

RESOLUTION

WHEREAS, University Park at Evansdale, LLC has made a generous offer to the City of Morgantown to gift \$250,000 to it for the future installation of a stoplight at the intersection of University Avenue and Oakland Street, per the recommendations of a traffic study performed by them;

WHEREAS, the attached Gift Agreement contains the terms and conditions applicable to the financial gift, should the City wish to accept it;

WHEREAS, the Gift Agreement clearly sets forth conditions under which the City may return the \$250,000 to University Park at Evansdale, LLC and not be obligated to construct the stoplight at issue;

WHEREAS, City Administration has recommended to City Council that it would be in the best interest of the City for Council to authorize the City Manager to execute the Gift Agreement;

WHEREAS, City Council is of the opinion that execution of the Gift Agreement would be in the best interest of the City; and

NOW, THEREFORE, ON THIS 1st DAY OF APRIL, 2014, BE IT RESOLVED by the City of Morgantown that its City Manager is authorized to execute the Gift Agreement, attached hereto, by and on behalf of the City of Morgantown.

MAYOR

CITY CLERK

GIFT AGREEMENT

This Agreement is made this 4th day of March 2014, by and between **UNIVERSITY PARK AT EVANSDALE, LLC**, a West Virginia limited liability company, having an address of 6 Canyon Road, Morgantown, WV 26508 ("Evansdale"), party of the first part, and **THE CITY OF MORGANTOWN**, a West Virginia municipal corporation, having an address of Attention City Manager, 389 Spruce Street, Morgantown, West Virginia, 26505 ("City"), party of the second part.

W I T N E S S E T H

WHEREAS, Evansdale is the developer of certain real property located in the Seventh Ward of the City of Morgantown, which Evansdale anticipates developing into a mixed use student housing and retail project commonly known as "University Park" (the "Project");

WHEREAS, Evansdale and the City believe that it may be in the best interest of the Project and the community to install certain traffic control device(s), including traffic lights, at the intersection of University Avenue and Oakland Street near the entrance of the Project (the "Traffic Control Area");

WHEREAS, Evansdale has obtained a traffic study report that indicates traffic lights are merited at the Traffic Control Area;

WHEREAS, Evansdale has shared the results of its traffic study report with the City;

WHEREAS, the City, independent of Evansdale's study elected to obtain a traffic study report of the University Avenue corridor between Patteson Drive and Riverview Drive, which includes the Traffic Control Area and has retained an expert to complete such traffic study (the "University Avenue Corridor Study");

WHEREAS, Subject to the terms of this Agreement, Evansdale is willing to gift to the City the sum of Two Hundred Fifty Thousand Dollars (\$250,000.00) for the installation of appropriate traffic control device(s) and for additional infrastructure for the betterment of the Project and the community at large (the "Gift");

WHEREAS, the City is willing to accept the gift from Evansdale subject to the terms of this Agreement;

NOW THEREFORE, in consideration of the mutual promises more particularly set forth herein, the parties agree as follows:

1. **The Gift.** Evansdale agrees to make the Gift by May 15, 2014. The Gift shall not exceed \$250,000.00. The City agrees it shall not request more than the Gift for traffic control

devices, or any other matters related to vehicular, bicycle, and pedestrian traffic and infrastructure arising from the Project. The City is not obligated to accept the Gift. If the City accepts the Gift, it will install traffic control devices, including traffic lights in the Traffic Control Area. If the cost of installation of the traffic control devices in the Traffic Control Area is less than \$250,000.00, the City may retain any excess Gift proceeds for purposes of making any infrastructure improvements the City deems appropriate within the University Ave. Corridor Study Area including, but not limited to, the streets connecting University Avenue to the Project.

2. **Traffic Control Study.** At the City's sole cost and expense, the City agrees to conduct the University Avenue Corridor Study, which is anticipated to be completed by April 1, 2014, and the results thereof reported to Evansdale by April 15, 2014.

3. **Results of Study.** (a) If the results of the Study indicate that a traffic control device, including traffic lights and/or other devices, are necessary to appropriately manage the vehicular, bicycle, and pedestrian traffic volume within the Traffic Control Area, and the cost of installation of the device(s) will not exceed the sum of \$250,000.00, the City will accept the Gift, and proceed with installation of the suggested device(s) and infrastructure; (b) If the results of the Study indicate the cost of needed traffic control devices will exceed the Gift, the City may: (i) accept the Gift and determine how to independently fund the additional costs for the necessary traffic control devices with no additional contribution from Evansdale; or (ii) refuse the Gift, and independently address traffic control issues without contribution from Evansdale.

4. **Completion of Work.** If the City proceeds with installation of traffic control device(s) the work shall be completed and the device(s) fully functional on or before July 31, 2015, provided the completion date may be extended by mutual agreement of the parties if the results of the University Avenue Corridor Study require coordination with the West Virginia Department of Transportation with the light at the intersection of Patteson Drive and University Avenue or the coordination with construction of other traffic control devices along University Avenue and such coordination and additional construction cannot be reasonably completed by July 31, 2015. If the parties cannot mutually agree upon an acceptable completion date, Evansdale may terminate this Agreement and the City agrees to return the Gift.

5. **Amendment.** This Agreement may not be modified or amended except in writing with the same degree of formality with which this Agreement has been executed.

6. **Notices.** Any notice provided for and concerning this Agreement shall be in writing and shall be deemed sufficiently given when sent by certified or registered mail and sent to the respective addresses of each party as set forth in the beginning of this Agreement.

7. **Entire Agreement.** This Agreement is the entire agreement between the parties and supersedes any and all other agreements, either oral or written, between the parties with respect to the matters herein. The Parties warrant that, in entering into this Agreement, they have relied on no oral or written statements or representations, except as expressly preserved in this Agreement.

8. **Headings.** Paragraph headings are inserted solely for convenience and shall have no bearing on the interpretation or meaning of this Agreement.

9. **Severability and Construction.** If a court of competent jurisdiction determines that any provision of this Agreement is unenforceable, the remainder of the Agreement shall continue in full force and effect. This Agreement shall be construed in accordance with its fair meaning and not for or against either of the parties.

10. **Counterparts.** This Agreement is executed in two counterparts, each of which shall be deemed an original and together shall constitute one and the same document, with one counterpart being delivered to each party.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement, as of the day and year first written above.

University Park at Evansdale, LLC,
a West Virginia limited liability company
By: M & J Property Holdings, LLC, Manager
By: M2 Holdings, LLC, Manager

By: _____
Mark J. Nesselroad, Member

Date

The City of Morgantown,
a West Virginia municipal corporation

By: _____
Jeff Mikorski, City Manager

Date