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7 Attorneys for Plaintiff Best Western
8 International, Inc.

9 **IN THE UNITED STATES DISTRICT COURT**
10 **FOR THE DISTRICT OF ARIZONA**

11 Best Western International, Inc., an
12 Arizona non-profit corporation,

13 Plaintiff

14 vs.

15 Lucy Chao, an individual; Henry Chao, an
16 individual; and Danny Chao, an individual,

17 Defendants.

No.

**APPLICATION FOR
PRELIMINARY INJUNCTION**

18 Plaintiff, Best Western International, Inc. (“Best Western”), through its undersigned
19 counsel, hereby makes application to this Court for an order enjoining Defendants, their
20 agents, servants and employees from:

21 1. Using, displaying or advertising or authorizing or licensing any other person
22 to use, display or advertise Plaintiff’s “Best Western” trademarks and service marks on or in
23 connection with motel/hotel goods and services.

24 2. Using, displaying or advertising or authorizing or licensing any other person
25 to use, display or advertise, Plaintiff’s “Best Western” trademarks and service marks or any
26 simulation, reproduction, counterfeit, copy or colorable imitation thereof in any manner
likely to cause confusion, mistake or deception as to the identity or source thereof.

3. Committing any acts calculated to cause others to believe that Defendants are,
in any way, connected to or associated with or sponsored by Plaintiff.

1 and Exhibit "A" to the Affidavit).

2 4. Pursuant to the Membership Agreement, Best Western grants to Applicant
3 a non-exclusive license to use, at and in connection with the Hotel, the Best Western
4 name and the Best Western Marks.

5 5. On or about December 20, 2006, Best Western terminated Defendants' Best
6 Western membership for failure to maintain minimum quality standards at the Hotel.

7 6. Pursuant to the terms of the Membership Agreement to which Defendants
8 were bound, once the membership with Best Western was terminated, Defendants agreed,
9 within 15 days from date of termination, to cease and desist from continuing use of the
10 Best Western Marks (See Affidavit of Cheryl Pollack and Exhibit "A" to the Affidavit).

11 7. At the time of termination of their Best Western membership, Best Western
12 requested that Defendants take appropriate steps to immediately discontinue all use of the
13 Best Western Marks. (See Affidavit of Cheryl Pollack).

14 8. Defendants have used and continue to use the mark "Best Western" and
15 other Best Western Marks to their commercial benefit, without Best Western's consent
16 and against its will. (See Affidavit of Cheryl Pollack).

17 9. By continuing to use the Best Western Marks, Defendants have caused Best
18 Western to suffer immediate, irreparable and permanent damage to its business,
19 reputation and property, for which there is no adequate remedy at law. (See Affidavit of
20 Cheryl Pollack).

21 **II. ARGUMENT**

22 Before granting an injunction, the Court must weigh four factors:

23 1. Whether the applicant has made a strong showing that it is likely to prevail on
24 the merits;

25 2. Whether the applicant has shown that without such relief it will be irreparably
26

1 injured;

2 3. Whether the granting of an injunction would substantially harm the opposing
3 party; and

4 4. Whether the public interest would be served by granting the applicant an
5 injunction. See, e.g., National Association of Farm Workers Organizations v. Marshall, 628
6 F.2d 604 (D.C. Cir. 1980).

7 **A. BEST WESTERN HAS A STRONG PROBABILITY OF**
8 **SUCCEEDING ON THE MERITS.**

9 1. Trademark Infringement

10 Any person who uses a trademark in commerce in connection with the
11 sale or advertising of any goods or services, without the consent of the registrant, is liable in
12 a civil action by the registrant for the remedies provided in 15 U.S.C. §§ 1116 through 1118
13 and 15 U.S.C. § 1114(1). Section 1116 provides that district courts “shall have power to
14 grant injunctions, according to the principles of equity and upon such terms as the court may
15 deem reasonable, to prevent the violation of any right of the registrant of a mark registered
16 in the Patent and Trademark Office.” 15 U.S.C. § 1116. In a closely analogous case,
17 Ramada Inns was entitled to an injunction against the continued use of its name by a motel
18 which was no longer a franchisee. See, Ramada Inns, Inc. v. Apple, 482 F. Supp. 753
19 (D.C.S.C. 1980). Cf. American Steel Foundries v. Robertson, 269 U.S. 372 (1926) (equity
20 not only will enjoin appropriation and use of a trademark or trade name identical with name
21 of a corporation, but will enjoin such appropriation and use when the resemblance is so
22 close as to cause likely confusion to the injury of the corporation which owns the name);
23 Charles Schwab & Co., Inc. v. Hibernia Bank, 665 F. Supp. 800 (N.D. Cal. 1987) (Financial
24 Company with registration mark in “THE EQUALIZER,” a computer program providing
25 financial services, was entitled to preliminary injunction against bank’s use of identical
26 terms in view of likelihood of confusion between marks and possibility of irreparable

1 injury).

2 Best Western has registered the service mark "Best Western" and other Best
3 Western Marks and has used those marks in advertising and marketing its services
4 throughout the United States. The marks were new, novel and distinctive at the time Best
5 Western adopted them, and they have come to mean quality and to readily identify Best
6 Western services to the traveling public.

7 In breach of the Membership Agreements and in violation of the Federal
8 trademark laws, Defendants have used the Best Western Marks in commerce and in
9 advertising in connection with their own services, a use that is likely to cause confusion and
10 to deceive the traveling public into purchasing Defendants' services in the belief that they
11 are Best Western's services. Furthermore, the wrongful use of the Best Western Marks is
12 likely to divert to Defendants the benefit of the reputation and good will associated with
13 Best Western's name throughout Arizona and elsewhere.

14 In short, by using Best Western's service mark, Defendants have knowingly
15 and willfully infringed upon Best Western's trademark rights to Best Western's injury. This
16 injury is immediate and irreparable and precisely the type of injury Section 1116 is meant to
17 remedy by injunctive relief. Pursuant to the Membership Agreement, Defendants agreed to
18 discontinue their use of the service mark at the termination. Nevertheless, Defendants
19 continue to use the Best Western Marks, undoubtedly resulting in an appreciable number of
20 consumers being misled as to the source of their motel services. Having shown a strong
21 likelihood of success on the merits of its trademark infringement claim, Best Western is
22 entitled to an order enjoining Defendants from using Best Western's trade names,
23 trademarks, logo and emblem (the Best Western Marks).

24 2. Breach of Contract

25 By signing the Membership Agreements and by agreeing to the terms of the
26

1 Membership Agreements, Defendants entered into a binding contractual relationship with
2 Best Western. Defendants also agreed to abide by the Articles of Incorporation, Bylaws and
3 Rules and Regulations of Best Western. Defendants have breached their obligation and
4 consequently breached the Membership Agreement by continuing to use the Best Western
5 Marks. Enforcement of the contract would be neither harsh nor unfair, but rather a
6 fulfillment of the obligations entered into by two competent parties in an arms-length
7 bargain. Best Western will very likely succeed on the merits of its breach of contract claim.

8 Best Western has shown that it is likely to prevail on the merits of all of its
9 claims. Defendant has infringed upon the Best Western Marks and breached the contract,
10 all to Best Western's harm. Best Western has no adequate remedy at law. Therefore, Best
11 Western is entitled to the Court's equitable relief. Sardi's Restaurant Corp. v. Sardie, 755
12 F.2d 719 (9th Cir. 1985) (Plaintiff is entitled to preliminary injunction in trademark case
13 when he demonstrates probable success on merits and possibility of irreparable injury).

14 **B. ABSENT INJUNCTIVE RELIEF, BEST WESTERN WILL**
15 **CONTINUE TO SUFFER IRREPARABLE HARM.**

16 Defendants' use of the Best Western Marks and other identification symbols without
17 authorization has caused and is causing irreparable injury to Best Western's business
18 reputation and good will. Such harm may be specifically demonstrated by the fact that other
19 affiliated members will lose business opportunities and customers from Defendants holding
20 themselves out as a Best Western member. Best Western's customers have come to know
21 and expect quality lodging, which Best Western cannot control with respect to Defendants'
22 motel, despite Defendants' use of the Best Western Marks. The consequent injury to the
23 public perception of Best Western's services is irreparable absent injunctive relief. See
24 Wells Fargo & Co. v. Wells Fargo Construction Co., 619 F. Supp. 710 (D. Az. 1985)
25 (damages occasioned by trademark infringement are by their very nature irreparable and are
26 not susceptible of adequate measurement for remedy at law).

1
2 **C. UNDER A BALANCE OF HARDSHIP TEST, BEST WESTERN'S**
3 **IRREPARABLE INJURIES SUBSTANTIALLY OUTWEIGH ANY**
4 **HARM DEFENDANT MIGHT SUFFER IF AN INJUNCTION IS**
5 **ISSUED.**

6 An award of an injunction is a matter of careful balancing of the interests of the
7 respective parties. Friends of the Earth, Inc. v. Coleman, 518 F.2d 323 (9th Cir. 1975). As
8 reflected in the discussion above, Best Western has suffered injury, and continues to suffer
9 injury caused by Defendants' trademark infringement which tends to harm and indeed
10 destroy Best Western's exclusive source of identity that its marks and good will have
11 achieved. By enjoining their further use of the Best Western Marks the Court will remedy
12 Best Western's wrong while denying nothing to Defendants that they rightfully possess.
13 Thus, the equities weigh heavily in Best Western's favor, entitling Best Western to
14 injunctive relief. See STX, Inc. v. Trik Stik, Inc., 708 F. Supp. 1551 (N.D. Cal. 1988)
15 (balance of hardship in favor of plaintiff for purposes of injunction where plaintiff
16 demonstrated its strong reputation and good will, high quality control and where likelihood
17 of confusion would occur.)

18 **D. ISSUING AN INJUNCTION WOULD SERVE THE PUBLIC**
19 **INTEREST.**

20 In passing upon a request for preliminary injunction, the public interest which may
21 be in jeopardy absent the injunction is a factor requiring consideration. Chalk v. U.S. Dist.
22 Court Central Dist. of Cal., 840 F.2d 701 (9th Cir. 1988). The public has a strong interest in
23 enforcing valid contracts and in protecting the holder of a trademark. Defendants have
24 contravened both of these policies by breaching their contract with Best Western and
25 infringing upon the Best Western Marks. Furthermore, Defendants' unfair trade practice of
26 using the Best Western Marks without authorization is likely to deceive the public into
 believing that they are a member of the Best Western organization, further disserving the

1 public interest. By granting an injunction, the Court would uphold the validity of
2 contractual relations and preserve Best Western's interest in its marks while restraining
3 Defendants' unfair trade practice. See Chemlawn Services Corp. v. GNC Pumps, Inc., 690
4 F. Supp. 1560 (S.D. Tax 1988) (the public interest is served by enjoining unfair trade
5 practices such as infringement occurring in stream of commerce).

6 **III. CONCLUSION**

7 For the foregoing reasons, Best Western respectfully requests that this Court grant a
8 preliminary injunction restraining Defendants from using the Best Western name, marks,
9 logo and emblem (the Best Western Marks).

10 RESPECTFULLY SUBMITTED this 6th day of April, 2007.

11 HELMS & DENEVA, P.C.

12
13
14 By /s/ Michael G. Helms
15 Michael G. Helms
16 3200 North Central Avenue, Suite 1260
17 Phoenix, Arizona 85012
18 Attorneys for Plaintiff
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AFFIDAVIT

STATE OF ARIZONA)
) ss.
County of Maricopa)

Cheryl Pollack, being first duly sworn upon her oath, deposes and says:

1. I am Director of Member Care and Development Administration of BEST WESTERN INTERNATIONAL, INC., an Arizona non-profit corporation.

2. I have personal knowledge of the facts set forth in this Affidavit and am authorized by BEST WESTERN INTERNATIONAL, INC. ("BEST WESTERN") to make, execute and file this Affidavit.

3. On or about July 30, 2001, Lucy Chao, Henry Chao and Danny Chao executed and delivered to BEST WESTERN a Membership Application and Agreement requesting membership in the BEST WESTERN organization. BEST WESTERN accepted this application and granted Lucy Chao, Henry Chao and Danny Chao membership in the BEST WESTERN organization. The Membership Application and Agreement which BEST WESTERN entered into with Defendants states on page four, paragraph 22:

22. within fifteen (15) days of license termination, Applicant shall remove from public view and cease using all Best Western symbols.

A copy of the Membership Application and Agreement is attached as **Exhibit "A"** to this Affidavit.

4. Pursuant to the Membership Agreement, Best Western grants to Applicant a non-exclusive license to use, at and in connection with Defendants' hotel, the Best Western name and those Best Western trademarks, service marks and identification symbols (the "Best Western Marks").

5. At all relevant times, Defendants have been and are the owners of the Scottsdale Airpak Suites located in Scottsdale, Arizona, and as such, are fully aware of their contractual obligations with respect to its BEST WESTERN membership.

6. Pursuant to the terms of the Membership Agreement, Defendants agreed that all rights and liabilities of the parties arising thereunder would be governed and construed according to the laws of the State of Arizona. The Membership Agreement further provides that:

In the event that Applicant breaches any obligation to Best Western, Applicant is liable to Best Western for all attorneys' fees, costs and expenses incurred by Best Western in connection with the breach or violation, whether or not suit is filed.

7. In part, the Membership Agreement is a contract to furnish Best Western membership services and supplies to Defendants. Pursuant to the terms of the Membership Agreement, Defendants agreed to pay promptly, when due, all fees and assessments as required by the terms of the Best Western Articles of Incorporation, Bylaws and Rules and Regulations.

8. Subsequent to entering into the Membership Agreement, Defendants were provided with BEST WESTERN's customary membership services and supplies.

9. On or about December 20, 2006, Best Western, in accordance with applicable provisions of the Membership Agreement, Bylaws and Rules and Regulations, notified defendants that their membership had been terminated for failure to maintain minimum quality standards at their hotel. BEST WESTERN advised Defendants that the signs and logo items must be removed within fifteen (15) days. Presently, Defendants still refuse to remove certain of the BEST WESTERN logos in connection with the Scottsdale Airpark Suites.

10. BEST WESTERN is now and has long been an organization of independently owned and operated motels and hotels prior to the acts herein complained of, and BEST WESTERN's Marks are closely associated with its services. BEST WESTERN has become well-known to and is popular with the trade and with the public in the territories which it serves.

11. The name, "BEST WESTERN" is a service mark for hotel services and was new, novel and distinctive at the time of its adoption by BEST WESTERN in the territories in which its services were then and are now advertised and marketed, and such name has afforded and does afford to the public and consumers a means of ready identification of BEST WESTERN's services.

12. BEST WESTERN owns numerous trade mark registrations for BEST WESTERN Marks, including various service marks, logo marks and word marks, as set forth in the Verified Complaint herein. BEST WESTERN's Marks are currently and have been continuously in commercial use, unrevoked and uncancelled.

13. Pursuant to paragraph 24 of the Membership Agreement, BEST WESTERN may claim liquidated damages from Defendants in an amount equal to fifteen percent (15%) of the mean of Defendants' room rates per day multiplied by the total number of rooms for every day Defendants continue to use the BEST WESTERN Marks in excess of the fifteen (15) day period allowed.

14. After repeated requests by BEST WESTERN, Defendants have refused to cease and desist from use of the name, signage and membership mark, or similar reproductions, of BEST WESTERN. The Defendants continue to hold themselves out to the public using the Best Western trademarks and symbols, or portions of the Best Western Symbols, despite their termination of the BEST WESTERN membership in December, 2006, and despite notices regarding termination. Attached hereto as **Exhibit "B"** are copies Defendants' internet advertisement as of March 28, 2007, depicting Defendants' continued use of the Gold Crown Club name and logo, a registered trademark of BEST WESTERN.

15. The use of the name, label, symbols and advertising in Arizona or elsewhere by the Defendants is likely to cause confusion and deceive the public that the Defendants' Hotel property is in fact affiliated with BEST WESTERN.

16. By reason of these acts, Defendants have caused and are causing great and irreparable injury to the business, reputation and good will of BEST WESTERN and will continue to do so unless restrained.

17. BEST WESTERN believes its remedy at law is inadequate in that Defendants' refusal to discontinue holding their property out as affiliated with BEST WESTERN causes BEST WESTERN sustained and continuing injury and loss, as well as irreparable injury to the public's perception of "BEST WESTERN" membership nationwide.

18. Irreparable injury has and is occurring to BEST WESTERN's interest in that BEST WESTERN may not be adequately compensated for the injuries in monetary damages, or the damages cannot be fully measured by any certain pecuniary standard. It is impossible for BEST WESTERN to directly measure the damage to BEST WESTERN's good will by Defendants' unauthorized use of the BEST WESTERN trademark.

DATED this 2nd day of ~~March~~, 2007.
April

Cheryl Pollack
Cheryl Pollack

SUBSCRIBED AND SWORN to before me this 2nd day of April, 2007.

Billie A. Hanson
Notary Public

My Commission Expires:

June 17, 2007

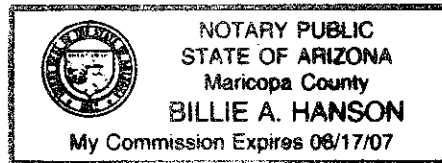


EXHIBIT A

03139



BEST WESTERN INTERNATIONAL, INC. AUG -2 AM 7:57

MEMBERSHIP APPLICATION AND AGREEMENT

Date: 20 July 2001

Current Hotel Name (if applicable): Holiday Inn Hotel & Suites

City and State/Province (Hotel Location): 7515 E Butherus, Scottsdale, AZ 85260

Description of Membership Application and Agreement

1. This Membership Application and Agreement contains four parts. The Application for Membership section sets out the terms which will be applicable to the application process. If the application is approved in writing by Best Western, the Membership Agreement and License Agreement sections will control the relationship between Applicant and Best Western. The General Provisions section applies to the entire Membership Application and Agreement.

2. This Membership Application and Agreement is submitted to affiliate with Best Western the hotel identified at the top of this page ("Hotel"). A guest room is any sleeping facility available through or managed through the Hotel front desk. If the Hotel is currently being operated as a "Best Western", the date of sale or transfer to Applicant is _____.

3. This Membership Application and Agreement is made jointly by the owner or lessee of the Hotel and a natural person known as the voting member. The owner or lessee of the Hotel is Lucy Chao. The voting member is Danny Chao. THE OWNER OR LESSEE AND THE VOTING MEMBER ARE EACH PERSONALLY RESPONSIBLE, JOINTLY AND SEVERALLY, FOR ALL OBLIGATIONS TO BEST WESTERN ARISING UNDER THIS MEMBERSHIP APPLICATION AND AGREEMENT OR RELATING TO THE AFFILIATION OF THE HOTEL WITH BEST WESTERN. Throughout this document the owner or lessee and the voting member are jointly referred to as "Applicant".

Part I. Application for Membership

Application Fees

4. All application fees referenced herein are payable in U.S. funds or Canadian funds that are equivalent to the U.S. funds (see Canadian Fee Schedule). Applicant has submitted, in connection with this application, an entrance fee which includes an affiliation fee and an evaluation fee. The evaluation fee is non-refundable and is to cover the administrative costs of processing the application. Payment of the evaluation fee entitles Applicant to an administrative work-up of the application. Payment of any fee or submission of this application does not give Applicant any right to affiliation with Best Western under any circumstances. The Board of Directors ("Board") may deny this application for any or no reason. The affiliation fee will be refunded without interest in the event that this application is denied or in the event that the application is withdrawn before Best Western approval.

Current "Best Western"

5. In the event that the Hotel is currently receiving services from Best Western, Best Western may permit Applicant to continue operating the Hotel as a "Best Western". In that event, Applicant agrees to pay the usual fees and charges relating to Best Western membership, beginning upon the earlier of Applicant's possession or ownership of the property or Hotel. During the pendency of this application, Applicant agrees to abide by all terms of the Membership Agreement and License Agreement as though Applicant were affiliated with Best Western. If this application is denied, Applicant agrees to be subject to the obligations and remedies provided in the License Agreement.

Conditions of Application

6. As a condition to presentation of this application to the Board, unless waived in writing by Best Western:

(a) If the Hotel is currently operated as a "Best Western", Applicant shall pay all past due fees, dues, assessments and charges, and the cost of all goods and services which have been incurred by prior members in connection with the Hotel, whether or not Applicant has received the goods or services or membership benefits.

(b) Applicant shall cure any past or current obligations or defaults to Best Western at other "Best Western" hotels owned or operated by Applicant.

Approval of Application

7. Except as provided in this paragraph all fees will become non-refundable upon approval of this application by Best Western. Best Western approval may be subject to certain additional applicant-specific conditions which will be communicated in writing along with Best Western's approval of this application. If the approval is subject to additional applicant-specific conditions, Applicant may reject the conditions within fifteen (15) days of the notification, in which case the application will be deemed to have been withdrawn. If Applicant does not reject the additional conditions, the application will be deemed approved subject to the conditions imposed by Best Western and all fees will become non-refundable.

8. In the event that approval is subject to additional applicant-specific conditions, the approval for membership shall be "conditional". Strict compliance with each condition and with each representation made by the Applicant, and strict adherence and compliance with all Best Western specifications, are required for the granting of membership. Time is of the essence. Best Western shall have no obligation to extend the time for Applicant's compliance with the conditions, even if the Applicant has attempted to perform all conditions in good faith and has substantially met all conditions. Unless specifically provided by Best Western, a "conditional" approval conveys no membership rights to the Applicant and conveys no rights to the Applicant to use the Best Western name or identification symbols, or to use any of the services provided by Best Western.

Application Not Confidential

9. Best Western may inform nearby Best Western hotels of this application. Applicant expressly consents to this disclosure and waives any right which Applicant may have to the confidentiality of this application.

Part II. Membership Agreement

10. This "Membership Agreement" section becomes operative only upon Best Western's written approval of the application and is subject to any condition that may be imposed under paragraph 7.

Membership Rights and Obligations

11. Best Western is a membership organization providing rights and obligations as set forth by the membership in the "Bylaws" and as set forth by the Board in the "Rules and Regulations". In connection only with the Hotel, Best Western agrees to provide to Applicant all rights, and Applicant agrees to abide by all obligations, as may be established from time to time in the duly adopted Bylaws and Rules and Regulations. APPLICANT ACKNOWLEDGES THAT APPLICANT HAS RECEIVED, READ AND UNDERSTOOD THE CURRENT BYLAWS AND RULES AND REGULATIONS.

12. Applicant agrees to timely pay all fees, dues, charges and assessments imposed generally on the membership by the Board, and the cost of all goods or services provided by or ordered through Best Western. Past due amounts shall bear interest at the rate of one and one half percent (1.5%) per month from the due date until paid, provided that such interest charge shall in no way authorize or excuse late payments or limit Best Western's rights and remedies against Applicant.

13. Where grounds for termination exist because of a default under this agreement, the Board may, in lieu of termination, impose additional conditions to membership. These may include, for example, higher quality assurance requirements, additional design requirements, or restriction of rights or services.

Agreement Term

14. The term of this Membership Agreement is through the end of Best Western's current fiscal year, which ends on November 30. Thereafter, this agreement may be renewed for additional one year terms as provided in the Best Western Bylaws. Applicant may terminate this Membership Agreement at any time without penalty. In the event that the Hotel continues to operate as a "Best Western" after termination of the Membership Agreement, Applicant shall pay full fees, dues, charges and assessments until the Hotel ceases operation as a "Best Western".

Member Market Area

15. A new application for membership for a property located within the member market area of a qualified hotel will not be accepted. An exception to this will only apply if the voting member responsible for each affected qualified hotel advises the Board of Directors in writing that the member has no objection to the approval of the application. For definitions of terms used in this section, and to determine if or how this section may apply to or affect the applicant, applicant should refer to Best Western's Bylaws & Articles, Article II, Section 3 (A & B).

Reservations & Communications Equipment

16. Applicant will purchase computer hardware through Best Western that will be used by the Applicant in receiving and sending reservations and in communicating with Best Western ("Hardware"). Applicant will also purchase Hardware maintenance through Best Western. Best Western will be responsible for providing for Hardware maintenance as long as Applicant is a member of Best Western. Best Western has provided or will provide the computer software that is to be loaded into the Hardware ("Software"). Software programs are copyrighted by Best Western or licensed to Best Western by third parties. This Software is the property of Best Western and must be deleted or returned to Best Western upon demand. The Hardware and Software may be upgraded by Best Western or its designee from time to time. Best Western has provided or will provide communications equipment, (including but not limited to a satellite dish, related cabling, Personal Earth Station and optional credit card authorization equipment) for the purpose of reservations delivery and information exchange ("Communications Equipment") as long as Applicant is a member of Best Western. Communications Equipment may be upgraded by Best Western or its designee from time to time.

Communications Equipment is the property of Best Western and must be returned to Best Western upon demand. Applicant will pay a monthly fee for the Communications Equipment.

In addition to the above, Applicant agrees:

(a) to use the Hardware, Software and Communications Equipment only for reservation communications with Best Western Central Reservations and with other Members and for other business purposes relating to the operation of the Hotel as a Best Western Hotel. The Hardware, Software and Communications Equipment may be upgraded from time to time by Best Western or its designee. Applicant may be charged an upgrade fee.

(b) to not copy, disclose or allow to be copied or disclosed any of the Software programs. Only Best Western authorized software may be utilized on the Hardware. Any cost of service or maintenance required as a result of using unauthorized software, shall be the obligation of the Applicant and shall include a minimum service charge of \$200.00.

(c) to abide in all respect with the terms of the Software licensed to Best Western, copies of which shall be provided on request, and with the terms of the Software copyrighted by Best Western. The Software licensed to Best Western and the Software copyrighted by Best Western shall be deleted or returned upon demand of Best Western and upon termination of the Membership Application and Agreement. Applicant shall provide Best Western with a signed statement that the Software has been deleted or returned.

(d) to utilize Best Western for the maintenance and repair of the Hardware purchased through Best Western and for the maintenance and repair of the Communications Equipment provided by Best Western, both at Applicant's expense. In the event of Hardware or Communications Equipment failure or interruption of service, it will be the responsibility of the Applicant to participate in the troubleshooting process. It shall be the sole responsibility of Best Western to make final problem determination and dispatch technical resources as needed to achieve problem resolution.

(e) to assume and hereby assumes all risks and liabilities, whether covered by insurance or not, for loss or damage to or destruction of the Hardware, Software and Communications Equipment or any part thereof. Applicant shall replace, at its expense, any Hardware, Software, Communications Equipment or any part thereof which is lost, damaged or destroyed.

(f) to return the Communications Equipment to Best Western in good condition, reasonable wear and tear excepted, upon demand.

Relationship of Parties

17. Best Western is a non profit corporation operated on a cooperative basis by and for its hotelier members. The relationship of Best Western to its members is one of an independent contractor. Neither party has the power to obligate or bind the other in any way. No relationship of partners, joint venturers or agents is created. BEST WESTERN ONLY PROVIDES SERVICES AS DIRECTED BY THE MEMBERSHIP. BEST WESTERN HAS NO RESPONSIBILITY FOR THE USE, CONDITION OR OPERATION OF THE HOTEL OR THE SAFETY OF THE DESIGN OF ANY STRUCTURE OR PRODUCT. BEST WESTERN HAS NO CONTROL OVER OR RESPONSIBILITY FOR ANY DECISION AFFECTING THE EMPLOYMENT OR SUPERVISION OF ANY PERSON EMPLOYED IN CONNECTION WITH THE HOTEL.

Termination of Agreement

18. This Membership Agreement terminates:

- (a) upon sale or lease of the Hotel, or transfer of control of the Hotel, as more fully set forth in the Bylaws.
- (b) upon default of any obligation to Best Western, as more fully set forth in the Bylaws, Rules and Regulations, and Operations Manual.

Part III. License Agreement

19. This "License Agreement" section becomes operative only upon Best Western's written approval of the application.

Grant of License

20. Best Western grants to Applicant a non-exclusive license to use, at and in connection with the Hotel, the Best Western name and those Best Western trademarks, service marks, and identification symbols as set forth from time-to-time in the Brand Identity Manual ("Best Western Symbols").

Ownership of Signs

21. Any portion of any sign displaying a Best Western Symbol is and shall remain the property of Best Western. Applicant transfers title of all such portions of signs, whether now owned or acquired in the future, to Best Western.

Termination of License

22. This license shall terminate upon termination of Applicant's Membership Agreement. Within fifteen (15) days of license termination, Applicant shall remove from public view and cease using all Best Western Symbols. This prohibition includes any representation, directly or indirectly that the Hotel was formerly affiliated with Best Western. Furthermore, Applicant shall actively take such steps as may be necessary to cause the cessation of all advertising and distribution of promotional material containing any Best Western Symbol.

23. Upon termination of this License Agreement, Applicant agrees not to use anything consisting of or incorporating any one or more words, letters, designs or devices which contain any part of any Best Western Symbol, or which singly or together are similar in spelling, sound, appearance or otherwise to any Best Western Symbol.

Remedies

24. For each day during which any Best Western Symbol or any name, symbol or device described in paragraph 23 are used in connection with the Hotel, after fifteen (15) days following termination of this License Agreement, Best Western may elect to claim from Applicant daily damages in an amount equal to fifteen percent (15%) of the mean of the Hotel's room rates per room per day multiplied by the total number of rooms. This amount is payable by Applicant whether or not Applicant continues to exercise control over the operations of the Hotel. It is understood and agreed that said amount is fixed as liquidated damages because of the difficulty of ascertaining the exact amount of damages that may be sustained because of such use. It is further understood and agreed that said amount fixed as liquidated damages is a reasonable amount, considering the damages that Best Western will sustain in the event of such use.

25. The rights provided in paragraph 24 shall be exercised solely at the option of Best Western. Best Western shall have the right to invoke any remedy at law or in equity, whether or not such remedy is herein provided. The exercise of any remedy shall not be deemed to be a waiver or exclusion of any other. If Best Western brings an injunctive action against Applicant, Applicant waives any requirement that Best Western post bond.

26. The obligations of Applicant and the remedies available to Best Western under this License Agreement are binding upon Applicant's heirs, executors, administrators, successors, assignees, receivers, and trustees in bankruptcy.

Part IV. General Provisions

27. Each provision in this "General Provisions" section is applicable to the Application, Membership Agreement, and License Agreement sections of this document.

Representations to Best Western

28. Applicant certifies that all representations made in connection with this Application and Agreement are true and constitute material representations for the purpose of inducing Best Western to grant membership. Applicant agrees that any misrepresentation shall be grounds for denial of this application or cancellation of membership. Applicant further agrees that any representations made in the future, whether in connection with renewing this agreement or otherwise, constitute material representations for the purpose of inducing Best Western to grant, continue or renew membership and that any false representation shall be grounds for denial of this Application, denial of membership renewal, or cancellation of membership.

Appointment of Voting Member as Attorney-in-Fact

29. The undersigned owner or lessee hereby appoints the undersigned voting member, and any substituted voting member, as its attorney-in-fact with full power and authority to bind owner or lessee in any and all agreements and liabilities which voting member may enter into or undertake to Best Western in connection with the Hotel. This authorization shall continue during the term of the Membership Agreement and during any renewal or continuation thereof, until terminated in writing by the owner or lessee. This power of attorney shall survive the death or disability of the undersigned.

Remedies

30. It is understood that Best Western shall have the right to invoke any remedy at law or in equity, whether or not other remedies are herein provided, for any breach of this Membership Application and Agreement, or for any other matter arising out of Applicant's affiliation or dealings with Best Western. All rights and remedies given to Best Western are distinct, separate and cumulative and no one of them, whether or not exercised by Best Western, shall be deemed to be an election of that remedy only or to be a waiver or exclusion of any of the others.

Limitation of Damages

31. Applicant agrees that Applicant shall have no recourse of any kind against Best Western, its directors, officers, employees, agents or members, if this application is denied. Applicant further agrees that Applicant shall have no recourse of any kind against Best Western, its directors, officers, employees, agents or members, for failure to grant membership after conditional approval unless Applicant has strictly, absolutely and timely complied with each and every requirement imposed upon Applicant by Best Western and this agreement, to the satisfaction of Best Western.

32. Applicant agrees that should the Hotel's Road Atlas and Travelers' Guide listing be omitted or if a material error occurs in any portion of the listing, whether or not through the negligence of Best Western, Applicant's sole remedy shall be the refund, without interest, of the annual dues paid on behalf of the Hotel. Best Western shall have no other liability in connection with the preparation or publication of the Road Atlas and Travelers' Guide.

33. Applicant agrees that Applicant shall be limited to actual damages for any breach or default by Best Western of any obligation or duty owed to Applicant, and Applicant further agrees that Best Western's liability for any damages shall be limited to the amount of membership fees actually paid by Applicant in connection with the Hotel, during a single fiscal year in which the breach or default occurred.

34. In the event that Best Western wrongfully fails to grant membership after making a "conditional" commitment for membership under paragraphs 7 and 8 of this Membership Application and Agreement, or if Best Western is found to have wrongfully failed to grant membership in any other situation, Applicant shall have no right to compel Best Western to grant a membership to Applicant. Applicant agrees that Applicant's sole remedy shall be limited to actual damages, which in no event shall exceed twice the amount of money paid by Applicant to Best Western in connection with the submission of this application.

Indemnification

35. Applicant shall indemnify, defend, and hold Best Western harmless and all of its employees, agents, representatives, and insurers (hereinafter collectively referred to as "indemnitees") from any and all claims, demands, suits, actions, proceedings, loss, cause and damages of every kind and description, including but not limited to any attorneys' fees and/or costs and expenses, whether or not a lawsuit is filed, which may be brought or made against or incurred by any indemnitee (a) arising out of, or contributed to, in whole or in part, by reason of any alleged act, omission, fault, mistake, or negligence of Applicant, its employees, agents, representatives, or subcontractors, in connection with or incident to the use, condition or operation of the Hotel, or (b) arising out of workers' compensation claims, unemployment disability compensation claims, or discrimination claims of employees of Applicant and/or its subcontractors or claims under similar such laws or obligations, or (c) in connection with any valid claim made by any indemnitee against Applicant for indemnity. Applicant's obligation under this section shall extend to any liability caused by the sole or concurrent negligence of an indemnitee (including both active and passive negligence).

Attorneys' Fees

36. In the event that Applicant breaches any obligation to Best Western, Applicant is liable to Best Western for all attorneys' fees, costs and expenses incurred by Best Western in connection with the breach or violation, whether or not suit is filed.

Application of Law and Choice of Forum

37. This Membership Application and Agreement shall be governed and construed according to the laws of the State of Arizona, unless any obligations under this Membership Application and Agreement shall be invalid or unenforceable under such laws, in which event the laws of the jurisdiction whose law can apply to and validate the obligations under this Membership Application and Agreement shall apply. This Membership Application and Agreement shall be deemed executed in Phoenix, Arizona.

38. Applicant acknowledges that Best Western is headquartered in Phoenix, Arizona, that the majority of Best Western's records and employees are in Phoenix, Arizona, and that Phoenix, Arizona is the most convenient locale for actions between Best Western and Applicant.

UNLESS WAIVED BY BEST WESTERN IN WHOLE OR IN PART, THE COURTS LOCATED IN THE STATE OF ARIZONA, STATE OR FEDERAL, SHALL HAVE EXCLUSIVE JURISDICTION TO HEAR AND DETERMINE ALL CLAIMS, DISPUTES AND ACTIONS ARISING FROM OR RELATED TO THE APPLICATION PROCESS, THIS MEMBERSHIP APPLICATION AND AGREEMENT OR TO ANY RELATIONSHIP BETWEEN THE PARTIES HERETO AND VENUE SHALL BE IN THE COURTS LOCATED IN MARICOPA COUNTY, ARIZONA. APPLICANT EXPRESSLY CONSENTS AND SUBMITS TO THE JURISDICTION OF SAID COURTS AND TO VENUE BEING IN MARICOPA COUNTY, ARIZONA.

Waiver

39. Any waiver by Best Western of a breach of any provision of this Membership Application and Agreement, or of any breach of any other requirement or policy of Best Western, shall not operate or be construed as a waiver of any subsequent breach thereof. Any delay by Best Western of enforcement of obligations shall not be deemed to be a waiver of Best Western's right to enforce the obligation.

Notices

40. All notices given by Best Western, under this Membership Application and Agreement or otherwise, shall be given to the voting member at such location as may be specified by the voting member, in writing, to the Best Western Membership Administration Department. Notice to the voting member shall constitute notice to each person or entity signing this Membership Application and Agreement. Any notice given to Best Western under this Membership Application and Agreement shall be given in writing to Best Western International, Inc., 6201 North 24th Parkway, Phoenix, Arizona 85016-2023, Attention Membership Administration, or such other location as may be specified by Best Western.

Headings

41. The headings of the sections of this Membership Application and Agreement are for convenience only and are not to be considered part of this Membership Application and Agreement or used in determining its content or context.

Severability

42. Any provision of this Membership Application and Agreement prohibited by law, or by court decree, in any jurisdiction shall be ineffective to the extent of such prohibition without in any way invalidating or affecting the remaining provisions of this Membership Application and Agreement.

Entire Agreement

43. This Membership Application and Agreement embodies the whole agreement of the parties. There are no promises, terms, conditions or obligations other than those contained herein. This Membership Application and Agreement shall supersede all previous communications, representations, or agreements, either verbal or written, between the parties hereto.

Signature of Owner or Lessee

44. The signature of all persons or entities having an ownership interest in the Hotel, or having a lessee interest in the lease, must sign. This means, for example, that a corporation owning the Hotel must sign through one of its authorized agents. It does not mean that each stockholder of the corporation must sign. Please refer to the Applicant Information Form for additional instructions on owner or lessee signatures. IF YOU HAVE ANY QUESTIONS, PLEASE CONTACT YOUR BEST WESTERN REPRESENTATIVE. FAILURE TO PROPERLY SIGN WILL DELAY CONSIDERATION OF THIS APPLICATION.

Lucy Chao
Name _____
384 72 1706
Social Security No. 5 _____
Date: 30 July 2001 _____
Signature *Lucy Chao*

Henry Chao
Spouse's Name* _____
568 13 7821
Social Security No. _____
Date: 30 July 2001 _____
Signature *Henry Chao*

Millennium Hotels
Entity Name _____
By: *[Signature]*
Signature of Authorized Signer _____
its: *President*
Title of Authorized Signer _____
Date: 30 July 2001 _____

USE ADDITIONAL PAGES IF NECESSARY

*Spouse's name and signature is required only in community property jurisdictions. Community property jurisdictions are Arizona, California, Idaho, Louisiana, Nevada, New Mexico, Quebec, Texas and Washington.

Signature of Voting Member

45. The voting member must sign using the voting member's name only. Any use of a title will delay consideration of this application. VOTING MEMBER IS PERSONALLY LIABLE FOR ALL OBLIGATIONS OF THE HOTEL TO BEST WESTERN UNDER THIS MEMBERSHIP APPLICATION AND AGREEMENT.

Danny Chao

Voting Member

Signature (DO NOT USE TITLE)

562 47 3009

Social Security No.

Date: 30 July 2001

EXHIBIT B

Scottsdale Thunderbird Suites



Our Hotel Specials & Groups Reservations Meetings Map & Directions Attractions Contact

- Scottsdale Thunderbird
- Our Hotel
- Specials & Groups
- Reservations
- Meetings
- Kachina Grill & Lounge
- Map & Directions
- Attractions
- Contact Us



*The Best Lodging Value
in
The Best Part of Scottsdale*

[Our Hotel](#) > [Suites](#) > [Weather](#) > [Hotel Fact Sheet](#)

Located in the north Scottsdale and greater Airpark business district, the Scottsdale Thunderbird Suites is rated the "best full-service all-suites hotel value in the best part of North Scottsdale."

- 3 Diamond Rating by National Auto Club
- Mobil 2 Stars
- 2003 Scottsdale Airpark News "Top Hotel Award" selected by readers
- Free Wireless internet throughout hotel
- **Gold Crown Club** frequency club points and air miles program
- Early check-in and late check-out if available
- Pay-Per-View Movies, cable HBO, and ESPN
- [More ...](#)

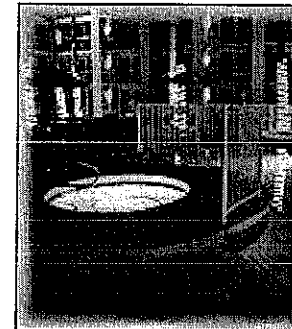


ACCOMMODATIONS

- 120 Deluxe Two Room Suites, feature separate sleeping and living areas
- Free 802.11b wireless internet in all suites
- Wet bar, mini refrigerator and microwave, plus dining ware for four persons
- Two 25" Color TV with free Cable Channels, HBO, ESPN and first run pay-per-view movies
- Iron & Ironing boards and Hair Dryers
- Either 2 Double-size Beds or 1 King-size Bed Available



All of our Suites feature NEW Simmons Premium Pillow-Top Mattresses for a great nights sleep!



AMENITIES

- Year round temperature controlled pool and spa
- Kachina Grille Restaurant - Room Service
- Exercise Room with treadmill, cycle, and elliptical cycle
- Coffee maker in all suites
- Free Deluxe continental breakfast every morning
- Complimentary USA Today newspaper
- Complimentary local calls & 2 line phones
- Data ports and Voice Mail
- On-Site Convenience Store
- 24 Hour Business Center with Broadband Internet
- Thunderbird Lounge with Happy Hour
- Complimentary shuttle within 5 miles radius