of guest admittance to the Hotel, establish room rates, and use of rooms for commercial purposes;
- (iv) Bank Accounts. Manager shall open and operate the Hotel's bank accounts. All sums received from the operation of the Hotel and all items paid by Manager arising by virtue of Manager's operation of the Hotel shall pass through bank account(s) established by Manager in Owner's name at such banks as Manager and Owner shall mutually agree ("Bank Account(s)"); only Manager's designees shall be exclusively authorized to operate and draw from the Bank Account(s). Each fiscal month Manager, on behalf of Owner, shall disburse funds from the Bank Account(s) in the order of priority and to the extent available in accordance with the priority schedule set forth on Exhibit "B." Notwithstanding anything herein to the contrary, except for management fees and fees due under the license agreement, no funds shall be disbursed except those authorized in the Pre-Opening Budget, the Operating Budget or authorized in writing by Owner.
- (v) Operating Budgets. Manager shall, not less than forty-five (45) days prior to the scheduled Opening Date submit to Owner, for Owner's approval, a proposed operating budget for the ensuing full or partial fiscal year, as the case may be ("Operating Budget"). Thereafter, Manager shall, not less than forty-five (45) days prior to the commencement of each full fiscal year, submit to Owner, for Owner's approval, a proposed Operating Budget for the ensuing full or partial fiscal year, as the case may be.

Owner's approval of the Operating Budget shall not be unreasonably withheld and shall be deemed given unless a specific written objection thereto is delivered by Owner to Manager within fifteen (15) days after submission. Owner shall review the Operating Budget on a line-by-line basis. To be effective, any notice which disapproves a proposed Operating Budget must contain specific objections in reasonable detail to individual line items.

If the initial Operating Budget contains disputed budget item(s), said item(s) shall be deemed adopted until Owner and Manager have resolved the item(s) objected to by Owner or the Accountant(s) (hereinafter defined in Section 10.02) have resolved the item(s) objected to by Owner. Thereafter, if Owner disapproves or raises objections to a proposed Operating Budget

in the manner and within the time period provided therefore, and Owner and Manager are unable to resolve the disputed or objectionable matters submitted by Owner prior to the commencement of the applicable fiscal year, the undisputed portions of the proposed Operating Budget shall be deemed to be adopted and approved and the corresponding line item contained in the Operating Budget for the preceding fiscal year shall be adjusted as set forth herein and shall be substituted in lieu of the disputed items in the proposed Operating Budget. Those line items which are in dispute shall be determined by increasing the preceding fiscal year's corresponding line items by an amount determined by Manager which does not exceed the Consumer Price Index for All Urban Consumers published by the Bureau of Labor Statistics of the United States Department of Labor, U.S. City Average, all items (1984-1986=100) for the fiscal year prior to the fiscal year with respect to which the adjustment to the line item is being calculated or any successor or replacement index thereto. The resulting Operating Budget obtained in accordance with the preceding sentence shall be deemed to be the Operating Budget in effect until such time as Manager and Owner have resolved the items objected to by Owner.

Manager shall revise, subject to Owner's written consent which shall not be unreasonably withheld, the Operating Budget from time to time, as necessary, to reflect any unpredicted significant changes, variables or events or to include significant, additional, unanticipated items of income or expense. Manager shall be permitted to reallocate part or all of the amount budgeted with respect to any line item to another line item providing a line item from which money is being transferred shall not be reduced by more than 5% of the original budget for such line item without the Owner's written consent which shall not be unreasonably withheld; Manager shall be permitted to make such other modifications to the Operating Budget as Manager deems necessary and for which Manager obtains Owner's written consent which shall not be unreasonably withheld. Owner acknowledges that the Operating Budget is intended only to be a reasonable estimate of the Hotel's income and expenses for the ensuing fiscal year. Manager shall not be deemed to have made any guarantee, warranty or representation whatsoever in connection with the Operating Budget;

- (vi) Operating Statement. Manager shall prepare and furnish Owner, on or before the fifteenth (15th) day of the fiscal month immediately following the close of a fiscal month, with a detailed operating statement setting forth the results of the Hotel's operations. Within ninety (90) days after the end of each fiscal year, Manager shall furnish Owner with a detailed operating statement setting forth the results of the Hotel's operations for the fiscal year.

- (vii) Capital Budgets. Manager shall, not less than forty-five (45) days prior to the commencement of each fiscal year, submit to Owner a recommended "Capital Budget" for the ensuing full or partial fiscal year, as the case may be, for furnishings, equipment, and ordinary Hotel capital replacement items as shall be required to operate the Hotel in accordance with the standards referred to in the License Agreement. Upon approval of the Capital Budget by owner or in accordance with Section 10.02.1(e), Manager shall be limited in terms of expenditure on capital items by the Capital Budget. If Owner does not approve the Capital Budget, Manager will be entitled to spend up to two percent (2%) of Adjusted Gross Revenue for capital expenditures in the second full year after Opening; three percent (3%) of Adjusted Gross Revenue in the third full year after Opening, and four percent (4%) of Adjusted Gross Revenue during the fourth full year after Opening and (5%) thereafter until the disputed Capital Budget item(s) have been resolved in accordance with Section 10.02.1(e);
- (viii) General Maintenance Non-Capital Replacements. Subject to the Operating Budget, Manager shall supervise the maintenance, repair and replacement of non-Capital Replacements;
- (ix) Operating Equipment. Subject to the Operating Budget, Manager shall select and purchase all operating equipment for the Hotel such as linens, utensils, uniforms and other similar items;
- (x) Operating Supplies. Subject to the Operating Budget, Manager shall select and purchase all operating supplies for the Hotel such as food, beverages, fuel, soap, cleansing items, stationery and other consumable items;
- (xi) Accounting Standards. Manager shall maintain the books and records reflecting the operations of the Hotel in accordance with the accounting practices of Manager in conformity with generally accepted accounting practices consistently applied and shall adopt and follow the fiscal accounting periods utilized by Manager in its normal course of business. The Hotel level generated accounting records reflecting detailed day-to-day transactions of the Hotel's operations, shall be kept by Manager at the Hotel and if desired by Manager, at Manager's regional offices or corporate headquarters, or at such other location as Manager shall reasonably determine. Manager shall receive a monthly fee for accounting services provided to the Hotel ("Accounting Fee"). The current Accounting Fee is set forth on Exhibit "B." The Accounting Fee shall be adjusted by Manager from time to time and set forth in the annual Operating Budget provided such adjustment is consistent or comparable with the adjustments in the Accounting Fees of other Embassy Suites;

- (xii) Marketing and Advertising. Manager shall advertise and promote the Hotel in coordination with the sales and marketing programs of Manager and other Embassy Suites hotels. Manager may participate in sales and promotional campaigns and activities involving complimentary rooms. Manager, in marketing and advertising the Hotel, shall have the right to use marketing and advertising services of employees of Manager and its parent and affiliated companies not located at the Hotel;
- (xiii) Permits and Licenses. Manager shall assist Owner in obtaining the various permits and licenses required to operate the Hotel in accordance with the terms of this Agreement and the License Agreement;
- (xiv) Goods and Services Contracts. Management Agreement to name owner as a third party beneficiary in all goods and services contracts entered into to the extent owner can be named.
- (xv) Owner Meetings. The Hotel's general manager shall meet with Owner's Representative [as hereinafter defined in Section 4.01 (viii)] monthly to review and discuss the previous and future month's operating statement, cash flow, budget, capital expenditures, important personnel matters and the general concerns of Owner and Manager ("Monthly Owner's Meeting"). In addition, a representative of Manager's corporate staff shall meet with Owner's Representative quarterly to review and discuss the previous and future quarter's operating statement, cash flow, budget, capital expenditures, important personnel matters and the general concerns of Owner and Manager ("Quarterly Owner's Meeting"). Except to the extent otherwise mutually agreed upon by Owner and Manager, all Monthly Owner's Meetings and Quarterly Owner's Meetings shall be held at the Hotel; and
- (xvi) Insurance. Manager shall procure and maintain throughout the Term the insurance coverages set forth on Exhibit "D."

ARTICLE 4 **OWNER'S OBLIGATIONS**

Section 4.01. Owner's Obligations. During the Term, Owner shall have the obligations set forth below:

- (i) License Agreement. Subject to Manager's obligation set forth in Section 3.01 hereof to direct the operation of the Hotel pursuant to the terms of the License Agreement, Owner shall comply with all the terms and conditions of the License Agreement (specifically including, but not limited to, Licensee's obligation to pay the fees, charges and contributions set forth in paragraph

3.C. of the License Agreement) and keep the License Agreement in full force and effect from the Effective Date through the remainder of the Term. Nothing in this Agreement shall be interpreted in a manner which would relieve Owner of any of its obligations under the License Agreement;

- (ii) Licenses and Permits. Owner shall obtain and maintain, with Manager's assistance and cooperation, all governmental permissions, licenses and permits necessary to enable Manager to operate the Hotel in accordance with the terms of this Agreement and the License Agreement;
- (iii) Insurance. Owner shall procure and maintain throughout the Term the insurance coverages set forth on Exhibit "E;"
- (iv) Pre-Opening Funds. Seven (7) days prior to the commencement of the pre-opening program described in Section 3.01(i), Owner shall make an initial deposit of the sum specified on Exhibit "B" in the Pre-Opening Bank Account(s). Thereafter, Owner shall deposit such funds in the Pre-Opening Bank Account(s) as are set forth in the funding schedule attached to the Pre-Opening Budget;
- (v) Operating Funds. Owner shall provide all funds necessary to enable Manager to arrange and operate the Hotel in accordance with the terms of this Agreement, subject to the Operating Budget, and the License Agreement. Owner agrees to deliver to Manager for deposit into the Bank Account(s) on the Opening Date the amount specified on Exhibit "B" which amount shall be the "Minimum Balance" to be maintained by Owner during the first year of the Hotel's operation. The Minimum Balance thereafter shall be no less than the Hotel's operating costs for the preceding fiscal month. The Minimum Balance shall serve as working capital for the Hotel's operations. Owner agrees, upon Manager's written request, to immediately furnish Manager with sufficient funds to make up any deficiency in the Minimum Balance.
- (vi) Capital Funds. Subject to the Capital Budget, Owner shall expend such amounts for renovation programs, furnishings, equipment and ordinary Hotel capital replacement items as are required from time to time to (a) maintain the Hotel in good order and repair; (b) comply with the standards referred to in the License Agreement; and (c) comply with governmental regulations and orders. Owner shall cooperate fully with Manager in establishing appropriate procedures and timetables for Owner to undertake capital replacement projects;
- (vii) Payments to Manager. Owner shall promptly pay to Manager all amounts due Manager under this Agreement;

- (viii) Owner's Representative. Owner shall appoint a representative to represent Owner in all matters relating to this Agreement and/or the Hotel ("Owner's Representative"). Owner's initial Owner's Representative shall be the individual named on Exhibit "B." Manager shall have the right to deal solely with the Owner's Representative on all such matters provided, however, no such statement or representation shall otherwise amend or modify this Management Agreement, the Operating Budget, or the Capital Budget nor shall it replace the need for any "written" consent called for under the Management Agreement. Manager may rely upon statements and representations of Owner's Representative as being from and binding upon Owner. Owner may change its Owner's Representative from time to time by providing written notice to Manager in the manner provided for herein. Owner shall cause the Owner's Representative to attend all Monthly Owner's Meetings and Quarterly Owner's Meetings;
- (ix) Owner's Audits. Owner shall have the right to have its independent accounting firm examine the books and records of the Hotel at any reasonable time upon forty-eight (48) hours notice to Manager. Owner, at its own expense, may reproduce or copy any of the books and records. Manager shall retain each year's books and records for at least eight years after the year covered by each book and each record.
- (x) Quiet and Peaceable Operation. Owner shall ensure that Manager is able to peaceably and quietly operate the Hotel in accordance with the terms of this Agreement, free from molestation, eviction and disturbance by Owner or by any other person or persons claiming by, through or under Owner. Owner shall undertake and prosecute all reasonable and appropriate actions, judicial or otherwise, required to assure such quiet and peaceable operations by Manager.

ARTICLE 5 MANAGEMENT FEE

Section 5.01. Management Fee. On the fifteenth (15th) day of each fiscal month after the Opening Date, Manager is authorized by Owner to pay itself from the Bank Account(s) the Management Fees calculated in the manner set forth on Exhibit "C." The calculation of each month's Management Fees shall be included as part of the Statement given by Manager to Owner the next month pursuant to Section 3.01(vi) hereof.

ARTICLE 6 CLAIMS AND LIABILITY

Section 6.01. Claims and Liability. Owner and Manager mutually agree for the benefit of each other to look only to the appropriate insurance coverages in effect

pursuant to this Agreement in the event any demand, claim, action, damage, loss, liability or expense occurs as a result of injury to person or damage to property regardless whether any such demand, claim, action, damage, loss, liability or expense is caused or contributed to, by or results from the negligence of Owner or Manager or their subsidiaries, affiliates, employees, directors, officers, agents or independent contractors and regardless whether the injury to person or damage to property occurs in and about the Hotel or elsewhere as a result of the performance of this Agreement. Nevertheless, in the event the insurance proceeds are insufficient or there is no insurance coverage to satisfy the demand, claim, action, loss, liability or expense and the same did not arise out of the gross negligence or willful misconduct of Manager, Owner agrees, at its expense, to indemnify and hold Manager and its subsidiaries, affiliates, officers, directors, employees, agents or independent contractors harmless to the extent of the excess liability was the result of the gross negligence, willful misconduct or breach of this Management Agreement by Owner. Further, nevertheless, in the event the insurance proceeds are insufficient or there is no insurance coverage to satisfy the demand, claim, action, loss, liability or expense and the same did not arise out of the gross negligence or willful misconduct of Owner, Manager agrees, at its expense, to indemnify and hold Owner and its subsidiaries, affiliates, officers, directors and employees harmless to the extent of the excess liability was the result of the gross negligence or willful misconduct by Manager.

Section 6.02. Survival. The provisions of this Article 6 shall survive any cancellation, termination or expiration of this Agreement and shall remain in full force and effect until such time as the applicable statute of limitation shall cut off all demands, claims, actions, damages, losses, liabilities or expenses which are the subject of the provisions of this Article 6.

ARTICLE 7 **CLOSURE, EMERGENCIES AND DELAYS**

Section 7.01. Events of Force Majeure. If at any time during the Term of this Agreement it becomes necessary, in Manager's opinion, to cease operation of the Hotel in order to protect the Hotel and/or the health, safety and welfare of the guests and/or employees of the Hotel for reasons beyond the reasonable control of Manager, such as, but not limited to, acts of war, insurrection, civil strife and commotion, labor unrest, governmental regulations and orders, shortage or lack of adequate supplies or lack of skilled or unskilled employees, contagious illness, catastrophic events or acts of God ("Force Majeure"), then in such event or similar events Manager may close and cease operation of all or any part of the Hotel, reopening and commencing operation when Manager deems that such may be done without jeopardy to the Hotel, its guests and employees.

Manager and Owner agree, except as otherwise provided herein, that the time within which a party is required to perform an obligation and Manager's right to manage the Hotel under this Agreement shall be extended for a period of time equivalent to the period of delay caused by an event of Force Majeure.

Section 7.02. Emergencies. If a condition of an emergency nature should exist which requires that immediate repairs be made for the preservation and protection of the Hotel, its guests or employees, or to assure the continued operation of the Hotel, Manager is authorized to take all actions and to make all expenditures necessary to repair and correct such condition, regardless whether provisions have been made in the applicable budget for such emergency expenditures. Expenditures made by Manager in connection with an emergency shall be paid, in Manager's sole discretion, out of the Bank Account(s). Owner shall immediately replenish such funds paid from the Bank Account(s). Manager shall promptly attempt to notify Owner by telephone or other appropriate means if an emergency condition occurs.

ARTICLE 8 CONDEMNATION AND CASUALTY

Section 8.01. Condemnation. If the Hotel is taken in any eminent domain, expropriation, condemnation, compulsory acquisition or similar proceeding by a competent authority, this Agreement shall automatically terminate as of the date of taking or condemnation. Any compensation for the taking or condemnation of the physical facility comprising the Hotel shall be paid to Owner. Manager, however, with the full cooperation of Owner, shall have the right to file a claim with the appropriate authorities for the loss of Management Fee income for the remainder of the Term and any extension thereof because of the condemnation or taking. If only a portion of the Hotel is so taken and the taking does not make it unreasonable or imprudent, in Manager's and Owner's opinion, to operate the remainder as a hotel of the type immediately preceding such taking, this Agreement shall not terminate. Any compensation shall be used, however, in whole or in part, to render the Hotel a complete and satisfactory architectural unit as a hotel of the same type and class as it was immediately preceding such taking or condemnation.

Section 8.02. Casualty. In the event of a fire or other casualty, Owner shall comply with the terms of the License Agreement and this Agreement shall remain in full force and effect so long as the License Agreement remains in full force and effect.

ARTICLE 9 TERMINATION RIGHTS

Section 9.01. Bankruptcy and Dissolution. If either party is voluntarily or involuntarily dissolved or declared bankrupt, insolvent, or commits an act of bankruptcy, or if a company enters into liquidation whether compulsory or voluntary otherwise than for the purpose of amalgamation or reconstruction, or compounds with its creditors, or has a receiver appointed over all or any part of its assets, or passes title in lieu of foreclosure, the other party may terminate this Agreement immediately upon serving notice to the other party, without liability on the part of the terminating party. Notwithstanding anything in this Section 9.01 to the contrary, if Manager continues to be paid promptly on a

monthly basis its Management Fees and if the operation of the Hotel is not materially impaired, in Manager's opinion, then Manager shall not have the right of termination under this Article 9.

Section 9.02. Manager's Termination Right Upon the Termination of License Agreement. If the License Agreement is terminated for any reason, Manager may terminate this Agreement immediately upon serving notice to Owner, without liability on the part of Manager. Upon such termination, unless specifically provided otherwise herein, Manager shall be entitled to receive the Termination Fee calculated in the manner set forth on Exhibit "B." Notwithstanding anything contained herein, Manager shall not be entitled to receive the Termination Fee if the License Agreement is terminated because of Manager's failure to perform its obligations hereunder and Manager's failure was not caused by the failure of Owner to perform its obligations hereunder.

Section 9.03. Breach. If either party, during the Term of this Agreement, commits a breach of this Agreement by failing to keep, perform or observe any covenant, obligation or agreement required to be kept, performed or observed by such party under the terms of this Agreement, and the defaulting party fails to remedy or correct such breach within thirty (30) days after receipt of notice of such breach from the non-defaulting party, then the non-defaulting party may terminate this Agreement, without prejudice to its right to seek damages or other remedies available to it at law or in equity, at the expiration of such thirty (30) day period; provided, however, that if the breach is non-monetary and is of a nature that it cannot reasonably be remedied or corrected within such thirty (30) day period, then such thirty (30) day period shall be deemed to be extended for such additional period as may reasonably be required to remedy or correct the same if the party committing the breach promptly commences to remedy the breach upon receipt of the other party's notice and continues therewith with due diligence. Manager's right to a "termination fee" will be waived in the event that Manager is terminated because of a breach.

Section 9.04. Owner's Early Termination Right. Owner, at its option, may terminate this Agreement upon sixty (60) days written notice to Manager provided, along with said notice, Owner pays Manager the Termination Fee calculated in the manner set forth on Exhibit "B."

Section 9.05. Manager's Right to Terminate Upon Sale. If there is to be a "Change in Ownership" as defined in the License Agreement and the new owner of the Hotel has not received an Embassy Suites License Agreement for the operation of the Hotel (for purposes of this Section 9.05, said agreement shall be referred to as the "License Agreement"), Manager shall have the right upon giving notice to Owner to terminate this Agreement on the date the Change of Ownership occurs. If there is a Change of Ownership and the new owner of the Hotel receives a License Agreement, but does not enter into an assumption agreement, pursuant to which the new owner assumes all of Owner's obligations hereunder which accrue from and after the date the Change of Ownership occurs, with Manager prior to the date the Change of Ownership occurs, Manager shall have the right, upon giving notice to Owner, to terminate this Agreement

on the date the Change of Ownership occurs. If Manager terminates this Agreement pursuant to this Section 9.05, (in addition to payment of all other fees and reimbursable sums due to Manager to the date of termination), Manager shall have the right to receive the Termination Fee calculated in the manner set forth on Exhibit "B." If a Change of Ownership occurs, and the new owner obtains a License Agreement and the new owner and Manager enter into an assumption agreement pursuant to which this Agreement remains in full force and effect, Manager shall not receive a Termination Fee.

Section 9.06. Delays. Notwithstanding any other provision of this Agreement, (i) if Owner fails to deliver to Manager a completed Hotel ready for operation on or before the date specified on Exhibit "B," or (ii) if any event of the type described in Article 7 or 8 occurs after Manager receives possession of the Hotel and Manager is unable to operate the Hotel for a period of ninety (90) days, Manager shall have the option to terminate this Agreement upon thirty (30) days prior written notice to Owner, without liability on the part of Manager, its parent or their subsidiaries or affiliates.

Section 9.07. Employment Solicitation Restriction Upon Termination. Owner and its affiliates and subsidiaries and their successors hereby agree not to solicit the employment of the Hotel general manager or assistant general manager at any time during the term of this Agreement without Manager's prior written approval. Furthermore, Owner and its affiliates and subsidiaries and successors agree not to employ the Hotel's general manager or assistant general manager for a period of twelve (12) months after the termination or expiration of this Agreement, without Manager's prior written approval.

ARTICLE 10 **APPLICABLE LAW AND ARBITRATION**

Section 10.01. Applicable Law. The interpretation, validity and performance of this Agreement shall be governed by the procedural and substantive laws of the state of California and any and all disputes, except those specifically referred to below, shall be brought and maintained within that state. If any judicial authority holds or declares that the law of another jurisdiction is applicable, this Agreement shall remain enforceable under the laws of that jurisdiction.

Section 10.02. Arbitration of Financial Matters.

Subsection 10.02.1. Matters to be Submitted to Arbitration. In the case of a dispute with respect to any of the following matters, either party may submit such matter to arbitration which shall be conducted by the Accountants (as hereinafter defined in Subsection 10.02.2):

- (a) computation of the Management Fees;
- (b) reimbursements due to Manager under the provisions of Section 11.15;
- (c) any adjustment in the Minimum Balance under the provisions of

- Section 4.01 (v);
- (d) any adjustment in dollar amounts of insurance coverages required to be maintained; and
- (e) any dispute concerning the approval of an Operating Budget or the Capital Budget.

All disputes concerning the above matters shall be submitted to the Accountants. The decision of the Accountants with respect to any matters submitted to them under this Subsection 10.02.1 shall be binding on both parties hereto.

Subsection 10.02.2. The Accountants. The "Accountants" shall be one of three (3) firms of certified public accountants of recognized national standing in the hotel industry. Until otherwise agreed to by the parties, the three (3) firms shall be Arthur Andersen & Co., Coopers and Lybrand, and Pannell Kerr Forster, notwithstanding any existing relationships which may exist between Owner and such accounting firms or Manager and such accounting firms. The party desiring to submit any matter to arbitration under Subsection 10.02.1 shall do so by written notice to the other party, which notice shall set forth the items to be arbitrated and such party's choice of one of the three (3) accounting firms. The party receiving such notice shall within fifteen (15) days after receipt of such notice either approve such choice, or designate one of the remaining two (2) firms by written notice back to the first party, and the first party shall within fifteen (15) days after receipt of such notice either approve such choice or disapprove the same. If both parties shall have approved one of the three (3) firms under the preceding sentence, then such firm shall be the "Accountants" for the purposes of arbitrating the dispute; if the parties are unable to agree on an accounting firm, then the third firm, which was not designated by either party, shall be the "Accountants" for such purpose. The Accountants shall be required to render a decision in accordance with the procedures described in Subsection 10.02.3 within fifteen (15) days after being notified of their selection. The fees and expenses of the Accountants will be paid by the non-prevailing party if the prevailing party's issues are wholly substantiated by the Accountants. Otherwise, the fees and expenses of the Accountants shall be divided equally.

Subsection 10.02.3. Procedures. In all arbitration proceedings submitted to the Accountants, the Accountants shall be required to agree upon and approve the substantive position advocated by Owner or Manager with respect to each disputed item. Any decision rendered by the Accountants that does not reflect the position advocated by Owner or Manager shall be beyond the scope of authority granted to the Accountants and, consequently, may be overturned by either party. All proceedings by the Accountants shall be conducted in accordance with the Uniform Arbitration Act, except to the extent the provisions of such act are modified by this Agreement or the mutual agreement of the parties. Unless otherwise agreed, all arbitration proceedings shall be conducted at the Hotel.

Section 10.03. Performance During Disputes. It is mutually agreed that during any kind of controversy, claim, disagreement or dispute, including a dispute as to the validity of this Agreement, Manager shall remain in possession of the Hotel as Manager;

and Owner and Manager shall continue their performance of the provisions of this Agreement and its exhibits. Manager shall be entitled to injunctive relief from a civil court or other competent authority to maintain possession in the event of a threatened eviction during any dispute, controversy, claim or disagreement arising out of this Agreement.

ARTICLE 11 **GENERAL PROVISIONS**

Section 11.01. Authorization. Owner and Manager represent and warrant to each other that their respective corporations have full power and authority to execute this Agreement and to be bound by and perform the terms hereof. On request, each party shall furnish the other evidence of such authority.

Section 11.02. Relationship. Manager and Owner shall not be construed as joint venturers or partners of each other by reason of this Agreement and neither shall have the power to bind or obligate the other except as set forth in this Agreement.

Section 11.03. Manager's Contractual Authority in the Performance of this Agreement. Manager is authorized to make, enter into and perform in the name of and for the account of Owner any contracts deemed necessary by Manager to perform its obligations under this Agreement.

Section 11.04. Further Actions. Owner and Manager agree to execute all contracts, agreements and documents and to take all actions necessary to comply with the provisions of this Agreement and the intent hereof.

Section 11.05. Successors and Assigns. Provided a majority of the Embassy Suite management agreements are being assigned to another entity or entities, Owner's consent shall not be required for Manager to assign any of its rights, interests or obligations as Manager hereunder to any parent, subsidiary or affiliate of Manager or Promus Hotels, Inc., provided that any such assignee agrees to be bound by the terms and conditions of this Agreement. The acquisition of Manager or its parent company by a third party shall not constitute an assignment of this Agreement by Manager and this Agreement shall remain in full force and effect between Owner and Manager. Except as herein provided, Manager shall not assign any of its obligations hereunder without the prior written consent of Owner, which shall not be unreasonably withheld or delayed. Owner shall be deemed to have consented to such an assignment of this Agreement if Owner has not notified Manager in writing to the contrary within fifteen (15) days after Owner has received Manager's request for Owner's consent to an assignment. Manager shall have the right to pledge or assign its right to receive the Management Fees hereunder without the prior written consent of Owner. In the event of any such pledge or assignment, Owner shall have no right of set off, counterclaim or defense of payment against assignee. Owner's sole remedy for breach of Manager's obligations under this Agreement shall be suit for damages or specific performance against Manager.

Owner shall have the right to assign this Agreement to the person or entity which has obtained title to the Hotel and a Embassy Suites License Agreement for the Hotel. Except as hereinabove provided, Owner shall not have the right to assign this Agreement.

Section 11.06. Notices. All notices or other communications provided for in this Agreement shall be in writing and shall be either hand delivered, delivered by certified mail, postage prepaid, return receipt requested, delivered by an overnight delivery service, or delivered by facsimile machine (with an executed original sent the same day by an overnight delivery service), addressed as set forth on Exhibit "B." Notices shall be deemed delivered on the date that is four (4) calendar days after the notice is deposited in the U.S. mail (not counting the mailing date) if sent by certified mail, or, if hand delivered, on the date the hand delivery is made, or if delivered by facsimile machine, on the date the transmission is made. If given by an overnight delivery service, the notice shall be deemed delivered on the next business day following the date that the notice is deposited with the overnight delivery service. The addresses given above may be changed by any party by notice given in the manner provided herein.

Section 11.07. Documents. Owner shall furnish Manager copies of all leases, title documents, property tax receipts and bills, insurance statements, all financing documents (including notes and mortgages) relating to the Hotel and such other documents pertaining to the Hotel as Manager shall request.

Section 11.08. Defense. To the extent there is insurance to pay for the cost of defense and to pay liability, Manager shall defend and/or settle any claim or legal action brought against Manager or Owner, individually, jointly or severally in connection with the operation of the Hotel. Subject to the right of any insurance company to defend and subject to California legal restrictions on the amount of fees to be paid by insurance companies reserving rights, but having a duty to defend, Manager shall retain and supervise legal counsel, accountants and such other professionals, consultants and specialists as Manager deems appropriate to defend and/or settle any such claim or cause of action covered by insurance. All liabilities, costs and expenses, including attorneys' fees and disbursements, incurred in defending and/or settling any such claim or legal action which are not covered by insurance or if insurance is not sufficient shall be handled in the manner described in Section 6.01 above.

Section 11.09. Waivers. No failure or delay by Manager or Owner to insist upon the strict performance of any covenant, agreement, term or condition of this Agreement, or to exercise any right or remedy consequent upon the breach thereof, shall constitute a waiver of any such breach or any subsequent breach of such covenant, agreement, term or condition. No covenant, agreement, term, or condition of this Agreement and no breach thereof shall be waived, altered or modified except by written instrument. No waiver of any breach shall affect or alter this Agreement, but each and every covenant, agreement, term and condition of this Agreement shall continue in full force and effect with respect to any other then existing or subsequent breach thereof.

Section 11.10. Changes. Any change to or modification of this Agreement including, without limitation, any change in the application of this Agreement to the Hotel, must be evidenced by a written document signed by both parties hereto.

Section 11.11. Captions. The captions for each Article and Section are intended for convenience only.

Section 11.12. Severability. If any of the terms and provisions hereof shall be held invalid or unenforceable, such invalidity or unenforceability shall not affect any of the other terms or provisions hereof. If, however, any material part of a party's rights under this Agreement shall be declared invalid or unenforceable, (specifically including Manager's right to receive its Management Fees) the party whose rights have been declared invalid or unenforceable shall have the option to terminate this Agreement upon thirty (30) days written notice to the other party, without liability on the part of the terminating party.

Section 11.13. Interest. Any amount payable to Manager or Owner by the other which has not been paid when due shall accrue interest at the lesser of: (a) the highest legal limit in the state in which the Hotel is located, (b) the highest legal limit in the state of Tennessee, or (c) two percentage points (2%) over the published base rate of interest charged by Citibank, N.A., New York, New York, to borrowers on ninety (90) day unsecured commercial loans, as the same may be changed from time to time.

Section 11.14. Reimbursement. The performance by Manager of its responsibilities under this Agreement are conditioned upon Owner providing sufficient funds to Manager on a timely basis to enable Manager to perform its obligations hereunder. Nevertheless, Manager shall be entitled, at its option, to advance funds or contribute property, on behalf of the Owner, to satisfy obligations of Owner in connection with the Hotel and this Agreement. Manager shall keep appropriate records to document all reimbursable expenses paid by Manager, which records shall be made available for inspection by Owner or its agents upon request. Owner agrees to reimburse Manager with interest upon demand for money paid or property contributed by Manager to satisfy obligations of Owner in connection with the Hotel and this Agreement. Interest shall be calculated at the rate set forth in Section 11.13 from the date Owner was obligated to remit the funds or contribute the property for the satisfaction of such obligation to the date reimbursement is made.

Section 11.15. Travel and Out-of-Pocket Expenses. Subject to the Operating Budget, Manager shall be reimbursed for all travel and out-of-pocket expenses of Manager's employees reasonably incurred in the performance of this Agreement. Manager shall have sole discretion, which shall not be unreasonably exercised, to determine the necessity for such travel or other expenses.

Section 11.16. Set off. Without prejudice to Manager's right to terminate this Agreement pursuant to the provisions of this Agreement, Manager may at any time and without notice to Owner set off or transfer any sum or sums held by Manager or other

member of Promus Hotels, Inc. to the order or on behalf of Owner or standing to the credit of Owner in the Pre-Opening Bank Account(s) or Bank Account(s) in or towards satisfaction of any of Owner's liabilities to Manager in respect of all sums due to Manager under the terms of this Agreement.

Section 11.17. Third Party Beneficiary. This Agreement is exclusively for the benefit of the parties hereto and it may not be enforced by any party other than the parties to this Agreement and shall not give rise to liability to any third party other than the authorized successors and assigns of the parties hereto.

Section 11.18. Brokerage. Manager and Owner represent and warrant to each other that neither has sought the services of a broker, finder or agent in this transaction, and neither has employed, nor authorized, any other person to act in such capacity. Manager and Owner each hereby agrees to indemnify and hold the other harmless from and against any and all claims, loss, liability, damage or expenses (including reasonable attorneys' fees) suffered or incurred by the other party as a result of a claim brought by a person or entity engaged or claiming to be engaged as a finder, broker or agent by the indemnifying party.

Section 11.19. Survival of Covenants. Any covenant, term or provision of this Agreement which, in order to be effective, must survive the termination of this Agreement, shall survive any such termination.

Section 11.20. Estoppel Certificate. Manager and Owner agree to furnish to the other party, from time to time upon request or at the request of Owner, to a Lender holding a security interest in the Hotel, an estoppel certificate in such reasonable form as the requesting party may request stating whether there have been any defaults under this Agreement known to the party furnishing the estoppel certificate and such other information relating to the Hotel or the Management Agreement as may be reasonably requested.

Section 11.21. Other Agreements. Except to the extent as may now or hereafter be specifically provided, nothing contained in this Agreement shall be deemed to modify any other agreement between Owner and Manager with respect to the Hotel or any other property.

Section 11.22. Periods of Time. Whenever any determination is to be made or action is to be taken on a date specified in this Agreement, if such date shall fall on a Saturday, Sunday or legal holiday under the laws of the state of Tennessee and/or the state in which the Hotel is located, then in such event said date shall be extended to the next day which is not a Saturday, Sunday or legal holiday.

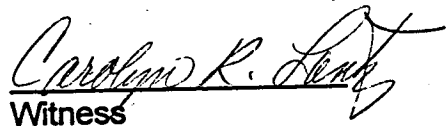
Section 11.23. Preparation of Agreement. This Agreement shall not be construed more strongly against either party regardless of who is responsible for its preparation.

Section 11.24. Exhibits. All exhibits attached hereto are incorporated herein by reference and made a part hereof as if fully rewritten or reproduced herein.

Section 11.25. Attorneys' Fees and Other Costs. The parties to this Agreement shall bear their own attorneys' fees in relation to negotiating and drafting this Agreement. Should Owner or Manager engage in litigation to enforce their respective rights pursuant to this Agreement, the prevailing party shall have the right to indemnity by the non-prevailing party for an amount equal to the prevailing party's reasonable attorneys' fees, court costs and expenses arising therefrom.

Section 11.26. Counterparts. This Agreement may be executed in two (2) or more counterparts, each of which shall be deemed an original.

The parties have respectively caused this Agreement to be executed as of the respective dates shown below.



Witness

OWNER:

LANDMARK HOTELS, LLC, a California Limited Liability Company

DAVID INVESTMENT LIMITED PARTNERSHIP, a Nevada Limited Partnership

By:


Mark B. David

Its:

General Partner

Date:

2-27-98

MANAGER:

PROMUS HOTELS, INC.

By: _____

Its: _____

Date: _____

Witness

EXHIBIT "A"
LICENSE AGREEMENT

EXHIBIT "B"

DEAL SPECIFIC TERMS

TERM: Ten (10) years from the Opening Date

EXTENSION TERM: TWO FIVE YEAR RENEWAL OPTIONS

INITIAL DEPOSIT IN PRE-OPENING BANK ACCOUNT(S):

INITIAL MINIMUM BALANCE FOR THE BANK ACCOUNT(S):

INITIAL OWNER'S REPRESENTATIVE:

DISBURSEMENT PRIORITY SCHEDULE:

Each fiscal month Manager, on behalf of Owner, shall disburse funds from the Bank Account(s) in the following order of priority and to the extent available:

- (a) all fees, assessments and charges due and payable under the License Agreement when issued;
- (b) the Management Fee;
- (c) all reimbursable expenses due Manager;
- (d) all other Hotel operating costs, as such costs and expenses are defined under the accounting practices of Manager in conformity with generally accepted accounting practices consistently applied, specifically including, but not limited to, (i) the cost of operating equipment and operating supplies, wages, salaries and employee fringe benefits, advertising and promotional expenses, the cost of personnel training programs, utility and energy costs, operating licenses and permits, grounds and landscaping maintenance costs and equipment rentals approved by Manager as an operating cost; (ii) all expenditures made for maintenance and repairs to keep the Hotel in good condition and repair, specifically excluding expenditures for Capital Replacements; and (iii) premiums and charges on the insurance coverages specified in Exhibit "D" incurred after the Opening Date. There shall be excluded from the operating costs of the Hotel the following, which shall be ownership costs of the Hotel:

(i) depreciation of the Hotel, furnishings, fixtures and equipment; (ii) rental pursuant to a ground lease, if any, or any other lease payments; (iii) debt service (interest and principal) on any mortgage(s) encumbering the Hotel; (iv) property taxes and assessments; (v) amortization of pre-opening expenses; (vi) expenditures for Capital Replacements; (vii) audit, legal and other professional or special fees; (viii) premiums for insurance coverages specified in Exhibit "E"; (ix) equipment rentals approved by Manager as an ownership cost; (x) administrative and general expenses and disbursements of Owner, including compensation of employees of Owner; (xi) Federal, State and local Franchise and Income Taxes; (xii) amortization of bond discounts and mortgage expenses; and (xiii) such other costs or expenses which are normally treated as ownership costs under the accounting practices of Manager in conformity with generally accepted accounting practices consistently applied;

(e) the following ownership costs, disbursed in the following order of priority and to the extent available:

- (i) debt service upon any mortgage(s) encumbering the Hotel;
- (ii) an amount (annualized) to satisfy land, building and personal property taxes and assessments;
- (iii) an amount (annualized) to satisfy the premiums for the insurance required to be obtained by Owner in accordance with Exhibit "E"; and
- (iv) any lease payments.

After the disbursements set forth above, any excess funds remaining in the Bank Account(s) over the Minimum Balance shall be distributed to Owner. If after making the disbursements set forth above, there shall be a deficiency in the Minimum Balance, Owner shall immediately provide such funds as may be required to maintain the Minimum Balance in the Bank Account(s).

NOTICES: Owner:
Landmark Hotels LLC
450 Newport Center Dr.-Ste. 480
Newport Beach, CA 92660
Fax: 714/640-5058
Attn: Mark B. David
General Partner

Manager:
Promus Hotels, Inc.
755 Crossover Lane
Memphis, TN 38117
Fax: 901/374-5050
Attn: Corporate Secretary

TERMINATION FEE:

The "Termination Fee" shall be: (i) Seven Hundred Fifty Thousand (\$750,000) if the termination of this Agreement occurs between the Effective Date and sixty (60) months after the Opening Date; (ii) Five Hundred Thousand (\$500,000) if the termination of this Agreement occurs after the sixtieth (60) month after the Opening Date. Notwithstanding anything contained herein, there shall be no Termination Fee paid upon the expiration of this Agreement.

OUTSIDE OPENING DATE:

ACCOUNTING FEE: \$3,000 per month.

EXHIBIT "C"
MANAGEMENT FEES

The "Management Fee" shall mean and refer to: (I) a base management fee equal to two percent (2%) of adjusted gross revenues (as hereinafter defined), for years one and two; two and one-half percent (2.5%) of adjusted gross revenues for year three; and three percent (3%) of adjusted gross revenues thereafter plus (ii) an incentive management fee equal to four percent (4%) of net operating income (as hereinafter defined) with respect to each fiscal month during the term of this Agreement.

The term "Gross Revenues" shall be defined as all revenues and income of any nature derived directly or indirectly from the Hotel or from the use or operation thereof, whether on or off the Site, including total room sales, food and beverage sales, if any, laundry, telephone, telegraph and telex revenues, other income, rental or other payments from lessees, sublessees, licensees and concessionaires (but not the gross receipts of such lessees, sublessees, licensees or concessionaires) and the proceeds of business interruption, use, occupancy or similar insurance.

The term "Adjusted Gross Revenues" shall be defined as Gross Revenues less the following revenues actually received by the Hotel and included in Gross Revenues: (i) any gratuities or service charges added to a customer's bill or actually paid by any person within the Hotel; (ii) any credits or refunds made to customers, guests or patrons; (iii) any sums and credits received by Owner for lost or damaged merchandise; (iv) any sales taxes, excise taxes, gross receipt taxes, admission taxes, entertainment taxes, tourist taxes or charges and any transit occupancy taxes including taxes which would otherwise have normally been paid but for provisions of the owners development and disposition agreement with the City of Garden Grove; (v) any proceeds from the sale or other disposition of the Hotel, furnishings and equipment or other capital assets; (vi) any fire and extended coverage insurance proceeds; (vii) any condemnation awards; (viii) any proceeds of financing or refinancing of the Hotel; and (ix) any interest on the Bank Account(s).

The term "Net Operating Income" shall be defined as Adjusted Gross Revenues less (I) all departmental operating expenses, and (ii) all undistributed operating expenses including "Property Taxes", Insurance, Capital Replacement Reserve, and Debt Service.

EXHIBIT "D"
INSURANCE

In accordance with Section 3.01(xv), Manager shall, on behalf of Owner and at Owner's expense, procure the insurance coverages hereinafter set forth and ensure that they are in full force and effect at the time the pre-opening program commences and that they remain in full force and effect throughout the Term of this Agreement. All cost(s) and expense(s) incurred by Manager in procuring the following insurance coverages shall be pre-opening expenses if incurred prior to the Opening Date and operating costs if incurred after the Opening Date and shall be paid from the Pre-Opening Bank Account(s) and the Bank Account(s) respectively:

<u>Coverages:</u>	<u>Amounts Of Insurance:</u>
<u>Comprehensive General Liability</u>	\$10,000,000 per location
Including - Premises - Operations Products/Completed Operations Contractual Personal Injury Liquor Liability/Dram Shop (if applicable) Elevators and Escalators	
<u>Automobile Liability</u>	\$10,000,000
Owned Vehicles Non-Owned Vehicles Uninsured Motorist where Required by Statute	
<u>Automobile Physical Damage (Optional)</u>	
Comprehensive Collision	(To Value if insured)
<u>Workers' Compensation</u>	Statutory
<u>Employer's Liability</u>	\$1,000,000
<u>Fidelity (Employee Dishonesty)</u>	As required
<u>Money and Securities</u>	As required

All insurance coverages provided for under this Exhibit "D" shall be effected by policies issued by insurance companies (i) that are authorized to do business in the state in which the Hotel is located; and (ii) that are of good reputation and of sound and adequate financial respoaning

standards or procedures.

Manager shall deliver to Owner duly executed certificates of insurance with respect to all of the policies of insurance procured, including existing, additional and renewal policies.

Each policy of insurance maintained in accordance with this Exhibit "D," to the extent obtainable, shall specify that such policies shall not be cancelled or materially changed without at least thirty (30) days prior written notice to Owner and Manager.

Except as otherwise provided in the Agreement, Manager and Owner each waives, releases and discharges the other from all claims or demands which each may have or acquire against the other, or against each other's subsidiaries, affiliates, directors, officers, agents, employees, independent contractors or partners, with respect to any claims for any losses, damages, liabilities or expenses (including attorneys' fees) incurred or sustained by either of them on account of injury to persons or damage to property or business arising out of the ownership, management, operation and maintenance of the Hotel, regardless whether any such claim or demand may arise because of the fault of negligence of the other party or its subsidiaries, affiliates, officers, employees, directors, agents or independent contractors. Each policy of insurance maintained in accordance with this Exhibit "D" shall contain a specific waiver of subrogation reflecting the above.

All policies of insurance provided for under this Exhibit "D" shall be carried in the name of the Manager. Owner's interest and that of any other applicable party will be included in the coverage by an additional insured endorsement.

All such policies of insurance shall be written on an "occurrence" basis, with no per location aggregate limitation.

Either Manager or Owner, by notice to the other, shall have the right to require that the minimum amount of insurance to be maintained with respect to the Hotel under this Exhibit "D" be increased to make such insurance comparable with prudent industry standards and to reflect increases in liability exposures, taking into account the size and location of the Hotel.

Owner hereby authorizes Manager to utilize the services of and/or place the insurance set forth in this Exhibit "D" with (i) any subsidiary or affiliated company of Promus Hotels, Inc. in the insurance business as Manager deems appropriate; or (ii) a third party insurance carrier meeting the specifications set forth above.

EXHIBIT "E"

INSURANCE

In accordance with Section 4.01(iii), Owner agrees, at its expense, to procure and maintain the following insurance coverages, as reasonably adjusted from time to time, throughout the Term of this Agreement:

Coverages:

Amounts Of Insurance:

Builders Risk

Completed value
of the Hotel

All risk for term of the initial
and any subsequent Hotel
construction and renovation.

Real and Personal Property

100% replacement
value of building
and contents

Blanket Coverage
Replacement Cost - all risk
Boiler Machinery - written on a
comprehensive form

Business Interruption

Calculated
yearly based
on estimated
Hotel
revenues.

Blanket Coverage for the perils
insured against under Real
and Personal Property in
this Exhibit "E." This coverage
shall specifically cover
Manager's loss of Management
Fees. The business interruption
insurance shall be for a
twelve (12) month indemnity period.

Owner's Protective Liability

\$10,000,000

All risks from construction and
renovation occurring prior to the
Opening Date and all risks from
Hotel construction and renovation
projects costing more than \$250,000
occurring after the Opening Date

All insurance coverages provided for under this Exhibit "E" shall be effected by policies issued by insurance companies (i) that are authorized to do business in the state in which the Hotel is located; and (ii) that are of good reputation and of sound and adequate financial responsibility, having a Bests Rating of B+ VI, or better, or a comparable rating if Bests ceases to publish its ratings or materially changes its rating standards or procedures.

Owner shall deliver to Manager duplicate copies of either insurance policies or certificates of insurance (at Manager's option) with respect to all of the policies of insurance procured, including existing, additional and renewal policies, and in the case of insurance nearing expiration, shall deliver duplicate copies of the insurance policies or certificates of insurance with respect to the renewal policies to Manager not less than thirty (30) days prior to the respective dates of expiration.

Each policy of insurance maintained in accordance with this Exhibit "E," to the extent obtainable, shall specify that such policies shall not be cancelled or materially changed without at least thirty (30) days prior written notice to Owner and Manager.

Except as otherwise provided in the Agreement, Manager and Owner each waives, releases and discharges the other from all claims or demands which each may have or acquire against the other, or against each other's subsidiaries, affiliates, directors, officers, agents, employees, independent contractors or partners, with respect to any claims for any losses, damages, liabilities or expenses (including attorneys' fees) incurred or sustained by either of them on account of injury to persons or damage to property or business arising out of the ownership, management, operation and maintenance of the Hotel, regardless whether any such claim or demand may arise because of the fault of negligence of the other party or its subsidiaries, affiliates, officers, employees, directors, agents or independent contractors. Each policy of insurance maintained in accordance with this Exhibit "E" shall contain a specific waiver of subrogation reflecting the above.

All policies of insurance provided for under this Exhibit "E" shall be carried in the name of the Owner and Manager, and losses thereunder shall be payable to the parties as their respective interests may appear. All liability policies shall name the Owner and Manager, and in each case any of their affiliated or subsidiary companies which they may specify, and their respective directors, officers, agents, employees and partners as additional named insureds.

All such policies of insurance shall be written on an "occurrence" basis.

Either Manager or Owner, by notice to the other, shall have the right to require the minimum amount of insurance to be maintained with respect to the Hotel under this Exhibit "E" be increased to make such insurance comparable with prudent industry standards and to reflect increases in liability exposures, taking into account the size and location of the Hotel.



3 Corporate Plaza
Suite #260
Newport Beach, CA 92660
Phone: (949) 640-5040
Fax: (949) 640-5058

Fax

To: Mark Savan	From: Carolyn Lantz
Company: Rainmaker Financial Companies	Ext.: 210
Phone: 818-865-4100	Pages: 1
Fax: 818-865-3595	Date: August 23, 2004
Re: Embassy Suites	Cc:

Please find Management Agreement. More to come.



John R. Dent
Vice President and Senior Counsel

March 1, 2002

BY FACSIMILE AND U.S. MAIL

Landmark Companies, LLC
Mr. Mark B. David
General Partner
450 Newport Center Drive
Suite 480
Newport Beach, CA 92660

**Re: Management Agreement dated February 27, 1998 (the "Agreement")
for the Embassy Suites Anaheim South /Disneyland Resort (the "Hotel")**

Dear Mr. David:

This will confirm your discussions with Ahmed Mahrous, Dianne Innes and Debbie Conway in response to the Notice of Default that was issued on February 15, 2002. We have agreed that the default identified in the Notice of Default will be deemed cured upon performance of the following (capitalized terms are used as defined in the Agreement):

1. By no later than 5:00 p.m. on Monday, March 4, 2002, Owner shall provide to Manager the amount of one hundred four thousand dollars (\$104,000.00) to be applied to the Minimum Balance.
2. To the extent that the Operating Statement for March 2002 shows that a shortfall in the Minimum Balance remains notwithstanding the payment described in Paragraph 1 and cash flow from operations through March 2002, Owner shall, within 48 hours after written demand by Manager, provide the amount necessary, up to fifty thousand dollars (\$50,000.00), to restore the Minimum Balance.

If the above does not accurately reflect our agreement in any material respect, please call Dianne Innes immediately at (312) 917-1780.

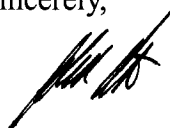
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Direct: 310-205-4201 Fax: 310-205-7878
john_dent@hilton.com
Hilton Hotels Corporation World Headquarters
9336 Civic Center Drive, Beverly Hills, CA 90210
Tel: +1 310 278 4321
Reservations: www.hilton.com or 1-800-HILTONS

Landmark Companies, LLC
March 1, 2002
Page 2 of 2

Thank you for your cooperation.

Sincerely,

A handwritten signature in black ink, appearing to read "John R. Dent", written over a horizontal line.

John R. Dent

cc: Debbie Conway
Dianne Innes
Ahmed Mahrous



John R. Dent
Vice President and Senior Counsel

March 1, 2002

BY FACSIMILE AND U.S. MAIL

Landmark Companies, LLC
Mr. Mark B. David
General Partner
450 Newport Center Drive
Suite 480
Newport Beach, CA 92660

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If the above does not accurately reflect our agreement in any material respect, please call Dianne Innes immediately at (312) 917-1780.

{008155.DOC; 1}

Direct: 310-205-4201 Fax: 310-205-7878
john_dent@hilton.com
Hilton Hotels Corporation World Headquarters
9336 Civic Center Drive, Beverly Hills, CA 90210
Tel: +1 310 278 4321
Reservations: www.hilton.com or 1-800-HILTONS

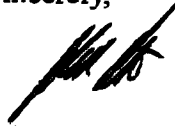
Landmark Companies, LLC

March 1, 2002

Page 2 of 2

Thank you for your cooperation.

Sincerely,



John R. Dent

cc: Debbie Conway
Dianne Innes
Ahmed Mahrous



Hilton Hotels Corporation
World Headquarters
9336 Civic Center Drive
Beverly Hills, California 90210

FACSIMILE TRANSMITTAL

DATE: **March 1, 2002**

TIME: **4:03 PM**

NO. OF PAGES (incl. cover page): **3**

	NAME	COMPANY	TELEPHONE	FACSIMILE NO.
TO	Mr. Mark B. David	Landmark Companies	949-640-5040	949-640-5058

FROM	John R. Dent	HHC Legal – Beverly Hills	(310) 205-4201	(310) 205-7878
------	---------------------	----------------------------------	-----------------------	-----------------------

Please deliver the following pages to the party mentioned above at your earliest convenience. If you do not receive all of the pages indicated above, please call the sender at the above number. Thank you.

MESSAGE FOR ADDRESSEE:

{006718.DOC; 1} THIS COMMUNICATION AND ITS ATTACHMENTS MAY CONTAIN CONFIDENTIAL INFORMATION THAT IS LEGALLY PRIVILEGED AND CONFIDENTIAL. IF YOU ARE NOT THE INTENDED RECIPIENT, OR A PERSON RESPONSIBLE FOR DELIVERING IT TO THE INTENDED RECIPIENT, YOU ARE HEREBY NOTIFIED THAT ANY DISCLOSURE, COPYING, DISTRIBUTION, OR USE OF ANY OF THE INFORMATION CONTAINED IN OR ATTACHED TO THIS TRANSMISSION IS STRICTLY PROHIBITED. IF YOU HAVE RECEIVED THIS IN ERROR, PLEASE IMMEDIATELY NOTIFY THE SENDER AT THE ABOVE NUMBER AND DESTROY THIS ORIGINAL TRANSMISSION AND ITS ATTACHMENTS WITHOUT READING OR SAVING IN ANY MANNER. THANK YOU.



August 20, 1998

Landmark Hotels, LLC
ATTN: Mr. Mark David
450 Newport Center Drive, Suite 480
Newport Beach, CA 92660

SENT VIA FAX (714) 640-5058

Dear Mark:

In checking our files, I have found that your current CCD (Commencement Construction Deadline) is September 14, 1998. As you and I have discussed over the phone, as long as you continue to make progress on the Embassy Suites - Anaheim/Garden Grove, CA project, I will be more than happy to extend the CCD to December 14, 1998. This is the extent of my administrative authority. If we come up on December 14 and you are still not under construction, I will then evaluate your progress and, if satisfactory, will recommend to our Development Committee that we grant another 90-day extension without fee. Again, my goal is like yours - to get the hotel built.

In closing, I anticipate the receipt of the balance of the application fee and continue to stand by, ready to help whenever I can.

Sincerely,

A handwritten signature in black ink, appearing to read "J. Patrick Pidkowiec", written over a circular scribble.

J. Patrick Pidkowiec
Vice President
Hotel Development
Western Region/International

JPP:wj

cc Janell Smith



August 19, 1998

Landmark Hotels, LLC
Mr. Mark B. David
450 Newport Center Drive, Suite 480
Newport Beach, CA 92660

SENT VIA FAX (714) 640-5058

Dear Mark:

In checking our files, I have found that your current CCD (Commencement Construction Deadline) is August 24, 1998. As you and I have discussed over the phone, as long as you continue to make progress on the Embassy Suites - Anaheim/Garden Grove, CA project, I will be more than happy to extend the CCD to November 24, 1998. This is the extent of my administrative authority. If we come up on November 24 and you are still not under construction, I will then evaluate your progress, and if satisfactory, will recommend to our Development Committee that we grant another 90-day extension without fee. Again, my goal is like yours - to get the hotel built.

In closing, I anticipate the receipt of the balance of the application fee and continue to stand by, ready to help whenever I can.

Sincerely,

A handwritten signature in black ink, appearing to read "J. Patrick Fidkowitz", written over the word "Sincerely,".

J. Patrick Fidkowitz
Vice President
Hotel Development
Western Region / International

cc: Janita Fletcher



August 19, 1998

Landmark Hotels, LLC
Mr. Mark B. David
450 Newport Center Drive, Suite 480
Newport Beach, CA 92660

SENT VIA FAX (714) 640-8058

Dear Mark:

In checking our files, I have found that your current CCD (Commencement Construction Deadline) is August 24, 1998. As you and I have discussed over the phone, as long as you continue to make progress on the Embassy Suites - Anaheim/Garden Grove, CA project, I will be more than happy to extend the CCD to November 24, 1998. This is the extent of my administrative authority. If we come up on November 24 and you are still not under construction, I will then evaluate your progress, and if satisfactory, will recommend to our Development Committee that we grant another 90-day extension without fee. Again, my goal is like yours - to get the hotel built.

In closing, I anticipate the receipt of the balance of the application fee and continue to stand by, ready to help whenever I can.

Sincerely,



J. Patrick Pickowicz
Vice President
Hotel Development
Western Region / International

cc: Janita Fletcher



Ronald Halpern
Vice President and
Deputy General Counsel

January 13, 1998

Howard D. Coleman, Esq.
Nossaman, Gunther, Knox & Elliott, LLP
Thirty-First Floor
445 South Figueroa Street
Los Angeles, CA 90071-1602

Re: Garden Grove - Management Agreement

Dear Howard:

Enclosed for your review is the most recent draft of the referenced. The changes have been underlined.

Ed Ansbro is not in the office until later this week and has not had a chance to review the draft; consequently, I must reserve the right to address any questions or comments that he may have. However, I did not want to delay your review.

Please let me know if you have any questions or comments.

Regards,

A handwritten signature in cursive script, appearing to read "Ron", written in black ink.

cc: Ed Ansbro (w/attachment)



JAN 12 3

1/9/97

MANAGEMENT AGREEMENT

This Management Agreement ("Agreement") is made and entered into on this ___ day of _____, 1997 ("Effective Date") between Landmark Hotels, LLC., a California limited liability company, whose address is 450 Newport Center Drive, Suite 480, Newport Beach, CA 92660 ("Owner") and Promus Hotels, Inc., a Delaware corporation, whose address is 755 Crossover Lane, Memphis, TN 38117 ("Manager").

ARTICLE 1 THE HOTEL

Section 1.01. The Hotel. The subject matter of this Agreement is the management of the "Hotel," as defined in the Embassy Suites License Agreement attached hereto as Exhibit "A" (hereinafter collectively referred to as the "License Agreement"), by Manager. The License Agreement shall exclusively govern Owner's right to use the Embassy Suites "System" (as defined in the License Agreement) in the operation of the Hotel. Owner hereby expressly acknowledges that it shall not derive any rights in or to the use of the "Embassy Suites" name or the Embassy Suites System from this Agreement. In the event that the License Agreement covers the same matter (for example, insurance) as set forth in this Agreement, the provisions of the License Agreement shall apply and prevail over the comparable provisions contained in this Agreement.

ARTICLE 2 TERM

Section 2.01. Opening Date. Manager shall open the Hotel to the public and commence doing business as a Embassy Suites hotel on the date all the conditions precedent in this Agreement and the License Agreement to the opening of the Hotel as a Embassy Suites hotel have been satisfied ("Opening Date"), which date shall be confirmed in an addendum to this Agreement.

Section 2.02. Term. The term shall commence on the Effective Date and continue for the term of years from the Opening Date set forth on Exhibit "B" ("Term").

Section 2.03. Extension of Term. The Term of this Agreement may be extended in the manner set forth on Exhibit "B." If Manager desires to so extend, Manager shall provide written notice of the exercise of each renewal option prior to 180 days before the end of the Term of the Agreement, as the same may have been extended.

ARTICLE 3
MANAGER'S OBLIGATIONS

Section 3.01. Manager's Obligations. Manager shall, on behalf of Owner and at Owner's expense, direct the operation of the Hotel pursuant to the terms of this Agreement and the License Agreement. Manager shall be exclusively responsible for directing the day-to-day activities of the Hotel and establishing all policies and procedures relating to the management and operation of the Hotel. Except as specifically otherwise provided, all cost(s) and expense(s) incurred by Manager in association with the performance of the obligations hereinafter set forth shall be pre-opening expenses if incurred prior to the Opening Date and operating costs if incurred after the Opening Date and shall accordingly be paid from the Pre-Opening Bank(s) Account as hereinafter defined in Section 3.01(i) or the Bank Account(s) as hereinafter defined in Section 3.01(iv) below. Manager, during the Term, shall have the following obligations:

- (i) **Pre-Opening.** Six (6) months prior to the scheduled Opening Date, Manager shall commence implementation of a pre-opening program which shall include all activities necessary to financially and operationally prepare the Hotel for opening. To implement the pre-opening program, Manager shall prepare a comprehensive pre-opening budget which shall be submitted to Owner for Owner's approval ninety (90) days after the Effective Date ("Pre-Opening Budget"). All costs and expenses of the pre-opening program shall be paid from a special bank account(s) opened by Manager in the name of Owner upon which only Manager's designees shall be authorized to draw ("Pre-Opening Bank Account(s)"). After all pre-opening expenses have been paid, the balance in the Pre-Opening Bank Account(s) shall be returned to Owner and the Pre-Opening Bank Account(s) closed. Manager shall have no authority to incur any pre-opening cost or expense (including but not limited to use of Off-Site Personnel) except as provided for in the approved Pre-Opening Budget; this limitation shall apply to all pre-opening costs and expenses. In preparing the Pre-Opening Budget, Manager shall confer with licensor under the License Agreement regarding any of its pre-opening requirements in order for the Pre-Opening Budget to reflect any requirements under the License Agreement.

- (ii) **Personnel.** Manager shall be the sole judge of the fitness and qualification of all personnel working at the Hotel ("Hotel Personnel") and shall have the sole and absolute right to hire, supervise, order, instruct, discharge and determine the compensation, benefits and terms of employment of all Hotel Personnel. All Hotel Personnel shall be employees of Manager. Manager shall also have the right to use employees of Manager, Manager's, parent and subsidiary and affiliated companies, not located at the Hotel to provide services to the Hotel ("Off-Site Personnel"). All expenses, costs (including, but not limited to, salaries, benefits and severance pay), liabilities and claims which are related to Hotel Personnel and Off-Site Personnel shall be pre-opening expenses or operating expenses as appropriate.

Manager shall provide Owner an opportunity to interview each proposed general manager for the Hotel prior to the appointment of said individual to the position of Hotel general manager. Manager shall solicit and seriously consider the opinions of Owner on said individual prior to making a final decision on the appointment of such individual to the position of Hotel general manager.

- (iii) Hotel Policies. Manager shall determine the terms of guest admittance to the Hotel, establish room rates, and use of rooms for commercial purposes;
- (iv) Bank Accounts. Manager shall open and operate the Hotel's bank accounts. All sums received from the operation of the Hotel and all items paid by Manager arising by virtue of Manager's operation of the Hotel shall pass through bank account(s) established by Manager in Owner's name at such banks as Manager and Owner shall mutually agree ("Bank Account(s)"); only Manager's designees shall be exclusively authorized to operate and draw from the Bank Account(s). Each fiscal month Manager, on behalf of Owner, shall disburse funds from the Bank Account(s) in the order of priority and to the extent available in accordance with the priority schedule set forth on Exhibit "B." Notwithstanding anything herein to the contrary, except for management fees and fees due under the license agreement, no funds shall be disbursed except those authorized in the Pre-Opening Budget, the Operating Budget or authorized in writing by Owner.
- (v) Operating Budgets. Manager shall, not less than forty-five (45) days prior to the scheduled Opening Date submit to Owner, for Owner's approval, a proposed operating budget for the ensuing full or partial fiscal year, as the case may be ("Operating Budget"). Thereafter, Manager shall, not less than forty-five (45) days prior to the commencement of each full fiscal year, submit to Owner, for Owner's approval, a proposed Operating Budget for the ensuing full or partial fiscal year, as the case may be.

Owner's approval of the Operating Budget shall not be unreasonably withheld and shall be deemed given unless a specific written objection thereto is delivered by Owner to Manager within fifteen (15) days after submission. Owner shall review the Operating Budget on a line-by-line basis. To be effective, any notice which disapproves a proposed Operating Budget must contain specific objections in reasonable detail to individual line items.

If the initial Operating Budget contains disputed budget item(s), said item(s) shall be deemed adopted until Owner and Manager have resolved the item(s) objected to by Owner or the Accountant(s) (hereinafter defined in Section 10.02) have resolved the item(s) objected to by Owner. Thereafter, if Owner disapproves or raises objections to a proposed Operating Budget in the manner and within the time period provided therefore, and Owner and

Manager are unable to resolve the disputed or objectionable matters submitted by Owner prior to the commencement of the applicable fiscal year, the undisputed portions of the proposed Operating Budget shall be deemed to be adopted and approved and the corresponding line item contained in the Operating Budget for the preceding fiscal year shall be adjusted as set forth herein and shall be substituted in lieu of the disputed items in the proposed Operating Budget. Those line items which are in dispute shall be determined by increasing the preceding fiscal year's corresponding line items by an amount determined by Manager which does not exceed the Consumer Price Index for All Urban Consumers published by the Bureau of Labor Statistics of the United States Department of Labor, U.S. City Average, all items (1984-1986=100) for the fiscal year prior to the fiscal year with respect to which the adjustment to the line item is being calculated or any successor or replacement index thereto. The resulting Operating Budget obtained in accordance with the preceding sentence shall be deemed to be the Operating Budget in effect until such time as Manager and Owner have resolved the items objected to by Owner.

Manager shall revise, subject to Owner's written consent which shall not be unreasonably withheld, the Operating Budget from time to time, as necessary, to reflect any unpredicted significant changes, variables or events or to include significant, additional, unanticipated items of income or expense. Manager shall be permitted to reallocate part or all of the amount budgeted with respect to any line item to another line item providing a line item from which money is being transferred shall not be reduced by more than 5% of the original budget for such line item without the Owner's written consent which shall not be unreasonably withheld; Manager shall be permitted to make such other modifications to the Operating Budget as Manager deems necessary and for which Manager obtains Owner's written consent which shall not be unreasonably withheld. Owner acknowledges that the Operating Budget is intended only to be a reasonable estimate of the Hotel's income and expenses for the ensuing fiscal year. Manager shall not be deemed to have made any guarantee, warranty or representation whatsoever in connection with the Operating Budget;

- (vi) Operating Statement. Manager shall prepare and furnish Owner, on or before the fifteenth (15th) day of the fiscal month immediately following the close of a fiscal month, with a detailed operating statement setting forth the results of the Hotel's operations. Within ninety (90) days after the end of each fiscal year, Manager shall furnish Owner with a detailed operating statement setting forth the results of the Hotel's operations for the fiscal year.

- (vii) Capital Budgets. Manager shall, not less than forty-five (45) days prior to the commencement of each fiscal year, submit to Owner a recommended "Capital Budget" for the ensuing full or partial fiscal year, as the case may be, for furnishings, equipment, and ordinary Hotel capital replacement items as shall be required to operate the Hotel in accordance with the standards referred to in the License Agreement. Upon approval of the Capital Budget by owner or in accordance with Section 10.02.1(e), Manager shall be limited in terms of expenditure on capital items by the Capital Budget. If Owner does not approve the Capital Budget, Manager will be entitled to spend up to two percent (2%) of Adjusted Gross Revenue for capital expenditures in the second full year after Opening; three percent (3%) of Adjusted Gross Revenue in the third full year after Opening, and four percent (4%) of Adjusted Gross Revenue during the fourth full year after Opening and (5%) thereafter until the disputed Capital Budget item(s) have been resolved in accordance with Section 10.02.1(e);
- (viii) General Maintenance Non-Capital Replacements. Subject to the Operating Budget, Manager shall supervise the maintenance, repair and replacement of non-Capital Replacements;
- (ix) Operating Equipment. Subject to the Operating Budget, Manager shall select and purchase all operating equipment for the Hotel such as linens, utensils, uniforms and other similar items;
- (x) Operating Supplies. Subject to the Operating Budget, Manager shall select and purchase all operating supplies for the Hotel such as food, beverages, fuel, soap, cleansing items, stationery and other consumable items;
- (xi) Accounting Standards. Manager shall maintain the books and records reflecting the operations of the Hotel in accordance with the accounting practices of Manager in conformity with generally accepted accounting practices consistently applied and shall adopt and follow the fiscal accounting periods utilized by Manager in its normal course of business. The Hotel level generated accounting records reflecting detailed day-to-day transactions of the Hotel's operations, shall be kept by Manager at the Hotel and if desired by Manager, at Manager's regional offices or corporate headquarters, or at such other location as Manager shall reasonably determine. Manager shall receive a monthly fee for accounting services provided to the Hotel ("Accounting Fee"). The current Accounting Fee is set forth on Exhibit "B." The Accounting Fee shall be adjusted by Manager from time to time and set forth in the annual Operating Budget provided such adjustment is consistent or comparable with the adjustments in the Accounting Fees of other Embassy Suites;

- (xii) Marketing and Advertising. Manager shall advertise and promote the Hotel in coordination with the sales and marketing programs of Manager and other Embassy Suites hotels. Manager may participate in sales and promotional campaigns and activities involving complimentary rooms. Manager, in marketing and advertising the Hotel, shall have the right to use marketing and advertising services of employees of Manager and its parent and affiliated companies not located at the Hotel;
- (xiii) Permits and Licenses. Manager shall assist Owner in obtaining the various permits and licenses required to operate the Hotel in accordance with the terms of this Agreement and the License Agreement;
- (xiv) Owner Meetings. The Hotel's general manager shall meet with Owner's Representative [as hereinafter defined in Section 4.01 (viii)] monthly to review and discuss the previous and future month's operating statement, cash flow, budget, capital expenditures, important personnel matters and the general concerns of Owner and Manager ("Monthly Owner's Meeting"). In addition, a representative of Manager's corporate staff shall meet with Owner's Representative quarterly to review and discuss the previous and future quarter's operating statement, cash flow, budget, capital expenditures, important personnel matters and the general concerns of Owner and Manager ("Quarterly Owner's Meeting"). Except to the extent otherwise mutually agreed upon by Owner and Manager, all Monthly Owner's Meetings and Quarterly Owner's Meetings shall be held at the Hotel; and
- (xv) Insurance. Manager shall procure and maintain throughout the Term the insurance coverages set forth on Exhibit "D."

ARTICLE 4 OWNER'S OBLIGATIONS

Section 4.01. Owner's Obligations. During the Term, Owner shall have the obligations set forth below:

- (i) License Agreement. Subject to Manager's obligation set forth in Section 3.01 hereof to direct the operation of the Hotel pursuant to the terms of the License Agreement, Owner shall comply with all the terms and conditions of the License Agreement (specifically including, but not limited to, Licensee's obligation to pay the fees, charges and contributions set forth in paragraph 3.C. of the License Agreement) and keep the License Agreement in full force and effect from the Effective Date through the remainder of the Term. Nothing in this Agreement shall be interpreted in a manner which would relieve Owner of any of its obligations under the License Agreement;

- (ii) Licenses and Permits. Owner shall obtain and maintain, with Manager's assistance and cooperation, all governmental permissions, licenses and permits necessary to enable Manager to operate the Hotel in accordance with the terms of this Agreement and the License Agreement;
- (iii) Insurance. Owner shall procure and maintain throughout the Term the insurance coverages set forth on Exhibit "E;"
- (iv) Pre-Opening Funds. Seven (7) days prior to the commencement of the pre-opening program described in Section 3.01(i), Owner shall make an initial deposit of the sum specified on Exhibit "B" in the Pre-Opening Bank Account(s). Thereafter, Owner shall deposit such funds in the Pre-Opening Bank Account(s) as are set forth in the funding schedule attached to the Pre-Opening Budget;
- (v) Operating Funds. Owner shall provide all funds necessary to enable Manager to arrange and operate the Hotel in accordance with the terms of this Agreement, subject to the Operating Budget, and the License Agreement. Owner agrees to deliver to Manager for deposit into the Bank Account(s) on the Opening Date the amount specified on Exhibit "B" which amount shall be the "Minimum Balance" to be maintained by Owner during the first year of the Hotel's operation. The Minimum Balance thereafter shall be no less than the Hotel's operating costs for the preceding fiscal month. The Minimum Balance shall serve as working capital for the Hotel's operations. Owner agrees, upon Manager's written request, to immediately furnish Manager with sufficient funds to make up any deficiency in the Minimum Balance.
- (vi) Capital Funds. Subject to the Capital Budget, Owner shall expend such amounts for renovation programs, furnishings, equipment and ordinary Hotel capital replacement items as are required from time to time to (a) maintain the Hotel in good order and repair; (b) comply with the standards referred to in the License Agreement; and (c) comply with governmental regulations and orders. Owner shall cooperate fully with Manager in establishing appropriate procedures and timetables for Owner to undertake capital replacement projects;
- (vii) Payments to Manager. Owner shall promptly pay to Manager all amounts due Manager under this Agreement;
- (viii) Owner's Representative. Owner shall appoint a representative to represent Owner in all matters relating to this Agreement and/or the Hotel ("Owner's Representative"). Owner's initial Owner's Representative shall be the individual named on Exhibit "B." Manager shall have the right to deal solely with the Owner's Representative on all such matters provided, however, no such statement or representation shall otherwise amend or modify this Management Agreement, the Operating Budget, or the Capital Budget nor

shall it replace the need for any "written" consent called for under the Management Agreement. Manager may rely upon statements and representations of Owner's Representative as being from and binding upon Owner. Owner may change its Owner's Representative from time to time by providing written notice to Manager in the manner provided for herein. Owner shall cause the Owner's Representative to attend all Monthly Owner's Meetings and Quarterly Owner's Meetings;

- (ix) Owner's Audits. Owner shall have the right to have its independent accounting firm examine the books and records of the Hotel at any reasonable time upon forty-eight (48) hours notice to Manager. Owner, at its own expense, may reproduce or copy any of the books and records. Manager shall retain each year's books and records for at least eight years after the year covered by each book and each record.
- (x) Quiet and Peaceable Operation. Owner shall ensure that Manager is able to peaceably and quietly operate the Hotel in accordance with the terms of this Agreement, free from molestation, eviction and disturbance by Owner or by any other person or persons claiming by, through or under Owner. Owner shall undertake and prosecute all reasonable and appropriate actions, judicial or otherwise, required to assure such quiet and peaceable operations by Manager.

ARTICLE 5 MANAGEMENT FEE

Section 5.01. Management Fee. On the fifteenth (15th) day of each fiscal month after the Opening Date, Manager is authorized by Owner to pay itself from the Bank Account(s) the Management Fees calculated in the manner set forth on Exhibit "C." The calculation of each month's Management Fees shall be included as part of the Statement given by Manager to Owner the next month pursuant to Section 3.01(vi) hereof.

ARTICLE 6 CLAIMS AND LIABILITY

Section 6.01. Claims and Liability. Owner and Manager mutually agree for the benefit of each other to look only to the appropriate insurance coverages in effect pursuant to this Agreement in the event any demand, claim, action, damage, loss, liability or expense occurs as a result of injury to person or damage to property regardless whether any such demand, claim, action, damage, loss, liability or expense is caused or contributed to, by or results from the negligence of Owner or Manager or their subsidiaries, affiliates, employees, directors, officers, agents or independent contractors and regardless whether the injury to person or damage to property occurs in and about the Hotel or elsewhere as a result of the performance of this Agreement. Nevertheless, in the event the insurance proceeds are insufficient or there is no insurance coverage to

satisfy the demand, claim, action, loss, liability or expense and the same did not arise out of the gross negligence or willful misconduct of Manager, Owner agrees, at its expense, to indemnify and hold Manager and its subsidiaries, affiliates, officers, directors, employees, agents or independent contractors harmless to the extent of the excess liability was the result of the gross negligence, willful misconduct or breach of this Management Agreement by Owner. Further, nevertheless, in the event the insurance proceeds are insufficient or there is no insurance coverage to satisfy the demand, claim, action, loss, liability or expense and the same did not arise out of the gross negligence or willful misconduct of Owner, Manager agrees, at its expense, to indemnify and hold Owner and its subsidiaries, affiliates, officers, directors and employees harmless to the extent of the excess liability was the result of the gross negligence or willful misconduct by Manager.

Section 6.02. Survival. The provisions of this Article 6 shall survive any cancellation, termination or expiration of this Agreement and shall remain in full force and effect until such time as the applicable statute of limitation shall cut off all demands, claims, actions, damages, losses, liabilities or expenses which are the subject of the provisions of this Article 6.

ARTICLE 7 CLOSURE, EMERGENCIES AND DELAYS

Section 7.01. Events of Force Majeure. If at any time during the Term of this Agreement it becomes necessary, in Manager's opinion, to cease operation of the Hotel in order to protect the Hotel and/or the health, safety and welfare of the guests and/or employees of the Hotel for reasons beyond the reasonable control of Manager, such as, but not limited to, acts of war, insurrection, civil strife and commotion, labor unrest, governmental regulations and orders, shortage or lack of adequate supplies or lack of skilled or unskilled employees, contagious illness, catastrophic events or acts of God ("Force Majeure"), then in such event or similar events Manager may close and cease operation of all or any part of the Hotel, reopening and commencing operation when Manager deems that such may be done without jeopardy to the Hotel, its guests and employees.

Manager and Owner agree, except as otherwise provided herein, that the time within which a party is required to perform an obligation and Manager's right to manage the Hotel under this Agreement shall be extended for a period of time equivalent to the period of delay caused by an event of Force Majeure.

Section 7.02. Emergencies. If a condition of an emergency nature should exist which requires that immediate repairs be made for the preservation and protection of the Hotel, its guests or employees, or to assure the continued operation of the Hotel, Manager is authorized to take all actions and to make all expenditures necessary to repair and correct such condition, regardless whether provisions have been made in the applicable budget for such emergency expenditures. Expenditures made by Manager in connection with an emergency shall be paid, in Manager's sole discretion, out of the Bank

Account(s). Owner shall immediately replenish such funds paid from the Bank Account(s). Manager shall promptly attempt to notify Owner by telephone or other appropriate means if an emergency condition occurs.

ARTICLE 8 CONDEMNATION AND CASUALTY

Section 8.01. Condemnation. If the Hotel is taken in any eminent domain, expropriation, condemnation, compulsory acquisition or similar proceeding by a competent authority, this Agreement shall automatically terminate as of the date of taking or condemnation. Any compensation for the taking or condemnation of the physical facility comprising the Hotel shall be paid to Owner. Manager, however, with the full cooperation of Owner, shall have the right to file a claim with the appropriate authorities for the loss of Management Fee income for the remainder of the Term and any extension thereof because of the condemnation or taking. If only a portion of the Hotel is so taken and the taking does not make it unreasonable or imprudent, in Manager's and Owner's opinion, to operate the remainder as a hotel of the type immediately preceding such taking, this Agreement shall not terminate. Any compensation shall be used, however, in whole or in part, to render the Hotel a complete and satisfactory architectural unit as a hotel of the same type and class as it was immediately preceding such taking or condemnation.

Section 8.02. Casualty. In the event of a fire or other casualty, Owner shall comply with the terms of the License Agreement and this Agreement shall remain in full force and effect so long as the License Agreement remains in full force and effect.

ARTICLE 9 TERMINATION RIGHTS

Section 9.01. Bankruptcy and Dissolution. If either party is voluntarily or involuntarily dissolved or declared bankrupt, insolvent, or commits an act of bankruptcy, or if a company enters into liquidation whether compulsory or voluntary otherwise than for the purpose of amalgamation or reconstruction, or compounds with its creditors, or has a receiver appointed over all or any part of its assets, or passes title in lieu of foreclosure, the other party may terminate this Agreement immediately upon serving notice to the other party, without liability on the part of the terminating party. Notwithstanding anything in this Section 9.01 to the contrary, if Manager continues to be paid promptly on a monthly basis its Management Fees and if the operation of the Hotel is not materially impaired, in Manager's opinion, then Manager shall not have the right of termination under this Article 9.

Section 9.02. Manager's Termination Right Upon the Termination of License Agreement. If the License Agreement is terminated for any reason, Manager may terminate this Agreement immediately upon serving notice to Owner, without liability on the part of Manager. Upon such termination, unless specifically provided otherwise

herein, Manager shall be entitled to receive the Termination Fee calculated in the manner set forth on Exhibit "B." Notwithstanding anything contained herein, Manager shall not be entitled to receive the Termination Fee if the License Agreement is terminated because of Manager's failure to perform its obligations hereunder and Manager's failure was not caused by the failure of Owner to perform its obligations hereunder.

Section 9.03. Breach. If either party, during the Term of this Agreement, commits a breach of this Agreement by failing to keep, perform or observe any covenant, obligation or agreement required to be kept, performed or observed by such party under the terms of this Agreement, and the defaulting party fails to remedy or correct such breach within thirty (30) days after receipt of notice of such breach from the non-defaulting party, then the non-defaulting party may terminate this Agreement, without prejudice to its right to seek damages or other remedies available to it at law or in equity, at the expiration of such thirty (30) day period; provided, however, that if the breach is non-monetary and is of a nature that it cannot reasonably be remedied or corrected within such thirty (30) day period, then such thirty (30) day period shall be deemed to be extended for such additional period as may reasonably be required to remedy or correct the same if the party committing the breach promptly commences to remedy the breach upon receipt of the other party's notice and continues therewith with due diligence. Manager's right to a "termination fee" will be waived in the event that Manager is terminated because of a breach.

Section 9.04. Owner's Early Termination Right. Owner, at its option, may terminate this Agreement upon sixty (60) days written notice to Manager provided, along with said notice, Owner pays Manager the Termination Fee calculated in the manner set forth on Exhibit "B."

Section 9.05. Manager's Right to Terminate Upon Sale. If there is to be a "Change in Ownership" as defined in the License Agreement and the new owner of the Hotel has not received an Embassy Suites License Agreement for the operation of the Hotel (for purposes of this Section 9.05, said agreement shall be referred to as the "License Agreement"), Manager shall have the right upon giving notice to Owner to terminate this Agreement on the date the Change of Ownership occurs. If there is a Change of Ownership and the new owner of the Hotel receives a License Agreement, but does not enter into an assumption agreement, pursuant to which the new owner assumes all of Owner's obligations hereunder which accrue from and after the date the Change of Ownership occurs, with Manager prior to the date the Change of Ownership occurs, Manager shall have the right, upon giving notice to Owner, to terminate this Agreement on the date the Change of Ownership occurs. If Manager terminates this Agreement pursuant to this Section 9.05, (in addition to payment of all other fees and reimbursable sums due to Manager to the date of termination), Manager shall have the right to receive the Termination Fee calculated in the manner set forth on Exhibit "B." If a Change of Ownership occurs, and the new owner obtains a License Agreement and the new owner and Manager enter into an assumption agreement pursuant to which this Agreement remains in full force and effect, Manager shall not receive a Termination Fee.

Section 9.06. Delays. Notwithstanding any other provision of this Agreement, (i) if Owner fails to deliver to Manager a completed Hotel ready for operation on or before the date specified on Exhibit "B," or (ii) if any event of the type described in Article 7 or 8 occurs after Manager receives possession of the Hotel and Manager is unable to operate the Hotel for a period of ninety (90) days, Manager shall have the option to terminate this Agreement upon thirty (30) days prior written notice to Owner, without liability on the part of Manager, its parent or their subsidiaries or affiliates.

Section 9.07. Employment Solicitation Restriction Upon Termination. Owner and its affiliates and subsidiaries and their successors hereby agree not to solicit the employment of the Hotel general manager or assistant general manager at any time during the term of this Agreement without Manager's prior written approval. Furthermore, Owner and its affiliates and subsidiaries and successors agree not to employ the Hotel's general manager or assistant general manager for a period of twelve (12) months after the termination or expiration of this Agreement, without Manager's prior written approval.

ARTICLE 10 APPLICABLE LAW AND ARBITRATION

Section 10.01. Applicable Law. The interpretation, validity and performance of this Agreement shall be governed by the procedural and substantive laws of the state of California and any and all disputes, except those specifically referred to below, shall be brought and maintained within that state. If any judicial authority holds or declares that the law of another jurisdiction is applicable, this Agreement shall remain enforceable under the laws of that jurisdiction.

Section 10.02. Arbitration of Financial Matters.

Subsection 10.02.1. Matters to be Submitted to Arbitration. In the case of a dispute with respect to any of the following matters, either party may submit such matter to arbitration which shall be conducted by the Accountants (as hereinafter defined in Subsection 10.02.2):

- (a) computation of the Management Fees;
- (b) reimbursements due to Manager under the provisions of Section 11.15;
- (c) any adjustment in the Minimum Balance under the provisions of Section 4.01 (v);
- (d) any adjustment in dollar amounts of insurance coverages required to be maintained; and
- (e) any dispute concerning the approval of an Operating Budget or the Capital Budget.

All disputes concerning the above matters shall be submitted to the Accountants. The decision of the Accountants with respect to any matters submitted to them under this Subsection 10.02.1 shall be binding on both parties hereto.

Subsection 10.02.2. The Accountants. The "Accountants" shall be one of three (3) firms of certified public accountants of recognized national standing in the hotel industry. Until otherwise agreed to by the parties, the three (3) firms shall be Arthur Andersen & Co., Coopers and Lybrand, and Pannell Kerr Forster, notwithstanding any existing relationships which may exist between Owner and such accounting firms or Manager and such accounting firms. The party desiring to submit any matter to arbitration under Subsection 10.02.1 shall do so by written notice to the other party, which notice shall set forth the items to be arbitrated and such party's choice of one of the three (3) accounting firms. The party receiving such notice shall within fifteen (15) days after receipt of such notice either approve such choice, or designate one of the remaining two (2) firms by written notice back to the first party, and the first party shall within fifteen (15) days after receipt of such notice either approve such choice or disapprove the same. If both parties shall have approved one of the three (3) firms under the preceding sentence, then such firm shall be the "Accountants" for the purposes of arbitrating the dispute; if the parties are unable to agree on an accounting firm, then the third firm, which was not designated by either party, shall be the "Accountants" for such purpose. The Accountants shall be required to render a decision in accordance with the procedures described in Subsection 10.02.3 within fifteen (15) days after being notified of their selection. The fees and expenses of the Accountants will be paid by the non-prevailing party if the prevailing party's issues are wholly substantiated by the Accountants. Otherwise, the fees and expenses of the Accountants shall be divided equally.

Subsection 10.02.3. Procedures. In all arbitration proceedings submitted to the Accountants, the Accountants shall be required to agree upon and approve the substantive position advocated by Owner or Manager with respect to each disputed item. Any decision rendered by the Accountants that does not reflect the position advocated by Owner or Manager shall be beyond the scope of authority granted to the Accountants and, consequently, may be overturned by either party. All proceedings by the Accountants shall be conducted in accordance with the Uniform Arbitration Act, except to the extent the provisions of such act are modified by this Agreement or the mutual agreement of the parties. Unless otherwise agreed, all arbitration proceedings shall be conducted at the Hotel.

Section 10.03. Performance During Disputes. It is mutually agreed that during any kind of controversy, claim, disagreement or dispute, including a dispute as to the validity of this Agreement, Manager shall remain in possession of the Hotel as Manager; and Owner and Manager shall continue their performance of the provisions of this Agreement and its exhibits. Manager shall be entitled to injunctive relief from a civil court or other competent authority to maintain possession in the event of a threatened eviction during any dispute, controversy, claim or disagreement arising out of this Agreement.

ARTICLE 11

GENERAL PROVISIONS

Section 11.01. Authorization. Owner and Manager represent and warrant to each other that their respective corporations have full power and authority to execute this Agreement and to be bound by and perform the terms hereof. On request, each party shall furnish the other evidence of such authority.

Section 11.02. Relationship. Manager and Owner shall not be construed as joint venturers or partners of each other by reason of this Agreement and neither shall have the power to bind or obligate the other except as set forth in this Agreement.

Section 11.03. Manager's Contractual Authority in the Performance of this Agreement. Manager is authorized to make, enter into and perform in the name of and for the account of Owner any contracts deemed necessary by Manager to perform its obligations under this Agreement.

Section 11.04. Further Actions. Owner and Manager agree to execute all contracts, agreements and documents and to take all actions necessary to comply with the provisions of this Agreement and the intent hereof.

Section 11.05. Successors and Assigns. Provided a majority of the Embassy Suite management agreements are being assigned to another entity or entities, Owner's consent shall not be required for Manager to assign any of its rights, interests or obligations as Manager hereunder to any parent, subsidiary or affiliate of Manager or Promus Hotels, Inc., provided that any such assignee agrees to be bound by the terms and conditions of this Agreement. The acquisition of Manager or its parent company by a third party shall not constitute an assignment of this Agreement by Manager and this Agreement shall remain in full force and effect between Owner and Manager. Except as herein provided, Manager shall not assign any of its obligations hereunder without the prior written consent of Owner, which shall not be unreasonably withheld or delayed. Owner shall be deemed to have consented to such an assignment of this Agreement if Owner has not notified Manager in writing to the contrary within fifteen (15) days after Owner has received Manager's request for Owner's consent to an assignment. Manager shall have the right to pledge or assign its right to receive the Management Fees hereunder without the prior written consent of Owner. In the event of any such pledge or assignment, Owner shall have no right of set off, counterclaim or defense of payment against assignee. Owner's sole remedy for breach of Manager's obligations under this Agreement shall be suit for damages or specific performance against Manager.

Owner shall have the right to assign this Agreement to the person or entity which has obtained title to the Hotel and a Embassy Suites License Agreement for the Hotel. Except as hereinabove provided, Owner shall not have the right to assign this Agreement.

Section 11.06. Notices. All notices or other communications provided for in this Agreement shall be in writing and shall be either hand delivered, delivered by certified mail, postage prepaid, return receipt requested, delivered by an overnight delivery service, or delivered by facsimile machine (with an executed original sent the same day by an overnight delivery service), addressed as set forth on Exhibit "B." Notices shall be deemed delivered on the date that is four (4) calendar days after the notice is deposited in the U.S. mail (not counting the mailing date) if sent by certified mail, or, if hand delivered, on the date the hand delivery is made, or if delivered by facsimile machine, on the date the transmission is made. If given by an overnight delivery service, the notice shall be deemed delivered on the next business day following the date that the notice is deposited with the overnight delivery service. The addresses given above may be changed by any party by notice given in the manner provided herein.

Section 11.07. Documents. Owner shall furnish Manager copies of all leases, title documents, property tax receipts and bills, insurance statements, all financing documents (including notes and mortgages) relating to the Hotel and such other documents pertaining to the Hotel as Manager shall request.

Section 11.08. Defense. To the extent there is insurance to pay for the cost of defense and to pay liability, Manager shall defend and/or settle any claim or legal action brought against Manager or Owner, individually, jointly or severally in connection with the operation of the Hotel. Subject to the right of any insurance company to defend and subject to California legal restrictions on the amount of fees to be paid by insurance companies reserving rights, but having a duty to defend, Manager shall retain and supervise legal counsel, accountants and such other professionals, consultants and specialists as Manager deems appropriate to defend and/or settle any such claim or cause of action covered by insurance. All liabilities, costs and expenses, including attorneys' fees and disbursements, incurred in defending and/or settling any such claim or legal action which are not covered by insurance or if insurance is not sufficient shall be handled in the manner described in Section 6.01 above.

Section 11.09. Waivers. No failure or delay by Manager or Owner to insist upon the strict performance of any covenant, agreement, term or condition of this Agreement, or to exercise any right or remedy consequent upon the breach thereof, shall constitute a waiver of any such breach or any subsequent breach of such covenant, agreement, term or condition. No covenant, agreement, term, or condition of this Agreement and no breach thereof shall be waived, altered or modified except by written instrument. No waiver of any breach shall affect or alter this Agreement, but each and every covenant, agreement, term and condition of this Agreement shall continue in full force and effect with respect to any other then existing or subsequent breach thereof.

Section 11.10. Changes. Any change to or modification of this Agreement including, without limitation, any change in the application of this Agreement to the Hotel, must be evidenced by a written document signed by both parties hereto.

Section 11.11. Captions. The captions for each Article and Section are intended for convenience only.

Section 11.12. Severability. If any of the terms and provisions hereof shall be held invalid or unenforceable, such invalidity or unenforceability shall not affect any of the other terms or provisions hereof. If, however, any material part of a party's rights under this Agreement shall be declared invalid or unenforceable, (specifically including Manager's right to receive its Management Fees) the party whose rights have been declared invalid or unenforceable shall have the option to terminate this Agreement upon thirty (30) days written notice to the other party, without liability on the part of the terminating party.

Section 11.13. Interest. Any amount payable to Manager or Owner by the other which has not been paid when due shall accrue interest at the lesser of: (a) the highest legal limit in the state in which the Hotel is located, (b) the highest legal limit in the state of Tennessee, or (c) two percentage points (2%) over the published base rate of interest charged by Citibank, N.A., New York, New York, to borrowers on ninety (90) day unsecured commercial loans, as the same may be changed from time to time.

Section 11.14. Reimbursement. The performance by Manager of its responsibilities under this Agreement are conditioned upon Owner providing sufficient funds to Manager on a timely basis to enable Manager to perform its obligations hereunder. Nevertheless, Manager shall be entitled, at its option, to advance funds or contribute property, on behalf of the Owner, to satisfy obligations of Owner in connection with the Hotel and this Agreement. Manager shall keep appropriate records to document all reimbursable expenses paid by Manager, which records shall be made available for inspection by Owner or its agents upon request. Owner agrees to reimburse Manager with interest upon demand for money paid or property contributed by Manager to satisfy obligations of Owner in connection with the Hotel and this Agreement. Interest shall be calculated at the rate set forth in Section 11.13 from the date Owner was obligated to remit the funds or contribute the property for the satisfaction of such obligation to the date reimbursement is made.

Section 11.15. Travel and Out-of-Pocket Expenses. Subject to the Operating Budget, Manager shall be reimbursed for all travel and out-of-pocket expenses of Manager's employees reasonably incurred in the performance of this Agreement. Manager shall have sole discretion, which shall not be unreasonably exercised, to determine the necessity for such travel or other expenses.

Section 11.16. Set off. Without prejudice to Manager's right to terminate this Agreement pursuant to the provisions of this Agreement, Manager may at any time and without notice to Owner set off or transfer any sum or sums held by Manager or other member of Promus Hotels, Inc. to the order or on behalf of Owner or standing to the credit of Owner in the Pre-Opening Bank Account(s) or Bank Account(s) in or towards satisfaction of any of Owner's liabilities to Manager in respect of all sums due to Manager under the terms of this Agreement.

Section 11.17. Third Party Beneficiary. This Agreement is exclusively for the benefit of the parties hereto and it may not be enforced by any party other than the parties to this Agreement and shall not give rise to liability to any third party other than the authorized successors and assigns of the parties hereto.

Section 11.18. Brokerage. Manager and Owner represent and warrant to each other that neither has sought the services of a broker, finder or agent in this transaction, and neither has employed, nor authorized, any other person to act in such capacity. Manager and Owner each hereby agrees to indemnify and hold the other harmless from and against any and all claims, loss, liability, damage or expenses (including reasonable attorneys' fees) suffered or incurred by the other party as a result of a claim brought by a person or entity engaged or claiming to be engaged as a finder, broker or agent by the indemnifying party.

Section 11.19. Survival of Covenants. Any covenant, term or provision of this Agreement which, in order to be effective, must survive the termination of this Agreement, shall survive any such termination.

Section 11.20. Estoppel Certificate. Manager and Owner agree to furnish to the other party, from time to time upon request or at the request of Owner, to a Lender holding a security interest in the Hotel, an estoppel certificate in such reasonable form as the requesting party may request stating whether there have been any defaults under this Agreement known to the party furnishing the estoppel certificate and such other information relating to the Hotel or the Management Agreement as may be reasonably requested.

Section 11.21. Other Agreements. Except to the extent as may now or hereafter be specifically provided, nothing contained in this Agreement shall be deemed to modify any other agreement between Owner and Manager with respect to the Hotel or any other property.

Section 11.22. Periods of Time. Whenever any determination is to be made or action is to be taken on a date specified in this Agreement, if such date shall fall on a Saturday, Sunday or legal holiday under the laws of the state of Tennessee and/or the state in which the Hotel is located, then in such event said date shall be extended to the next day which is not a Saturday, Sunday or legal holiday.

Section 11.23. Preparation of Agreement. This Agreement shall not be construed more strongly against either party regardless of who is responsible for its preparation.

Section 11.24. Exhibits. All exhibits attached hereto are incorporated herein by reference and made a part hereof as if fully rewritten or reproduced herein.

Section 11.25. Attorneys' Fees and Other Costs. The parties to this Agreement shall bear their own attorneys' fees in relation to negotiating and drafting this Agreement. Should Owner or Manager engage in litigation to enforce their respective rights pursuant to this Agreement, the prevailing party shall have the right to indemnity by the non-prevailing party for an amount equal to the prevailing party's reasonable attorneys' fees, court costs and expenses arising therefrom.

Section 11.26. Counterparts. This Agreement may be executed in two (2) or more counterparts, each of which shall be deemed an original.

The parties have respectively caused this Agreement to be executed as of the respective dates shown below.

OWNER:

By: _____

Its: _____

Date: _____

Witness

MANAGER:

PROMUS HOTELS, INC.

By: _____

Its: _____

Date: _____

Witness

EXHIBIT "A"
LICENSE AGREEMENT

EXHIBIT "B"

DEAL SPECIFIC TERMS

TERM: Ten (10) years from the Opening Date

EXTENSION TERM: TWO FIVE YEAR RENEWAL OPTIONS

INITIAL DEPOSIT IN PRE-OPENING BANK ACCOUNT(S):

INITIAL MINIMUM BALANCE FOR THE BANK ACCOUNT(S):

INITIAL OWNER'S REPRESENTATIVE:

DISBURSEMENT PRIORITY SCHEDULE:

Each fiscal month Manager, on behalf of Owner, shall disburse funds from the Bank Account(s) in the following order of priority and to the extent available:

- (a) all fees, assessments and charges due and payable under the License Agreement when issued;
- (b) the Management Fee;
- (c) all reimbursable expenses due Manager;
- (d) all other Hotel operating costs, as such costs and expenses are defined under the accounting practices of Manager in conformity with generally accepted accounting practices consistently applied, specifically including, but not limited to, (i) the cost of operating equipment and operating supplies, wages, salaries and employee fringe benefits, advertising and promotional expenses, the cost of personnel training programs, utility and energy costs, operating licenses and permits, grounds and landscaping maintenance costs and equipment rentals approved by Manager as an operating cost; (ii) all expenditures made for maintenance and repairs to keep the Hotel in good condition and repair, specifically excluding expenditures for Capital Replacements; and (iii) premiums and charges on the insurance coverages specified in Exhibit "D" incurred after the Opening Date. There shall be excluded from the operating costs of the Hotel the following, which shall be ownership costs of the Hotel:

(i) depreciation of the Hotel, furnishings, fixtures and equipment; (ii) rental pursuant to a ground lease, if any, or any other lease payments; (iii) debt service (interest and principal) on any mortgage(s) encumbering the Hotel; (iv) property taxes and assessments; (v) amortization of pre-opening expenses; (vi) expenditures for Capital Replacements; (vii) audit, legal and other professional or special fees; (viii) premiums for insurance coverages specified in Exhibit "E"; (ix) equipment rentals approved by Manager as an ownership cost; (x) administrative and general expenses and disbursements of Owner, including compensation of employees of Owner; (xi) Federal, State and local Franchise and Income Taxes; (xii) amortization of bond discounts and mortgage expenses; and (xiii) such other costs or expenses which are normally treated as ownership costs under the accounting practices of Manager in conformity with generally accepted accounting practices consistently applied;

(e) the following ownership costs, disbursed in the following order of priority and to the extent available:

- (i) debt service upon any mortgage(s) encumbering the Hotel;
- (ii) an amount (annualized) to satisfy land, building and personal property taxes and assessments;
- (iii) an amount (annualized) to satisfy the premiums for the insurance required to be obtained by Owner in accordance with Exhibit "E"; and
- (iv) any lease payments.

After the disbursements set forth above, any excess funds remaining in the Bank Account(s) over the Minimum Balance shall be distributed to Owner. If after making the disbursements set forth above, there shall be a deficiency in the Minimum Balance, Owner shall immediately provide such funds as may be required to maintain the Minimum Balance in the Bank Account(s).

NOTICES: Owner:
Landmark Hotels LLC
450 Newport Center Dr.-Ste. 480
Newport Beach, CA 92660
Fax: 714/640-5058
Attn: Mark B. David
General Partner

Manager:
Promus Hotels, Inc.
755 Crossover Lane
Memphis, TN 38117
Fax: 901/374-5050
Attn: Corporate Secretary

TERMINATION FEE:

The "Termination Fee" shall be: (i) Seven Hundred Fifty Thousand (\$750,000) if the termination of this Agreement occurs between the Effective Date and sixty (60) months after the Opening Date; (ii) Five Hundred Thousand (\$500,000) if the termination of this Agreement occurs after the sixtieth (60) month after the Opening Date. Notwithstanding anything contained herein, there shall be no Termination Fee paid upon the expiration of this Agreement.

OUTSIDE OPENING DATE:

ACCOUNTING FEE: \$3,000 per month.

EXHIBIT "C" **MANAGEMENT FEES**

The "Management Fee" shall mean and refer to: (i) a base management fee equal to two percent (2%) of adjusted gross revenues (as hereinafter defined), for years one and two; two and one-half percent (2.5%) of adjusted gross revenues for year three; and three percent (3%) of adjusted gross revenues thereafter plus (ii) an incentive management fee equal to four percent (4%) of net operating income (as hereinafter defined) with respect to each fiscal month during the term of this Agreement.

The term "Gross Revenues" shall be defined as all revenues and income of any nature derived directly or indirectly from the Hotel or from the use or operation thereof, whether on or off the Site, including total room sales, food and beverage sales, if any, laundry, telephone, telegraph and telex revenues, other income, rental or other payments from lessees, sublessees, licensees and concessionaires (but not the gross receipts of such lessees, sublessees, licensees or concessionaires) and the proceeds of business interruption, use, occupancy or similar insurance.

The term "Adjusted Gross Revenues" shall be defined as Gross Revenues less the following revenues actually received by the Hotel and included in Gross Revenues: (i) any gratuities or service charges added to a customer's bill or actually paid by any person within the Hotel; (ii) any credits or refunds made to customers, guests or patrons; (iii) any sums and credits received by Owner for lost or damaged merchandise; (iv) any sales taxes, excise taxes, gross receipt taxes, admission taxes, entertainment taxes, tourist taxes or charges and any transit occupancy taxes including taxes which would otherwise have normally been paid but for provisions of the owners development and disposition agreement with the City of Garden Grove; (v) any proceeds from the sale or other disposition of the Hotel, furnishings and equipment or other capital assets; (vi) any fire and extended coverage insurance proceeds; (vii) any condemnation awards; (viii) any proceeds of financing or refinancing of the Hotel; and (ix) any interest on the Bank Account(s).

The term "Net Operating Income" shall be defined as Adjusted Gross Revenues less (i) all departmental operating expenses, and (ii) all undistributed operating expenses including "Property Taxes", Insurance, Capital Replacement Reserve, and Debt Service.

EXHIBIT "D"
INSURANCE

In accordance with Section 3.01(xv), Manager shall, on behalf of Owner and at Owner's expense, procure the insurance coverages hereinafter set forth and ensure that they are in full force and effect at the time the pre-opening program commences and that they remain in full force and effect throughout the Term of this Agreement. All cost(s) and expense(s) incurred by Manager in procuring the following insurance coverages shall be pre-opening expenses if incurred prior to the Opening Date and operating costs if incurred after the Opening Date and shall be paid from the Pre-Opening Bank Account(s) and the Bank Account(s) respectively:

<u>Coverages:</u>	<u>Amounts Of Insurance:</u>
<u>Comprehensive General Liability</u>	\$10,000,000 per location
Including - Premises - Operations Products/Completed Operations Contractual Personal Injury Liquor Liability/Dram Shop (if applicable) Elevators and Escalators	
<u>Automobile Liability</u>	\$10,000,000
Owned Vehicles Non-Owned Vehicles Uninsured Motorist where Required by Statute	
<u>Automobile Physical Damage</u> (Optional)	
Comprehensive Collision	(To Value if insured)
<u>Workers' Compensation</u>	Statutory
<u>Employer's Liability</u>	\$1,000,000
<u>Fidelity</u> (Employee Dishonesty)	As required
<u>Money and Securities</u>	As required

All insurance coverages provided for under this Exhibit "D" shall be effected by policies issued by insurance companies (i) that are authorized to do business in the state in which the Hotel is located; and (ii) that are of good reputation and of sound and adequate financial responsibility, having a Bests Rating of B+ VI, or better, or a comparable rating if Bests ceases to publish its ratings or materially changes its rating standards or procedures.

Manager shall deliver to Owner duly executed certificates of insurance with respect to all of the policies of insurance procured, including existing, additional and renewal policies.

Each policy of insurance maintained in accordance with this Exhibit "D," to the extent obtainable, shall specify that such policies shall not be cancelled or materially changed without at least thirty (30) days prior written notice to Owner and Manager.

Except as otherwise provided in the Agreement, Manager and Owner each waives, releases and discharges the other from all claims or demands which each may have or acquire against the other, or against each other's subsidiaries, affiliates, directors, officers, agents, employees, independent contractors or partners, with respect to any claims for any losses, damages, liabilities or expenses (including attorneys' fees) incurred or sustained by either of them on account of injury to persons or damage to property or business arising out of the ownership, management, operation and maintenance of the Hotel, regardless whether any such claim or demand may arise because of the fault of negligence of the other party or its subsidiaries, affiliates, officers, employees, directors, agents or independent contractors. Each policy of insurance maintained in accordance with this Exhibit "D" shall contain a specific waiver of subrogation reflecting the above.

All policies of insurance provided for under this Exhibit "D" shall be carried in the name of the Manager. Owner's interest and that of any other applicable party will be included in the coverage by an additional insured endorsement.

All such policies of insurance shall be written on an "occurrence" basis, with no per location aggregate limitation.

Either Manager or Owner, by notice to the other, shall have the right to require that the minimum amount of insurance to be maintained with respect to the Hotel under this Exhibit "D" be increased to make such insurance comparable with prudent industry standards and to reflect increases in liability exposures, taking into account the size and location of the Hotel.

Owner hereby authorizes Manager to utilize the services of and/or place the insurance set forth in this Exhibit "D" with (i) any subsidiary or affiliated company of Promus Hotels, Inc. in the insurance business as Manager deems appropriate; or (ii) a third party insurance carrier meeting the specifications set forth above.

EXHIBIT "E"

INSURANCE

In accordance with Section 4.01(iii), Owner agrees, at its expense, to procure and maintain the following insurance coverages, as reasonably adjusted from time to time, throughout the Term of this Agreement:

Coverages:

Amounts Of Insurance:

Builders Risk

Completed value
of the Hotel

All risk for term of the initial
and any subsequent Hotel
construction and renovation.

Real and Personal Property

100% replacement
value of building
and contents

Blanket Coverage
Replacement Cost - all risk
Boiler Machinery - written on a
comprehensive form

Business Interruption

Calculated
yearly based
on estimated
Hotel
revenues.

Blanket Coverage for the perils
insured against under Real
and Personal Property in
this Exhibit "E." This coverage
shall specifically cover
Manager's loss of Management
Fees. The business interruption
insurance shall be for a
twelve (12) month indemnity period.

Owner's Protective Liability

\$10,000,000

All risks from construction and
renovation occurring prior to the
Opening Date and all risks from
Hotel construction and renovation
projects costing more than \$250,000
occurring after the Opening Date

LAW OFFICES
NOSSAMAN, GUTHNER, KNOX & ELLIOTT, LLP

THIRTY-FIRST FLOOR
 445 SOUTH FIGUEROA STREET
 LOS ANGELES, CALIFORNIA 90071-1602
 TELEPHONE (213) 612-7800
 FACSIMILE (213) 612-7801

FAX COVER PAGE

Date: 01/21/98 **Time:** 9:50 AM **File No.:** 120406-003

To:

Mr. Ed Ansbro	Fax:	(901) 374-5051
Promus Hotel Corporation	Phone:	(901) 374-5163
Mr. Mark B. David	Fax:	(714) 640-5058
Laguna Landmark, Incorporated	Phone:	(714) 640-5040
Ronald M. Halpern, Esq.	Fax:	(901) 374-5050
Promus Hotels, Inc.	Phone:	(901) 374-5000

From: Howard D. Coleman

Message:

*IF YOU DO NOT RECEIVE 2 PAGES, INCLUDING THIS COVER PAGE,
 PLEASE CALL Marcia Bertolli AT (714) 833-7800*

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LAW OFFICES
NOSSAMAN, GUTHNER, KNOX & ELLIOTT, LLP

WALTER L. NOSSAMAN
(1886-1984)

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SUITE 1800
LAKESHORE TOWERS
18101 VON KARMAN AVENUE
IRVINE, CA 92612-1047
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HOWARD D. COLEMAN
DIRECT DIAL NUMBER
(213) 612-7821

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JOHN T. KNOX
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OF COUNSEL

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WASHINGTON, D.C. 20005
(202) 783-7272

SACRAMENTO
SUITE 1000
915 L STREET
SACRAMENTO, CA 95814-3701
(916) 442-8888

January 21, 1998

REFER TO FILE NUMBER
120406-003

VIA FACSIMILE

Mr. Ed Ansbro
Vice President, Development
Promus Hotel Corporation
755 Crossover Lane
Memphis, Tennessee 38117-4900

Re: Garden Grove Management Agreement

Dear Ed:

I appreciate the redraft of the Management Agreement sent by Ron's letter of January 13th. Two quick points:

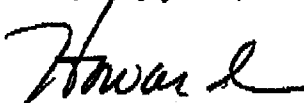
First, in the third paragraph of Exhibit "C", the new language should pick up real property taxes as well.

Second, I did not see my comment 45 regarding our client being named as a third party beneficiary in your goods and services contracts to the extent our client could so be named.

I think we are there.

Best regards.

Very truly yours,



Howard D. Coleman
of NOSSAMAN, GUTHNER, KNOX & ELLIOTT, LLP

HDC/mib

cc: Mark David/via fax
Ronald Halpern, Esq./via fax



Promus Hotel Corporation
755 Crossover Lane
Memphis, Tennessee 38117
Development Department
Fax #: (901) 374-5051

FACSIMILE TRANSMITTAL COVER SHEET

TO: Mark David

Company: _____

Fax Number: _____

From: Ed Anstiro

Fax Number: _____

Date: 7-14-97

Number of Pages (Including Cover Sheet): _____

If there are any problems with this transmittal, please call _____

at _____

COMMENTS

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July 11, 1997

Mr. Howard D. Coleman
Nossaman, Guther, Knox and Elliott, L.P.
445 S. Figueroa Street
Los Angeles, CA 90071-1602

RE: PROPOSED GARDEN GROVE HOTEL

Dear Mr. Coleman:

Pursuant to your proposal request of June 26, attached is our response to the questions that were included in your letter. To simplify the process, we have attached a proposed management contract which addresses many of the questions. As called for in your letter, each item is addressed in the order that you outlined. Any issue already included in the management contract will be so identified.

We look forward to furthering our discussions with Mark on this exciting project and look forward to hearing back from you within the next couple of weeks.

Thank you for this opportunity to work with you.

Very truly yours,

Ed Ansbro
Vice President
Hotel Development
Western Region

EA:wj



**PROPOSED MANAGEMENT CONTRACT
EMBASSY SUITES - ANAHEIM/GARDEN GROVE**

1. Terms of Management Agreement -

Refer to Exhibit C of the Management Agreement.

2. Management Fee -

Refer to Exhibit C of the Management Agreement.

3. Termination Provisions -

Refer to Section 9.01 - 9.07 of the Management Agreement.

4. Radius Protection -

During the first five years, Promus Hotels will not open another Embassy Suites hotel within a two-mile radius of the subject site.

5. Employees -

The employees of the hotel shall be employees of Promus Hotels, Inc.

6. Liquor License -

Refer to Section 4.01(ii) of the Management Contract.

7. Non-Site Specific Services -

The manager shall provide the services outlined under a standard license agreement. In addition, the Management Contract will cover off-site services including:

- Design Review Consultation
- Accounting Service/Reporting
- Payroll/Benefits Administration
- Human Resources Staffing/Development
- Risk Management
- Tax Insurance
- Capital Plan Administration
- Legal Support

All of the services are included in the management contract fee with the exception of accounting which is \$3,000/month.

8. Insurance -

Refer to Exhibit E of the Management Contract.

9. Assignability -

Refer to Section 11.05 of the Management Contract.

**Proposed Management Contract
Embassy Suites - Anaheim/Garden Grove
Page Two**

10. Budgets -

Refer to Section 3.01(v) of the Management Contract.

11. Financial Contribution -

Promus Hotels, Inc. would consider mezzanine financing on this project up to \$3,000,000 provided it meets our underwriting criteria outlined in the mezzanine loan application which is included for your review.

12. Financial Contribution by Owner -

Refer to Section 4.01 of the Management Contract.

13. Owner Control -

Refer to Section 3.01(ii); 3.01(v); 3.01(vi); 3.01(vii); 3.01(xiv) of the Management Contract.

14. Management/Owner Coordination and Responsibilities Prior to Opening -

- A. Design of hotel: The manager will work with the owner's architect on concept, schematic and final architectural plans.
- B. Interior Design: The manager will review and approve/disapprove the interior design package.
- C. Theme: Upon approval of the Franchise Agreement, the manager's design/construction and operating team will meet with the owner and his architect to discuss positioning and theme of the hotel.
- D. Construction: The manager's design and construction department will inspect the construction site a minimum of four times to ensure that the hotel is being built according to the approved plans and specifications.

15. Projections -

As discussed with Mark David, we believe the hotel could achieve a stabilized occupancy of 75% at an average daily rate of \$125 in 1997 dollars. This assumption is based on the performance of existing Embassy Suites in Orange County as well as properties that we operate in the Walt Disney World market. An internal study would be conducted by us upon execution of the License Agreement.

Garden Grove
7/09/97

MANAGEMENT AGREEMENT

This Management Agreement ("Agreement") is made and entered into on this ___ day of _____, 1997 ("Effective Date") between Laguna Landmark Inc, a _____, whose address is _____, ("Owner") and Promus Hotels, Inc., a Delaware corporation, whose address is 755 Crossover Lane, Memphis, TN 38117 ("Manager").

1:46PM

ARTICLE 1 THE HOTEL

Section 1.01. The Hotel. The subject matter of this Agreement is the management of the "Hotel," as defined in the Embassy Suites License Agreement attached hereto as Exhibit "A" (hereinafter collectively referred to as the "License Agreement"), by Manager. The License Agreement shall exclusively govern Owner's right to use the Embassy Suites "System" (as defined in the License Agreement) in the operation of the Hotel. Owner hereby expressly acknowledges that it shall not derive any rights in or to the use of the "Embassy Suites" name or the Embassy Suites System from this Agreement.

ARTICLE 2 TERM

Section 2.01. Opening Date. Manager shall open the Hotel to the public and commence doing business as a Embassy Suites hotel on the date all the conditions precedent in this Agreement and the License Agreement to the opening of the Hotel as a Embassy Suites hotel have been satisfied ("Opening Date"), which date shall be confirmed in an addendum to this Agreement.

Section 2.02. Term. The term shall commence on the Effective Date and continue for the term of years from the Opening Date set forth on Exhibit "B" ("Term").

Section 2.03. Extension of Term. The Term of this Agreement may be extended in the manner set forth on Exhibit "B."

ARTICLE 3
MANAGER'S OBLIGATIONS

Section 3.01. Manager's Obligations. Manager shall, on behalf of Owner and at Owner's expense, direct the operation of the Hotel pursuant to the terms of this Agreement and the License Agreement. Manager shall be exclusively responsible for directing the day-to-day activities of the Hotel and establishing all policies and procedures relating to the management and operation of the Hotel. Except as specifically otherwise provided, all cost(s) and expense(s) incurred by Manager in association with the performance of the obligations hereinafter set forth shall be pre-opening expenses if incurred prior to the Opening Date and operating costs if incurred after the Opening Date and shall accordingly be paid from the Pre-Opening Bank(s) Account as hereinafter defined in Section 3.01(i) or the Bank Account(s) as hereinafter defined in Section 3.01(iv) below. Manager, during the Term, shall have the following obligations:

- (i) **Pre-Opening.** Six (6) months prior to the scheduled Opening Date, Manager shall commence implementation of a pre-opening program which shall include all activities necessary to financially and operationally prepare the Hotel for opening. To implement the pre-opening program, Manager shall prepare a comprehensive pre-opening budget which shall be submitted to Owner for Owner's approval ninety (90) days after the Effective Date ("Pre-Opening Budget"). All costs and expenses of the pre-opening program shall be paid from a special bank account(s) opened by Manager in the name of Owner upon which only Manager's designees shall be authorized to draw ("Pre-Opening Bank Account(s)"). After all pre-opening expenses have been paid, the balance in the Pre-Opening Bank Account(s) shall be returned to Owner and the Pre-Opening Bank Account(s) closed.
- (ii) **Personnel.** Manager shall be the sole judge of the fitness and qualification of all personnel working at the Hotel ("Hotel Personnel") and shall have the sole and absolute right to hire, supervise, order, instruct, discharge and determine the compensation, benefits and terms of employment of all Hotel Personnel. All Hotel Personnel shall be employees of Manager. Manager shall also have the right to use employees of Manager, Manager's, parent and subsidiary and affiliated companies, not located at the Hotel to provide services to the Hotel ("Off-Site Personnel"). All expenses, costs (including, but not limited to, salaries, benefits and severance pay), liabilities and claims which are related to Hotel Personnel and Off-Site Personnel shall be pre-opening expenses or operating expenses as appropriate.

Manager shall provide Owner an opportunity to interview each proposed general manager for the Hotel prior to the appointment of said individual to the position of Hotel general manager. Manager shall solicit and seriously consider the opinions of Owner on said individual prior to making a final decision on the appointment of such individual to the position of Hotel

general manager.

- (iii) **Hotel Policies.** Manager shall determine the terms of guest admittance to the Hotel, establish room rates, and use of rooms for commercial purposes;
- (iv) **Bank Accounts.** Manager shall open and operate the Hotel's bank accounts. All sums received from the operation of the Hotel and all items paid by Manager arising by virtue of Manager's operation of the Hotel shall pass through bank account(s) established by Manager in Owner's name at such banks as Manager and Owner shall mutually agree ("Bank Account(s)"); only Manager's designees shall be exclusively authorized to operate and draw from the Bank Account(s). Each fiscal month Manager, on behalf of Owner, shall disburse funds from the Bank Account(s) in the order of priority and to the extent available in accordance with the priority schedule set forth on Exhibit "B;"
- (v) **Operating Budgets.** Manager shall, not less than forty-five (45) days prior to the scheduled Opening Date submit to Owner, for Owner's approval, a proposed operating budget for the ensuing full or partial fiscal year, as the case may be ("Operating Budget"). Thereafter, Manager shall, not less than forty-five (45) days prior to the commencement of each full fiscal year, submit to Owner, for Owner's approval, a proposed Operating Budget for the ensuing full or partial fiscal year, as the case may be.

Owner's approval of the Operating Budget shall not be unreasonably withheld and shall be deemed given unless a specific written objection thereto is delivered by Owner to Manager within fifteen (15) days after submission. Owner shall review the Operating Budget on a line-by-line basis. To be effective, any notice which disapproves a proposed Operating Budget must contain specific objections in reasonable detail to individual line items.

If the initial Operating Budget contains disputed budget item(s), said item(s) shall be deemed adopted until Owner and Manager have resolved the item(s) objected to by Owner or the Accountant(s) (hereinafter defined in Section 10.02) have resolved the item(s) objected to by Owner. Thereafter, if Owner disapproves or raises objections to a proposed Operating Budget in the manner and within the time period provided therefore, and Owner and Manager are unable to resolve the disputed or objectionable matters submitted by Owner prior to the commencement of the applicable fiscal year, the undisputed portions of the proposed Operating Budget shall be deemed to be adopted and approved and the corresponding line item contained in the Operating Budget for the preceding fiscal year shall be adjusted as set forth herein and shall be substituted in lieu of the disputed items in the proposed Operating Budget. Those line items which are in

dispute shall be determined by increasing the preceding fiscal year's corresponding line items by an amount determined by Manager which does not exceed the Consumer Price Index for All Urban Consumers published by the Bureau of Labor Statistics of the United States Department of Labor, U.S. City Average, all items (1984-1986=100) for the fiscal year prior to the fiscal year with respect to which the adjustment to the line item is being calculated or any successor or replacement index thereto. The resulting Operating Budget obtained in accordance with the preceding sentence shall be deemed to be the Operating Budget in effect until such time as Manager and Owner have resolved the items objected to by Owner.

Manager shall revise the Operating Budget from time to time, as necessary, to reflect any unpredicted significant changes, variables or events or to include significant, additional, unanticipated items of income or expense. Manager shall be permitted to reallocate part or all of the amount budgeted with respect to any line item to another line item and to make such other modifications to the Operating Budget as Manager deems necessary. Owner acknowledges that the Operating Budget is intended only to be a reasonable estimate of the Hotel's income and expenses for the ensuing fiscal year. Manager shall not be deemed to have made any guarantee, warranty or representation whatsoever in connection with the Operating Budget;

- (vi) Operating Statement. Manager shall prepare and furnish Owner, on or before the twentieth (20th) day of the fiscal month immediately following the close of a fiscal month, with a detailed operating statement setting forth the results of the Hotel's operations. Within ninety (90) days after the end of each fiscal year, Manager shall furnish Owner with a detailed operating statement setting forth the results of the Hotel's operations for the fiscal year;
- (vii) Capital Budgets. Manager shall, not less than forty-five (45) days prior to the commencement of each fiscal year, submit to Owner a recommended "Capital Budget" for the ensuing full or partial fiscal year, as the case may be, for furnishings, equipment, and ordinary Hotel capital replacement items as shall be required to operate the Hotel in accordance with the standards referred to in the License Agreement. If Owner does not approve the Capital Budget, Manager will be entitled to spend up to two percent (2%) of Adjusted Gross Revenue for capital expenditures in the second full year after Opening; three percent (3%) of Adjusted Gross Revenue in the third full year after Opening, and four percent (4%) of Adjusted Gross Revenue during the fourth full year after Opening and (5%) thereafter until the disputed Capital Budget item(s) have been resolved in accordance with Section 10.02.1(e);

- (viii) **General Maintenance Non-Capital Replacements.** Manager shall supervise the maintenance, repair and replacement of non-Capital Replacements;
- (ix) **Operating Equipment.** Manager shall select and purchase all operating equipment for the Hotel such as linens, utensils, uniforms and other similar items;
- (x) **Operating Supplies.** Manager shall select and purchase all operating supplies for the Hotel such as food, beverages, fuel, soap, cleansing items, stationery and other consumable items;
- (xi) **Accounting Standards.** Manager shall maintain the books and records reflecting the operations of the Hotel in accordance with the accounting practices of Manager in conformity with generally accepted accounting practices consistently applied and shall adopt and follow the fiscal accounting periods utilized by Manager in its normal course of business. The Hotel level generated accounting records reflecting detailed day-to-day transactions of the Hotel's operations, shall be kept by Manager at the Hotel or at Manager's regional offices or corporate headquarters, or at such other location as Manager shall reasonably determine. Manager shall receive a monthly fee for accounting services provided to the Hotel ("Accounting Fee"). The current Accounting Fee is set forth on Exhibit "B." The Accounting Fee shall be adjusted by Manager from time to time and set forth in the annual Operating Budget;
- (xii) **Marketing and Advertising.** Manager shall advertise and promote the Hotel in coordination with the sales and marketing programs of Manager and other Embassy Suites hotels. Manager may participate in sales and promotional campaigns and activities involving complimentary rooms. Manager, in marketing and advertising the Hotel, shall have the right to use marketing and advertising services of employees of Manager and its parent and affiliated companies not located at the Hotel;
- (xiii) **Permits and Licenses.** Manager shall assist Owner in obtaining the various permits and licenses required to operate the Hotel in accordance with the terms of this Agreement and the License Agreement;
- (xiv) **Owner Meetings.** The Hotel's general manager shall meet with Owner's Representative [as hereinafter defined in Section 4.01 (viii)] monthly to review and discuss the previous and future month's operating statement, cash flow, budget, capital expenditures, important personnel matters and the general concerns of Owner and Manager ("Monthly Owner's Meeting"). In addition, a representative of Manager's corporate staff shall meet with Owner's Representative quarterly to review and discuss the previous and

future quarter's operating statement, cash flow, budget, capital expenditures, important personnel matters and the general concerns of Owner and Manager ("Quarterly Owner's Meeting"). Except to the extent otherwise mutually agreed upon by Owner and Manager, all Monthly Owner's Meetings and Quarterly Owner's Meetings shall be held at the Hotel; and

- (xv) Insurance. Manager shall procure and maintain throughout the Term the insurance coverages set forth on Exhibit "D."

ARTICLE 4 OWNER'S OBLIGATIONS

Section 4.01. Owner's Obligations. During the Term, Owner shall have the obligations set forth below:

1:50PM

- (i) License Agreement. Owner shall comply with all the terms and conditions of the License Agreement (specifically including, but not limited to, Licensee's obligation to pay the fees, charges and contributions set forth in paragraph 3.C. of the License Agreement) and keep the License Agreement in full force and effect from the Effective Date through the remainder of the Term. Nothing in this Agreement shall be interpreted in a manner which would relieve Owner of any of its obligations under the License Agreement;
- (ii) Licenses and Permits. Owner shall obtain and maintain, with Manager's assistance and cooperation, all governmental permissions, licenses and permits necessary to enable Manager to operate the Hotel in accordance with the terms of this Agreement and the License Agreement;
- (iii) Insurance. Owner shall procure and maintain throughout the Term the insurance coverages set forth on Exhibit "E;"
- (iv) Pre-Opening Funds. Seven (7) days prior to the commencement of the pre-opening program described in Section 3.01(i), Owner shall make an initial deposit of the sum specified on Exhibit "B" in the Pre-Opening Bank Account(s). Thereafter, Owner shall deposit such funds in the Pre-Opening Bank Account(s) as are set forth in the funding schedule attached to the Pre-Opening Budget;
- (v) Operating Funds. Owner shall provide all funds necessary to enable Manager to arrange and operate the Hotel in accordance with the terms of this Agreement and the License Agreement. Owner agrees to deliver to Manager for deposit into the Bank Account(s) on the Opening Date the

amount specified on Exhibit "B" which amount shall be the "Minimum Balance" to be maintained by Owner during the first year of the Hotel's operation. The Minimum Balance thereafter shall be no less than the Hotel's operating costs for the preceding fiscal month. The Minimum Balance shall serve as working capital for the Hotel's operations. Owner agrees, upon Manager's written request, to immediately furnish Manager with sufficient funds to make up any deficiency in the Minimum Balance;

- (vi) Capital Funds. Owner shall expend such amounts for renovation programs, furnishings, equipment and ordinary Hotel capital replacement items as are required from time to time to (a) maintain the Hotel in good order and repair; (b) comply with the standards referred to in the License Agreement; and (c) comply with governmental regulations and orders. Owner shall cooperate fully with Manager in establishing appropriate procedures and timetables for Owner to undertake capital replacement projects;
- (vii) Payments to Manager. 1:51PM ; Owner shall promptly pay to Manager all amounts due Manager under this Agreement;
- (viii) Owner's Representative. Owner shall appoint a representative to represent Owner in all matters relating to this Agreement and/or the Hotel ("Owner's Representative"). Owner's initial Owner's Representative shall be the individual named on Exhibit "B." Manager shall have the right to deal solely with the Owner's Representative on all such matters. Manager may rely upon statements and representations of Owner's Representative as being from and binding upon Owner. Owner may change its Owner's Representative from time to time by providing written notice to Manager in the manner provided for herein. Owner shall cause the Owner's Representative to attend all Monthly Owner's Meetings and Quarterly Owner's Meetings;
- (ix) Owner's Audits. Owner shall have the right to have its independent accounting firm examine the books and records of the Hotel at any reasonable time upon forty-eight (48) hours notice to Manager; and
- (x) Quiet and Peaceable Operation. Owner shall ensure that Manager is able to peaceably and quietly operate the Hotel in accordance with the terms of this Agreement, free from molestation, eviction and disturbance by Owner or by any other person or persons claiming by, through or under Owner. Owner shall undertake and prosecute all reasonable and appropriate actions, judicial or otherwise, required to assure such quiet and peaceable operations by Manager.

ARTICLE 5 MANAGEMENT FEE

Section 5.01. Management Fee. On the fifteenth (15th) day of each fiscal month after the Opening Date, Manager is authorized by Owner to pay itself from the Bank Account(s) the Management Fees calculated in the manner set forth on Exhibit "C."

ARTICLE 6 CLAIMS AND LIABILITY

Section 6.01. Claims and Liability. Owner and Manager mutually agree for the benefit of each other to look only to the appropriate insurance coverages in effect pursuant to this Agreement in the event any demand, claim, action, damage, loss, liability or expense occurs as a result of injury to person or damage to property regardless whether any such demand, claim, action, damage, loss, liability or expense is caused or contributed to, by or results from the negligence of Owner or Manager or their subsidiaries, affiliates, employees, directors, officers, agents or independent contractors and regardless whether the injury to person or damage to property occurs in and about the Hotel or elsewhere as a result of the performance of this Agreement. Nevertheless, in the event the insurance proceeds are insufficient or there is no insurance coverage to satisfy the demand, claim, action, loss, liability or expense and the same did not arise out of the gross negligence or willful misconduct of Manager, Owner agrees, at its expense, to indemnify and hold Manager and its subsidiaries, affiliates, officers, directors, employees, agents or independent contractors harmless to the extent of the excess liability.

Section 6.02. Survival. The provisions of this Article 6 shall survive any cancellation, termination or expiration of this Agreement and shall remain in full force and effect until such time as the applicable statute of limitation shall cut off all demands, claims, actions, damages, losses, liabilities or expenses which are the subject of the provisions of this Article 6.

ARTICLE 7 CLOSURE, EMERGENCIES AND DELAYS

Section 7.01. Events of Force Majeure. If at any time during the Term of this Agreement it becomes necessary, in Manager's opinion, to cease operation of the Hotel in order to protect the Hotel and/or the health, safety and welfare of the guests and/or employees of the Hotel for reasons beyond the reasonable control of Manager, such as, but not limited to, acts of war, insurrection, civil strife and commotion, labor unrest, governmental regulations and orders, shortage or lack of adequate supplies or lack of skilled or unskilled employees, contagious illness, catastrophic events or acts of God ("Force Majeure"), then in such event or similar events Manager may close and cease

operation of all or any part of the Hotel, reopening and commencing operation when Manager deems that such may be done without jeopardy to the Hotel, its guests and employees.

Manager and Owner agree, except as otherwise provided herein, that the time within which a party is required to perform an obligation and Manager's right to manage the Hotel under this Agreement shall be extended for a period of time equivalent to the period of delay caused by an event of Force Majeure.

Section 7.02. Emergencies. If a condition of an emergency nature should exist which requires that immediate repairs be made for the preservation and protection of the Hotel, its guests or employees, or to assure the continued operation of the Hotel, Manager is authorized to take all actions and to make all expenditures necessary to repair and correct such condition, regardless whether provisions have been made in the applicable budget for such emergency expenditures. Expenditures made by Manager in connection with an emergency shall be paid, in Manager's sole discretion, out of the Bank Account(s). Owner shall immediately replenish such funds paid from the Bank Account(s).

ARTICLE 8 **CONDEMNATION AND CASUALTY**

Section 8.01. Condemnation. If the Hotel is taken in any eminent domain, expropriation, condemnation, compulsory acquisition or similar proceeding by a competent authority, this Agreement shall automatically terminate as of the date of taking or condemnation. Any compensation for the taking or condemnation of the physical facility comprising the Hotel shall be paid to Owner. Manager, however, with the full cooperation of Owner, shall have the right to file a claim with the appropriate authorities for the loss of Management Fee income for the remainder of the Term and any extension thereof because of the condemnation or taking. If only a portion of the Hotel is so taken and the taking does not make it unreasonable or imprudent, in Manager's and Owner's opinion, to operate the remainder as a hotel of the type immediately preceding such taking, this Agreement shall not terminate. Any compensation shall be used, however, in whole or in part, to render the Hotel a complete and satisfactory architectural unit as a hotel of the same type and class as it was immediately preceding such taking or condemnation.

Section 8.02. Casualty. In the event of a fire or other casualty, Owner shall comply with the terms of the License Agreement and this Agreement shall remain in full force and effect so long as the License Agreement remains in full force and effect.

ARTICLE 9

TERMINATION RIGHTS

Section 9.01. Bankruptcy and Dissolution. If either party is voluntarily or involuntarily dissolved or declared bankrupt, insolvent, or commits an act of bankruptcy, or if a company enters into liquidation whether compulsory or voluntary otherwise than for the purpose of amalgamation or reconstruction, or compounds with its creditors, or has a receiver appointed over all or any part of its assets, or passes title in lieu of foreclosure, the other party may terminate this Agreement immediately upon serving notice to the other party, without liability on the part of the terminating party.

Section 9.02. Manager's Termination Right Upon the Termination of License Agreement. If the License Agreement is terminated for any reason, Manager may terminate this Agreement immediately upon serving notice to Owner, without liability on the part of Manager. Upon such termination, unless specifically provided otherwise herein, Manager shall be entitled to receive the Termination Fee calculated in the manner set forth on Exhibit "B." Notwithstanding anything contained herein, Manager shall not be entitled to receive the Termination Fee if the License Agreement is terminated because of Manager's failure to perform its obligations hereunder and Manager's failure was not caused by the failure of Owner to perform its obligations hereunder.

Section 9.03. Breach. If either party, during the Term of this Agreement, commits a breach of this Agreement by failing to keep, perform or observe any covenant, obligation or agreement required to be kept, performed or observed by such party under the terms of this Agreement, and the defaulting party fails to remedy or correct such breach within thirty (30) days after receipt of notice of such breach from the non-defaulting party, then the non-defaulting party may terminate this Agreement, without prejudice to its right to seek damages or other remedies available to it at law or in equity, at the expiration of such thirty (30) day period; provided, however, that if the breach is non-monetary and is of a nature that it cannot reasonably be remedied or corrected within such thirty (30) day period, then such thirty (30) day period shall be deemed to be extended for such additional period as may reasonably be required to remedy or correct the same if the party committing the breach promptly commences to remedy the breach upon receipt of the other party's notice and continues therewith with due diligence.

Section 9.04. Owner's Early Termination Right. Owner, at its option, may terminate this Agreement upon sixty (60) days written notice to Manager provided, along with said notice, Owner pays Manager the Termination Fee calculated in the manner set forth on Exhibit "B."

Section 9.05. Manager's Right to Terminate Upon Sale. If there is to be a "Change in Ownership" as defined in the License Agreement and the new owner of the Hotel has not received an Embassy Suites License Agreement for the operation of the Hotel (for purposes of this Section 9.05, said agreement shall be referred to as the "License Agreement"), Manager shall have the right upon giving notice to Owner to

terminate this Agreement on the date the Change of Ownership occurs. If there is a Change of Ownership and the new owner of the Hotel receives a License Agreement, but does not enter into an assumption agreement, pursuant to which the new owner assumes all of Owner's obligations hereunder, with Manager prior to the date the Change of Ownership occurs, Manager shall have the right, upon giving notice to Owner, to terminate this Agreement on the date the Change of Ownership occurs. If Manager terminates this Agreement pursuant to this Section 9.05, (in addition to payment of all other fees and reimbursable sums due to Manager to the date of termination), Manager shall have the right to receive the Termination Fee calculated in the manner set forth on Exhibit "B." If a Change of Ownership occurs, and the new owner obtains a License Agreement and the new owner and Manager enter into an assumption agreement pursuant to which this Agreement remains in full force and effect, Manager shall not receive a Termination Fee.

Section 9.06. Delays. Notwithstanding any other provision of this Agreement, (i) if Owner fails to deliver to Manager a completed Hotel ready for operation on or before the date specified on Exhibit "B," or (ii) if any event of the type described in Article 7 or 8 occurs after Manager receives possession of the Hotel and Manager is unable to operate the Hotel for a period of ninety (90) days, Manager shall have the option to terminate this Agreement upon thirty (30) days prior written notice to Owner, without liability on the part of Manager, its parent or their subsidiaries or affiliates.

Section 9.07. Employment Solicitation Restriction Upon Termination. Owner and its affiliates and subsidiaries and their successors hereby agree not to solicit the employment of the Hotel general manager or assistant general manager at any time during the term of this Agreement without Manager's prior written approval. Furthermore, Owner and its affiliates and subsidiaries and successors agree not to employ the Hotel's general manager or assistant general manager for a period of twelve (12) months after the termination or expiration of this Agreement, without Manager's prior written approval.

ARTICLE 10 APPLICABLE LAW AND ARBITRATION

Section 10.01. Applicable Law. The interpretation, validity and performance of this Agreement shall be governed by the procedural and substantive laws of the state of Tennessee and any and all disputes, except those specifically referred to below, shall be brought and maintained within that state. If any judicial authority holds or declares that the law of another jurisdiction is applicable, this Agreement shall remain enforceable under the laws of that jurisdiction.

Section 10.02. Arbitration of Financial Matters.

Subsection 10.02.1. Matters to be Submitted to Arbitration. In the case of a dispute with respect to any of the following matters, either party may submit such matter to arbitration which shall be conducted by the Accountants (as hereinafter defined in Subsection 10.02.2):

- (a) computation of the Management Fees;
- (b) reimbursements due to Manager under the provisions of Section 11.15;
- (c) any adjustment in the Minimum Balance under the provisions of Section 4.01 (v);
- (d) any adjustment in dollar amounts of insurance coverages required to be maintained; and
- (e) any dispute concerning the approval of an Operating Budget.

1:55PM ;

All disputes concerning the above matters shall be submitted to the Accountants. The decision of the Accountants with respect to any matters submitted to them under this Subsection 10.02.1 shall be binding on both parties hereto.

Subsection 10.02.2. The Accountants. The "Accountants" shall be one of three (3) firms of certified public accountants of recognized national standing in the hotel industry. Until otherwise agreed to by the parties, the three (3) firms shall be Arthur Andersen & Co., Coopers and Lybrand, and Pannell Kerr Forster, notwithstanding any existing relationships which may exist between Owner and such accounting firms or Manager and such accounting firms. The party desiring to submit any matter to arbitration under Subsection 10.02.1 shall do so by written notice to the other party, which notice shall set forth the items to be arbitrated and such party's choice of one of the three (3) accounting firms. The party receiving such notice shall within fifteen (15) days after receipt of such notice either approve such choice, or designate one of the remaining two (2) firms by written notice back to the first party, and the first party shall within fifteen (15) days after receipt of such notice either approve such choice or disapprove the same. If both parties shall have approved one of the three (3) firms under the preceding sentence, then such firm shall be the "Accountants" for the purposes of arbitrating the dispute; if the parties are unable to agree on an accounting firm, then the third firm, which was not designated by either party, shall be the "Accountants" for such purpose. The Accountants shall be required to render a decision in accordance with the procedures described in Subsection 10.02.3 within fifteen (15) days after being notified of their selection. The fees and expenses of the Accountants will be paid by the non-prevailing party.

Subsection 10.02.3. Procedures. In all arbitration proceedings submitted to the Accountants, the Accountants shall be required to agree upon and approve the substantive position advocated by Owner or Manager with respect to each disputed item. Any decision rendered by the Accountants that does not reflect the position advocated by

Owner or Manager shall be beyond the scope of authority granted to the Accountants and, consequently, may be overturned by either party. All proceedings by the Accountants shall be conducted in accordance with the Uniform Arbitration Act, except to the extent the provisions of such act are modified by this Agreement or the mutual agreement of the parties. Unless otherwise agreed, all arbitration proceedings shall be conducted at the Hotel.

Section 10.03. Performance During Disputes. It is mutually agreed that during any kind of controversy, claim, disagreement or dispute, including a dispute as to the validity of this Agreement, Manager shall remain in possession of the Hotel as Manager; and Owner and Manager shall continue their performance of the provisions of this Agreement and its exhibits. Manager shall be entitled to injunctive relief from a civil court or other competent authority to maintain possession in the event of a threatened eviction during any dispute, controversy, claim or disagreement arising out of this Agreement.

1:56PM ;

ARTICLE 11

GENERAL PROVISIONS

Section 11.01. Authorization. Owner and Manager represent and warrant to each other that their respective corporations have full power and authority to execute this Agreement and to be bound by and perform the terms hereof. On request, each party shall furnish the other evidence of such authority.

Section 11.02. Relationship. Manager and Owner shall not be construed as joint venturers or partners of each other by reason of this Agreement and neither shall have the power to bind or obligate the other except as set forth in this Agreement.

Section 11.03. Manager's Contractual Authority in the Performance of this Agreement. Manager is authorized to make, enter into and perform in the name of and for the account of Owner any contracts deemed necessary by Manager to perform its obligations under this Agreement.

Section 11.04. Further Actions. Owner and Manager agree to execute all contracts, agreements and documents and to take all actions necessary to comply with the provisions of this Agreement and the intent hereof.

Section 11.05. Successors and Assigns. Owner's consent shall not be required for Manager to assign any of its rights, interests or obligations as Manager hereunder to any parent, subsidiary or affiliate of Manager or Promus Hotels, Inc., provided that any such assignee agrees to be bound by the terms and conditions of this Agreement. The acquisition of Manager or its parent company by a third party shall not constitute an assignment of this Agreement by Manager and this Agreement shall remain in full force and effect between Owner and Manager. Except as herein provided, Manager shall not assign any of its obligations hereunder without the prior written consent

of Owner, which shall not be unreasonably withheld or delayed. Owner shall be deemed to have consented to such an assignment of this Agreement if Owner has not notified Manager in writing to the contrary within fifteen (15) days after Owner has received Manager's request for Owner's consent to an assignment. Manager shall have the right to pledge or assign its right to receive the Management Fees hereunder without the prior written consent of Owner. In the event of any such pledge or assignment, Owner shall have no right of set off, counterclaim or defense of payment against assignee. Owner's sole remedy for breach of Manager's obligations under this Agreement shall be suit for damages or specific performance against Manager.

Owner shall have the right to assign this Agreement to the person or entity which has obtained title to the Hotel and a Embassy Suites License Agreement for the Hotel. Except as hereinabove provided, Owner shall not have the right to assign this Agreement.

Section 11.06. Notices. All notices or other communications provided for in this Agreement shall be in writing and shall be either hand delivered, delivered by certified mail, postage prepaid, return receipt requested, delivered by an overnight delivery service, or delivered by facsimile machine (with an executed original sent the same day by an overnight delivery service), addressed as set forth on Exhibit "B." Notices shall be deemed delivered on the date that is four (4) calendar days after the notice is deposited in the U.S. mail (not counting the mailing date) if sent by certified mail, or, if hand delivered, on the date the hand delivery is made, or if delivered by facsimile machine, on the date the transmission is made. If given by an overnight delivery service, the notice shall be deemed delivered on the next business day following the date that the notice is deposited with the overnight delivery service. The addresses given above may be changed by any party by notice given in the manner provided herein.

Section 11.07. Documents. Owner shall furnish Manager copies of all leases, title documents, property tax receipts and bills, insurance statements, all financing documents (including notes and mortgages) relating to the Hotel and such other documents pertaining to the Hotel as Manager shall request.

Section 11.08. Defense. Manager shall defend and/or settle any claim or legal action brought against Manager or Owner, individually, jointly or severally in connection with the operation of the Hotel. Manager shall retain and supervise legal counsel, accountants and such other professionals, consultants and specialists as Manager deems appropriate to defend and/or settle any such claim or cause of action. All liabilities, costs, and expenses, including attorneys' fees and disbursements, incurred in defending and/or settling any such claim or legal action which are not covered by insurance shall be paid by Owner.

Section 11.09. Waivers. No failure or delay by Manager or Owner to insist upon the strict performance of any covenant, agreement, term or condition of this Agreement, or to exercise any right or remedy consequent upon the breach thereof, shall constitute a waiver of any such breach or any subsequent breach of such covenant, agreement, term

or condition. No covenant, agreement, term, or condition of this Agreement and no breach thereof shall be waived, altered or modified except by written instrument. No waiver of any breach shall affect or alter this Agreement, but each and every covenant, agreement, term and condition of this Agreement shall continue in full force and effect with respect to any other then existing or subsequent breach thereof.

Section 11.10. Changes. Any change to or modification of this Agreement including, without limitation, any change in the application of this Agreement to the Hotel, must be evidenced by a written document signed by both parties hereto.

Section 11.11. Captions. The captions for each Article and Section are intended for convenience only.

Section 11.12. Severability. If any of the terms and provisions hereof shall be held invalid or unenforceable, such invalidity or unenforceability shall not affect any of the other terms or provisions hereof. If, however, any material part of a party's rights under this Agreement shall be declared invalid or unenforceable, (specifically including Manager's right to receive its Management Fees) the party whose rights have been declared invalid or unenforceable shall have the option to terminate this Agreement upon thirty (30) days written notice to the other party, without liability on the part of the terminating party.

Section 11.13. Interest. Any amount payable to Manager or Owner by the other which has not been paid when due shall accrue interest at the lesser of: (a) the highest legal limit in the state in which the Hotel is located, (b) the highest legal limit in the state of Tennessee, or (c) two percentage points (2%) over the published base rate of interest charged by Citibank, N.A., New York, New York, to borrowers on ninety (90) day unsecured commercial loans, as the same may be changed from time to time.

Section 11.14. Reimbursement. The performance by Manager of its responsibilities under this Agreement are conditioned upon Owner providing sufficient funds to Manager on a timely basis to enable Manager to perform its obligations hereunder. Nevertheless, Manager shall be entitled, at its option, to advance funds or contribute property, on behalf of the Owner, to satisfy obligations of Owner in connection with the Hotel and this Agreement. Manager shall keep appropriate records to document all reimbursable expenses paid by Manager, which records shall be made available for inspection by Owner or its agents upon request. Owner agrees to reimburse Manager with interest upon demand for money paid or property contributed by Manager to satisfy obligations of Owner in connection with the Hotel and this Agreement. Interest shall be calculated at the rate set forth in Section 11.13 from the date Owner was obligated to remit the funds or contribute the property for the satisfaction of such obligation to the date reimbursement is made.

Section 11.15. Travel and Out-of-Pocket Expenses. Manager shall be reimbursed for all travel and out-of-pocket expenses of Manager's employees reasonably incurred in the performance of this Agreement. Manager shall have sole discretion, which shall not be unreasonably exercised, to determine the necessity for such travel or other expenses.

Section 11.16. Set off. Without prejudice to Manager's right to terminate this Agreement pursuant to the provisions of this Agreement, Manager may at any time and without notice to Owner set off or transfer any sum or sums held by Manager or other member of Promus Hotels, Inc. to the order or on behalf of Owner or standing to the credit of Owner in the Pre-Opening Bank Account(s) or Bank Account(s) in or towards satisfaction of any of Owner's liabilities to Manager in respect of all sums due to Manager under the terms of this Agreement.

Section 11.17. Third Party Beneficiary. This Agreement is exclusively for the benefit of the parties hereto and it may not be enforced by any party other than the parties to this Agreement and shall not give rise to liability to any third party other than the authorized successors and assigns of the parties hereto.

Section 11.18. Brokerage. Manager and Owner represent and warrant to each other that neither has sought the services of a broker, finder or agent in this transaction, and neither has employed, nor authorized, any other person to act in such capacity. Manager and Owner each hereby agrees to indemnify and hold the other harmless from and against any and all claims, loss, liability, damage or expenses (including reasonable attorneys' fees) suffered or incurred by the other party as a result of a claim brought by a person or entity engaged or claiming to be engaged as a finder, broker or agent by the indemnifying party.

Section 11.19. Survival of Covenants. Any covenant, term or provision of this Agreement which, in order to be effective, must survive the termination of this Agreement, shall survive any such termination.

Section 11.20. Estoppel Certificate. Manager and Owner agree to furnish to the other party, from time to time upon request, an estoppel certificate in such reasonable form as the requesting party may request stating whether there have been any defaults under this Agreement known to the party furnishing the estoppel certificate and such other information relating to the Hotel as may be reasonably requested.

Section 11.21. Other Agreements. Except to the extent as may now or hereafter be specifically provided, nothing contained in this Agreement shall be deemed to modify any other agreement between Owner and Manager with respect to the Hotel or any other property.

Section 11.22. Periods of Time. Whenever any determination is to be made or action is to be taken on a date specified in this Agreement, if such date shall fall on a

Saturday, Sunday or legal holiday under the laws of the state of Tennessee and/or the state in which the Hotel is located, then in such event said date shall be extended to the next day which is not a Saturday, Sunday or legal holiday.

Section 11.23. Preparation of Agreement. This Agreement shall not be construed more strongly against either party regardless of who is responsible for its preparation.

Section 11.24. Exhibits. All exhibits attached hereto are incorporated herein by reference and made a part hereof as if fully rewritten or reproduced herein.

Section 11.25. Attorneys' Fees and Other Costs. The parties to this Agreement shall bear their own attorneys' fees in relation to negotiating and drafting this Agreement. Should Owner or Manager engage in litigation to enforce their respective rights pursuant to this Agreement, the prevailing party shall have the right to indemnity by the non-prevailing party for an amount equal to the prevailing party's reasonable attorneys' fees, court costs and expenses arising therefrom.

Section 11.26. Counterparts. This Agreement may be executed in two (2) or more counterparts, each of which shall be deemed an original.

The parties have respectively caused this Agreement to be executed as of the respective dates shown below.

OWNER:

LAGUNA LANDMARK INC.

By: _____

Its: _____

MANAGER:

PROMUS HOTELS, INC.

By: _____

Its: _____

Witness

Witness

c:\manage\phoenix.mga

EXHIBIT "A"
LICENSE AGREEMENT

2:00PM ;

COMM-FEDER

1997-07-14

EXHIBIT "B"**DEAL SPECIFIC TERMS**

TERM: Ten (10) years from the Opening Date

EXTENSION TERM: Two (2) Five Year Renewal Options

INITIAL DEPOSIT IN PRE-OPENING BANK ACCOUNT(S):

INITIAL MINIMUM BALANCE FOR THE BANK ACCOUNT(S):

INITIAL OWNER'S REPRESENTATIVE:

DISBURSEMENT PRIORITY SCHEDULE:

Each fiscal month Manager, on behalf of Owner, shall disburse funds from the Bank Account(s) in the following order of priority and to the extent available:

- (a) all fees, assessments and charges due and payable under the License Agreement when issued;
- (b) the Management Fee;
- (c) all reimbursable expenses due Manager;
- (d) all other Hotel operating costs, as such costs and expenses are defined under the accounting practices of Manager in conformity with generally accepted accounting practices consistently applied, specifically including, but not limited to, (i) the cost of operating equipment and operating supplies, wages, salaries and employee fringe benefits, advertising and promotional expenses, the cost of personnel training programs, utility and energy costs, operating licenses and permits, grounds and landscaping maintenance costs and equipment rentals approved by Manager as an operating cost; (ii) all expenditures made for maintenance and repairs to keep the Hotel in good condition and repair, specifically excluding expenditures for Capital Replacements; and (iii) premiums and charges on the insurance coverages specified in Exhibit "D" incurred after the Opening Date. There shall be excluded from the operating costs of the Hotel the following, which shall be ownership costs of the Hotel:

(i) depreciation of the Hotel, furnishings, fixtures and equipment; (ii) rental pursuant to a ground lease, if any, or any other lease payments; (iii) debt service (interest and principal) on any mortgage(s) encumbering the Hotel; (iv) property taxes and assessments; (v) amortization of pre-opening expenses; (vi) expenditures for Capital Replacements; (vii) audit, legal and other professional or special fees; (viii) premiums for insurance coverages specified in Exhibit "E"; (ix) equipment rentals approved by Manager as an ownership cost; (x) administrative and general expenses and disbursements of Owner, including compensation of employees of Owner; (xi) Federal, State and local Franchise and Income Taxes; (xii) amortization of bond discounts and mortgage expenses; and (xiii) such other costs or expenses which are normally treated as ownership costs under the accounting practices of Manager in conformity with generally accepted accounting practices consistently applied;

2:01PM ;

(e) the following ownership costs, disbursed in the following order of priority and to the extent available:

- (i) debt service upon any mortgage(s) encumbering the Hotel;
- (ii) an amount (annualized) to satisfy land, building and personal property taxes and assessments;
- (iii) an amount (annualized) to satisfy the premiums for the insurance required to be obtained by Owner in accordance with Exhibit "E"; and
- (iv) any lease payments.

After the disbursements set forth above, any excess funds remaining in the Bank Account(s) over the Minimum Balance shall be distributed to Owner. If after making the disbursements set forth above, there shall be a deficiency in the Minimum Balance, Owner shall immediately provide such funds as may be required to maintain the Minimum Balance in the Bank Account(s).

NOTICES: Owner:
Laguna Landmark, Inc.

Manager:
Promus Hotels, Inc.
755 Crossover Lane
Memphis, TN 38117
Fax: 901/374-5050
Attn: Corporate Secretary

Fax: _____
Attn: _____

TERMINATION FEE:

The "Termination Fee" shall be: (i) One Million Dollars and No/100 Dollars (\$1,000,000) if the termination of this Agreement occurs between the Effective Date and sixty (60) months after the Opening Date; (ii) Seven Hundred and Fifty No/100 Dollars (\$750,000.00) if the termination of this Agreement occurs between the sixtieth (60th) month after the Opening Date and the one hundred twentieth (120th) month after the Opening Date. Notwithstanding anything contained herein, there shall be no Termination Fee paid upon the expiration of this Agreement.

OUTSIDE OPENING DATE:

ACCOUNTING FEE: \$3,000/month

ADDUBON 1ST FL-
7147249701;#28/28
7-14-97 2:02PM

EXHIBIT "C" **MANAGEMENT FEES**

The "Management Fee" shall mean and refer to a: (i) a Base Management Fee equal to four percent (4%) of Adjusted Gross Revenues (as hereinafter defined), plus (ii) an Incentive Management Fee equal to two percent (2%) of Gross Operating Profit (as hereinafter defined) with respect to each fiscal month during the term of this Agreement.

The term "Gross Revenues" shall be defined as all revenues and income of any nature derived directly or indirectly from the Hotel or from the use or operation thereof, whether on or off the Site, including total room sales, food and beverage sales, if any, laundry, telephone, telegraph and telex revenues, other income, rental or other payments from lessees, sublessees, licensees and concessionaires (but not the gross receipts of such lessees, sublessees, licensees or concessionaires) and the proceeds of business interruption, use, occupancy or similar insurance.

The term "Adjusted Gross Revenues" shall be defined as Gross Revenues less the following revenues actually received by the Hotel and included in Gross Revenues: (i) any gratuities or service charges added to a customer's bill; (ii) any credits or refunds made to customers, guests or patrons; (iii) any sums and credits received by Owner for lost or damaged merchandise; (iv) any sales taxes, excise taxes, gross receipt taxes, admission taxes, entertainment taxes, tourist taxes or charges; (v) any proceeds from the sale or other disposition of the Hotel, furnishings and equipment or other capital assets; (vi) any fire and extended coverage insurance proceeds; (vii) any condemnation awards; (viii) any proceeds of financing or refinancing of the Hotel; and (ix) any interest on the Bank Account(s).

The term "Gross Operating Profit" shall be defined as Adjusted Gross Revenues less: (i) all departmental operating expenses, and (ii) all undistributed operating expenses, but before the deduction of the base Management Fee, Property Taxes, Insurance, Capital Replacement Reserve, Debt Service and Income Taxes.

**EXHIBIT "D"
INSURANCE**

In accordance with Section 3.01(xv), Manager shall, on behalf of Owner and at Owner's expense, procure the insurance coverages hereinafter set forth and ensure that they are in full force and effect at the time the pre-opening program commences and that they remain in full force and effect throughout the Term of this Agreement. All cost(s) and expense(s) incurred by Manager in procuring the following insurance coverages shall be pre-opening expenses if incurred prior to the Opening Date and operating costs if incurred after the Opening Date and shall be paid from the Pre-Opening Bank Account(s) and the Bank Account(s) respectively:

<u>Coverages:</u>	<u>Amounts Of Insurance:</u>
<u>Comprehensive General Liability</u>	\$10,000,000 per location
Including -	
Premises - Operations	
Products/Completed Operations	
Contractual	
Personal Injury	
Liquor Liability/Dram Shop (if applicable)	
Elevators and Escalators	
<u>Automobile Liability</u>	\$10,000,000
Owned Vehicles	
Non-Owned Vehicles	
Uninsured Motorist where Required by Statute	
<u>Automobile Physical Damage (Optional)</u>	
Comprehensive	(To Value
Collision	if insured)
<u>Workers' Compensation</u>	Statutory
<u>Employer's Liability</u>	\$1,000,000
<u>Fidelity (Employee Dishonesty)</u>	As required
<u>Money and Securities</u>	As required

All insurance coverages provided for under this Exhibit "D" shall be effected by policies issued by insurance companies (i) that are authorized to do business in the state in which the Hotel is located; and (ii) that are of good reputation and of sound and adequate financial responsibility, having a Bests Rating of B+ VI, or better, or a comparable rating if Bests ceases to publish its ratings or materially changes its rating standards or procedures.

Manager shall deliver to Owner duly executed certificates of insurance with respect to all of the policies of insurance procured, including existing, additional and renewal policies.

Each policy of insurance maintained in accordance with this Exhibit "D," to the extent obtainable, shall specify that such policies shall not be cancelled or materially changed without at least thirty (30) days prior written notice to Owner and Manager.

Except as otherwise provided in the Agreement, Manager and Owner each waives, releases and discharges the other from all claims or demands which each may have or acquire against the other, or against each other's subsidiaries, affiliates, directors, officers, agents, employees, independent contractors or partners, with respect to any claims for any losses, damages, liabilities or expenses (including attorneys' fees) incurred or sustained by either of them on account of injury to persons or damage to property or business arising out of the ownership, management, operation and maintenance of the Hotel, regardless whether any such claim or demand may arise because of the fault of negligence of the other party or its subsidiaries, affiliates, officers, employees, directors, agents or independent contractors. Each policy of insurance maintained in accordance with this Exhibit "D" shall contain a specific waiver of subrogation reflecting the above.

All policies of insurance provided for under this Exhibit "D" shall be carried in the name of the Manager. Owner's interest and that of any other applicable party will be included in the coverage by an additional insured endorsement.

All such policies of insurance shall be written on an "occurrence" basis, with no per location aggregate limitation.

Either Manager or Owner, by notice to the other, shall have the right to require that the minimum amount of insurance to be maintained with respect to the Hotel under this Exhibit "D" be increased to make such insurance comparable with prudent industry standards and to reflect increases in liability exposures, taking into account the size and location of the Hotel.

Owner hereby authorizes Manager to utilize the services of and/or place the insurance set forth in this Exhibit "D" with (i) any subsidiary or affiliated company of Promus Hotels, Inc. in the insurance business as Manager deems appropriate; or (ii) a third party insurance carrier meeting the specifications set forth above.

EXHIBIT "E"**INSURANCE**

In accordance with Section 4.01(iii), Owner agrees, at its expense, to procure and maintain the following insurance coverages, as reasonably adjusted from time to time, throughout the Term of this Agreement:

Coverages:**Amounts Of Insurance:****Builders Risk**

Completed value
of the Hotel

All risk for term of the initial
and any subsequent Hotel
construction and renovation.

Real and Personal Property

100% replacement
value of building
and contents

Blanket Coverage
Replacement Cost - all risk
Boiler Machinery - written on a
comprehensive form

Business Interruption

Calculated
yearly based
on estimated
Hotel
revenues.

Blanket Coverage for the perils
insured against under Real
and Personal Property in
this Exhibit "E." This coverage
shall specifically cover
Manager's loss of Management
Fees. The business interruption
insurance shall be for a
twelve (12) month indemnity period.

Owner's Protective Liability

\$10,000,000

All risks from construction and
renovation occurring prior to the
Opening Date and all risks from
Hotel construction and renovation
projects costing more than \$250,000
occurring after the Opening Date

All insurance coverages provided for under this Exhibit "E" shall be effected by policies issued by insurance companies (i) that are authorized to do business in the state in which the Hotel is located; and (ii) that are of good reputation and of sound and adequate financial responsibility, having a Bests Rating of B+ VI, or better, or a comparable rating if Bests ceases to publish its ratings or materially changes its rating standards or procedures.

Owner shall deliver to Manager duplicate copies of either insurance policies or certificates of insurance (at Manager's option) with respect to all of the policies of insurance procured, including existing, additional and renewal policies, and in the case of insurance nearing expiration, shall deliver duplicate copies of the insurance policies or certificates of insurance with respect to the renewal policies to Manager not less than thirty (30) days prior to the respective dates of expiration.

Each policy of insurance maintained in accordance with this Exhibit "E," to the extent obtainable, shall specify that such policies shall not be cancelled or materially changed without at least thirty (30) days prior written notice to Owner and Manager.

Except as otherwise provided in the Agreement, Manager and Owner each waives, releases and discharges the other from all claims or demands which each may have or acquire against the other, or against each other's subsidiaries, affiliates, directors, officers, agents, employees, independent contractors or partners, with respect to any claims for any losses, damages, liabilities or expenses (including attorneys' fees) incurred or sustained by either of them on account of injury to persons or damage to property or business arising out of the ownership, management, operation and maintenance of the Hotel, regardless whether any such claim or demand may arise because of the fault of negligence of the other party or its subsidiaries, affiliates, officers, employees, directors, agents or independent contractors. Each policy of insurance maintained in accordance with this Exhibit "E" shall contain a specific waiver of subrogation reflecting the above.

All policies of insurance provided for under this Exhibit "E" shall be carried in the name of the Owner and Manager, and losses thereunder shall be payable to the parties as their respective interests may appear. All liability policies shall name the Owner and Manager, and in each case any of their affiliated or subsidiary companies which they may specify, and their respective directors, officers, agents, employees and partners as additional named insureds.

All such policies of insurance shall be written on an "occurrence" basis.

Either Manager or Owner, by notice to the other, shall have the right to require the minimum amount of insurance to be maintained with respect to the Hotel under this Exhibit "E" be increased to make such insurance comparable with prudent industry standards and to reflect increases in liability exposures, taking into account the size and location of the Hotel.

2:06PM ;

Mezzanine Loan Application

Mezzanine Financing

In today's economy, first mortgage lenders have restricted their funds in many cases to no more than 50-60% of total project cost, while developers are prepared to inject 20-25% equity into a project. We have developed a program to help fill this gap between first mortgage funds and owner's equity. Promus Hotels established a mezzanine financing program to help qualified franchisees in the development of properties by providing secured second mortgage financing. These loans are secured by a second mortgage on all hotel real estate and fixtures and a security interest in any personal property.

The following pages contain underwriting criteria and loan terms relating to Mezzanine financing, a Mezzanine Loan application form, a sample form for preliminary cost summary, and a sample form for 5 year pro forma operating statement. Once a Franchise Application is approved, you may apply for a Mezzanine Loan by submitting a completed application with the supporting documents and requested information attached. A check payable to Promus Hotels, Inc. in the amount of \$2,000 for the application fee should be submitted with the application package to:

PROMUS HOTELS
Financial Services
Attn: Karen L. Anderson
755 Crossover Lane
Memphis, TN 38117
(901) 374-5456

Promus may grant or deny any loan application in its sole discretion. Promus's program to provide mezzanine financing is subject to change or cancellation at any time.

MEZZANINE FINANCING PROGRAM LOAN CRITERIA & TERMS

Contact: Vincent C. Ciaramitaro or Karen L. Anderson

Underwriting Criteria

- Visible market, good site and strong feasibility study
- Acceptable net worth, liquidity and credit background for principals
- Minimum 20% equity in project
- \$1.5 million maximum Mezzanine Loan
- Mezzanine financing cannot exceed hard equity in project
- Acceptable 1st mortgage terms and inter-creditor agreement
- Debt service coverage of 1.4 for 3rd full year projections (1st & 2nd mortgage combined)
- 12% unleveraged return (cap rate) - 3rd full year
- Promus Senior Management approval

Loan Terms

- 5-year bullet loan
- 10% annual interest rate or 2% over prime (measured quarterly), whichever is greater
- Do not intend to extend any loan beyond maturity; however, interest rate will be increased to the greater of 12% or 3% over prime, plus 2% of total revenue, not to exceed the maximum permitted by law should an extension be granted.
- Interest only (Automatic Funds Transfer)
- Joint and several personal guarantees, with no burn off
- 2nd mortgage
- No prepayment penalty
- Franchisee pays reasonable loan costs (i.e., legal, title, etc.) plus \$2,000 application fee (non-refundable)

Credit Enhancement (Partial 1st Mortgage Guarantee)

- 2% Enhancement Fee per year
- 5-year term
- Do not intend to extend any guarantee beyond the 5-year term; however, the enhancement fee will be increased to 5% per year should an extension be granted.
- Joint and several personal guarantees, with no burn off
- 2nd mortgage upon trigger of guarantee
- No prepayment penalty
- Franchisee pays reasonable enhancement costs (i.e., legal) plus \$2,000 application fee (non-refundable)

MEZZANINE LOAN APPLICATION

1. Applicant's Name _____ SS# _____
 Borrowing Entity _____
 Address _____
 City/State _____ Zip _____
 Phone # _____ Fax # _____

2. Project Name/Location _____
 3. Proposed Cost (Budget) _____
 # Rooms/Suites _____
 Estimated Opening Date _____

4. Proposed Capital Structure:
 Mortgage _____
 FF&E Loan/Lease _____
 Mezzanine Loan _____
 Equity _____
 Total Amount _____

5. Debt Description:

1st Mortgage	FF&E Loan/Lease
Lender _____	_____
Contact _____	_____
Phone # _____	_____
Interest Rate _____	_____
Amortization _____	_____
Maturity Date _____	_____

6. Requested funding date for Mezzanine Loan _____

7. What is source of equity and potential cost overruns: _____

8. Attach:
- a. appraisal and feasibility study, if available.
 - b. first mortgage commitment letter, if available
 - c. pro forma operating statements (financials), including ADR and occupancy;
 - d. project cost estimate summary; and
 - e. a check for \$2,000 payable to "Promus Hotel, Inc." for non-refundable loan application fee to cover due diligence and underwriting expense. Legal costs will be billed separately.

9. Signature: _____
 Date: _____

Note: Franchise Application must be submitted with or prior to loan application.

Construction Estimate Summary

Project Name: _____		Number of Suites: _____	
Stories: _____		Corridors (Int/Ext): _____	
Category	Amount	Per / Room	
Land			
Acquisition Cost / Contributed Value	\$ _____	\$	_____
Construction			
Construction Contract	\$ _____	\$	_____
Site Preparation	_____		_____
Utility Connections	_____		_____
Landscaping	_____		_____
Other Construction	_____		_____
Contingency	_____		_____
Total Construction	\$ _____	\$	_____
Soft Costs			
Architectural Fees	\$ _____	\$	_____
Engineering Fees & Soil Testing	_____		_____
Legal Fees	_____		_____
Property Taxes / Insurance	_____		_____
Closing Costs / Permits / Fees	_____		_____
Working Capital	_____		_____
Construction Interest & Loan Fees	_____		_____
Total Soft Costs	\$ _____	\$	_____
Furniture, Fixtures, & Equipment			
Suite Furnishings	\$ _____	\$	_____
Suite Appliances	_____		_____
Public Area Furnishings	_____		_____
Operating Equipment	_____		_____
Laundry Equipment	_____		_____
Administrative Equipment	_____		_____
Outdoor Signage	_____		_____
Front Office System	_____		_____
Televisions	_____		_____
Telephone Equipment	_____		_____
Courtesy Van	_____		_____
Total Furniture, Fixtures, & Equipment	\$ _____	\$	_____
Pre-Opening Expenses			
Payroll	\$ _____	\$	_____
Training Expenses	_____		_____
Temporary Office Expenses	_____		_____
Marketing & Advertising	_____		_____
Linen Inventory & Operating Supplies	_____		_____
Total Pre-Opening Expenses	\$ _____	\$	_____
Total Project Costs	\$ _____	\$	_____

Location: _____
 Number of Suites: _____

Year 1 Year 2 Year 3 Year 4 Year 5
 _____% _____% _____% _____% _____%
 \$ _____ \$ _____ \$ _____ \$ _____ \$ _____
 \$ _____ \$ _____ \$ _____ \$ _____ \$ _____

Occupancy
 Average Daily Rate: _____
 RevPas: _____

Pro Forma Operating Statement

	Year 1	Year 2	Year 3	Year 4	Year 5
	Amount	Amount	Amount	Amount	Amount
	%	%	%	%	%
Suite Revenue	\$ _____	\$ _____	\$ _____	\$ _____	\$ _____
Telephone Revenue	_____	_____	_____	_____	_____
Other Revenue	_____	_____	_____	_____	_____
Total Revenue	\$ _____	\$ _____	\$ _____	\$ _____	\$ _____
Suite Expense	\$ _____	\$ _____	\$ _____	\$ _____	\$ _____
Complimentary Breakfast	_____	_____	_____	_____	_____
Social Hour	_____	_____	_____	_____	_____
Telephone Expense	_____	_____	_____	_____	_____
Other Expense	_____	_____	_____	_____	_____

	Year 1	Year 2	Year 3	Year 4	Year 5
	Amount	Amount	Amount	Amount	Amount
Total Operating Cost	\$ _____	\$ _____	\$ _____	\$ _____	\$ _____
GROSS OPERATING INCOME	\$ _____	\$ _____	\$ _____	\$ _____	\$ _____

Administrative & General	\$ _____	\$ _____	\$ _____	\$ _____	\$ _____
Franchise Fees	_____	_____	_____	_____	_____
Sales & Advertising	_____	_____	_____	_____	_____
Marketing & Reservation Assess	_____	_____	_____	_____	_____
Energy Costs	_____	_____	_____	_____	_____
Maintenance & Repair	_____	_____	_____	_____	_____

Total Overhead	\$ _____	\$ _____	\$ _____	\$ _____	\$ _____
GROSS OPERATING PROFIT	\$ _____	\$ _____	\$ _____	\$ _____	\$ _____

Management Fees	_____	_____	_____	_____	_____
Property Tax	_____	_____	_____	_____	_____
Insurance	_____	_____	_____	_____	_____
Capital Replacement/Reserves	_____	_____	_____	_____	_____
Other (explain)	_____	_____	_____	_____	_____

CASH AVAILABLE FOR DEBT SERVICE	\$ _____	\$ _____	\$ _____	\$ _____	\$ _____
--	----------	----------	----------	----------	----------

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(916) 442-8888

March 2, 1998

REFER TO FILE NUMBER

120406-003

BY FEDERAL EXPRESS

Mr. Ed Ansbro
Vice President, Development
Promus Hotel Corporation
755 Crossover Lane
Memphis, Tennessee 38117-4900

Re: Garden Grove Embassy Suites

Dear Ed:

Enclosed please find two copies of the Management Agreement executed by Landmark Hotels LLC which are delivered to you subject to this letter. As you know, the mezzanine financing for \$4M is one of the key ingredients to Mark moving forward with Promus on the Management Agreement. We understand that Promus has yet to formally approve of either the mezzanine financing or if made, the amount of such loan. Mark needs the ability to obtain alternative financing in the event Promus decides not to approve the mezzanine financing. Therefore, should Promus reach a decision which is negative on a \$4M loan, then Mark must have the option to look for a new operator who will be able to provide such financing. Therefore, the Management Agreement is delivered to you on the condition that the delivery is conditioned and Mark may revoke such delivery in the event Promus does not provide the \$4M loan and Mark determines that it would be appropriate to bring in another operator who will fund an adequate mezzanine loan.

Best regards.

Very truly yours,


Howard D. Coleman
of NOSSAMAN, GUTHNER, KNOX & ELLIOTT, LLP

HDC/mib

cc: Mark David ✓

Not Checked-In

NOSSAMAN, GUINER, KNOX & ELLIOTT, LLP

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October 14, 1997

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HOWARD D. COLEMAN
DIRECT DIAL NUMBER
(213) 612-7821

REFER TO FILE NUMBER

120406-001

VIA FACSIMILE

Mr. Ed Ansbro
Vice President, Development
Promus Hotel Corporation
755 Crossover Lane
Memphis, Tennessee 38117-4900

R. 6127801
L.A. 6127801
S.F. 4153983800
WASH. 2027837272
IRVINE 7148337800
SACRAMENTO 9164428888

Re: Garden Grove Embassy Suites -- Laguna Landmark

Dear Ed:

The purpose of this letter is to provide you with a general overview of our major concerns with regard to the draft Management Agreement ("MA") and the draft License Agreement ("LA"). We have several significant problems which, when appropriately addressed, will necessitate substantial changes to both the MA and LA. After revising the LA and MA to deal with our major concerns, it certainly should be an easier and more manageable task to provide "word" specific changes to such documents.

1. The MA/LA Sandwich. The MA and LA are separate, stand alone documents. An owner could have an LA with you, but not a MA and the reverse is theoretically possible as well. While we have both, there must be a direct contractual interrelationship between the two.

- While the MA is in effect, and on the condition that the owner is current with any of its monetary obligations under the MA, operation by Promus under the MA should operate to fulfill all the responsibilities and obligations under the LA of the owner.

SEARCHED
SERIALIZED
INDEXED
FILED
OCT 14 1997
FBI - LOS ANGELES

Mr. Ed Ansbro
October 14, 1997
Page 3

3. Non-Parallel Relationship. The MA and LA call for many obligations upon the owner. Yet, there seems to be very little required of Promus.

- It is uncomfortable to read paragraph 6 of the LA and find no similar provision in the MA obligating Promus to do under the MA what Promus wants the operator to do under the LA. This inequality has to be addressed. Certainly, there must be a standard under which Promus will manage the hotel. In addition, the obligations of Promus under paragraph 3 of the LA (particularly (d)) need to have some standard to be achieved.
- Section 6.01 of the MA is evidence of this non-reciprocal nature of the relationship where the owner agrees to indemnify Promus for uninsured claims which do not arise out of the gross negligence or willful misconduct of Promus. Where is a parallel provision in favor of owner? What happens if the owner is sued for sexual harassment or age discrimination as a result of the acts of Promus? Why does the owner have to compensate Promus for its ordinary negligence?
- Why is the arbitration section so limited to just accounting issues and why does it appear as though the owner will have to go to Tennessee to sue?

4. Radius Clause. I assume that the LA will have a radius clause. Mark reminded me that he still has not received the map from you reflecting the radius protection area.

5. Some Other Issues.

- It should be made clear that Promus' approval of the mezzanine loan is a condition to the documents. Moreover, the proceeds of such loan should be available to anything connected with the hotel such as construction, FF&E acquisition, funding reserve accounts, etc.
- The definition of Net Operating Income in Exhibit "C" to the MA should also exclude any payments under the LA.

NOSSAMAN, GUTHNER, KNOX & ELLIOTT, LLP

**Mr. Ed Ansbro
October 14, 1997
Page 4**

- It should be made clear that the gross calculations which exclude taxes should continue to exclude them despite any rebate thereof.
- The owner should have a say in establishing room rates. (MA 3.01(iii)).
- There needs to be more reports, forecasts and marketing plans for the manager to prepare.
- The money should be held in the name of the owner.
- The books and records should be kept onsite.
- The owner should have the ability to designate other insurance companies and other suppliers if the quality is just as good or better, but price is lower.
- Promus should have no right to condemnation proceeds.
- The set off rights language under Section 11.16 of the MA is very broad.
- In the paragraph 7a(2) of the LA, there should be a limitation on the ability to increase the marketing fee percentage by Promus.
- We are going to have to discuss the transfer and assignability provisions. Certainly, Promus should not be able to assign any of its obligations under the LA unless Promus sells the entire company.
- In paragraph 13 of the LA, a notice and cure provision appears to be missing.
- The LA's liquidated damage needs to be addressed particularly if the MA is being terminated by owner at the same time.
- I assume the Guaranty of the LA will not be required.

ed
ad.
page 2
page 3
page 4
page 5
page 6
page 7
page 8
page 9
page 10

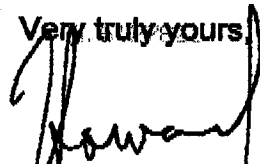
Mr. Ed Ansbro
October 14, 1997
Page 5

- Finally, Mark stated that it was his understanding that certain of the pre-construction design and similar help from Promus would be offered without charge.

There are, of course, other issues, but hopefully many of them will consequently be resolved as a result of resolving the concerns addressed in this letter.

I look forward to talking to you regarding the issues raised in this letter. Although it certainly looks like there are many major issues, they are, however, readily divisible into only a few categories.

Very truly yours,



Howard D. Coleman
of NOSSAMAN, GUTHNER, KNOX & ELLIOTT, LLP

HDC/mib
cc: Mark David

Very truly yours,
Howard D. Coleman
of NOSSAMAN, GUTHNER, KNOX & ELLIOTT, LLP

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Very truly yours,
Howard D. Coleman
of NOSSAMAN, GUTHNER, KNOX & ELLIOTT, LLP

P R O M U S HOTEL CORPORATION



TO: Mark David
 FROM: Ed Ansbro *[Signature]*
 DATE: October 7, 1997
 RE: Anaheim/Garden Grove

Mark:

My apologies again for the apparent misunderstanding concerning the two agreements. As we discussed yesterday afternoon, hotel companies approach their licensing/management contract arrangements differently.

In an attempt to better align our economic interests, we are prepared to revise our previously agreed-upon terms as follows:

<u>Year</u>	<u>Base Fee</u>	<u>Marketing Assessment</u>
1	2%	2.5%
2	2%	2.5%
3	2.5%	3.5%
4-10	3.0%	3.5%

I will be in the office all day to discuss.

Regards.

EA:wj

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FAX COVER PAGE

Date: 10/14/97 **Time:** 10:47 AM **File No.:** 120406-001

To:

Mr. Ed Ansbro **Fax:** **(901) 374-5051**
Promus Hotel Corporation **Phone:** (901) 374-5163

Mr. Mark B. David **Fax:** **(714) 724-9701**
Laguna Landmark, Incorporated **Phone:** (714) 724-9600

From: Howard D. Coleman

Message:

*IF YOU DO NOT RECEIVE 6 PAGES, INCLUDING THIS COVER PAGE,
PLEASE CALL Marcia I. Bertolli AT (213) 612-7800*

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FAX COVER PAGE

Date: 10/13/97 **Time:** 10:50 AM **File No.:** 120406-001

To:
Mr. Mark B. David **Fax:** (714) 724-9701
Laguna Landmark, Incorporated **Phone:** (714) 724-9600

From: Howard D. Coleman

Message:

*IF YOU DO NOT RECEIVE 7 PAGES, INCLUDING THIS COVER PAGE,
PLEASE CALL Marcia I. Bertoli AT (213) 612-7800*

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October 13, 1997

REFER TO FILE NUMBER

120406-001

DRAFT

VIA FACSIMILE

Mr. Ed Ansbro
Vice President, Development
Promus Hotel Corporation
755 Crossover Lane
Memphis, Tennessee 38117-4900

U.6127801

NOSSAMAN, GUTHNER, KNOX & ELLIOTT, LLP
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Re: Garden Grove Embassy Suites -- Laguna Landmark

Dear Ed:

The purpose of this letter is to provide you with a general overview of our major concerns with regard to the draft Management Agreement ("MA") and the draft License Agreement ("LA") you provided to us. We have several significant problems which, when appropriately addressed, will necessitate substantial changes to both the MA and LA. After revising the LA and MA to deal with our major concerns, it certainly should be an easier and more manageable task to provide "word" specific changes to such documents.

1. The MA/LA Sandwich. The MA and LA are, for all intents and purposes, separate, stand alone documents. An owner could have an LA with you, but not a MA and the reverse is theoretically possible as well. While we have both, there must be a direct contractual interrelationship between the two.

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- While the MA is in effect, and on the condition that the owner is current with any of its monetary obligations under the MA, operation by Promus under the MA should operate to fulfill all the responsibilities and obligations under the LA of the owner.
- I assume that to the extent there are similar requirements in the MA and the LA (e.g., insurance), the requirements of the LA will not be effective during the time the MA continues in full force and effect. Section 4.01 of the MA should be a Promus obligation while the MA is in effect.

2. Budget/Monetary Control. If Promus under the LA and MA were to earn most of its fees based on net income, the interests of the owner and Promus would be more in sync. This is not the case as Promus obtains its basic fees based on a share of the gross. Thus, throwing dollars at increasing the gross may, at times, conflict with the need to increase the net. Because of this eternal conflict between maximizing both, the owner's most important input is through the budget process and the resultant limitation imposed by an agreed upon budget. The MA is weakest on this point of limitation.

- It is my understanding that the initial Operating Budget will be an exhibit to the MA and thus the extensive Initial Operating Budget provisions are unnecessary.
- Referring to the MA/LA sandwich above, it is imperative that any expenses to be imposed under the LA must go through the MA budget process and be limited as a result. Thus, there can be no LA-derived expense which is imposed upon

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the owner outside of the MA budget procedure. The MA and LA dollar obligations must mesh and be controlled.

- The approved budget will serve to authorize and limit Promus (exclusive of "emergency" costs and unexpected costs otherwise approved by owner). There are various provisions of the MA that have open-ended spending authorization. All these provisions must be tied in and limited by the budget. For example, Section 11.08 of the MA is not responsive to our concern; certainly any claim (at least above a set amount) needs to be settled with the approval of owner and this same restriction applies to the lawyers you hire. (See also Section 11.15).
- Budget changes among categories cannot be totally within the discretion of Promus.

3. Non-Parallel Relationship. The MA and LA call for many obligations upon the owner. Yet, there seems to be very little required of Promus.

- It is uncomfortable to read paragraph 6 of the LA and find no similar provision in the MA obligating Promus to do under the MA what Promus wants the operator to do under the LA. This inequality has to be addressed. Certainly, there must be a standard under which Promus will manage the hotel. In addition, the obligations of Promus under paragraph 3 of the LA (particularly (d)) need to have some standard to be achieved.

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- Section 6.01 of the MA is evidence of this non-reciprocal nature of the relationship where the owner agrees to indemnify Promus for uninsured claims which do not arise out of the gross negligence or willful misconduct of Promus. Where is a parallel provision in favor of owner? What happens if the owner is sued for sexual harassment or age discrimination as a result of the acts of Promus? Why does the owner have to compensate Promus for its ordinary negligence?
- Why is the arbitration section so limited to just accounting issues and why does it appear as though the owner will have to go to Tennessee to sue?

4. Some Other Issues.

- The definition of Net Operating Income in Exhibit "C" to the MA should also exclude any payments under the LA.
- The owner should have a say in establishing room rates. (MA 3.01(iii)).
- There needs to be more reports, forecasts and marketing plans for the manager to prepare.
- The money should be in the name of the owner.
- The books and records should be kept onsite.

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- The owner should have the ability to designate other insurance companies and other suppliers if the quality is just as good or better, but price is lower.
- Promus should have no right to condemnation proceeds.
- The set off rights language under Section 11.16 of the MA is very broad.
- I assume that the LA will have a radius clause comparable to the MA.
- In the paragraph 7a(2) of the LA, there should be a limitation on the ability to increase the marketing fee percentage by Promus.
- We are going to have to discuss the transfer and assignability provisions. Certainly, Promus should not be able to assign any of its obligations under the LA unless Promus sells the entire company.
- In paragraph 13 of the LA, a notice and cure provision appears to be missing.
- The LA's liquidated damage needs to be addressed particularly if the MA is being terminated by owner at the same time.
- I assume the Guaranty of the LA will not be required.

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There are, of course, other issues, but hopefully many of them will consequently be resolved as a result of resolving the concerns addressed in this letter.

I look forward to talking to you regarding the issues raised in this letter. Although it certainly looks like there are many major issues, they are, however, readily divisible into only a few categories.

Very truly yours,
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**Howard D. Coleman
of NOSSAMAN, GUTHNER, KNOX & ELLIOTT, LLP**

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cc: Mark David

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