

ORDINANCE 2022-04

**AN ORDINANCE OF THE CORPORATION OF HARPERS FERRY AUTHORIZING THE MAYOR TO EXECUTE THE CORRECTIVE & AMENDED DEED BY AND BETWEEN THE CORPORATION OF HARPERS FERRY AND SWAN HILL TOP OPERATING PARTNERS, LLC AND HF HILLTOP LLC**

**WHEREAS**, The Corporation of Harpers Ferry is a municipal corporation established under the Constitution and laws of the State of West Virginia; and

**WHEREAS**, SWaN Hill Top Operating Partners, LLC is a Delaware limited liability company and HF Hilltop LLC is a Virginia limited liability company. SWaN Hill Top Operating Partners, LLC and HF Hilltop LLC are sometimes referred to herein collectively as "Grantees"; and

**WHEREAS**, By The Town Council of the Corporation of Harpers Ferry, adopted Ordinance 2021-02, *AN ORDINANCE OF THE CORPORATION OF HARPERS FERRY AUTHORIZING THE MAYOR AND/OR RECORDER TO EXECUTE NECESSARY DOCUMENTS TO SELL EAST RIDGE STREET (Paved - 50' ROW), COLUMBIA STREET (Paved- 30' ROW), COLUMBIA STREET (Paper - 30' ROW), LANCASTER STREET, NORTH (Paper - 30' ROW, LANCASTER STREET, SOUTH (Paper - 30' ROW), AND EAST RIDGE STREET (Paper - 50' ROW) LOCATED AND SHOWN ON EXHIBIT A TO SWaN HILL TOP OPERATING PARTNERS, LLC., approving the sale of certain real estate;* and

**WHEREAS**, by Deed dated the 6<sup>th</sup> day of April, 2021, of record in the Office of the Clerk of the County Commission of Jefferson County, West Virginia in Deed Book 1258, at page 1 (the "Original Deed"), The Corporation for Harpers Ferry, conveyed the subject real property to SWaN Hill Top Operating Partners, LLC;

**WHEREAS**, by Deed dated the 18<sup>th</sup> day of November, 2021, of record in the aforesaid Clerk's Office in Deed Book 1271, at page 600, SWaN Hill Top Operating Partners,

LLC conveyed a Sixty-Seven and Three Tenths percent (67.3%) interest in the below-described real property to HF Hilltop LLC, with SWAN retaining the remaining Thirty-Two and Seven Tenths percent (32.7%) interest in said real property as tenants in common with HF Hilltop LLC;

**WHEREAS**, errors were discovered in the following items contained in the Original Deed: (i) the legal descriptions of Parcels No. 1, 3, and 4; (ii) the reference to a plat of record; (iii) failure to define the term "Hotel Property" with respect to the attached "Gordon TDD Map"; (iv) the paragraph breaks and numbering of restrictive covenants and conditions; (v) failure to specify Corporation of Harpers Ferry's intention with respect to any residue in the property conveyed; and (vi) the description of public utility easements reserved by Corporation of Harpers Ferry;

**WHEREAS**, by this Corrective & Amended Deed, The Corporation of Harpers Ferry desires to correct such errors in the Original Deed;

**WHEREAS**, The Town Council of the Corporation of Harpers Ferry finds that the Corrective & Amended Deed furthers the economic development project and encourages the development, construction and operation of the Hill Top House Hotel: and

**WHEREAS**, The Town Council of the Corporation of Harpers Ferry finds that it is in the best interest of the public to execute the Corrective & Amended Deed; and

**NOW, THEREFORE BE IT ORDAINED BY THE TOWN COUNCIL OF THE CORPORATION OF HARPERS FERRY:** pursuant to the authority granted to the Town by its acceptance into the Municipal Home Rule Pilot Program, Phase II, and the provisions of Article 114 of the Codified Ordinances of the Corporation of Harpers Ferry:

**Section 1.** The Corporation of Harpers Ferry is hereby authorized, pursuant to the authority granted to the Town by its acceptance into the Municipal Home Rule Pilot Program, Phase II, and the provisions of Article I I4 of the Codified Ordinances of the Corporation of Harpers Ferry to make and deliver the Corrective & Amended Deed conveying unto SWaN Hill Top Operating Partners, LLC an undivided Thirty-Two and Seven Tenths percent (32.7%) interest, and unto HF Hilltop LLC an undivided Sixty-Seven and Three Tenths percent (67.3%) interest, as tenants in common, in and subject to the following:

**Parcel No.1**

East Ridge Street - (Paved - 50' ROW)

From the approximate midpoint of Lot 2 in Block "U" to the easterly end of the paved roadway

Being situated east of Gilmore Street located in the Town of Harpers ferry and being shown on the Plat of Harpers Ferry, West Virginia, by S. Howell Brown, Surveyor of Jefferson County, among the land records of Jefferson County, West Virginia, more particularly described as follows:

Beginning at a point at the easterly end of the paved roadway and on the southerly line of the property now or formerly of Swan Hilltop Hotel, LLC, said point being S 82°15'35"E, 46.62 feet from a P.K. Nail found marking a southwesterly corner of said Swan Hilltop Hotel, LLC, said P.K. Nail also marking the intersection of the easterly right of way line of Lancaster Street with the northerly right of way line of Ridge Street; thence crossing Ridge Street at the easterly end of the paved roadway S 14°20'50" W, 50.37 feet to a point on the northerly line of Block "BB", Lot 10; thence with said northerly line Block "BB", Lot 10 N 82°12'03" W, 39.32 feet to a set re-bar and cap marking the northwesterly corner of said Block "BB", Lot 10, said re-bar also marking the intersection of the easterly right of way line of Lancaster Street with the southerly right of way line of Ridge Street; thence crossing said Lancaster Street N 82°12'03" W, 30.00 feet to a set re-bar and cap marking the northeasterly corner of Block "E", Lot 1, said re-bar also marking the intersection of the westerly right of way line of said Lancaster Street and with said southerly right of way line of Ridge Street; thence departing said westerly right of way line of Lancaster Street with the northern lines of said Block "E", Lot 1 and continuing with the northerly lines of Block "E", Lots 2 through 5 and 6B N 82°12'03" W, 345.00 feet to a set re-bar and cap marking the

northwesterly corner of said Block "E", Lot 6B, said re-bar also marking the intersection of the easterly right of way line of Columbia Street and with said southerly right of way line of Ridge Street; thence crossing said Columbia Street N 82°12'03" W, 30.99 feet to a re-bar found marking the northeasterly corner of Block "F", Lot 8, said re-bar also marking the intersection of the westerly right of way line of said Columbia Street with said southerly right of way line of Ridge Street; thence departing said westerly right of way line of Columbia Street and with the northerly line of said Block "F", Lot 8 N 82°12'03" W, 61.97 feet to a re-bar found marking the northwesterly corner of said Block "F", Lot 8 and the northeasterly corner of Block "F", Lot 7; thence with the northerly line of said Block "F", Lot 7 N 82°17'56" W, 7.24 feet to a point; thence through Ridge Street; N 07°44'08" E, 43.76 feet to a re-bar found marking the southeasterly corner of Block "U", the westerly half of Lot 2; thence with the easterly line of said Block "U", the westerly half of Lot 2 N 02°47'19" E, 4.38 feet to a point on the southerly line of Block "U", the easterly half of Lot 2; thence with said southerly line of Block "U", the easterly half of Lot 2 and Lot 1 S 82°26'32" E, 71.00 feet to a point marking the southeasterly corner of said Block "U", Lot 1, said point also marking the intersection of the westerly right of way line of Columbia Street with the northerly right of way line of Ridge Street; thence crossing said Columbia Street S 82°26'32" E, 30.00 feet to a point marking the southwest corner of the Seminary Lot, said point also marking the intersection of the easterly right of way line of said Columbia Street with said northerly right of way line of Ridge Street; thence departing said easterly right of way line of Columbia Street and with the southerly line of said Seminary Lot S 82°26'32" E, 69.00 feet to a point and S 82°25'16" E, 274.07 feet to a point marking the intersection of the westerly right of way line of said Lancaster Street with said northerly right of way line of Ridge Street; thence crossing said Lancaster Street S 82°25'16" E, 30.00 feet to a PK Nail found marking a southwest corner of said Swan Hilltop Hotel, LLC, said PK Nail also marking the intersection of the easterly right of way line of said Lancaster Street with said northerly right of way line of Ridge Street; thence departing said easterly right of way line of Lancaster Street and with the southerly line of said Swan Hilltop Hotel, LLC S 82°15'35" E, 46.62 feet to the point of beginning containing 25,434 square feet or 0.5839 acres of land, more or less.

**Parcel No. 2**

Columbia Street- (Paved - 30' ROW)  
South of Ridge Street and North of Washington Street

Being situated on the north side of Washington Street (U.S. Alternate Route 340) and on the south side of Ridge Street located in the Town of Harpers Ferry and being shown on the Plat of Harpers Ferry, West Virginia, by S. Howell Brown, Surveyor of Jefferson County, among the land records of Jefferson County, West Virginia, more particularly described as follows:

Beginning at a stone wall corner on the northerly right of way line of Washington Street (U.S. Alternate Route 340) marking the southeasterly corner of Block "F", Lot 1; thence departing said northerly right of way line of Washington Street and with the easterly line of said Block "F", Lot 1 N 07°34'17" E, 148.69 feet to an axle found marking the 1101tbeasterly corner of said Block "F", Lot 1 and the southeasterly corner of Block "F", Lot 8; thence with the easterly line of said Block "F", Lot 8; N 07°47'57" E, 115.15 feet to an iron re-bar found on the southerly right-of-way line of Ridge Street marking the northeasterly corner of said Block "F", Lot 8; thence with said southerly right-of-way line of Ridge Street S 82°12'03" E, 30.99 feet to a set re-bar and cap marking the northwesterly corner of Block "E" Lot 6B; thence departing said southerly right-of-way line of Ridge Street and with the westerly Line of said Block "E", Lot 6B and continuing with Block "E", Lot 6A; S 07°47'57" W, 264.00 feet to a set re-bar and cap on the aforementioned northerly right-of-way line of Washington Street marking the southwesterly corner of said Block "E", Lot 6A; thence with said northerly right-of-way line of Washington Street N 81°54'00" W, 30.40 feet to the point of beginning containing 8,167 square feet or 0.1875 acres of Land, more or less.

### **Parcel No. 3**

#### Columbia Street - (Paper - 30' ROW) North of Ridge Street

Being situated on the no11h side of Ridge Street located in the Town of Harpers Ferry and being shown on the Plat of Harpers Ferry, West Virginia, by S. Howell Brown, Surveyor of Jefferson County, among the land records of Jefferson County, West Virginia, more particularly described as follows:

Beginning at a point on the northerly right-of-way line of Ridge Street marking the southeasterly corner of Block "U", Lot 1; thence departing said 1101iherly right-of-way line of Ridge Street with the easterly line of said Block "U", Lot 1 N 07°33'28"E, 27.98 feet to a point marking the southwesterly corner of the propely now or formerly of William H. Stanhagen, Et Al., Trustees (Deed of Trust

Book 587, Page 626); thence with the line of said Stanhagen the following three (3) courses: S 82° 26' 32" E, 8.00 feet to a point; N07° 33' 28"E, 28.00 feet to a point and N82° 26' 32"W, 8.00 feet to a point on said easterly line of Block "U", Lot 1 marking the northwesterly comer of said Stanhagen; thence with said easterly line of Block "U", Lot 1 N07° 33' 28"E Length: 75.91' marking the northeasterly comer of said Block "U", Lot 1, said point also being on the southerly line of the property now or formerly of Swan Hilltop Hotel, LLC; thence with the southerly line of said Swan Hilltop Hotel, LLC; S 82°26'32" E, 30.00 feet to point marking the northwesterly corner of the Seminary Lot; thence with the westerly line of said Seminary Lot S07°33'28" W, 131.89 feet to a point on the aforementioned northerly right-of-way of Ridge Street marking the southwesterly corner of said Seminary Lot; thence with said northerly right-of-way line of Ridge Street N 82°26'32" W, 30.00 feet to the point of beginning containing 3,733 square feet or 0.0857 acres of land, more or less.

#### **Parcel No. 4**

#### **Lancaster Street-(Paper - 30' ROW) North of Ridge Street**

Being situated on the north side of Ridge Street located *in* the Town of Harpers Ferry and being shown on the Plat of Harpers Ferry, West Virginia, by S. Howell Brown, Surveyor of Jefferson County, among the land records of Jefferson County, West Virginia, more particularly described as follows:

Beginning at a point on the northerly right of way line of Ridge Street marking a southeasterly corner of the Seminary Lot; thence departing said northerly right of way line of Ridge Street and with the easterly line of said Seminary Lot N 07°44'23" E, 39.86 feet to a point on the southerly line of the. property now or formerly of Swan Hilltop Hotel, LLC; thence with the southerly and westerly lines of said Swan Hilltop Hotel, LLC the following six (6) courses: S 81°52'50" E, 5.96 feet to a point; N 08°05'40" E, 54.00 feet to a point; S 81°52'50" E, 10.00 feet to a point; N 08°05'40" E, 38.29 feet to a point; S 82°26'32" E, 13.47 feet and S 07°44'23"W, 132.00 feet to a point on the aforementioned northerly right-of-way line of Ridge Street; thence with said northerly right-of-way line of Ridge Street N 82°25'16" W, 30.00 feet to the point of beginning containing 3,002 square feet or 0.0689 acres of land, more or less.

**Parcel No. 5**

Lancaster Street - (Paper- 30' ROW)  
South of Ridge Street and North of Washington Street

Being situated on the north side of Washington Street (U.S. Alternate Route 340) and the south side of Ridge Street located in the Town of Harpers Ferry and being shown on the Plat of Harpers Ferry, West Virginia, by S. Howell Brown, Surveyor of Jefferson County, among the land records of Jefferson County, West Virginia, more particularly described as follows:

Beginning at a set re-bar and cap on the northerly right-of-way line of Washington Street (U.S. Alternate Route 340) marking the southeasterly corner of Block "E", Lot 1; thence departing said northerly right-of-way line of Washington Street and with the easterly line of said Block "E", Lot 1 N 07°47'57" E, 264.00 feet to a set re-bar and cap on the southerly right-of-way line of Ridge Street marking the northeasterly corner of said Block "E", Lot 1; thence with said southerly right-of-way line of Ridge Street S 82°12'03" E, 30.00 feet to a set re-bar and cap marking the northwesterly corner of Block "BB", Lot 10; thence departing said southerly right-of-way line of Ridge Street and with the westerly line of said Block "BB", Lot 10 S 07°47'57" W, 264.00 feet to a set re-bar and cap on the aforementioned northerly right-of-way line of Washington Street marking the southwesterly corner of said Block "BB", Lot 10; thence with said northerly right-of-way line of Washington Street N 82°12'03" W, 30.00 feet to the point of beginning containing 7,920 square feet or 0.1818 acres of land, more or less.

**Parcel No. 6**

East Ridge Street - (Paper - 50' ROW)  
From the easterly end of the paved roadway to the terminus at the southwesterly right of way line of the CSX Railroad, formerly known as the Baltimore and Ohio Railroad

Being situated east of Lancaster Street located in the Town of Harpers Ferry and being shown on the Plat of Harpers Ferry, West Virginia, by S. Howell Brown, Surveyor of Jefferson County, among the land records of Jefferson County, West Virginia, more particularly described as follows:

Beginning at a point at the easterly end of the paved roadway and on the southerly line of the property now or formerly of Swan Hilltop Hotel, LLC, said point being S 82°15'35"E, 46.62 feet from a P.K.

Nail found marking a southwesterly corner of said Swan Hilltop Hotel, LLC, said P.K. Nail also marking the intersection of the easterly right of way line of Lancaster Street with the northerly right of way line of Ridge Street; thence with said southerly line of Swan Hilltop Hotel, LLC S 82°15'35" E, 502.15 feet to a point; thence S 53°44' 17" E, 9.78 feet to a set re-bar and cap on the westerly right of way line of CSX Railroad marking the most northerly corner of the property now or formerly of OGE LLC (Deed Book I047, Page 373); thence departing said westerly right of way line of CSX Railroad and with the northwesterly line of said OGE LLC S 36°01'40" W, 11.90 feet to a point; thence with the northerly lines of a boundary overlap into Ridge Street of Block "BB", Lots 2 and 3 N 84°36'38" W, 84.18 feet to a point and S 05°25'57" W, 31.91 feet to a point; thence with the northerly line Block "BB", Lot 4, and continuing with the northerly lines of Block "BB", Lots 5 through 9 and part of Lot 10 N 82°12'03"W, 428.08 feet to a point; thence crossing Ridge Street at the easterly end of the paved roadway N 14°20'50" E, 50.37 feet to the point of beginning containing 22,781 square feet or 0.5230 acres of land, more or less.

This conveyance of the hotel streets to Grantees is expressly made subject to the following restrictive covenants and conditions, all of which shall run with the land in perpetuity:

- (1) Grantees shall not build any permanent structures on the surface of the hotel streets; provided, however, that this restriction shall not apply to: (i) a 20' x 10' concrete transformer pad, with transformers, located upon parcel no. 2, provided, further, that Grantees shall utilize best efforts to reduce sound emanating from the transformer facility to reasonable levels by implementing commercially reasonable and practicable solutions, which may include a stone or brick wall not in excess of six feet in height; (ii) landscaping, either vegetative or hard surface; (iii) stone or brick walls which do not exceed three feet in height; or (iv) any parking structure, utilities or other necessary appurtenance constructed below the surface of the hotel streets;
- (2) Grantees shall not provide, or permit any sublessee, franchisee, or licensee to operate, any form of gambling including, but not limited to, table games, video lottery machines or organized sportsbook anywhere on the "hotel property", defined as the real property within the TDD boundary shown on the map titled "Hill Top House Hotel Tourism Development District" by GordonDC, dated February 26, 2021, attached as exhibit A to



the Original Deed and incorporated herein by reference (hereinafter, the "Gordon TDD Map"); and

- (3) Grantees shall not subdivide, abrogate, or sell the hotel streets separately from the other real property comprising the hotel property.
- (4) Grantees shall grant a conservation easement prohibiting development upon the steep slope portion of the Lancaster Street, south (paper) right of way, south of the armory house. Grantees shall in perpetuity be responsible for the maintenance of the conservation easement. Grantees may, however, install and maintain all such underground utilities as they shall deem necessary.
- (5) Grantees shall grant a conservation easement upon the steep slope portion of the East Ridge Street (paper) right of way, providing an open viewshed to the public. Grantees shall in perpetuity be responsible for the maintenance of the conservation easement. Grantees may, however, install and maintain all such underground utilities as they shall deem necessary.
- (6) Grantees shall grant a conservation easement upon the steep slope portion of the Columbia Street (paper) right of way, providing an open viewshed to the public. Grantees in perpetuity shall be responsible for the maintenance of the conservation easement. Grantees may, however, install all such underground utilities as they shall deem necessary.
- (7) Grantees shall grant a 24/7 pedestrian easement on the "paper" portion of Columbia Street right of way, for the public. Grantees shall design, build, and maintain, in perpetuity, this scenic viewpoint in a park like setting and attempt to expand the footprint of the viewing area to; offer maximum views of the river and mountain ridge, be harmonious with the natural surroundings, be ecologically sensitive and minimize the impact of construction. Grantees shall have the right to restrict such access to the public for reasons of security, life-safety, maintenance, or excessive noise/disturbances. Grantees shall provide the town recorder with at least 24-hour notice of the intent to restrict access when practicable.
- (8) Grantees in perpetuity shall maintain the existing overlook scenic viewpoint with a flagpole at its current location (approximately fifteen feet (15') north of the existing East

Ridge Street paper right of way), at no less than the current elevation, and with similar landscaping which: maintains the current intimate and secluded experience, is in keeping with the historic nature of the town, and offers maximum views of the confluence of the rivers and mountain ridge, all in a manner harmonious with nature, ecologically sensitive and minimizing the impact of construction on the land. Grantees in perpetuity shall grant a 24/7 pedestrian easement, with ADA-Compliant access to said overlook on the existing East Ridge Street paper right of way and on the path leading from said right of way to the overlook scenic viewpoint, open to the public as provided, however, Grantees shall have the right to restrict such access to the public for reasons of security, life-safety, maintenance, or excessive noise/disturbances. Grantees shall provide the town recorder with at least 24-hour notice of the intent to restrict access when practicable.

- (9) Grantees in perpetuity shall conserve and promote the planting and maintenance of native and/or native hybrid tree and plant species wherever and whenever possible and shall not intentionally introduce invasive species into the landscape. This restriction will not be applicable to a "chef's garden" that will be used for the preparation of food and meals within the hotel property. Said "chef's garden" shall be maintained in a way to prevent the non-native plants from being introduced into the native landscape.
- ( 10) The conveyance of the Streets to Grantees is subject to a reversionary clause providing that the Streets shall revert back to the Town if construction of the Hotel is not substantially completed by December 31, 2030, unless the Town or its officials are responsible for the project delay.
- (1 1) In the event that the subject reversionary clause in Paragraph 10, directly above, is exercised, the Town will retain the Purchase Price for the Streets.
- (12) Grantees in perpetuity agree to the following covenants with respect to lot 31 as reflected on the Gordon TDD Map:
  - A. Grantees shall agree to design, build, and maintain a switchback trail for pedestrian access to the promontory overlook which shall supplement the East Ridge access on either lot 31 or other real property which permits access to the "lower town," as Grantees shall determine in their sole discretion (either option hereinafter referred to as the

"trail"), for the roost part in the style proposed and presented in the 2018 concept plan (hereinafter defined), upon satisfaction of the following precedents:

- I. The one-year anniversary of the commencement of operations at the hotel;
  2. Receipt by Grantees of an up to \$125,000 cash contribution by the town towards up to 50% of the cost of design and construction of the trail, not to exceed \$250,000.00;
  3. A determination by Grantees that the total cost of design and construction of the trail shall not exceed \$250,000, including the town's cash contribution up to \$125,000.00; and
  4. Grantees shall provide the town with a dawn to dusk pedestrian easement for the trail, provided that Grantees shall have the authority to restrict such public access for reasons of security, life safety, maintenance, or excessive noise/disturbance. Grantees shall provide the town recorder with at least 24-hour notice of the intent to restrict access when practicable.
- B. Except as provided herein, Grantees in perpetuity shall agree to prohibit any permanent structures on the surface of lot 31 with the goal of maintaining a conservation easement. This restriction does not include landscaping, both vegetative and hard surfaces, footbridge, or stone or brick walls which do not exceed three feet in height, or wing walls. Grantees may also, however, install and maintain all such underground utilities as they shall deem necessary.
- C. Grantees in perpetuity shall agree not to subdivide, abrogate, or sell lot 31 separately from the other real property comprising the hotel property.
- D. Grantees in perpetuity shall grant a conservation easement upon lot 31, provided however, that the construction, operation and maintenance of the trail, any landscaping, both vegetative and hard surfaces, provided in paragraph 10.b. above, and any underground utilities shall be expressly permitted. Grantees in perpetuity will be

responsible for the maintenance of the conservation easement on lot 31, including the trail, if built.

- £. Grantees in perpetuity shall conserve and promote the planting and maintenance of native tree and plant species wherever and whenever possible and will not intentionally introduce invasive species into the landscape.

(13) Grantees in perpetuity agrees to the following covenants with respect to lots 14 and 16 as reflected on the Gordon TDD Map:

- A. Grantees in perpetuity shall construct a realigned Columbia Street, similar in the design and manner proposed and presented in the 2018 concept design plan and conceptual LEP (collectively, the "2018 concept plan"), with all traffic to the hotel (with exception for emergency vehicles) directed to use the realigned Columbia Street and to stay off of the residential section of East Ridge Street. The realigned Columbia Street shall be well maintained by Grantees in perpetuity.
- B. Grantees in perpetuity shall agree to prohibit any above ground permanent structures on lot 14. This restriction does not include landscaping, either vegetative or hard surface, or stone or brick walls which do not exceed three feet in height.
- C. Grantees in perpetuity agrees not to sell lot 14 and 16 separately from the other real property comprising the hotel property.
- D. Grantees shall grant a public access easement for vehicular traffic to use the realigned Columbia Street.
- E. Grantees in perpetuity shall agree that the western boundary of lot L4 shall be heavily landscaped as a natural, park-like setting, to create a buffer between the hotel property and the residential area. Lot 14 shall be landscaped with heritage, native or improved native hybrid plants species wherever and whenever practicable and shall not intentionally introduce any invasive species.
- F. Grantees may install and maintain all such underground utilities as they shall deem necessary under lots 14 and 16.

It is the intention of the grantor to release, remise, quitclaim, annul, and abandon, any and all interest it may have in the residue of the property conveyed herein, without limitation and as shown upon the plats of survey, whether paved, paper, improved, or unimproved, which streets and roadways are contiguous to each adjoining parcel without any gaps, gores, or strips.

There is excepted and reserved from this conveyance all existing public utility easements for potable water and stormwater through the hotel streets.

This conveyance is further made subject to all existing reservations, restrictions, exceptions, conditions, easements, rights of ways or other servitudes, if any, made, retained, or contained or referred to in prior deeds or other instruments of record affecting or pertaining to the hotel streets.

#### **ADDITIONAL CONSIDERATION**

As further consideration for the conveyance of the Streets to Grantees, the Town and Grantees agree as follows:

1. Grantees shall operate the Hotel in a manner to abide by acceptable noise levels, as prescribed by Harpers Fen-y Ordinance Article 527 in effect as of January 1, 2021 and attached hereto as Exhibit C and incorporated herein by reference, for the mutual benefit of hotel guests and the neighboring residential community, along the western edge of the TDD, with the exception of July 4th, New Year's Eve, Federal holidays and five other evening events per year as designated by Grantees. Otherwise, Grantees shall operate the Hotel in a manner that noise shall not exceed 75dB to be measured along the northern, southern, and eastern boundaries of the proposed TDD, as shown on the Gordon TDD Map, after 11:00 p.m., prevailing time, with the exceptions of New Year's Eve, Fourth of July, Federal Holidays and five other evening events per year as designated by Grantees.

#### **OTHER CONDITIONS AGREED TO BY GRANTEES**

1. Grantees to the extent physically, architecturally, mechanically, operationally, and financially practicable, shall agree to construct the Hotel Project for the most part as proposed and presented in the 2018 Concept Plan.

2. Grantees agrees to pay fees for metes & bounds descriptions of street conveyances and all associated reasonable closing costs

that cannot exceed 5% of Purchase Price and an additional twenty-five thousand dollars for professional fees provided, however, Grantees will not reimburse the Town for legal fees related to the lawsuit threatened against the West Virginia Development Office with respect to the Tourism Development District Act.

3. Grantees shall agree to ensure that the historic armory houses listed on the National Register of Historic Places are rehabilitated and maintained in a manner so as to retain those historic designations and further agrees to architecturally restore the exterior of the historic double armory house.

4. Grantees shall agree to adhere to a lighting policy driven by Leadership in Energy and Environmental (LEED) guidelines for light pollution in effect as of January 1, 2021, that promotes the preservation of the night sky, restricts nighttime light pollution to the extent possible, minimizes light trespass from the building and site, reduces sky-glow to increase night sky visibility, improves nighttime visibility through glare reduction, reduces impact from lighting on nocturnal environments, and reduces the consequences of impact on wildlife and people, including possibly implementing lighting restrictions after certain hours, within the ability of Grantees to provide for the safety and security of hotel guests and/or property.

5. Grantees shall agree, to the extent possible, to limit deliveries to normal business hours promoting early-morning and late-night quiet hours.

6. Grantees shall agree to replace the existing stone wall on Columbia Street along Lot 17 on the Gordon TDD Map if such wall must be either partially or wholly moved for the realigned Columbia Street along the new property boundary. Such replacement shall be in the same style as the existing stone wall. Grantees shall, to the extent practicable, preserve the landmark historic pecan tree.

7. Grantees shall delineate historic existing Columbia Street with special landscaping and special paving and pave the realigned new Columbia Street on Lot 16 and Lot 17 as shown on the Gordon TDD Map differently so there is a distinct difference between the two, providing a physical recognition of the historic street grid.

8. Grantees shall require that any excavation or construction contractor working on the Hotel shall carry sufficient liability insurance to cover damage to surrounding properties from construction and excavation.

9. Grantees shall work with the Town during the construction of the Hotel Project to comply with Appendix B Part 13 of the Codified Ordinances of the Town in effect as of January 1, 2021, to the extent possible, pursuant to the highlighted text in Appendix B sections titled Requirements Of The Site Logistics Plan, Standards For The Maintenance Of The Project Site, Permitted Hours For Exterior Work., Standards For Compliance With Local, State, And Federal Regulations, Standards For Compliance With Local Safety Requirements and Standards for the Preservation of Trees, attached hereto as Exhibit D and incorporated herein by reference, and/or as mutually agreed upon.

10. Grantees agrees that, if Lots 3, 4 and 17 as shown on the Gordon TDD Map are no longer utilized in connection with the Hotel they will revert to a residential use.

11. Grantees agrees to not expand the hotel project beyond the proposed TDD boundary as reflected on the Gordon TDD Map attached as Exhibit B.

12. Grantees agrees that, in the absence of an express written irrevocable offer of public dedication of such property to such use, made by Grantees in the manner prescribed by law, which has been accepted by the county, city, or other public body to which Grantees made the offer of dedication, no use of the easements by the public under and after the effective date of this Agreement shall ever ripen to constitute a dedication or confer upon the public or any governmental body or unit a vested right to its use the easements in a manner inconsistent with Grantees' right of dominion and control of the same except to the extent provided in this Agreement.

#### **OTHER CONDITIONS AGREED TO BY THE TOWN**

1. The Town and Grantees shall, in perpetuity, maintain casualty and liability insurance in amounts not less than \$1,000,000 per event, \$3,000,000 in aggregate, for all public access to any portion of the Hotel Property through easements provided for in this Agreement. The Parties agree to name the other as an "additional insured" under all such policies of insurance.

2. The Town shall, as a condition precedent to the effectiveness of the covenants and representations in this Agreement, convey good and marketable title to the Streets to Grantees and all covenants and representations of Grantees are contingent upon conveyance of such good and marketable title. If the Town does not convey good and marketable title to each of the Streets to Grantees, this Agreement,

and all covenants and representations herein, shall immediately be void.

3. This Agreement, together with all attachments hereto, constitutes the entire agreement of the Parties hereto and cannot be amended or varied without the express written agreement of the Parties.

4. This Agreement shall be governed and construed according to the laws of the State of West Virginia.

5. This Agreement and the terms and provisions hereof shall inure to the benefit of and be binding upon the Parties hereto and their respective legal representatives, successors and assigns wherever the context so requires or admits.

6. All representations, warranties, covenants and agreements of the Parties contained herein, or made in writing in connection herewith, shall, with respect to the Streets, survive the conveyance of the Streets, to the extent not merged therein.

**Section 2.** The Mayor is hereby authorized and directed to execute and deliver the Corrective & Amended Deed.

Introduced:

Adopted:

\_\_\_\_\_  
Mayor

Attest:

\_\_\_\_\_  
Recorder