

RECEIVED
 OCT 25 2019
 BY: RV

Letter of Transmittal



SWaN Investors
 P.O. Box 1410
 Harpers Ferry WV
 25425

◀ Select an area to comment on

To: Mayor Bishop and HF
 Town Council Members

Address: 1000 W Washington St.
 Harpers Ferry, WV 25425

Attn:	<u>Kevin Carden</u>
Re:	<u>Development Agreement</u>
Transmittal #:	<u>04</u>

We are Sending you

Attached	Under Separate Cover via the following		
Shop Drawings	Prints	plans	other
<input checked="" type="checkbox"/> Copy of Letter	Change Order	samples	
Total Quantity	Reproducible	Specifications	

Submittal	Quantity	Date	DWG. #	Description
<u>Development Agreement</u>	<u>1</u>	<u>10-24-19</u>		<u>Agreement between HF & Hill Top for assurances</u>

These are Transmitted as Checked below

For Approval	Approved as Submitted	Resubmit Copies for Approval
<input checked="" type="checkbox"/> For Your Use	Approved as Noted	Submit (#) Copies for Distribution
As Requested	Returned For Corrections	Return (#) corrected Prints

Comments

Signature [Signature] Date 10/25/19



HILL TOP HOUSE HOTEL

HARPERS FERRY, WV

Mayor Wayne Bishop and the Council of the Town of Harpers Ferry
1000 Washington Street
Harpers Ferry, West Virginia 25425

October 24, 2019

Dear Members of Council and Mayor Bishop,

Undertaking a project with the scope and scale of the Hill Top House Hotel requires cooperation between all interested parties. We come to this enterprise from a place of love and with a passion to amplify an important segment of American history and bring it to life in a way that serves the future. We are ready, willing and able to move forward with the required risk capital and world-class talent to make this happen.

We have been involved with many high-profile and award-winning businesses in the areas of professional sports, entertainment, packaged goods, foods, retail, educational and medical technologies, as well as others. We have dealt with numerous governmental and governing bodies at state, federal, international, industry and league levels, but the machinations of the Town Council of The Corporation of Harpers Ferry (the "Council"), and associated individuals has been surreal.

We and our partners are only human, each with only one life to live, and the percentage of our lives spent in unproductive discussions on manipulated topics surrounding this hotel is staggering. To put this into stark perspective, since we've commenced this task, three members of our team have actually died.

We ARE moving forward with this project. To the extent the Council has jurisdiction or even influence over our interest, we require legal certainty. From our perspective, this project will require a commitment of approximately \$130 million, so you can understand our concern.

In an effort to never again get hung-up or have any aspect of our much-revised project plan segmented apart by the Council, we have challenged ourselves to brainstorm a comprehensive list of as many details as possible which require the Council's cooperation. What follows is that list in the appropriate form required to establish the required certainty. None of the items on the list should be hard to deliver. None of the items harm the residents of Harpers Ferry; and all of the items can be dealt with through a parallel process that can result in commencing construction before the end of 2020.

Section 1: Mutual Benefit.

- A. New Improvements. The realization of the Hill Top Project will result in mutual benefit for both SWaN and the residents of the Town. The goal is to create a destination hotel and spa, with restaurants and amenities required for, and connected with, such a facility (the “Hotel”). To achieve this goal pursuant to the Master Plan, SWaN shall demolish the Original Hotel and shall design, acquire, construct and equip improvements on the Site, specifically including, but not limited to, a “New Primary Building.” The Hotel shall be designed, acquired, constructed and equipped within the parameters of the Promontory Overlay District and the Master Plan, and the Parties shall work cooperatively to achieve this goal. To honor the history of the Original Hotel, it is the plan of SWaN to reuse turret and wall stones which survived the hotel’s second major fire.
- B. Original Structures. The historic nature of the Site is important both for the Town and the success of the Hotel. Accordingly, SWaN has accounted for the historic nature of the Site and, as set forth in the Master Plan, will renovate and re-use Original Structures which may be safely rehabilitated. With respect to the Original Structures:
1. The Town must issue the necessary permits to allow for the demolition of the Original Hill Top House Hotel.
 2. As described in the Master Plan, certain Original Structures will be renovated by SWaN and may be used to accommodate guest suites, administrative or support offices for the Hotel, Hotel amenities (including, but not limited to, a cooking school and/or art gallery), or any other function which conforms to the Master Plan and is associated with a destination hotel and spa and as the Hotel.
 3. Renovations to the Hotel Annex and Armory Houses will be performed in accordance with the Standards for Rehabilitation as issued by the United States Department of the Interior.
 4. The Armory Houses and any other structures on the Real Property which are rented to Hotel guests following the renovation thereof will be considered part of the Hotel and thus will be granted a variance by the Town from any restrictions or regulations for short-term rentals and Bed & Breakfast operations of the Town.
 5. Renovations to the Hotel Annex will require some demolition of the existing structure. As renovations occur on the Hotel Annex, the Armory Houses and other existing structures, some existing structural damage or deterioration may necessitate demolition of all or a portion of an existing structure.

Section 2: Further Regulatory Approvals; Permitting; Construction Inspection.

- A. Master Plan. On May 29, 2018, SWaN submitted to the Harpers Ferry Planning Commission (the “Planning Commission”), as required by the Promontory Overlay District, the SWaN Hill Top LLC Concept Design Plan Proposal, including the recorded 3-D model of the Hotel and Historic Resources Plan for the Hill Top House Hotel (collectively, the “SWaN Concept Design Plan”). On July 31, 2018 the Planning Commission released a Statement of Conformity for the SWaN Concept Design Plan (the “SOC”). On August 3, 2018, SWaN submitted the Hill Top House Landscape Enhancement Plan to the Planning Commission (the “SWaN Landscape Enhancement Plan”), with the express intent of addressing certain recommendations in the SOC. The Planning Commission released a Statement of Conformity – Amendment on October 2, 2018 (the “SOC – Amendment” collectively with the SOC, the “Statement of Conformity”). The Statement of Conformity identifies certain areas of necessary cooperation and negotiation required by SWaN and the Town to bring the

Hill Top Project into “likely compliance” with the Harpers Ferry Comprehensive Plan and the objectives of the Promontory Overlook District. Areas of cooperation and negotiation suggested in the Statement of Conformity have been addressed and agreed to. The Parties should expressly agree that the SWaN Concept Design Plan and SWaN Landscape Enhancement Plan shall be considered the “Master Plan.”

B. Hill Top Project Design Review and Approvals; Permitting.

1. The Town must permit, and support, the demolition of the Original Hotel, the renovation of the remaining structures, and the construction of the New Improvements as shown on the Master Plan. Additionally, the Town must permit all applicable public space closures needed for life safety construction purposes. The Town must not issue Stop Work Orders during the demolition of the Original Hotel, the renovation of the remaining structures, and the construction of the New Improvements as shown on the Master Plan.
2. The Town must provide its support to SWaN in obtaining such reviews, permits and approvals, to realize the Hill Top Project in conformance with the Master Plan, specifically including, but not limited to, the approval of the Board of Zoning Appeals of the Town (the “BZA”). The Town shall, to the extent permitted by law, require the BZA, the Harpers Ferry Historic Landmarks Commission, the Harpers Ferry Tree Committee and the Building Inspector for the Town to act within the time frames set forth in “Exhibit A - Permitting Time Frames.”
3. SWaN must, in conformance with the ordinances and regulations of the Town, submit Design Plans, a Site Plan and a Construction Plan for the Hill Top House Project to the BZA for review and approval, in substantial conformance with the Master Plan. The Parties must agree that, during the final design, acquisition, construction and equipping of the Hill Top Project, minor modifications to the Design Plans for the Hill Top Project will occur. The Town must agree that SWaN is not required to obtain any approval for such changes to the Design Plans, Site Plan and the Construction Plan so long as such changes are in furtherance of the Master Plan.
4. SWaN must submit a Conditional Use Permit application and Building permit application to the Town for review and approval, each of which shall substantially conform to the Master Plan. The Parties must agree that, during the final design, acquisition, construction and equipping of the Hill Top Project, minor modifications to the building permit for the Hill Top Project will occur. The Town must agree that SWaN is not required to obtain any further permits for such changes to the Design Plans so long as such minor modifications are in furtherance of the Master Plan.
5. During the design, acquisition, construction and equipping of the Hill Top Project, following issuance of Permits by the Town, material modifications to the Design Plans will arise. Such material modifications must be subject to whatever approvals are required by law. The Parties agree, however, that any such material modifications will not be subject to review by Town Council or any sub-unit of the Town, specifically including, but not limited to, the Planning Commission, the Board of Zoning Appeals or the Landmarks Commission, provided that such material modifications comply with the Promontory Overlay District.

C. Permitting Fees.

1. The Parties must agree that the Hill Top Project is subject to pay Permitting Fees in order to acquire the necessary Permits for the design, acquisition, construction and equipping of the

Hill Top Project, and subsequent operation of the Hotel. The Parties must agree that, in recognition of the significant capital investment by SWaN in the Hill Top Project and the desire of the Town to encourage the Hill Top Project to realize the goals of the Promontory Overlay District, the total aggregate amount to be paid by SWaN in satisfaction of such Permitting Fees related to the design, acquisition, construction and equipping of the Hill Top Project shall not exceed \$100,000. Included within the Permitting Fees are the expenses related for professional review of all submittals required of SWaN to obtain the Permits, specifically including, but not limited to, the Design Plans, the Site Plan, the Construction Plan, the building permit and the Certificate of Occupancy (collectively, the “Design Review”). Any Design Review performed on behalf of the Town, or any sub-unit thereof, shall be performed by the Plan Review Team of the Jefferson County Commission (Office of Building Permits & Inspections Jefferson County Commission).

D. Construction Inspection.

1. The Town does not employ an adequate number of inspectors to conduct necessary inspections of the Hill Top Project during the acquisition, construction and equipping thereof.
2. SWaN must, at its own expense, contract with a third-party engineering or architectural firm certified to conduct inspections pursuant to the International Construction Code (the “ICC”) and with an errors and omissions insurance policy with limits of not less than \$1,000,000 (the “Third-Party Inspector”), for the purposes of providing required inspection services on behalf of the Town during the acquisition, construction and equipping of the Hill Top Project.
3. Both the Town and SWaN will be beneficiaries under the contract with the Third-Party Inspector.
4. The Third-Party Inspector will perform inspections in accordance with the standards of the ICC.
5. The decisions and recommendations made by the Third-Party Inspector will be final and accepted by each of the Parties hereto.

Section 3: Tax Increment Financing District; Possible Future TIF Projects to Benefit Town.

- A. Tax Increment Financing District for Hill Top Project. Financing for the Hill Top Project is dependent upon realization of certain economic development incentive programs, one of which is the creation by the County Commission of a Tax Increment Financing District (the “Hill Top TIF District”) including the Site and the Hotel. SWaN will file an application with the County Commission for the creation of the Hill Top TIF District and for approval of a project plan whereby improvements to infrastructure, specifically including, but not limited to, roads, walkways, sidewalks, trails, street scaping, lighting, utilities and a tiered underground parking structure, and all necessary appurtenances, shall be financed through the Hill Top TIF District (collectively, the “TIF Project”). As required by State statute, the Town must adopt a resolution supporting the creation of the Hill Top TIF District within the Town’s corporate boundaries and approving the TIF Project. Certain components of the TIF Project that are described in this letter as the responsibility of, and/or designed, acquired, constructed, equipped and financed by SWaN, as SWaN will provide the financing for such components of the TIF Project, will be reimbursed through the Hill Top TIF District over time.
- B. Future TIF Projects to Benefit Town. SWaN believes that, due to the level of capital investment in the Hill Top Project, substantial property tax increment revenues from the Hill Top TIF District will

be available over and above those revenues which SWaN will use pursuant to State law to finance portions of the Hill Top Project. Accordingly, such remaining property tax increment revenues may be available for use by the Town to finance public improvements within, or for the benefit of, the Hill Top TIF District, as more fully described in the letter from SWaN to the Town dated August 21, 2019, attached hereto and incorporated herein, as “Exhibit B - SWaN TIF Letter.” SWaN will include in the application for the creation of the Hill Top TIF District, an approval of the project plan to finance or refinance elements of the Project for the Water System upon the retirement of the debt incurred for the Hill Top TIF Projects, as all defined in Exhibit B - SWaN TIF Letter.

Section 4: Conveyance of Certain Improved Streets.

- A. Improved Streets to be Conveyed. The Town must convey to SWaN the following improved streets, or portions thereof, including all real property interests, whether by deed, easement or other instrument or right, related thereto, to SWaN, or its designee:
1. Columbia Street. The portion running from its intersection with Washington Street to East Ridge Street, as more fully described as Tag B on Page 1 (Existing Streets Areas Exhibit) of “Exhibit C – Public Street Areas,” attached hereto and incorporated herein by reference (hereinafter “Conveyed Columbia Street”); and
 2. East Ridge Street. The entirety of East Ridge Street extending eastward from its intersection with realigned Columbia Street, as more fully described as Tag A on Page 1 (Existing Street Areas Exhibit) of “Exhibit C – Public Street Areas,” attached hereto and incorporated herein by reference (hereinafter “Conveyed East Ridge Street” and, collectively with Conveyed Columbia Street, the “Conveyed Improved Streets”).
- B. Continuing Nature of Conveyed Improved Streets. The Conveyed Improved Streets must each be available for public use with only such limitations and restrictions as are applicable to guests of the Hotel. SWaN must grant a permanent pedestrian easement to the Town for use of the Conveyed Columbia Street and the Conveyed East Ridge Street.
- C. Maintenance, Repair and Replacement of Conveyed Improved Streets. Upon receipt of the Conveyed Streets from the Town, SWaN must be responsible for the maintenance, repair and replacement of the Conveyed Improved Streets, specifically including, but not limited to, removal of snow accumulation.
- D. Improvements to Conveyed Improved Streets. The Master Plan includes certain additions, betterments and improvements by SWaN to the Conveyed Improved Streets, specifically including, but not limited to, the realignment of the Conveyed Columbia Street and the Conveyed East Ridge Street to improve access to the Hotel. Additionally, the realigned Conveyed Columbia Street must be improved to enhance emergency vehicle access to the Hotel and SWaN may construct additional access points to realigned Conveyed Columbia Street as set forth in the Master Plan.
- E. Consideration. As full and adequate consideration for the conveyance by the Town to SWaN of the Conveyed Columbia Street and the Conveyed East Ridge Street, SWaN will pay to the Town the sum of \$999.00 for each of the Conveyed Improved Streets, for a total aggregate principal amount of \$1,998.00. The Parties must agree that such amount represents the fair market value of the Conveyed Improved Streets, under the circumstances. The transfer of the Conveyed Improved Streets from the Town to SWaN must occur not later than five (5) business days after a Building Permit is issued for the Hill Top Project by the Town.
- F. Vehicular Access to Hotel.

1. **Realigned Conveyed Columbia Street.** Realigned Conveyed Columbia Street will serve as:
 - i. The primary access point to the Hotel for guests, employees and deliveries; and
 - ii. The primary access point to the Site during the acquisition, construction and equipping of the Hill Top Project.
2. SWaN must install signage on realigned Conveyed Columbia Street and at the termination of Conveyed East Ridge Street restricting through traffic.

Section 5: Conveyance of Certain Paper Streets.

- A. Paper Streets to be Conveyed. The Town must convey to SWaN the following certain interests in real property and/or rights of way which are owned by, or reserved to, the Town either on or immediately adjacent to, the Real Property for streets and alleys of the Town which have not been, and are not as of the date hereof, constructed, improved or maintained or used by the public for vehicular travel, as shown on “Exhibit C – Public Street Areas,” attached hereto and incorporated herein by reference:
1. Columbia Street – north of the intersection with East Ridge Street to its terminus as more fully described as Tag C on Page 1 (Existing Street Areas Exhibit);
 2. Lancaster Street – the portion between Washington Street and Ridge Street as more fully described as Tag E on Page 1 (Existing Street Areas Exhibit);
 3. Lancaster Street – north of the intersection with East Ridge Street to its terminus as more fully described as Tag D on Page 1 (Existing Street Areas Exhibit); and
 4. East Ridge Street – east of the intersection with Lancaster Street to its terminus as more fully described as Tag F on Page 1 (Existing Street Areas Exhibit) (collectively, the “Paper Streets”).
- B. Continuing Nature of Conveyed Paper Streets. Upon conveyance, the Paper Streets will cease to exist as public rights of way.
- C. Consideration. As full and adequate consideration for the conveyance by the Town to SWaN of the Paper Streets, SWaN shall pay to the Town the sum of \$999.00 for each of the Paper Streets, for a total aggregate principal amount of \$3,996.00. The Parties must agree that such amount represents the fair market value of the Paper Streets under the circumstances. The transfer of the Paper Streets from the Town to the SWaN shall occur not later than five (5) business days after a Building Permit is issued for the Hill Top Project by the Town.

Section 6: Ordinance Approving Agreement Satisfies all Ordinance Requirements.

The Town ordinances must satisfy all requirements of the Code regarding the conveyance by the Town to SWaN of the Conveyed Improved Streets and the Paper Streets, specifically including, but not limited to, Code § 8-11-3.

Section 7: Conveyance of Property by SWaN to Town.

- A. SWaN Property to be Conveyed. SWaN will transfer to the Town, or any subunit of the Town as so directed by the Town, the following real property:

Parcel No. #4 as set forth on “Exhibit C – Public Street Areas,” attached hereto, and incorporated herein by reference.

- B. Use of Lower Town Trail Property; Reversionary Interest. The Town will maintain the Lower Town Trail Property as a public access to the Overlook. The Town will not build any permanent structure on the Lower Town Trail Property. In the event the Lower Town Trail Property shall cease to be used for public access to the Overlook for a period of six (6) consecutive calendar months, the Lower Town Trail Property shall revert back to SWaN without any further action on the part of either of the Parties. Other than improvements, betterments and additions for the walking path on the Lower Town Trail Property to the Overlook and landscaping associated therewith, the Town shall not construct any additions, betterments or improvements on the Lower Town Trail Property without the advance of written consent of SWaN. The Town will be responsible for all costs associated with additions, betterments and improvements to the walking path to the Overlook on the Lower Town Trail Property.
- C. Permanent Easement Retained by SWaN. The outfall for stormwater drainage from the Site is located on the Lower Town Trail Property. Therefore, SWaN will retain a perpetual easement across the Lower Town Trail Property to the outfall for purposes of conveying storm water from the Site and must expressly reserve the right to acquire, construct and equip such facilities as a necessary and useful for the conveyance of stormwater from the Site.
- D. Maintenance, Repair and Replacement of Lower Town Trail Property. Upon receipt of the Lower Town Trail Property from SWaN, the Town will be responsible for the maintenance, repair and replacement of the Lower Town Trail Property, specifically including, but not limited to, removal of snow accumulation. The Lower Town Trail Property must be maintained in a manner complementary to the ongoing operation and maintenance of the Hotel and the Promontory Overlay District. In the event that the Town fails to maintain the Lower Town Trail Property in a manner complementary to the ongoing operation and maintenance of the Hotel and the Promontory Overlay District, the Town must expressly authorize SWaN to perform such maintenance on the Lower Town Trail Property as SWaN shall deem, in its sole discretion, necessary, and the Town shall reimburse SWaN for the reasonable expenses related thereto.
- E. Consideration. The conveyance of the Conveyed Improved Streets and the Paper Streets from the Town to SWaN and the payments by SWaN to the Town must be full and adequate consideration for the conveyance of the Lower Town Trail Property by SWaN to the Town. The transfer of the Lower Town Trail Property from SWaN to the Town will occur simultaneously with the transfer of the Conveyed Improved Streets and the Paper Streets from the Town to the SWaN as mentioned above.

Section 8: Definition of Real Property.

Attached hereto as “Exhibit D – Site Plan” is a map of the entirety of the Site, which is incorporated herein by reference.

Section 9: Aggregation and/or Subdivision of Parcels.

SWaN must reserve the right to aggregate any one or more parcels with any other parcel or parcels included in the Site. SWaN must reserve the right to subdivide any parcel of property included in the Site into one or more parcels, provided, however, any such aggregation or subdivision by SWaN shall not impact the preservation of the Paper Streets.

Section 10: Construction Across Parcel Boundaries Comprising Real Property.

For all purposes other than ad valorem property taxation, the Town will consider all property to be a single parcel. SWaN must be able to, pursuant to the Master Plan, construct buildings and improvements across parcel boundary lines without regard to such boundary lines or set back requirements. SWaN will not construct any permanent enclosed structures on top of the Conveyed Paper Streets. Additionally, no landscape buffers will be required between adjacent parcels comprising the Real Property owned by SWaN.

Section 11: Commercial Zoning.

All parcels included in the Site must be zoned solely “Commercial,” with the zoning for any specific parcel or parcels to be changed by ordinance enacted by the Town, as required. SWaN will maintain the right to develop residential properties on the two lots owned immediately West of Columbia St., specifically on parcels 55.1 and 57.

Section 12: Zoning Variances.

SWaN must receive all required zoning variances with respect to the Site, the renovation of certain Original Structures and the acquisition, construction and equipping of the New Improvements as contemplated in the Master Plan. The Town must take any actions required to ensure that SWaN receives the necessary accommodations set forth herein and in conformance with the Master Plan, specifically including, but not limited to:

- A. Conveyed Columbia Street - all set back requirements must be waived;
- B. Conveyed East Ridge Street – all set back requirements must be waived;
- C. Parcels included in the Site:
 - 1. All set back requirements must be waived;
 - 2. No landscape buffers will be required between adjacent parcels owned by SWaN comprising the Site; and
 - 3. SWaN must be able to construct additions, betterments and improvements, both on the ground surface and below ground, across the entirety of the Site without regard to the current boundary lines of the parcels comprising the Site.
- D. All zoning rules and regulations of the Town which are contrary to the design, acquisition, construction and equipping of the Project and the ownership, operation and maintenance of the Hotel as a destination hotel and spa, as shown on the Master Plan, must be waived.

Section 13: Hotel not a Gaming Venue.

SWaN must not utilize any portion of the Hotel as an Authorized Gaming Facility as provided by West Virginia Code Section 29-25-1 *et seq.* (or any successor thereto) licensed as such by the State of West Virginia.

Section 14: Hotel Parking.

SWaN must provide parking for the guests and employees of the Hotel, as required by the Promontory Overlay District, through a combination of surface parking spaces and an underground tiered parking structure.

Section 15: Potable Water.

- A. Potable Water from the Town: Water Use Agreement. Commencing with the start of the acquisition, construction and equipping of the Hill Top Project, SWaN will purchase potable water from, and be a customer of, the potable water treatment, storage and distribution system of the Town (the “Water System”) for both domestic usage and fire protection. The Parties will enter into a Water Use Agreement and, to the extent required by law, will jointly seek the approval of the Water Use Agreement from the Public Service Commission of West Virginia (the “PSC”). Among other items, the Water Use Agreement will establish a rate for water service to the Hill Top Project of \$4.86 per 1,000 gallons of metered water usage, the established rate paid by Hollywood Casino. The Town will be responsible for the operation and maintenance of the water facilities it will extend to serve the Hill Top Project that are upstream of the meter(s) that will serve the Hill Top Project. SWaN will be responsible for any facilities that are downstream of the meter(s) that will serve the Hill Top Project.
- B. Flow Test: The Town will assist SWaN in scheduling and conducting a fire flow test no later than November 29, 2019. Engineers and consultants retained by SWaN will conduct the flow test, and the Town will attend and observe the flow test.
- C. Wells and/or Cisterns for Non-Potable Water. SWaN will be permitted to drill one or more water wells and/or construct one or more cisterns for the collection of precipitation for purposes of supplying potable or non-potable water for irrigation and maintenance of the Hotel. The Town will not enact or adopt any zoning restriction or policy the effect of which would be to prevent SWaN from drilling or using water wells or constructing or using cisterns.
- D. Gray Water System. SWaN will be permitted to incorporate a water re-use system (“grey water system”) into the Hotel.
- E. Impact Fee or Capacity Improvement Fee. SWaN will not be charged any impact fee or capacity improvement fee for potable water service by the City or any sub-unit thereof.

Section 16: Sanitary Sewer.

- A. Sanitary Sewer Service from Harpers Ferry – Bolivar PSD. Commencing with the start of the acquisition, construction and equipping of the Hill Top Project, SWaN will be a customer of, and connect to, the sanitary sewerage collection and treatment system of the Harpers Ferry – Bolivar Public Service District (the “PSD”). The PSD has provided written assurance of its ability to provide such service to the Hotel. The rate paid by SWaN will not exceed that of other significant hospitality businesses, such as the Hollywood Casino.

Section 17: Storm Water.

- A. Storm Water Management Facilities. The Hill Top Project will include storm water management and transmission facilities pursuant to the storm water management guidelines found in the Harpers Ferry Comprehensive Plan.
- B. Access to Storm Water Transmission Facilities Located off the Site. To the extent required to allow stormwater transmission facilities constructed by SWaN for the Hotel to flow by gravity, the Town will allow SWaN to connect to existing culverts, pipes or other stormwater transmission assets owned by the Town.
- C. Impact Fee or Capacity Improvement Fee. SWaN will not be subject to any impact fee or capacity

improvement fee for storm water service which is enacted by the Council.

Section 18: Above Ground Utilities.

- A. Relocation of Utilities Located Above Ground on Site. SWaN will coordinate with the public utilities with assets located above-ground on the Site to relocate the utility assets underground contemporaneously with the acquisition, construction and equipping of the Hill Top Project, with the goal of all such utility assets being relocated underground by the commencement of operations of the Hotel, as prescribed by the Promontory Overlay District.
- B. Relocation of Above Ground Utilities Adjacent to Site. Relocation of certain utility assets located on real property or rights of way adjacent to the Site may be either necessary to permit and facilitate the relocation of such utility assets on the Site or, in SWaN's opinion, desirable to promote the historical aesthetic of the Hotel and the Promontory Overlay District. If relocation of above ground utility assets on real property or rights of way adjacent to the Site is determined necessary or desirable by SWaN, the Town will cooperate with SWaN to provide access to Town rights of way to permit the relocation of such utility assets underground.
- C. Removal of Telephone Poles. The Town will permit any telephone poles or other aerial structures owned by the Town which are no longer required for public utility assets which are relocated underground by SWaN to be removed by SWaN at SWaN's expense.

Section 19: Construction of Public Improvements.

SWaN will design, acquire, construct and equip, and finance the cost of, certain additions, betterments and improvements to public assets only as outlined in Section 20 below (collectively, as herein more fully described, the "Public Improvements") owned by governmental entities, such as the Town, the West Virginia Department of Highways ("DOH") and/or the District (collectively, including any additional such governmental entity which may be identified in the future, the "Public Entities" and, singularly, "Public Entity"). Upon the completion of design, acquisition, construction and equipping of such Public Improvements, SWaN will transfer the Public Improvements to the appropriate Public Entity. The design of all such improvements will be reviewed by the appropriate Public Entity, including the eventual owner thereof. Upon transferring such Public Improvements to the respective Public Entities, SWaN will not be responsible for maintenance, repair or replacement of the Public Improvements.

Section 20: Washington Street.

- A. Improvements at Intersection of Washington Street and Columbia Street. As set forth in the Master Plan, SWaN will design, acquire, construct and equip, and provide the financing for, certain improvements at the intersection of Washington Street and Columbia Street. Such improvements will be transferred to the Town or DOH, as appropriate.
- B. Street Scaping of Washington Street Bordering Site. A portion of the Site borders the north side of Washington Street. SWaN may, in its sole discretion, elect to improve the street scaping along both sides of that portion of Washington Street which borders the Site, specifically including, but not limited to, sidewalks, lighting, vegetation, seating, trash receptacles and other appurtenances. The Town will permit such improvements, following approval of design thereof, to be located in such rights of way as the Town may own along Washington Street.

Section 21: Intersection of Shenandoah Street and Route 340.

SWaN will work with the National Park Service and DOH for the enhancement of the intersection of

Shenandoah Street and Route 340 (the “Shenandoah Intersection”) to promote the scenic access to the Town. Improvements to the intersection may specifically include, but not be limited to, the construction of a right-hand turn lane and improved signage welcoming visitors to Historic Harpers Ferry and directions to the Hotel. The Town will support such improvements.

Section 22: National Park Service. Byrnes Island.

- A. National Park Service. SWaN considers the National Park Service a critical partner in the success of the Hotel. The Town will support the Hill Top Project by advocating the Master Plan and the Hotel to the National Park Service as requested by SWaN.
- B. Byrnes Island. SWaN will use Byrnes Island as a base for low impact recreational amenities (e.g. hiking, fishing, picnics, etc.) and seasonal event location, including erection of temporary structures in support thereof. The Town will support efforts by SWaN to:
 - 1. Obtain an access easement from the National Park Service across land owned by the National Park Service; and
 - 2. Construct permanent access to Byrnes Island.

Section 23: Railroad Service.

The Town currently enjoys significant benefit from the availability of railroad service. SWaN anticipates a significant portion of its guests will arrive by train. The Town will support SWaN in its efforts to optimize the existing, and expand, rail service, as follows.

- A. Harpers Ferry Historic Train Station. SWaN will fully utilize the historic train station in the Town and to maximize the value thereof through:
 - 1. Securing two (2) designated parking spaces in the station parking for Hotel vans to shuttle guests between the station and the Hotel.
 - 2. Create a small welcome center in the Station.
 - 3. Expand hours of staffing at Station to coincide with arrival of trains.
- B. AMTRAK, MARC and CSX.
 - 1. SWaN may obtain a passenger train car branded with the Hotel to be included in MARC trains.
 - 2. SWaN may obtain a check-in area for the Hotel at Union Station for service through MARC and AMTRAK.
 - 3. SWaN will negotiate with CSX to stop the nightly train whistle through Harpers Ferry. The Town will support this effort through the enactment of a “Quiet Cities Ordinance.”

Section 24: Federal and State Incentives.

In addition to the creation of the Hill Top TIF District, SWaN anticipates seeking economic development incentives from the Federal and State governments for the Hotel. The Town will enact a

resolution supporting the creation of the Hill Top TIF District. Additionally, the Town will assist SWaN in applying and advocating for all other federal and state governmental incentives as SWaN shall request.

Section 25: Noise Ordinance.

The Town will grant a variance to permit for a standard of 75 decibels fifty (50) feet from the outer property line of the Site.

Section 26: Temporary Structures.

The Town will modify the Promontory Overlay District to remove the requirement that a permit or other approval from the Town is required for the erection of any temporary structure (e.g. tent) on the Site to support and/or enhance any aspect of the operation of the Hotel.

Section 27: Event Permitting.

Events held on the Site which support, and are consistent with, any aspect of the operation of the Hotel are events held on private property and do not require any permit or approval from the Town, regardless of size, duration or date(s) of occurrence. Additionally, the Town will not enact any ordinance, rule or regulation which would require a permit for such events. Notwithstanding this Section 27, all other laws and regulations of the Town (e.g. fireworks, noise) will apply to such events held on the Real Property.

Section 28: Excursions.

The amenities which the Hotel will offer may include various activities for Hotel guests which occur primarily off the Site. Such amenities occurring primarily off the Site may include, but not be limited to, guided fishing, hiking and historical tours, self-guided hiking, walks, biking and ornithology outings, and geo-caching (collectively, the “Excursions”). The Hotel will aim to partner with local merchants where possible for certain Excursions, so long as the merchants provides services and perform in a manner complementary to the ongoing operation and maintenance of the Hotel. The Town will not require the Hotel to obtain any separate permits or licenses for such Excursions and all such Excursions will be considered part of the operations of the Hotel.

Section 29: Use of Additional Municipal Sales Tax Receipts.

A. Municipal Sales Tax in Excess of Historical Annual Municipal Sales Tax. As a result of the sales of goods and services at the Hotel, the Town will realize significant additional tax revenue from the Town’s 1% municipal sales tax (the “Municipal Sales Tax”). To the extent that, after commencement of operations at the Hotel, the Town’s annual receipts of Municipal Sales Tax exceed the average of the Municipal Sales Tax received by the Town in all of the complete fiscal years for which the Municipal Sales Tax was collected prior to the commencement of operations at the Hotel (the “Historical Average Municipal Sales Tax”), fifty percent (50%) of the amount of Sales Tax collected exceeding the Historical Average Municipal Sales Tax will be deposited in a “Public Improvement Account” established by the Town and used, (i) to pay the costs of design, acquisition, construction and equipping of additions, betterments and improvements for the sidewalk East of 400 Washington Street to the intersection of High Street and Shenandoah Street, specifically including, but not limited to, handrails, ADA accessibility, seating, and sidewalk scaping (collectively, the Lower Town Sidewalk Project”); and (ii) after completion acquisition, construction and equipping of the Lower Town Sidewalk Project, for any of the following purposes which jointly benefit the Town and SWaN:

1. Public street improvements,

2. Street scaping (including sidewalks, lighting, walkways, etc.),
3. Public bike or walking trails,
4. Joint use welcome center at the Station,
5. Pedestrian trail to the Overlook on the Lower Town Trail Property,
6. Access to Byrnes Island across the Potomac Power Plant Canal and the Potomac River,
7. Improvements to the uncontrolled, at grade railway crossing on Potomac Street, and
8. Marketing/ promotion of tourism to the Town.

B. Term of Commitment of Additional Municipal Sales Tax Revenue. The Town will utilize fifty percent (50%) of the Additional Municipal Sales Tax Revenues in the manner set forth in Section 29.A above for a period of fifteen (15) full municipal fiscal years after the commencement of operation at the Hotel.

Section 30: Trees/Vegetation.

- A. SWaN Landscape Enhancement Plan. SWaN will acquire, construct and install the landscape on the Site in general conformance with the SWaN Landscape Enhancement Plan. SWaN will provide specific plans and specifications for landscaping for review and comment by the Town.
- B. Vegetation Management. SWaN will have the right to manage vegetation on the Site as needed to enhance the Hotel and the viewshed from the Hotel, both upstream of the Potomac River and downstream of the Potomac River, including the Overlook. Such management may include, but is not limited to, selective clearing, selective removal of invasive plant species, new planting, reforestation and afforestation in compliance with the Promontory Overlay District.

Section 31: External Lighting.

- A. External Lighting. The Master Plan incorporates external lighting of the Hotel and Site for safety, as well as aesthetic, reasons. Exterior lighting will specifically include, but not be limited to:
1. Roads and parking areas;
 2. Walks and pathways;
 3. Outdoor gathering and meeting spaces;
 4. Architectural accent lighting;
 5. Landscape lighting; and
 6. Emergency lighting.
- B. Lighting Limitations. All lighting will be installed with the goal of limiting glare to properties adjacent to the Site and enhancing dark skies. Lighting for road, parking areas and outdoor spaces will have pre-installed equipment to limit offsite glare and enhance dark skies and will comply with the LEED Light Pollution Guidelines.

Section 32: Signage.

- A. SWaN will be permitted to install signage on Washington Street for the entrance to the Hotel, consistent with the Master Plan.
- B. SWaN will be permitted to install signage on the Real Property for purpose of directing guests to the Hotel to the extent such signage is visible from a public vehicular right of way.
- C. SWaN will be permitted to install lighting for any signage.

Section 33: Public Access to Conveyed Improved Roads and Pedestrian Walkways.

Members of the public shall have the same right of access to the Conveyed Improved Roads and the pedestrian walkways on the Site as guests of the Hotel.

Section 34: Public Access to Overlook and Lower Town Trail Property.

Members of the public will have the same right of access to the Overlook via walkways and trails on the Site and the Lower Town Trail Property as guests of the Hotel. The Promontory Overlook will remain open for public access twenty-four hours a day, seven days a week, three hundred sixty-five days a year, once the Hotel is operational.

We look forward to commencing with this very important project for the collective benefit of the population at large, SWaN and the Town.

Sincerely,



The SWaN Hill Top House Hotel Team
Karen Schaufeld, CEO

EXHIBIT A - PERMITTING TIME FRAMES

EXHIBIT A – PERMITTING TIME FRAMES

Conditional Use Permit:

- The BZA will invite Historic Landmarks Commission within 45 days of Conditional Use Permit submittal
- The BZA will hold a hearing within 45 days of inviting Historic Landmarks Commission
- The BZA will publish its written option within 30 days of holding its hearing

Site Plan & Construction Plan Approval:

- The BZA will invite Historic Landmarks Commission within 45 days of Site Plan & Construction Plan submittal
- The BZA will hold a hearing within 45 days of inviting Historic Landmarks Commission
- The BZA will publish its written option within 30 days of holding its hearing

Demolition Permit:

- Decision to be made within 30 days of Demolition Permit application submittal

Environmental Permits:

- To be issued within 30 days of Environmental Permit application submittals

Building Project Permit:

- To be issued within 45 days after Building Project Permit application submittal

Zoning Compliance Permit:

- To be issued within 45 days after Zoning Compliance Permit application submittal

Land Disturbance Permit:

- To be issued within 30 days after Land Disturbance Permit application submittal

Landscape Plan Recommendation:

- Tree Committee to make recommendation within 45 days of Landscape Plan application submittal

Business Sign Permit:

- To be issued within 30 days of Business Sign Permit application submittals

Fire Safety Permit:

- To be issued within 45 days of Fire Safety Permit application submittal

Certificate of Occupancy:

- To be issued within 45 days of Certificate of Occupancy application submittal

Harpers Ferry Town Hill Top House Hotel Approval Process

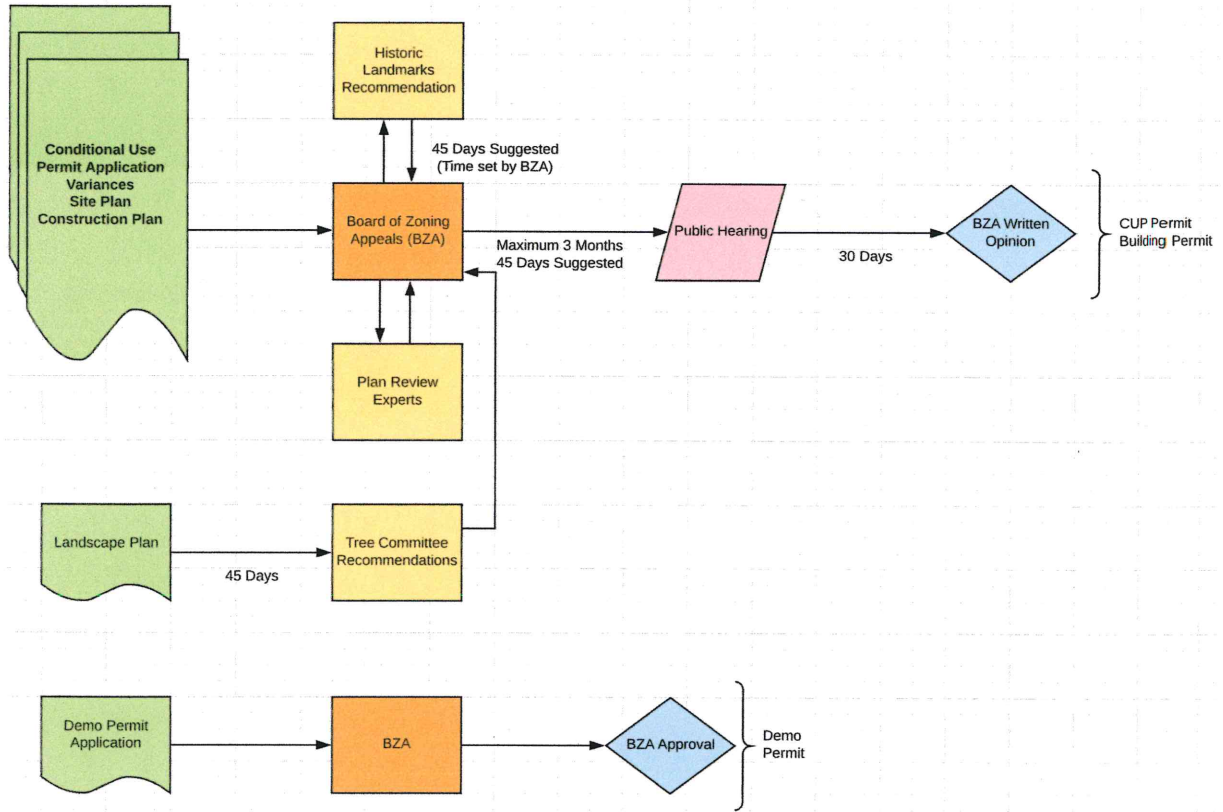


EXHIBIT B - SWAN TIF LETTER



HILL TOP HOUSE HOTEL

HARPERS FERRY, WV

August 21, 2019

Mayor Wayne Bishop and the Council of the
Town of Harpers Ferry
1000 Washington Street
Harpers Ferry, West Virginia 25425

Re: Town of Harpers Ferry Water System

Dear Members of Council and Mayor Bishop;

We understand that the Town of Harpers Ferry has been working diligently for several years to construct certain improvements (the "Project") for the Town's water treatment, storage and distribution system (the "Water System"). The Town has secured financing from the United States Department of Agriculture, Rural Utilities Service, in the amount of \$6,250,000 to finance the Project. We also understand that the Town has received construction bids for the Project and due to increases in construction costs and the requirement to keep the budget for the Project within the available financing committed and previously enacted water rates, the Town plans to immediately proceed with the construction of the majority of the components of the Project ("Phase I"), while delaying to a later date the financing and construction of certain elements of the Project which are not immediately essential ("Phase II").

As part of our plan to redevelop Hill Top House into a destination hotel and spa, we understand the importance of, and support the need for, high quality potable water for both the residents of, and businesses in, the Town. As we have demonstrated throughout the development process, we are committed to a strong working partnership with the Town and its residents to achieve the best possible results from our redevelopment of Hill Top House for all involved.

As the Town faces the challenges involved with the Project and the future timing *and financing of Phase II we believe that the completion and operation of Hill Top House may provide significant opportunities for the Town to mitigate future water rate increases and, over time,

**The Harpers Ferry Water Works is a municipal-owned water system. The Harpers Ferry Water Commission, in its advisory capacity, assists the Town Council in administering, operating, and maintaining the system on behalf of the Town of Harpers Ferry.*

address some of the capital expenses included in Phase I and Phase II. We have identified the following partnership opportunities for the Water System and the Project from the redevelopment of Hill Top House.

1. Hill Top House Water Usage. Upon commencement of operations Hill Top House will purchase significant potable water from the Water System for domestic usage. While we anticipate that we will receive bulk rates for both water and sewer service consistent with other destination hotels in Jefferson County, the additional purchases of water by Hill Top House will have the following positive impacts on the Water System:
 - A. The Water System revenue from Hill Top House was NOT included in the rates implemented by the Town for the Project.
 - B. The additional usage by Hill Top House will require little additional expense for the Water System; essentially only treatment and pumping expense.
 - C. The additional net revenue for the Water System from Hill Top House may be sufficient, after Hill Top House is constructed and operational, to allow the Town to:
 - (i) Finance the Phase II improvements;
 - (ii) Reduce rates for existing customers of the Water System; and/or
 - (iii) Mitigate the need for future rate increases for customers of the Water System.
2. Hill Top House Tax Increment Financing. As we have stated from the beginning of the development process, the unique nature of the Hill Top House project requires the utilization of tax increment financing (“TIF”) through The County Commission of Jefferson County. While we must utilize TIF to the fullest extent permitted under state law and the policies of the West Virginia Development Office, we believe that, due to the level of our investment, property tax increment will be available over and above what we are permitted to utilize for the Hill Top House redevelopment. The financing plan for Hill Top House requires that the proceeds from TIF be utilized to fund construction costs for certain necessary capital improvements (the “Hill Top TIF Projects”) as rapidly as the TIF monies become available. We believe, however, that after the financing for the Hill Top TIF Projects has been retired, the property tax increment created by Hill Top House over the remaining term of the TIF District will allow for significant contributions towards repayment of debt incurred by the Town* for Phase I and potentially the payment of the construction costs of all, or a substantial portion of, Phase II. In order to take advantage of this potential future financial contribution for the Water System, our TIF Application will need to include:
 - A. The financing of the Hill Top TIF Projects; and

**The Harpers Ferry Water Works is a municipal-owned water system. The Harpers Ferry Water Commission, in its advisory capacity, assists the Town Council in administering, operating, and maintaining the system on behalf of the Town of Harpers Ferry.*

- B. The potential refinancing of a portion of the debt incurred by the Town for Phase I; and
- C. Either the direct financing of, or refinancing of all or a portion of, the debt incurred by the Town for Phase II.

The Hill Top House project continues in the development and funding stage. Accordingly, we recognize that lenders will not allow the Town to rely on the future construction and operation of Hill Top House to pay debt service on debt for the Project, either from water usage or TIF. As a result, the Hill Top House redevelopment will not immediately impact the rate increases which have been passed for the Project. Given the current progress of the Hill Top House redevelopment and the anticipated construction period, the earliest date at which Hill Top House will open to guests and begin purchasing significant amounts of potable water will be 2022 (dependent on Hill Top Town Approval by January 2020).

In summary, we envision the following benefits to the Water System from the partnership between the Town and our project (in addition to the many benefits to the Town unrelated to the Water System.):

1. Significant additional net revenue for the Water System from bulk rate potable water purchases by Hill Top House.
2. Potential financing for all or a portion of Phase II of the Water System Project due to Hill Top House potable water usage.
3. Potential use of remaining tax increment from TIF following repayment of financing for the Hill Top TIF Projects to prepay all or a portion of Town* debt for Phase I.
4. Potential use of remaining tax increment from TIF following repayment of financing for the Hill Top TIF Projects to finance directly, or refinance debt for, all or a portion of Phase II.

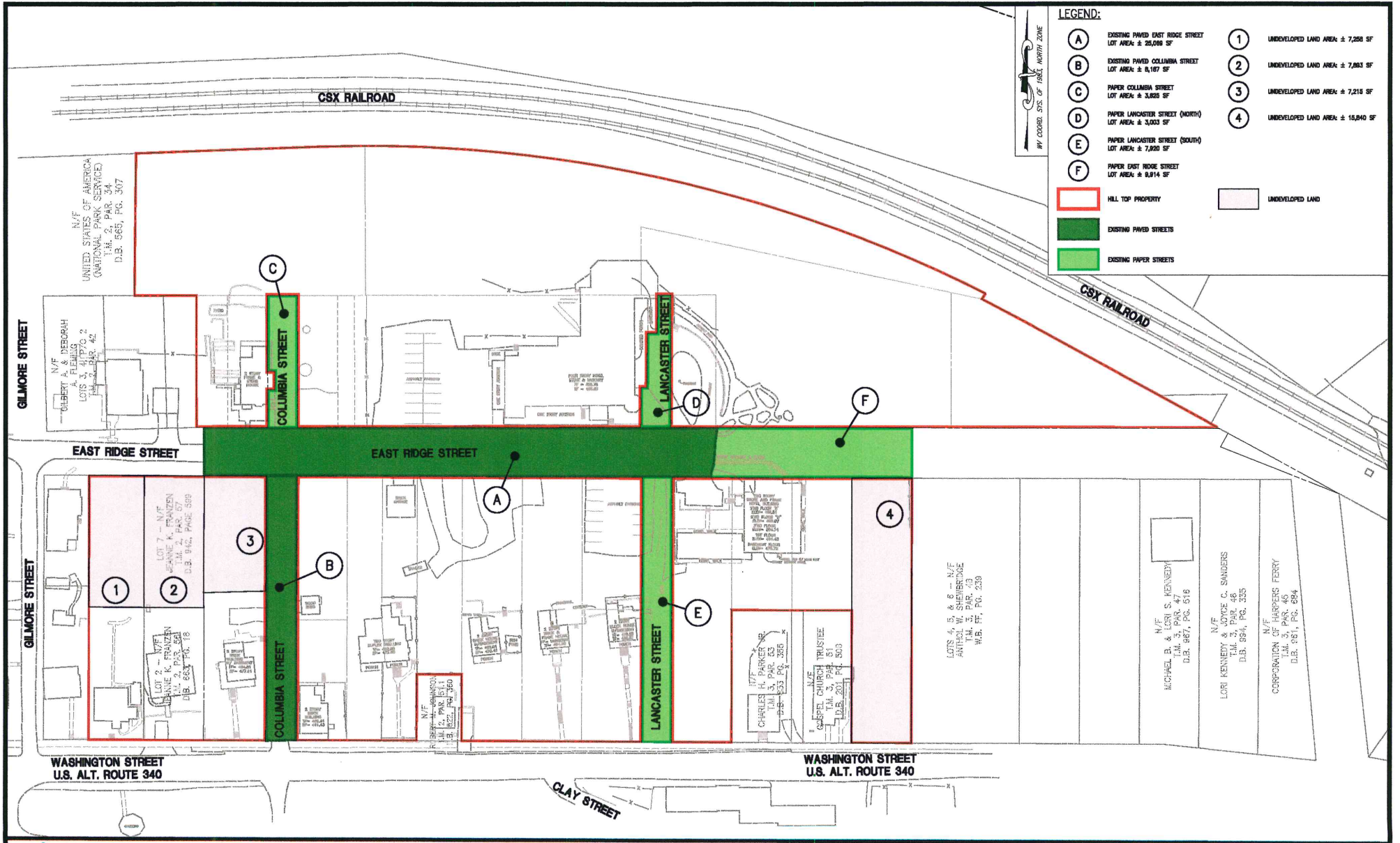
Finally, while many steps remain to bring about the redevelopment of Hill Top House, we both remain fully committed to the Hill Top House project and the Town of Harpers Ferry. We are pleased that our investment in Hill Top House provides this opportunity to further our partnership with the Town, with direct benefit to each resident of Harpers Ferry and all Harpers Ferry Water Works customers.

Warm regards,

Karen Schaufeld

**The Harpers Ferry Water Works is a municipal-owned water system. The Harpers Ferry Water Commission, in its advisory capacity, assists the Town Council in administering, operating, and maintaining the system on behalf of the Town of Harpers Ferry.*

EXHIBIT C – PUBLIC STREET AREAS



1020 16th St, Suite 305
Washington, DC 20036
Phone: 202-698-1800
www.gordondc.com

CIVIL ENGINEERING
PROFESSIONAL AND PLANNING
SECURITY CONSULTING

HILLTOP HOUSE HOTEL

EXISTING STREET AREAS EXHIBIT
SCALE: 1"=40'
NOVEMBER 9, 2018

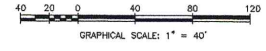
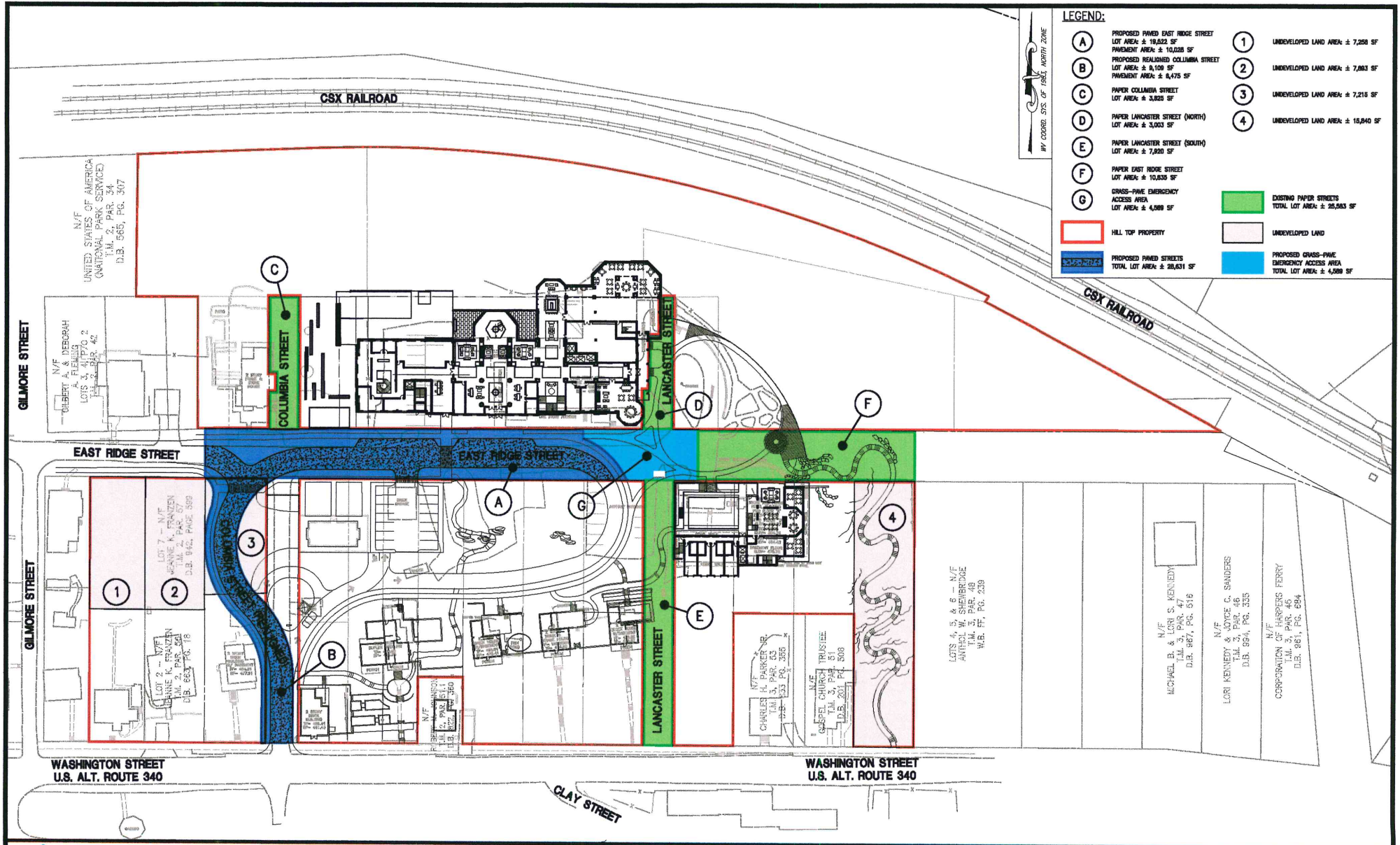


EXHIBIT 0008-0011
DRAWN BY: SH
SHEET 1 OF 1



LEGEND:

(A)	PROPOSED PAVED EAST RIDGE STREET LOT AREA: ± 19,822 SF PAVEMENT AREA: ± 10,026 SF	(1)	UNDEVELOPED LAND AREA: ± 7,208 SF
(B)	PROPOSED REPAVED COLUMBIA STREET LOT AREA: ± 8,109 SF PAVEMENT AREA: ± 8,475 SF	(2)	UNDEVELOPED LAND AREA: ± 7,863 SF
(C)	PAPER COLUMBIA STREET LOT AREA: ± 3,823 SF	(3)	UNDEVELOPED LAND AREA: ± 7,215 SF
(D)	PAPER LANCASTER STREET (NORTH) LOT AREA: ± 3,003 SF	(4)	UNDEVELOPED LAND AREA: ± 18,140 SF
(E)	PAPER LANCASTER STREET (SOUTH) LOT AREA: ± 7,920 SF		
(F)	PAPER EAST RIDGE STREET LOT AREA: ± 10,835 SF		
(G)	GRASS-PINE EMERGENCY ACCESS AREA LOT AREA: ± 4,589 SF		
[Red Outline]	HILL TOP PROPERTY	[Green]	EXISTING PAPER STREETS TOTAL LOT AREA: ± 25,563 SF
[Blue]	PROPOSED PAVED STREETS TOTAL LOT AREA: ± 28,831 SF	[Pink]	UNDEVELOPED LAND
		[Blue]	PROPOSED GRASS-PINE EMERGENCY ACCESS AREA TOTAL LOT AREA: ± 4,589 SF

GordonDC
 CIVIL ENGINEERING
 PROFESSIONAL AND PLANNING
 SECURITY CONSULTING
 1020 16th St, Suite 305
 Washington, DC 20036
 Phone: 202-898-1833
 www.gordondc.com

HILLTOP HOUSE HOTEL
 PROPOSED STREET AREAS EXHIBIT
 SCALE: 1"=40'
 NOVEMBER 12, 2018

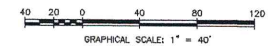
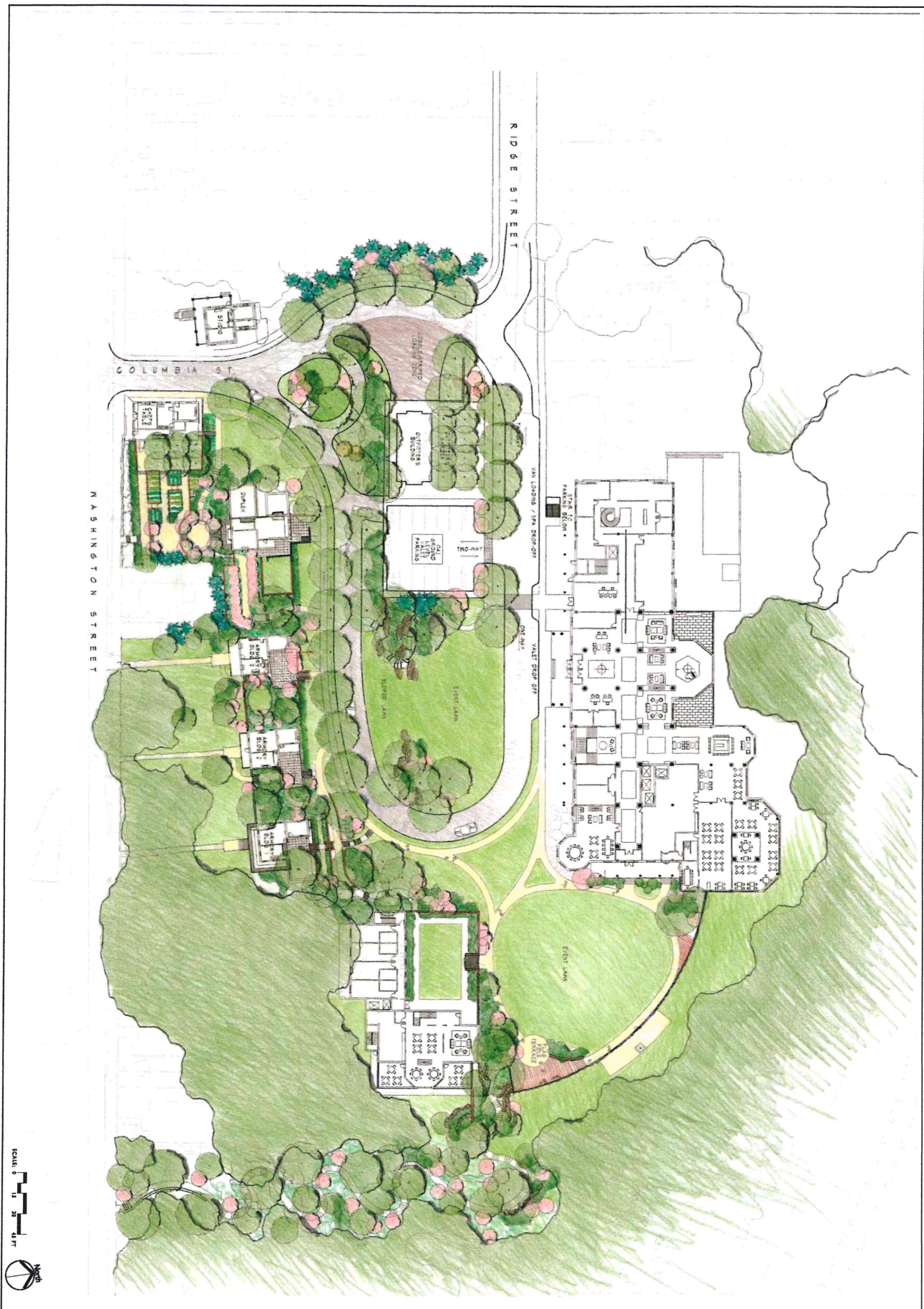


EXHIBIT 0008-0011
 CASE: 0009-0201-001-1-EXHIBIT 0008-0011
 DRAWN BY: JAC
 SHEET 1 OF 1

EXHIBIT D - SITE PLAN



L-0.0
 JOB NO. 1887

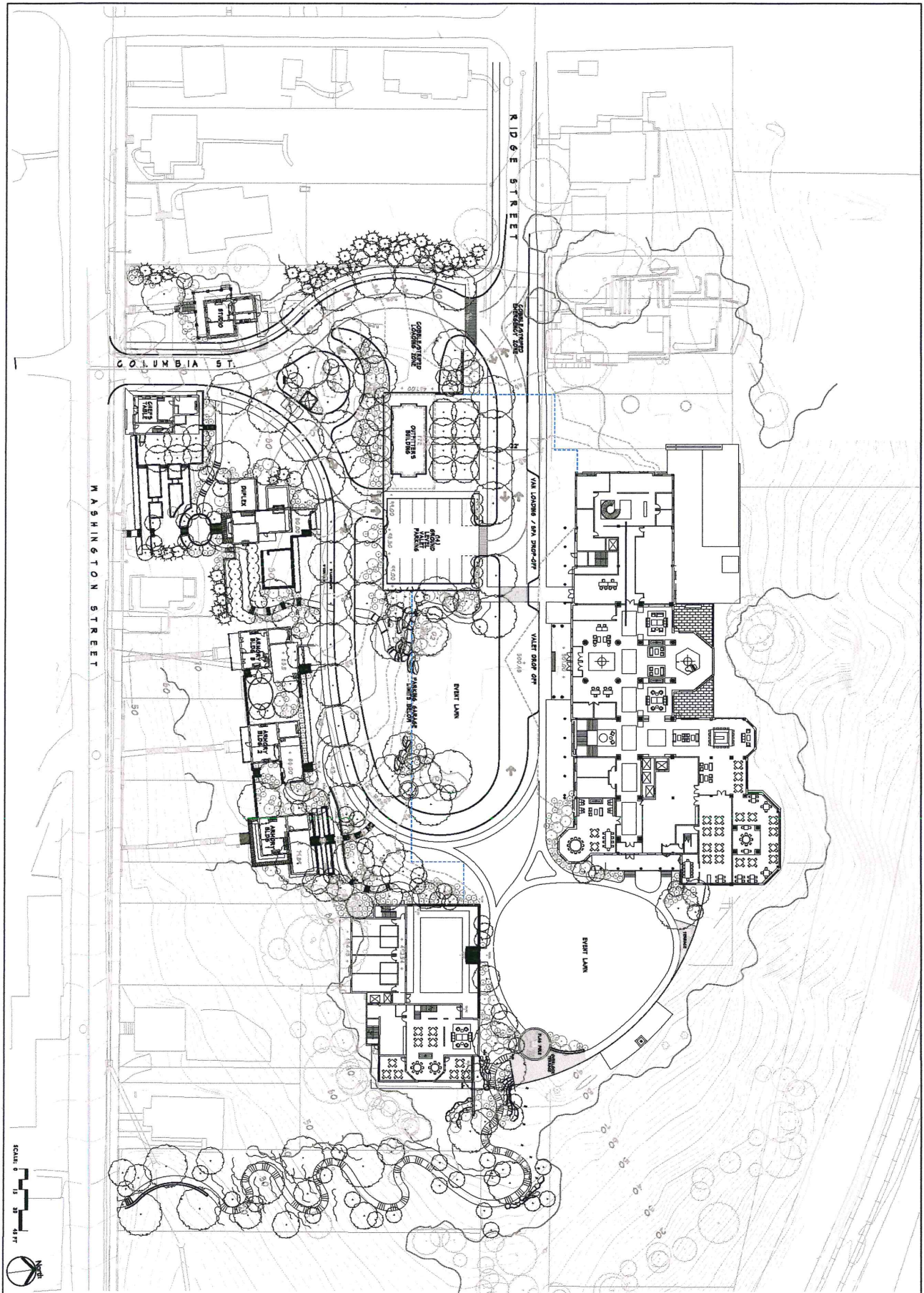
LANDSCAPE ENHANCEMENT PLAN
 SCALE: 1" = 30'-0"

ISSUE DATE: 09.11.2018
 PLANNED GROUND SITE PLAN

HILL TOP HOUSE HOTEL
 400 EAST RIDGE STREET
 HARPERS FERRY, WV. 25425

arentz
 LANDSCAPE ARCHITECTS LLC
 8514 CHARLES ROAD - BERRILL - THUNDER BOLT
 F 204.243.1000 P 204.243.1001 WWW.ARENTZ.COM

This drawing and the design shown are the property of Arentz Landscape Architects LLC. The reproduction, copying, or other use of this drawing without the landscape architect's written consent is prohibited and any infringement will be subject to legal action.
 ©2018 ARENTZ LANDSCAPE ARCHITECTS LLC



L-0.0

LANDSCAPE ENHANCEMENT PLAN

JOB NO. 1887

SCALE: 1" = 30'-0"

ISSUE DATE: 09.11.2018

EXHIBIT CONCEPT SITE PLAN

HILL TOP HOUSE HOTEL

400 EAST RIDGE STREET
HARPERS FERRY, WV. 25425

arentz
LANDSCAPE ARCHITECTS LLC
8514 GRANITE ROAD • BOWERS, VIRGINIA 22111
P: 540.845.1000 F: 540.845.1001 WWW.ARENTZ.COM

This drawing and the design shown are the property of Arentz Landscape Architects LLC. The reproduction, copying, or other use of this drawing without the landscape architect's written consent is prohibited and any infringement will be subject to legal action.

©2018 ARENTZ LANDSCAPE ARCHITECTS LLC

EXHIBIT E – PERMIT SCHEDULE

EXHIBIT E – PERMIT SCHEDULE

Conditional Use Permit

Demolition Review Permit

Environmental Permits

Site Plan & Construction Plan Approval

Building (Project) Permit

Zoning Compliance Permit

Land Disturbance Permit

Landscape Plan Recommendation

Business Sign Permit

Fire Safety Permit

Certificate of Occupancy

Any other permit that may be required before, during and after the Hotel is constructed and operated

EXHIBIT F - DEFINITIONS

EXHIBIT F - DEFINITIONS

The following terms shall have the meanings ascribed to them below.

“Above Ground Utilities” means, collectively, all public utilities which may be located above the surface of the ground, specifically including, but not limited to, electric lines, telecommunications cables and television cable.

“Armory Houses” means, collectively the four (4) structures, each as presently existing and as modified by the Hill Top Project, located at the addresses listed below:

400 Washington Street, Harpers Ferry, West Virginia;

420 Washington Street, Harpers Ferry, West Virginia;

450 Washington Street, Harpers Ferry, West Virginia; and

470 Washington Street, Harpers Ferry, West Virginia.

“Business Day” means any day other than a Saturday, Sunday or legal holiday in the State of West Virginia.

“Code” means the Code of the State of West Virginia of 1931, as amended.

“County” means Jefferson County, West Virginia.

“County Commission” means The County Commission of Jefferson County.

“Design Plans” means plans and specifications for the Hill Top Project prepared by an engineer or architect licensed to practice in the State.

“DOH” means the West Virginia Department of Transportation, Division of Highways.

“Master Plan” shall mean the 2018 Concept Plan and enhanced landscape plan.

“New Improvements” means, collectively, the Hotel and all other betterments, additions and improvements constructed on the Site in connection with the Hill Top Project.

“Original Hill Top House Hotel” means the structure, as presently existing and as modified by the Hill Top Project, located at 400 East Ridge Street, Harpers Ferry, West Virginia.

“Permits” means all permits, licenses and approvals which SWaN, or any agent, assignee or contractor for SWaN, is required to obtain from the Town for the design, acquisition, construction and equipping of the Hill Top Project up to and including the receipt of certificate of occupancy for the Hotel, and subsequent operation of the Hotel, specifically including, but not limited to, the permits, licenses, and approvals set forth in “Exhibit E – Permit Schedule” attached hereto and incorporated herein by reference.

“Permitting Fees” means, collectively and in the aggregate, all fees, assessments, charges and taxes required to be paid by SWaN, and any agent, assignee or contractor for SWaN, to obtain the Permits, specifically including, but not limited to, those permits set forth in “Exhibit E – Permit Schedule.”

“Real Property” means, collectively, those parcels of real property, and the improvements presently

existing, or to be constructed thereon, as set forth in the Master Plan.

“Site” means, collectively, the Real Property, the Paper Streets, the Conveyed Columbia Street, Conveyed East Ridge Street and all other interests in Real Property owned by SWaN related to the Hill Top Project.

“SWaN” means, collectively, SWaN Hill Top House Hotel LLC, a Delaware limited liability company, its affiliates and assignees, and any other individual or entity with which SWaN may contract for the management and operation of the Hotel.

“State” means the State of West Virginia.

“Town” means The Corporation of Harpers Ferry, a municipal corporation and political subdivision of the State of West Virginia located in Jefferson County.