

AGREEMENT

between

SWAN HILL TOP HOUSE HOTEL

And

WEST VIRGINIA DEVELOPMENT OFFICE

This Agreement is entered into this day of December 17, 2019, by and between SWaN Hill Top House Hotel, LLC ("SWaN") on and the West Virginia Development Office ("WVDO").

WHEREAS, SWaN is undertaking a tourism development project, to wit:

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

WHEREAS, the Project falls within the definition and purview of the West Virginia Tourism Development Act WV §5B-2E-1, *et seq.* (the "Act"); and

WHEREAS, the Project is located adjacent to the Harpers Ferry National Historical Park, a federal recreational area owned and managed by the National Park Service, an agency of the U.S. Department of Interior; and

WHEREAS, SWaN has completed and submitted to the WVDO an application in accordance with the Act to apply for benefits of the Act and has identified estimated development costs not to exceed One Hundred Thirty-Eight Million Eight Hundred Ninety-Seven Thousand Eight Hundred Eighty-Two dollars (\$138,897,882); and

WHEREAS, the Act provides that an approved company is allowed a credit against the West Virginia Consumer Sales and Service Tax imposed by Article Fifteen, Chapter eleven of the Code and collected by the approved company on sales generated by or arising from the operations of the tourism development project; Provided, that if the consumers sales and service tax collected by the approved company is not solely attributable to sales resulting from the operation of the new tourism development project, the credit shall only be applied against that portion of the consumers sales and service tax collected in excess of the base tax revenue amount; and

WHEREAS, the maximum amount of credit allowable under the Act is equal to thirty-five percent (35%) of the approved company's approved costs as provided in this Agreement. The amount of credit allowable must be taken over a ten-year period, at the rate of one tenth of the amount thereof per taxable year, unless the approved company elects to delay the beginning of the ten-year period until the next succeeding taxable year. This election shall be made in the first consumer sales and service tax return filed by the approved company following the date the project is opened to the public. Once made, the election cannot be revoked; and

WHEREAS, the amount determined under subsection (b) of §5B-2E-7 of the Act is allowed as a credit against the consumers sales and service tax collected by the approved company on sales from the

operation of the tourism development project. The amount determined under said subsection may be used as a credit against taxes required to be remitted on the approved company's monthly consumer sales and service tax returns that are filed pursuant to section sixteen, article fifteen chapter eleven of the Code. The approved company shall claim the credit by reducing the amount of consumer sales and service tax required to be remitted with its monthly consumers sales and service tax returns by the amount of its aggregate annual credit allowance until such time as the full current year annual credit allowance has been claimed. Once the total credit claimed for the tax year equals the approved company's aggregate annual credit allowance no further reductions to its monthly consumers sales and service tax returns will be permitted; and

WHEREAS, if any credit remains after application of subsection (d) of §5B-2E-7 of the Act, the amount of credit is carried forward to each ensuing tax year until used or until the expiration of the third taxable year subsequent to the end of the initial ten-year credit application period. If any unused credit remains after the thirteenth year, that amount is forfeited. No carryback to a prior taxable year is allowed for the amount of any unused credit; and

WHEREAS, as the result of the review of the SWaN application and Project, including a comprehensive analysis of all aspects of the application and phases of the Project, the WVDO has granted the Project final approval and extended to SWaN the status of "Approved Company"; and

WHEREAS, SWaN anticipates that on or about November 1, 2023 all aspects of the proposed expansion project will have been completed and the new hotel will be open for business to the public, subject to the option of SWaN to request an extension pursuant to W. Va. Code § 5B-2E-6(2).

Now, Therefore, SWaN and WVDO hereby agree as follow:

- (1) Approved costs of the Project that qualify for the sales tax credit provided in Section 7 of the Act shall not exceed One Hundred Thirty-Eight Million Eight Hundred Ninety-Seven Thousand Eight Hundred Eighty-Two dollars (\$138,897,882), resulting in a maximum amount of credit equal to \$48,614,258.00; and
- (2) SWaN shall document the actual cost of the Project, through a certification of the costs by an independent certified public accountant acceptable to the WVDO no later than three months following completion of the Project; and
- (3) SWaN shall complete and open the Project to the public on or about November 1, 2023, subject to the option of SWaN to request an extension pursuant to W.Va. Code § 5B-2E-6(2).

SWAN HILL TOP HOUSE HOTEL

By: Laurel Ziemianski
Laurel Ziemianski
Project Manager

WEST VIRGINIA DEVELOPMENT OFFICE

By: Michael R. Graney
Michael R. Graney