

FORGIVABLE LOAN AGREEMENT and PROMISSORY NOTE

This Loan Agreement and Promissory Note (the "Agreement"), effective this ____ day of May 2013, is entered into between the following parties:

Lender: Sedgwick County, Kansas Board of County Commissioners ("Lender")
 525 N. Main
 Wichita, Kansas 67203
 Contact Person/Title: Sherdeill Breathett, Economic Developer / FTZ #161 Admin.
 Phone: 316-268-1139 FAX: 316-265-7502

Borrower: Starwood Hotels & Resorts Worldwide, Inc.
 OneStarpoint
 Stamford, CT 06902
 Contact Person/Title: Associate Gen. Counsel, Real Estate
 Phone 203-964-6000 FEIN: 52-1193298

WHEREAS, it has been determined by the Lender that an economic emergency or unique opportunity exists which warrants funding to secure economic benefits or avoid or remedy economic losses; and

WHEREAS, the Borrower has specified that this funding will be used to fund fit-out and capital improvements at the Borrower's new facility in Wichita, Sedgwick County, Kansas; and

WHEREAS, the Lender has authorized an expenditure of up to \$200,000 for the purpose of making a loan to the Borrower under such terms and conditions as may be prescribed by the Lender.

NOW THEREFORE, in consideration of the mutual promises, covenants and agreements, the parties agree as follows:

1) **Loan Amount and Terms:** Subject to the terms and conditions of the Agreement, the Lender hereby agrees to provide the Borrower with the principal sum of \$200,000 within thirty (30) days of the Lender receiving satisfactory documentation that the lease for the new facility has been fully executed ("Loan"). The Loan shall be provided for a sixty (60) month period ("Term"). Interest will accrue from the date of disbursement at the rate of zero percent (0.0%) per annum on the unpaid balance. Should a default occur, repayment of all principal and interest will be made immediately in accordance with the provisions shown below. The Borrower shall have the right to prepay any part or all of the unpaid principal and interest balance at any time without penalty. This loan is not transferable.

2) **Forgiveness of Debt:** The Borrower promises to create and maintain minimum employment levels at the Sedgwick County, Kansas facility at the end of each of five (5) years as shown in the following schedule:

Year	Full Time Equivalents	Per Hour Wage Without Overtime	Average Wage	Total Wages
1	532	\$11.45	\$23,816	\$12,670,112
2	617	\$11.95	\$24,856	\$15,336,152
3	712	\$12.50	\$26,000	\$18,512,000
4	807	\$13.00	\$27,040	\$21,821,280
5	907	\$13.40	\$27,872	\$25,279,904

For purposes of this Agreement, the number of New Full-Time Equivalent Jobs shall be measured based on the first payroll period that ends in July in each of the five measurement years, beginning with July 2014. For purposes of this Agreement, New Full-Time Equivalent Job shall mean (i) one employee located at the new facility who was employed an average of 40 hours (including customary vacation, sick, holiday and personal days) or more per week during such payroll period, or (ii) two or more employees located at the new facility who were employed a combined average of 40 hours (including customary vacation, sick, holiday and personal days) or more per week during such payroll period. The average annual salary, shall be calculated by multiplying the average hourly wage of the Full-Time Equivalent Jobs as of such payroll by 2080.

The outstanding principal balance will be divided by the total number of years in the term, and the resulting figure will be the Installment. The first date for meeting the first year's job creation commitment shall be the last day of the first payroll period that ends in July, 2014. On this first measurement date and at each of the four (4) measurement dates thereafter (each such measurement date being the last day of the first payroll period that ends in July of such year), where the Borrower has achieved the required job and wage commitment, an amount equal to an Installment, plus any accrued interest, will be forgiven. If, on any of the measurement dates, the Borrower falls short of the required job commitment and or wage commitment, the installment amount to be forgiven shall be reduced by the greater of the following calculations each year:

- (i) an amount equal to multiplying the Installment for such year by the percentage by which the new Full-Time Equivalent Jobs, as calculated above, were below the job commitment. For example, if the New Full-Time Equivalent Jobs as measured for Year 2 were ten percent (10%) below the job commitment for such year, ninety percent (90%) of the Installment would be forgiven.
- (ii) an amount equal to multiplying the Installment for such year by the percentage by which the actual average annual salary, as calculated above, was below the wage commitment. For example, if the wages for Year 2 were ten percent (10%) below the wage commitment for such year, ninety (90%) of the Installment would be forgiven.

Within 60 days of the expiration of the Term, Borrower shall make a payment to the Lender equal to any remaining outstanding balance, after all forgiveness set forth in this Section 2 has been applied.

3) **Collateral:** None is required under this Agreement.

4) **Mortgage/Security Agreement:** Not applicable.

5) **Insurance:** The Borrower agrees to provide and maintain at its own expense casualty and hazard insurance covering loss by fire or wind with extended coverage insuring all of the real estate, buildings, fixtures and improvements and all business machinery, equipment, furnishings and furniture at its Sedgwick County, Kansas facility. Evidence of such coverage will be provided to the Lender upon request. The total amount of the insurance policy shall be sufficient to pay all indebtedness to lien holders and other parties with an interest in this property, and pay the Lender the entire outstanding principal balance and accrued interest. In the event of such loss, the Borrower agrees to repay the Lender as detailed in section 16(A)(ii) below, subject to item (6).

6) **Force Majeure:** In the event that operations at the worksite are impaired or suspended due to uncontrollable forces of nature, the Borrower will be given a reasonable period of time, as determined in the sole discretion of the Lender, in which to reestablish any lost jobs. The term of this agreement will be extended by the length of this period, and no contractual penalty will be imposed on the company during this period.

7) **Release of Mortgage/Security Agreement:** Not applicable.

8) **Life Insurance:** Not applicable.

9) **Use of Funds:** The monies from this loan shall be used by the Borrower to pay for costs related to fit-out and capital improvements at the Borrower's worksite in Wichita, Sedgwick County, Kansas.

Any machinery and equipment obtained using these loan funds will be promptly identified to the Lender, including narrative description and serial number, and will remain in the Sedgwick County, Kansas facility for the duration of this agreement. The Lender or its representative shall be afforded the right of inspection of such machinery and equipment throughout the term of this agreement.

10) **Services Provided to Borrower:** The Lender is not obligated to provide any services to the Borrower other than those specified in the Agreement.

11) **Related Contracts:** The Borrower shall provide, upon written request, copies of all contracts entered into by the Borrower for activities covered by the loan monies.

12) **Period of Performance:** The Borrower may be reimbursed with loan funds for expenses incurred prior to the date of this Agreement, if they were made in connection with activities defined in item (9) above.

Activities will terminate when all conditions of the Agreement have been met within any specified time frames, or by mutual consent of all parties to the Agreement, or when a default situation arises, unless the Lender chooses not to terminate the Agreement.

13) **Financial Management:** Borrower shall keep accounting records in conformance with generally accepted accounting principles, and make such records and all related reports, files, documents and other papers pertaining to the funds provided under this Agreement available for audits, examinations and monitoring if requested by Lender; such records will be retained for a period of three (3) years after termination of the loan period or repayment of the debt in full. The accounting system used by the Borrower shall clearly establish records of budgets and expenditures for the activities funded with the loan monies.

14) **Monitoring and Reporting:** A random audit, or audits, may be conducted by the Lender, or a designated representative of the Lender, to assure accountability of loan expenditures and examine the status of any machinery and equipment acquired with this loan funding.

The Borrower will provide to Lender, on an annual basis during the Term, a report for the Borrower's Wichita, Sedgwick County, Kansas facility which sets forth the number of Full-Time Equivalent Jobs as described in Section 2 of this Agreement, the average annual salary as defined in Section (2) of this Agreement, and a record of capital investment for the most recent report period and accumulated since the beginning of the report periods. Each report will be submitted within 60 days following the measurement date set forth in Section (2) of this Agreement.

15) **Waivers:** The Borrower hereby waives presentment, demand of payment, protest, and any and all other notices and demands whatsoever. No waiver of any payment or other right under this Agreement shall operate as a waiver of any other payment or right.

16) **Default:** This Agreement shall be considered in default:

(A) Upon any default or failure to properly perform under any clause in this Agreement (or the provisions of any security agreement(s) or mortgage documents which secure this Agreement).

(i) If the Borrower ceases to operate in Wichita, Sedgwick County, Kansas during the Term, the following repayment is required:

- a) the entire outstanding principal amount is immediately due and payable, plus
- b) any principal and interest previously forgiven as specified in item (2) above, plus
- c) interest penalties equal to a twelve percent (12%) compounded annual rate calculated for a 5 year period against the highest outstanding principal amount over the term of the loan.

- (ii) Upon audit, any loan funds shown to have been used for other than the intended purposes shall be repaid with interest to Lender by Borrower. Such unintended purposes would include, but not be limited to, the acquisition of machinery and equipment which is not used at the Wichita, Kansas facility throughout the term of this loan. The amount to be repaid shall be such principal plus twenty-five percent (25%) compounding interest accrued from the date of the initial draw-down against this loan.
 - (iii) If the Borrower otherwise defaults in any manner on the obligations set forth in this Agreement, the following repayment is required:
 - a) any principal balance outstanding on the loan is due and payable; and
 - b) interest penalties equal to a twelve percent (12%) compounded annual rate calculated against the principal balance for the period during which it has been outstanding.
- (B) Upon any occurrence under this Agreement or security agreements or mortgage documents by which this loan may or shall become due and payable.
- (C) At any time that the Lender determines in good faith that the prospect of any payment required by this note is impaired.

In the event of default under this Section, the Lender shall provide the Borrower with thirty (30) days written notice of default and an opportunity to cure such default within the thirty (30) days. If the Borrower fails to cure the default within the thirty (30) day cure period, the Lender may, at its option, declare all unpaid indebtedness evidenced by this Agreement and any modifications thereof, immediately due and payable, without further notice, regardless of date of maturity. The Lender's failure to exercise this option when available at any point in time shall in no way invalidate its right to exercise the option in future default situations. Should it become necessary to collect the monetary obligations of this Agreement through an attorney, the Borrower agrees to pay all costs of collecting these monies, including reasonable attorneys' fees to the extent permitted by law, whether collected by suit, foreclosure, or otherwise.

17) **Indemnification**: The Borrower shall indemnify, defend, and hold harmless the Lender and its respective officers and employees from any liabilities, claims, suits, judgments, and damages arising as a result of the performance of the obligations under this Agreement by the Borrower or any party in a relationship with the Borrower which is a result of this Agreement. The liability of the Borrower under this Agreement shall continue after the termination of the Agreement with respect to any liabilities, claims, suits, judgments and damages resulting from acts occurring prior to the termination of this Agreement.

18) **Amendments**: Changes to this Agreement will not be effective or binding unless in writing and signed by both parties to the Agreement.

19) **Compliance with the Law**: The Borrower agrees to operate in Sedgwick County, Kansas in full compliance with applicable federal, state and local laws without limitation.

20) **Authorization to Contract**: Before or at the time of execution of the Agreement, the Borrower must be able to provide evidence that it is duly incorporated, in good standing in the state of its incorporation, authorized to do business in the State of Kansas, and authorized to borrow money; and evidence shall be provided that the person executing the Agreement and any supporting documents is authorized to act on behalf of the Borrower in such a transaction.

21) **Termination of Agreement**: Lender may terminate the loan, in whole or in part, in the event of a default by Borrower that continues beyond applicable notice and cure period. The Borrower will receive written notice and the reasons for termination.

22) **Divisibility**: The invalidity of any one or more phrases, sentences, clauses, or section contained in this Agreement shall not affect the remaining portions of this Agreement, or any part thereof. Further, various headings included in this Agreement exist purely as an aid to locate particular wording, and do not in and of themselves in any way affect the substance of this Agreement.

23) **Complete Document**: The parties agree this Agreement is a complete document in which all obligations have been reduced to writing, and there are no understandings, agreements, conventions or covenants not included herein.

24) **Assignment**: The parties further agree that this Agreement may not be assigned by the Borrower without prior written approval by the Lender, which approval shall not be unreasonably withheld, conditioned or delayed.

25) **Binding Effect**: The provisions of this Agreement shall both bind and benefit the Borrower's successors, assigns, guarantors, endorsers, and any other person or entity now or hereafter liable hereon.

26) **Notices**. Notifications required pursuant to this contract shall be made in writing and mailed to the addresses shown below. Such notification shall be deemed complete upon mailing.

Borrower: Starwood Hotels & Resorts Worldwide, Inc.
Attn: Associate General Counsel - Real Estate
One StarPoint
Stamford, CT 06902

County: Sedgwick County Legal Department
Attn: Contract Notification
Sedgwick County Courthouse
525 N. Main, Suite 359
Wichita, KS 67203-3790

Economic Development
Attn: Sherdeill Breathett, Eco. Devo
350 West Douglas Street
Wichita, Kansas 67202

27) **Cash Basis and Budget Laws**. The right of Lender to enter into this Agreement is subject to the provisions of the Cash Basis Law (K.S.A. 10-1112 and 10-1113), the Budget Law (K.S.A. 79-2935), and other laws of the State of Kansas. This Agreement shall be construed and interpreted so as to ensure that Lender shall at all times stay in conformity with such laws, and as a condition of this Agreement Lender reserves the right to unilaterally sever, modify, or terminate this Agreement at any time if, in the opinion of its legal counsel, the Agreement may be deemed to violate the terms of such laws.

28). **Equal Opportunity and Affirmative Action.**

In carrying out this contract, Borrower shall deny none of the benefits or services of the program to any eligible participant pursuant to K.S.A. 44-1001 et seq.

A. Borrower shall observe the provisions of the Kansas act against discrimination and shall not discriminate against any person in the performance of work under this contract because of race, religion, color, sex, disability, national origin, or ancestry.

B. In all solicitations or advertisements for employees, Wichita, Sedgwick, Kansas facility, Borrower shall include the phrase "equal opportunity employer" or a similar phrase to be approved by the Kansas Human Rights Commission.

C. If Borrower fails to comply with the provisions of K.S.A. 44-1031, requiring reports to be submitted to the Kansas Human Rights Commission when requested by that Commission, Borrower shall be deemed to have breached this contract and it may be canceled, terminated or suspended, in whole or in part, by Lender.

D. If Borrower is found guilty of a violation of the Kansas act against discrimination under a decision or order of the Kansas Human Rights Commission which has become final, Borrower shall be deemed to have breached this contract and it may be canceled, terminated or suspended, in whole or in part by Lender.

E. Borrower shall include the provisions of paragraphs A through D inclusively of this section in every subcontract or purchase order directly related to the expenditure of the Loan at the Wichita, Sedgwick, Kansas facility so that such provisions will be binding upon such subcontractor or vendor.

IN WITNESS WHEREOF, the parties have signed their names below.

LENDER:

BOARD OF COUNTY COMMISSIONERS
OF SEDGWICK COUNTY

James B. Skelton, Chairman


ATTEST:

Kelly Arnold, County Clerk

APPROVED AS TO FORM:

BORROWER: [Starwood Hotels & Resorts Worldwide, Inc.]

Principal Officer Signature



Michael North, Assistant County Counselor

Revised Master:
05172013