



AMERICAS BEST VALUE INN BY VANTAGE<sup>SM</sup> MEMBERSHIP AGREEMENT

This is an application for Membership in the AMERICAS BEST VALUE INN BY VANTAGE brand (hereinafter, the "Brand").

Applicant is (company): \_\_\_\_\_

and is applying for its property located at (address): \_\_\_\_\_

City/State/Zip: \_\_\_\_\_ The Property has \_\_\_\_\_ Billable Units (hereinafter, the "Property").

It is agreed:

1) MEMBERSHIP: That if this application for Membership is approved by Brand it thereupon becomes the Membership Agreement between the parties hereto, and Applicant shall thereafter be and be referred to herein as Member and in consideration thereof, Member shall abide by the Brand Standards including all duties and responsibilities required in this Agreement. The Brand provides Brand Programs that are intended to educate and assist the Member in improving its Property Standards and Level of Service through Member's efforts and participation. Member's satisfaction and success as a Member depends substantially on Member operating and maintaining the Property in accordance with the Brand Programs; however, other than as set forth in this Agreement, Member is free to operate Property pursuant to its independent best practices business judgment. The granting of Membership is dependent upon Applicant and Property meeting all of the Criteria of Membership.

2) INITIAL FEE: As a condition of BRAND considering Applicant for Membership, enclosed herewith is Applicant's good check payable to AMERICAS BEST VALUE INN BRAND MEMBERSHIP in the amount of \$7,500.00 plus \$125.00 for each Property Unit in excess of 60 Units, for a total of \$\_\_\_\_\_ (Initial Fee).

3) RECURRING FEES: The Fee Summary attached hereto shall establish the minimum fees charged to Member.

a) MEMBERSHIP FEES AND ADVERTISING FEES: Based upon a per Billable Unit fee as set forth on the Fee Summary for the Term, payable monthly.

b) ANNUAL CONFERENCE FEES: Based upon a per Property fee as set forth on the Fee Summary for the Term, payable monthly.

c) RESERVATION FEES (Booking Fees): Booking Fees are due and payable on a monthly basis in accordance with Perot/TACS Agreement; attached hereto. Property may be activated in the Reservation System, prior to the Billing Start Date and therefore, Member may therefore incur Booking Fees prior to the Billing Start Date; notwithstanding; Member shall timely reconcile, process and pay all such Booking Fees.

d) DATA UPDATE FEE: Based upon a per Property fee as set forth on the Fee Summary. Due to the proliferation of property data in the various electronic medium, the Brand will update Property Data on an annual basis (in addition to regular updates by Brand and/or Property). To facilitate this process, the Brand will contact Member upon renewal to facilitate gathering and/or confirming of all necessary Property Data and Member shall fully cooperate and facilitate this process.

e) MEMBER APPROVED PROGRAM FEES: Based upon the individual Program Fees; see Required Marketing Participation Programs Form, incorporated herein.

f) BILLING: Fees may be billed via mail, fax, or internet and in any such case, Member shall comply with Brand (including Perot/TACS Agreement) requirements for Timely review and reconciliation (see also paragraph 9), after which, all billing is final and payable in full. Payments made via check may be processed via electronic check processing and, by submitting a check for payment, Member authorizes Brand to initiate this process from Member's account. The Billing Start Date will be 30 days after the approval date unless stated otherwise.

4) SPECIAL CONSIDERATIONS: (if left blank then there are none): \_\_\_\_\_

5) INTEGRATION CLAUSE; DEFINITIONS: Only information contained on this Application, FRONT AND BACK, and Exhibits, and no oral or other agreements shall be deemed a part of this Application or Agreement unless specifically incorporated herein by reference.

ADDITIONAL TERMS AND CONDITIONS ARE CONTAINED on the reverse side hereof and in EXHIBITS INCLUDING: 1) THE TRANSITION GUIDE, 2) THE FEE SUMMARY, 3) THE REQUIRED MARKETING PARTICIPATION PROGRAMS FORM, 4) THE PEROT/TACS AGREEMENT, 5) THE DEFINITIONS and 6) ANY ADDENDA THERETO OR WHICH MAY BE INCLUDED. THESE TERMS AND EXHIBITS ARE PART OF THIS APPLICATION AND AGREEMENT. PARAGRAPH TITLES ARE NOT CONTROLLING. BRAND STANDARDS AND MEMBER APPROVED PROGRAMS MAY BE CHANGED, UPDATED AND/OR MODIFIED FROM TIME TO TIME WHEREUPON THEY SHALL BE CONSIDERED INCORPORATED HEREIN.

6) TIME IS OF THE ESSENCE: All duties and obligations of Member shall be performed Timely.

Dated this \_\_\_\_\_ Day of \_\_\_\_\_, \_\_\_\_\_

Mailing Address for Owner/Office, if different than Property address: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Company Name: \_\_\_\_\_

Fictitious Name, if any: \_\_\_\_\_

Tax ID No.: \_\_\_\_\_

Signature: \_\_\_\_\_

PRINTED Name: \_\_\_\_\_

Title: \_\_\_\_\_

Cell Phone: \_\_\_\_\_

State of incorporation or registration and State Folio Number: \_\_\_\_\_

All billing and notices are to be sent to (check one)  Property Address  Owner/Office Address

Property Phone # \_\_\_\_\_ Property Fax # \_\_\_\_\_ Property e-mail \_\_\_\_\_

Office Phone # \_\_\_\_\_ Office Fax # \_\_\_\_\_ Office e-mail (if different) \_\_\_\_\_

FOR AMERICAS BEST VALUE INN BY VANTAGE USE ONLY

Approval Date: the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_. The Initial Term of the Membership Agreement (Effective Date) begins the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

Billing Start Date: the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_. Renewal Date: the \_\_\_\_\_ day of \_\_\_\_\_.

By: \_\_\_\_\_ Title: \_\_\_\_\_

- 7) **MEMBERSHIP APPROVAL PROCESS:** This is a request by Applicant for a Membership. In order for the Application to be considered by BRAND, it must be completed, executed and returned along with the Initial Fee, completed Preliminary Application Form and Non-Refundable Application Fee within ten (10) business days from the date you receive the Application. Member must meet all Criteria of Membership. In cases where conditions to acceptance are noted, such as a Pre-opening PIP, Applicant will be advised. Where a Pre-Opening PIP is required, it must be executed by Applicant and returned to Brand whereupon the Application will be reconsidered. Upon approval of this Application as evidenced by Brand's signature and date hereon, this Agreement shall be binding and the Initial Fee shall be earned.
- 8) **TERM:** Initial Term is for one year beginning on the Effective Date, unless stated otherwise in Special Considerations section or an Exhibit. At the end of the Initial Term, Membership shall continue for Subsequent Terms of one year each beginning on the Renewal Date unless canceled by either party more than 90 days prior to the Renewal Date.
- 9) **DUE DATE, LATE FEES AND REACTIVATION FEES:** All fees and charges are due upon receipt, unless otherwise stated as, for example, in the case of the Perot/TACS Agreement. Membership, Advertising and Conference Fees are past due if not paid by the 10th of the month and all other fees are past due if not paid by the 25th of the month; in each case, following the date of billing. A late fee of \$25 or 1 1/2 percent interest per month on unpaid fees, whichever is greater, will be charged on all past due accounts. If a Property is in Suspension then, as a further condition of cure, Member shall pay the Re-activation Fee and provide Brand a DDA for all Fee payments for a period of no less than 12 months. During Suspension BRAND may, at Member's expense, cancel and/or relocate any Property reservations in the Reservation System.
- 10) **PROPERTY STANDARDS, INSPECTIONS AND LEVEL OF SERVICE:** Applicant/Member covenants that the Property meets or exceeds Property Standards. Member agrees to Quality Assurance Inspections both as a Criteria of Membership and on an annual basis. Depending on the schedule of the Brand inspector, the first QA Inspection may occur within a relatively short period of time after Date of Approval. Property Standards may be more stringent than those necessary to achieve an AAA rating; consequently, Property Standards must be maintained regardless of AAA rating. Member shall provide complimentary accommodations for the Brand inspector at the Property for purposes of QA Inspections. Member will be provided with a copy of the Quality Assurance Report, advised of its Quality Assurance Score (QA Score) and, should the QA Score be less than an "A" then, Member will be provided with a PIP in order to bring the Property in compliance with Property Standards. Member shall Timely comply with the PIP. Additionally, if Property receives a failing QA score (F), it shall be immediately Suspended pending timely acceptance, commencement and completion of the PIP and confirmation of status as a Member in Good Standing. All costs of a follow-up QA Inspection shall be paid by Member with said costs not to exceed a \$500 fee plus reasonable travel expenses. Member shall operate its Property consistent with Brand's Level of Service Standard and shall endeavor to promptly resolve guest complaints at the Property level. When a guest notifies Brand of a complaint regarding Brand Standards, the Guest Complaint Procedure shall be followed; see Transition Guide and Resource Guide. Should Member fail to Timely resolve a guest complaint to satisfaction of Brand and should Brand, in its discretion, deem it necessary to resolve the complaint, Brand may charge Member and Member shall Timely pay for the cost of compensation to the guest plus an administrative fee of \$75.00.
- 11) **USE OF LICENSE AND EFFECT OF TERMINATION:** Member acknowledges receipt of the Transition Guide and Resource Guide. Brand marketing for the Membership is conducted under and pursuant to the Mark and BV Chain Code and is facilitated by the Advertising Fund under the direction of the Brand marketing department and the Advertising Counsel. Use by Member of the Mark is for the Property only and the license to do so shall not be transferred without the express written consent of Brand. Member shall utilize the Marks at the Property in a prominent fashion including primary interior and exterior signage in such a fashion that the consumer/guest will easily identify the Property as being a Member of Brand. All signs utilizing Marks must be approved in writing and in advance by Brand; such approval shall not be a guaranty that the sign meets code or the sign can (curvilinear shape), etc. does not violate third party trade or service marks. Sign specifications submitted by a sign company that is not a Preferred Vendor will be subject to a non-refundable Sign Compliance Fee.
- Should Membership cease, for any cause, Member shall, at Member's expense: 1) immediately terminate all uses of the Mark and all Brand Programs, 2) immediately return the Resource Guide and all other property of Brand to the Corporate Office, 3) remove any use of the Mark, including removal of Mark from all signage, furniture and fixtures and from all OTA sites within 30 days of receipt of Notice of termination of Membership or within 30 days of termination by Member (the Grace Period). In the event Member fails to Timely and completely remove all Marks and stop using all Brand Programs, Member acknowledges the damage done to Brand thereby will be difficult or impossible to ascertain and Member shall pay to Brand, the amount of \$150.00 per day beginning at the end of the Grace Period and continuing until the use of all Marks is confirmed by BRAND to have ceased. Brand is not responsible for assuring that any travel website(s) timely or correctly gathers and/or populates its site with updated information.
- 12) **AREA OF PROTECTION (AOP):** The grant of a license under this Agreement does not guaranty to Member any Area of Protection unless agreed to in writing by Brand. An AOP, if provided, is relative only to the market segment in which Member operates; in other words, an AOP for an "inn" product would not negate the Brand from granting a license to an applicant who will operate a "suites" product.
- 13) **PROGRAM COMPLIANCE:** a. **MEMBER APPROVED PROGRAMS:** Member shall comply with all Member Approved Programs as and when such Programs are approved by Membership Vote and are implemented by the Brand. As of the Date of Approval, all such Programs are set forth in this Membership Agreement and its Exhibits. Where applicable, costs and/or fees attributable to Member Approved Programs will be billed to Member as additional Fees. b. **BEST PRACTICES:** Notwithstanding the above, the Brand is not established to and does not substantially control the business operations, local property marketing programs or business practices of Member and therefore relies upon Member to understand its local market and consumers/guests and to operate Property consistent with the applicable best business practices in the transient guest business; where there is a conflict between this Agreement and a Property's claim of applicable best business practices then, this Agreement shall be controlling. c. **INDUSTRY STANDARDS:** Certain standards of customer/guest service and information integrity are common in the industry and/or are consistent with typical norms imposed by Distribution Entities; Member shall abide by these industry standards including that: 1) Property Data shall be maintained and updated by Member on a regular basis, 2) Rates and Availability of inventory shall be maintained by Member in the CRS to provide last room availability, 3) Member shall honor policies, Rates and Availability as displayed in the CRS, 4) Reservations booked through OTAs, with which the Brand has a direct Brand-level agreement shall be managed through the CRS. 5) in the event the Property is unable to accommodate a guest with a confirmed reservation, Property shall secure comparable accommodations for the guest at no additional charge to the guest and, 6) Member shall Timely respond to guest and/or provider inquiries and/or complaints (i.e., not in excess of 10 calendar days from the date the complaint is submitted to Member).
- 14) **DEFAULT:** If Member is in default of Brand Standards (other than non-payment of Fees) or if the operation of the business is inconsistent with or detrimental to the Brand then Member shall be notified of default. Upon Notice and an opportunity to cure, if Member remains in default then, without further Notice, Brand may Suspend Property. Thereafter, if Member fails to Timely cure, Brand may terminate this Agreement and accelerate all Fees through the anniversary of the Renewal Date. If Member is in default for non-payment of Fees, Brand will issue a shut-off advisory by mail and, if the default for non-payment remains uncured, Brand will issue a shut-off notice via facsimile providing 48 hours to cure. If Member does not Timely cure then, Property may be placed in Suspension and thereafter, Notified of termination, including acceleration of Fees nothing herein shall be taken to limit Brand's rights and remedies.
- 15) **TERMINATION:** If Member terminates this Agreement prior to conclusion of any Term or if Member is terminated under the Agreement, Member shall immediately pay all amounts due (Fees and other charges), the balance of Fees for the Term on an accelerated basis and all Booking Fees. At the discretion of Brand, Booking Fees shall be due either as incurred or based upon the information shown in the CRS as of the date of termination. Brand will process reservations for arrivals only prior to the Termination Date. For guests confirmed for an arrival date on or after the Termination Date, Member shall comply with Brand Standards; Brand reserves the right to contact guests and/or make alternate accommodations for guests in the event Brand deems necessary in its sole discretion.
- 16) **TRANSFER FEE:** The License granted hereunder is non-transferable without the written consent of BRAND and the payment of a Transfer Fee; see Fee Summary; consent shall not be unreasonably withheld. A Change in Ownership is considered a transfer for purposes hereof.
- 17) **INSURANCE; AGREEMENT DOES NOT CREATE JOINT VENTURE, ETC:** Member shall, at all times, carry property and casualty insurance on the Property whereon Brand is named as an additional insured; a copy of such coverage shall be submitted to Brand within fifteen (15) days of Date of Approval (consistent with Transition Guide) and shall be resubmitted on an annual basis. Minimum coverage requirements shall be the greater of 1) those required by the Mortgagee of Property or, if none, then 2) coverage shall include a minimum of \$1M/1M general liability, personal injury and medical, fire and loss of revenue endorsements. Should Member fail to comply with this provision, Brand, in addition to its other remedies, may contact Member's agent or carrier directly or otherwise obtain said coverage and bill the applicable premium to the Member to be paid in full upon receipt. Nothing contained herein shall be deemed to create a joint venture, partnership, agency, servant, subsidiary or legal representative relationship (except with regard to authority to transfer Property Data in the Reservation System, in particular to facilitate reservation activity) of or between the Parties. Member is an independent third party. Member is not authorized to make any contract, agreement, representation or warranty on behalf of Brand except as specifically set forth herein or induce any debt or other obligations in the Brand name(s).
- 18) **GOOD FAITH AND FAIR DEALING:** Member and Brand agree to deal with each other honestly, fairly, in good faith and in a non-discriminatory manner.
- 19) **DISPUTES, ATTORNEYS' FEES:** In the event either party is required to engage an attorney to enforce its rights hereunder or in any ancillary action, the prevailing party shall be entitled to recover reasonable attorney's fees for pre-trial, trial, mediation, and on appeal. In the event that Brand, its agents or assigns are made a party to any claim, action, or suit against Member or Property wherein Brand, its agents or assigns is/are named in a capacity as a passive tortfeasor (i.e., not the party who is alleged to have actively committed the wrong) or should the Brand, its agents or assigns incur any expense or attorney's fees as a non-party to litigation and/or administrative proceedings and/or for any other reason, then, to that extent, Member agrees to indemnify Brand for all damages, costs, expenses, and attorneys' fees and immediately pay same upon being billed. With regard to any claim by a Member against Brand (whether arising under this Agreement or otherwise), Brand may require that said matter shall be referred to and resolved in arbitration. In the event that Brand declares Member in default due to a Quality Assurance (with the exception of a life-safety matter) or guest service issue, Member may request that such default be referred to an Advisory Board Member (the Advisory Board Member will be chosen by the Brand and must be one of the elected hotel owner Members and not a Corporate or Preferred Vendor Member) for review (Advisory Board Review). A request for Advisory Board Review must be made by Member within ten (10) days of its receipt of the Notice of Default. Member's right to Advisory Board Review is conditioned upon all payments to Brand being current and Member otherwise being a Member in good standing. Advisory Board Review will be limited to a decision on the specific matter referred and within thirty (30) days a written decision will be rendered by the Advisory Board Member. The decision of the Advisory Board Member is binding. As a portion of the consideration for the fees charged hereunder, Member agrees that Florida laws shall apply to all disputes, jurisdictions shall lie in the State of Florida and venue for all proceedings such as arbitration shall be in Broward or Palm Beach County, FL at the discretion of Brand.