

January 2, 2024

Laurel Ziemianski
Project Manager
SWaN Hill Top House Hotel, LLC

Re: SWaN Hill Top House Hotel, LLC Tourism Development Project

Dear Ms. Ziemianski:

The West Virginia Department of Economic Development (WVDED) is in receipt of the letter from SWaN Hill Top House Hotel, LLC, dated December 28, 2023, requesting that the Tourism Development Act agreement with SWaN Hill Top House Hotel, LLC be amended to reflect a new estimated completion date of December 31, 2027.

Per W.Va. Code §5B-2E-6(2), completion dates of approved Tourism Development Act projects may be updated and amended as necessary, with the written approval of the WVDED upon a submission by the approved company outlining the reason for amendment, and, if approved, the completion and opening of the project either prior to or after the initial proposed date shall not impact the qualification of the approved company for the tax credit as provided in §5B-2E-7 or §5B-2E-7a.

The WVDED has reviewed your letter and taken into consideration the reasons for the amendment outlined. The amended date of December 31, 2027 is considered approved and is reflected in the revised agreement, attached for your consideration. Please review, sign, and return a copy of this document at your earliest convenience.

Thank you for notifying the WVDED of your amended project completion date. We look forward to working with you as the project moves forward.

Sincerely,



Mitch Carmichael
Cabinet Secretary

MC:ms

TOURISM DEVELOPMENT ACT AGREEMENT

This Agreement, which shall be effective as of the last date of execution by both parties to the agreement (the "Effective Date"), is made and entered into by and between SWaN Hill Top House, LLC ("SWaN") and the West Virginia Department of Economic Development ("WVDED"). WVDED and SWaN are each a "Party" and are collectively referred to as the "Parties."

WHEREAS, SWaN is undertaking a tourism development project to include the construction of a new destination hotel and spa on the former site of the Hill Top House Hotel in Harpers Ferry, WV. (the "Project"). The Project will consist of an approximately 110-room luxury hotel building as well as restoring and rehabilitating the seven adjacent historic structures for use as guest lodging and activity programming;

WHEREAS, the Project qualifies as a tourism development project eligible for tax credits available pursuant to the West Virginia Tourism Development Act, W. Va. Code §5B-2E-1 *et seq.* (the "Act") and the project qualifies for the tax credits at a rate of thirty-five percent of the approved costs, as the project site is located adjacent to a federal recreation area of Harpers Ferry National Historical Park, pursuant to §5B-2E-7 (b);

WHEREAS, the Act provides for the requirements and procedures for the administration of the tax credits authorized therein;

WHEREAS, SWaN has completed and submitted to the WVDED an application in accordance with the Act to apply for benefits authorized by the Act and has identified estimated development costs.

NOW THEREFORE, in consideration of the mutual covenants and conditions contained herein, and for other good and valuable consideration, the receipt, mutuality, and sufficiency of all of which is hereby acknowledged by the Parties hereto, the Parties hereby agree as follows:

1. **Application Approval.** WVDED reviewed SWaN's tourism development project application and has granted the Project final approval, designates SWaN as an "Approved Company," and conveys upon SWaN all the benefits and obligations provided by the Act.
2. **Documentation Requirement.** Within six months of the Completion Date (as defined by this agreement), SWaN shall document the actual cost of the Project through a certification of the costs to WVDED by an independent certified public accountant acceptable to the WVDED.
3. **Completion Date.** SWaN shall have completed and opened the Project to the public no later than December 31, 2027. SWaN may request and WVDED may grant an extension or change to the Completion Date.
4. **Approved Costs.** The approved costs of the Project are those costs that are defined in W. Va. Code §5B-2E-3(3) and qualify for the sales tax credit provided by W. Va. Code §5B-2E-7. The estimated amount of approved costs for the project are One Hundred Thirty-Eight Million Eight Hundred Ninety-Seven Thousand Eight Hundred Eighty-Two dollars (\$138,897,882). Upon submission of the certification of costs report submitted by SWaN

to the WVDED, the West Virginia Tax Department shall document the actual amount of credit available in writing.

5. **Annual Reporting.** Within forty-five days after the end of each calendar year, beginning in the year following the first calendar year the project is open to the public, SWaN shall supply WVDED with all reports and certifications required by W. Va. Code §5B-2E-8, in order to maintain the benefits authorized by the Act. The WVDED shall then certify to the Tax Commissioner that the approved company is in compliance with this section.
6. **Amendments or Modifications.** This Agreement may only be amended or modified by a signed writing executed by authorized representatives of the Parties.
7. **Severability.** If any provision of this Agreement shall for any reason be held illegal, invalid, or unenforceable, then the other provisions of this Agreement shall not be rendered invalid or otherwise affected thereby and shall continue in full force and effect to the maximum extent permitted by applicable law.
8. **Governing Law.** This Agreement shall be governed by the laws of the State of West Virginia and any dispute arising out of this Agreement will be resolved in a West Virginia court having jurisdiction.
9. **Irrevocable.** Upon acceptance by SWaN and execution of the Parties, this Agreement will become a legally enforceable contract.
10. **Termination.** WVDED reserves the right to terminate this agreement and rescind SWaN's "Approved Company" designation, if, in WVDED's determination, SWaN does not maintain compliance with the Tourism Development Act.

[Signature Page to Follow]

IN WITNESS WHEREOF, the Parties have caused this Agreement to be executed by their duly authorized representatives to be effective as of the Effective Date.

SWAN HILL TOP HOUSE HOTEL, LLC



Name:

Laurel Ziemianski

Title:

SWAN Project Manager

Date:

1/18/24

**WEST VIRGINIA DEPARTMENT OF
ECONOMIC DEVELOPMENT**



Name: Mitch Carmichael

Title: Cabinet Secretary

Date:

1/24/24



HILL TOP HOUSE HOTEL

HARPERS FERRY, WV

VIA ELECTRONIC MAIL: megan.e.smith@wv.gov

Meghan Smith
Manager, Business and Industrial Development
West Virginia Department of Economic Development
1900 Kanawha Blvd. East
Charleston, West Virginia 25305

December 28, 2023

Re: SWaN Hill Top House Hotel, LLC
Tourism Development Project

Dear Meghan:

SWaN Hill Top House Hotel, LLC ("SWaN"), on December 17, 2019, entered into an agreement with the West Virginia Development Office (now the "West Virginia Department of Economic Development") (the "WVDED") memorializing the approval of SWaN's design, acquisition, construction and equipping, and subsequent operation, of a new destination hotel and spa on the former site of the Hill Top House Hotel in Harpers Ferry, West Virginia (the "Project") as a Tourism Development Project under the West Virginia Tourism Development Act (WV Code Section 5B-2E-1 et seq.) (the "Act").

In the application required under the Act (the "Application"), SWaN projected that the design, acquisition, construction and equipping of the Project would be completed, and the Project open for business to the public on or about November 1, 2023.

Design of the Project is complete, and SWaN is in the process of permitting the Project through the WVDED. SWaN projects that construction and equipping of the Project will commence in calendar year 2024. The delay in the Project from the originally projected opening date of November 1, 2023, is the result of a number of factors beyond SWaN's control. These factors include, but are not limited to:

1. The impact of the Pandemic on the hospitality industry;
2. Dramatic increases in construction costs;
3. Significant increases in interest rates and financing costs; and
4. Tightening of the credit markets due to macroeconomic factors and the impact of the pandemic on the hospitality industry.

Additionally, due to the present delays in obtaining materials and equipment for construction projects, the period for construction and equipping of the Project will likely be longer than originally anticipated.

In summary, SWaN anticipates that construction and equipping of the Project will be completed, and the Project in operation and open to the public, by December 31, 2027.

Please accept this letter as a request by SWaN that the Agreement be amended to project that December 31, 2027, as the date by which SWaN reasonably expects the Project to be completed and in operation for, and open to, the public.

Thank you for your assistance. Please do not hesitate to email or call me if you have any questions.

Very Truly Yours,



Laurel Ziemianski