

AN ORDINANCE BY THE CITY OF MORGANTOWN VACATING, ABANDONING, AND ANNULLING PARTS OR PORTIONS OF QUAY STREET AND ACCEPTING THE DEDICATION OF ADDITIONS TO QUAY STREET, LOCATED AND SITUATE IN THE FOURTH WARD OF THE CITY OF MORGANTOWN, MONONGALIA COUNTY, WEST VIRGINIA, IN CONJUNCTION WITH THE PARTIAL REALIGNMENT AND RELOCATION OF QUAY STREET;

WHEREAS, the Common Council ("Council") of The City of Morgantown, West Virginia ("City"), finds and makes a legislative determination that Quay Street ("Street") is a publicly dedicated and accepted easement and right-of-way for, among other purposes, street purposes, that is shown, illustrated, and depicted on maps or plats of record in the Office of the Clerk of the County Commission of Monongalia County, West Virginia ("Clerk's Office"); and

WHEREAS, the Council finds and makes a legislative determination that the Street is located and situate within the Fourth Ward of the municipal limits of the City, Monongalia County, West Virginia; and

WHEREAS, the Council finds and makes a legislative determination that a part or portion of the Street is adjoined on the south by property of West Virginia University Board of Governors on behalf of West Virginia University, an agency and higher education institution of the State of West Virginia ("WVU"), and on the north by property to be conveyed to American Campus Communities Operating Partnership, LP, a Maryland limited partnership ("ACC"); and

WHEREAS, the Council finds and makes a legislative determination that it is in the best interests of the City and the public generally that the Street be partially realigned and relocated; and

WHEREAS, the Council finds and makes a legislative determination that to effect the partial realignment and relocation of the Street, separate and distinct parts or portions of the Street must be vacated, abandoned, and annulled by the City; and

WHEREAS, the Council finds and makes a legislative determination that to effect the partial realignment and relocation of the Street, a separate and distinct part or portion of the property of ACC must be dedicated by ACC to the City and accepted by the City for, among other purposes, street purposes; and

WHEREAS, a map or plat prepared by Potesta and Associates, Inc., a reproduction of which is appended to this Ordinance as Exhibit No. 1 and incorporated into this Ordinance by this reference ("Exhibit Plat"), shows, illustrates, and depicts (a) the separate and distinct parts or portions of the Street that must be vacated, abandoned, and annulled by the City to effect the partial realignment and relocation of the Street ("Vacated Parcel") and (b) the separate and distinct part or portion of the property of ACC that must be dedicated by ACC to the City and accepted by the City to effect the partial realignment and relocation of the Street ("Dedicated Parcel"); and

WHEREAS, Downtown Campus Parking Associates, LLC, a West Virginia limited liability company ("DCPA") is currently engaged in the design, development, and construction of certain parking garage facilities (the "Parking Garage Project") on property located adjacent to Quay Street and the Dedicated Parcel;

WHEREAS, as part of the Parking Garage Project, DCPA is designing, developing and constructing certain improvements (including, without limitation, grading, paving, installation of curbs, etc.) to Quay Street (the "Quay Street Improvements"), as described and set forth on Exhibit No. 2 attached hereto and made a part hereof (the "Quay Street Improvements");

WHEREAS, a portion of the Quay Street Improvements are to be constructed on the Dedicated Parcel;

WHEREAS, the Council finds and makes a legislative determination that, in conjunction with the realignment and relocation of the Street, the Vacated Parcels are not presently used, useful, or needed for street purposes or any other public uses or purposes; and

WHEREAS, the Council finds and makes a legislative determination that, in conjunction with the partial realignment and relocation of the Street, the Vacated Parcels shall not subsequently be used, useful, or needed for street purposes or any other public uses or purposes; and

WHEREAS, the Council finds and makes a legislative determination that, in conjunction with the partial realignment and relocation of the Street, no party nor any property of any party will be injured or damaged by either the partial realignment and relocation of the Street or the vacation, abandonment, and annulment of the Vacated Parcels; and

WHEREAS, the Council finds and makes a legislative determination that, in conjunction with the partial realignment and relocation of the Street, it is in the best interests of the City and the public generally that the Street be partially realigned and relocated and that the Vacated Parcels be vacated, abandoned, and annulled by the City for street purposes and any and all other public uses or purposes;

WHEREAS, the Council finds and makes a legislative determination that, in conjunction with the partial realignment and relocation of the Street, it is in the best interests of the City and the public generally that the Dedicated Parcel be conveyed by quitclaim deed from ACC to the City, all as more particularly set forth in that certain Quitclaim Deed from ACC dated of even date herewith and to be recorded simultaneously herewith ("Quitclaim Deed"); and

WHEREAS, the Council finds and makes a legislative determination that, in conjunction with the partial realignment and relocation of the Street, it is in the best interests of the City and the public generally that the Quay Street Improvements, including the portion of the Quay Street Improvements located on the Dedicated Parcel, be accepted upon completion thereof by DCPA in accordance with the plans therefor and incorporated by the City as a part of Quay Street, a municipal public road providing a means of public ingress, egress and regress for all adjacent parcels thereto.

NOW, THEREFORE, it is ordained by the Council, in regular session, duly and properly assembled, as follows:

Section 1. The findings and legislative determinations of the Council set forth and contained in the above recitals are incorporated and integrated into this Ordinance by this reference and adopted, confirmed, and affirmed as findings and legislative determinations of the Council.

Section 2. The Exhibit Plat is incorporated and integrated into this Ordinance by this reference.

Section 3. The Vacated Parcels are described as follows:

678 Square Foot +/- Parcel:

Beginning at a point at the intersection of the southern right of way line of Quay Street and the northern right of way line of Overhill Street, thence running with the existing right of way line of said Quay Street

N25°08'39"W, 211.83 feet to a point, thence leaving said existing right of way line of Quay Street and running through and across said Quay Street

N46°14'33"W, 9.03 feet to a point, thence

S25°14'16"E, 48.13 feet to a point, thence

S24°44'56"E, 36.18 feet to a point, thence

S25°20'23"E, 66.46 feet to a point, thence

S25°13'10"E, 42.61 feet to a point, thence

S28°30'35"E, 9.24 feet to the existing northern right of way line of said Overhill Street, thence with said Overhill Street

S53°18'33"W, 4.04 feet to the point of beginning containing 678 square feet more or less.

32 Square Foot +/- Parcel:

Commencing at a point at the intersection of the southern right of way line of Quay Street and the northern right of way line of Overhill Street, thence running with the existing right of way line of said Quay Street

N25°08'39"W, 234.83 feet to a point, thence

N25°34'06"W, 48.31 feet to a point, thence

S58°55'49"W, 9.78 feet to the TRUE POINT OF BEGINNING of the herein described 32 Square Foot Annulment, thence

N25°06'04"W, 19.40 feet to a point, thence leaving said existing right of way line of Quay Street and running through and across said Quay Street

S55°52'13"E, 3.44 feet to a point, thence

S25°06'04"E, 16.25 feet to a point, thence

S58°55'49"W, 1.77 feet to the TRUE POINT OF BEGINNING, containing 32 square feet more or less.

Section 4. Upon the Effective Date of this Ordinance, for the reasons set forth and contained in the above recitals, the easement and right-of-way of the City for street purposes and any and all other public uses or purposes in, of, and to the Vacated Parcels are and shall be vacated, abandoned, and annulled by the City, with the intent and effect that subsequent to the Effective Date of the adoption of this Ordinance, the Vacated Parcels shall cease to be a part or portion of a public easement and right-of-way or public street.

Section 5. Upon the Effective Date of this Ordinance, any and all right, title, interest, claim, and estate of the City, of any and every nature, kind, character, manner, and description, in, of, and to the Vacated Parcels are and shall be cancelled, terminated, vacated, abandoned, annulled, released, and relinquished in favor of and for the benefit of WVU and its successors and assigns.

Section 6. The City shall not keep, except, reserve, or retain any utility easements or rights-of-way in, on, over, upon, under, through, or across the Vacated Parcels of any nature, kind, character, manner, or description.

Section 7. The acceptance of the Quay Street Improvements, including the portion of the Quay Street Improvements located on the Dedicated Parcel, upon completion thereof by DCPA in accordance with the plans therefor, and dedication of the Dedicated Parcel and the Quay Street Improvements to the City for, among other purposes, street purposes, is accepted by the City and no subsequent or further acts other than (1) the adoption of this Ordinance by the City, and (2) the execution, recordation, and delivery by ACC of the Quitclaim Deed, shall be requisite to effect such acceptance, even in the event that the Quitclaim

Deed shall be executed, delivered, or placed of record subsequent to the adoption of this Ordinance.

Section 8. Within ten (10) days of the adoption of this Ordinance, ACC shall execute and cause to be recorded in the Clerk's Office and subsequently deliver to the City the Quitclaim Deed substantially identical in form, substance, and content to the quitclaim deed appended to this Ordinance as Exhibit No. 3 and incorporated into this Ordinance by this reference ("Easement Declaration").

Section 9. The Dedicated Parcel is described as follows:

Beginning at a 5/8 inch rebar with plastic cap found at the intersection of the northern right of way line of Overhill Avenue and the eastern right of way line of Quay Avenue, thence leaving said Overhill Avenue and running with said Quay Avenue

N25°08'39"W, 231.87 feet to a 5/8 inch rebar with plastic cap found at the common corner to Eugene J. Stout, recorded in Deed Book 1082 at page 461, thence leaving said Quay Avenue and running through and across the property from which this conveyance is a part of

Around a curve to the right, having an arc length of 53.26 feet, a radius of 102.17 feet and a chord bearing and distance of S40°04'47"E, 52.66 feet to a 5/8 inch rebar with plastic cap set, thence

S25°08'39"E, 178.21 feet to a 5/8 inch rebar with plastic cap set on the northern right of way line of said Overhill Avenue, thence with said right of way line

S53°18'33"W, 13.85 feet to the POINT OF BEGINNING, containing ±2,905 square feet, 0.07 acres more or less.

Section 10. Upon the adoption of this Ordinance, the City Clerk shall provide a certified photocopy of this Ordinance to counsel for WVU and ACC for the purpose of such counsel admitting the same of record in the Clerk's Office as evidence of, among other matters, the vacation, abandonment, and annulment of a part or portion of the Street.

Section 11. This Ordinance shall be effective upon the Adopted Date set forth below (the "Effective Date").

First Reading: \_\_\_\_\_, 2015

Second Reading: \_\_\_\_\_, 2015

Adopted: \_\_\_\_\_, 2015

Filed: \_\_\_\_\_, 2015

Recorded: \_\_\_\_\_, 2015

\_\_\_\_\_

Mayor

\_\_\_\_\_

City Clerk

EXHIBIT NO. 1  
PLAT

EXHIBIT NO. 2

QUAY STREET IMPROVEMENTS

EXHIBIT NO. 3  
FORM OF QUITCLAIM DEED

**AN ORDINANCE PROVIDING FOR EXECUTION OF A RIGHT-OF-WAY AND  
EASEMENT AGREEMENT WITH WEST VIRGINIA UNIVERSITY RELATING TO A  
PORTION OF QUAY STREET IN THE FOURTH WARD**

The City of Morgantown hereby ordains:

That the City Manager is hereby authorized to execute, on behalf of the City of Morgantown, the “Right-of-Way and Easement Agreement” attached to, and made a part of, this ordinance.

This Ordinance shall be effective from the date of its adoption.

First Reading:

Adopted:

\_\_\_\_\_

Mayor

Filed:

Recorded:

\_\_\_\_\_

City Clerk

**RIGHT-OF-WAY AND EASEMENT AGREEMENT**

THIS RIGHT-OF-WAY AND EASEMENT AGREEMENT, made and executed in duplicate this \_\_\_\_ day of \_\_\_\_\_, 2015, by and between THE CITY OF MORGANTOWN, West Virginia, a municipal corporation, party of the first party, GRANTOR, and WEST VIRGINIA UNIVERSITY BOARD OF GOVERNORS ON BEHALF OF WEST VIRGINIA UNIVERSITY, an agency and higher education institution of the State of West Virginia, party of the second part, GRANTEE.

WITNESSETH: That for and in consideration of the payment of One Dollar (\$1.00), cash in hand paid, the receipt of which is hereby acknowledged, and other good and valuable consideration hereinafter detailed, GRANTOR does now hereby bargain, sell, grant, and convey unto the GRANTEE, its contractors, licensees, lessees, sublessees, successors and/or assigns, a non-exclusive right-of-way and easement for the laying, relaying, constructing, reconstructing, placing, replacing, repairing, maintaining, and removing a retaining wall and geogrid situate, lying and being within the public right of way known as Quay Street, located in the Fourth Ward of the City of Morgantown, Monongalia County, West Virginia.

The location of said right-of-way and easement is more particularly shown upon the plat of survey entitled Proposed Annulment and Right of Way Changes Along Quay Street, dated May 5, 2015, prepared by Victor M. Dawson, P.S. No. 956, of Potesta and Associates, Inc., on Detail – 2 of said plat and depicted in green, consisting of 381 square feet, more or less, and 44 square feet, more or less, to be recorded in the Office of the clerk of the County Commission of Monongalia County, West Virginia, immediately prior to this Agreement, and being more particularly described as follows:

381 SQUARE FOOT +/- EASEMENT AREA:

Commencing at a point at the intersection of the southern right of way line of Quay Street and the northern right of way line of Overhill Street, thence running with the line of said Overhill Street N53°18'33"E, 4.04 feet to a point at the intersection of said Overhill Street and the proposed new southern right of way line of said Quay Street, thence running with said new Quay Street right of way line N28°30'35"W, 9.24 feet to a point, thence N35°13'10"W, 42.61 feet to the TRUE POINT OF BEGINNING of the herein described Geogrid Easement, thence N25°20'23"W, 66.46 feet to a point, thence N24°44'56"W, 36.18 feet to a point, thence N25°14'16"W, 48.13 feet to a point, thence N46°14'33"W, 9.03 feet to a point on the original southern right of way line of said Quay Street, thence with said original right of way line N25°08'39"W, 23.05 feet to a point, thence N25°34'06"W, 48.31 feet to a point, thence leaving said original right of way line and running through and across said Quay Street N58°55'49"E, 2.29 feet to a point, thence S24°37'25"E, 68.35 feet to a point, thence S44°40'07"E, 11.80 feet to a point, thence S25°07'11"E, 61.40 feet to a point, thence S24°14'12"E, 89.93 feet to a point, thence S64°49'31"W, 0.48 feet to TRUE POINT OF BEGINNING, containing 381 square feet more or less.

#### 44 SQUARE FOOT +/- EASEMENT AREA:

Commencing at a point at the intersection of the southern right of way line of Quay Street and the northern right of way line of Overhill Street, thence running with the existing right of way line of said Quay Street N25°08'39"W, 234.83 feet to a point, thence N25°34'06"W, 48.31 feet to a point, thence S58°55'49"W, 8.01 feet to the TRUE POINT OF BEGINNING of the herein described 44 Square Foot Annulment, thence N25°06'04"W, 16.25 feet to a point, thence N55°52'13"W, 3.44 feet to a point, thence N25°06'04"W, 3.91 feet to a point, thence S55°52'13"E, 7.35 feet to a point, thence S25°06'04"E, 16.59 feet to a point, thence S58°55'49"W, 2.01 feet to the TRUE POINT OF BEGINNING, containing 44 square feet more or less.

381 Square Foot +/- Easement Area and the 44 Square Foot +/- Easement Area collectively referred to herein as the "Easement Area".

For the consideration aforesaid, GRANTOR does now also hereby grant and convey unto the GRANTEE, its contractors, licensees, lessees, sublessees, successors and/or assigns, the right of ingress, egress, and regress to and from the Easement Area, and a temporary construction right-of-way and easement of such width as is reasonable and necessary for the purposes of laying, relaying, constructing, reconstructing, placing, replacing, repairing, maintaining, and removing the retaining wall and geogrid.

The retaining wall and geogrid shall be constructed, maintained and repaired at Grantee's, or its contractors, licensees, lessees, sublessees, successors and/or assigns, sole cost and expense. All work to construct, install, maintain and/or repair the retaining wall and geogrid (the "Work") shall be subject to the following additional conditions:

(a) all Work shall be performed by Grantee, or its contractors, licensees, lessees, sublessees, successors and/or assigns, as expeditiously as possible in accordance with good construction practices and so as to minimize interference with the use of the Grantor's property, including the flow of pedestrian and vehicular traffic;

(b) any surface or subsurface damage to paved areas or other improvements on the Grantor's property known as Quay Street caused by Grantee, or its contractors, licensees, lessees, sublessees, successors and/or assigns, in connection with the Work shall be promptly repaired by Grantee to a condition equal to that existing before any such Work or actions were undertaken, or as directed by the City Engineer; and

(c) Whenever entry onto Grantor's property is required for maintenance or repairs to the retaining wall or geogrid, Grantee, or its contractors, licensees, lessees, sublessees, successors and/or assigns, shall provide the Grantor with not less than twenty-four (24) hours prior notice except when access is required in the case of emergency repairs;

(d) Whenever Grantor conducts any repairs, maintenance, alterations, reconstruction or improvements to Grantor's property known as Quay Street that is adjacent to Grantee's property and/or the retaining wall and over the geogrid, Grantor agrees to provide Grantee with not less than twenty-four (24) hours prior notice of same, except when access is required in the case of emergency repairs; and

(e) In the event damage to the retaining wall or geogrid would compromise the safety of life/property upon Grantor's property known as Quay Street, at the direction of the City Engineer, Grantee shall promptly repair the damage to the retaining wall or geogrid and restore the surface or subsurface damage to paved areas or other improvements of Grantor's property to a condition equal to that existing before any such Work or actions were undertaken.

The GRANTOR does grant and convey said right-of-way and easement unto the GRANTEE, its contractors, licensees, lessees, sublessees, successors and/or assigns, upon the following terms and conditions:

In accordance with the City Charter of the City of Morgantown, this conveyance of an interest in real property is subject to approval and acceptance by the Morgantown City Council, which approval and acceptance has been duly granted.

Grantee shall name Grantor as an additional insured on its insurance policy covering the Work and shall provide evidence of the same upon demand by Grantor.

This Agreement shall be binding upon the parties and their respective successors and/or assigns. The rights of way and easements granted herein shall be appurtenant to and run with the land thereby benefited and burdened.

This Agreement may be executed in multiple counterparts, each of which shall, for all purposes, be deemed an original and all of which, taken together, shall constitute one and the same agreement.

#### **DECLARATION OF CONSIDERATION**

Under the penalties of fine and imprisonment as provided by law,, the undersigned hereby declares that the transfer involved in the document to which this Declaration is appended is a transfer to or from the State of West Virginia, or to or from any of its instrumentalities,

agencies or political subdivisions, and therefore is not subject to West Virginia excise tax and is exempt under the provisions of Chapter 11, Article 22, Section 1 of the West Virginia Code, 1931, as amended.

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WITNESS the following signature and seal:

**THE CITY OF MORGANTOWN**, West Virginia,  
a municipal corporation

By: \_\_\_\_\_  
Jeffrey Mikorski  
Its: City Manager

STATE OF WEST VIRGINIA

COUNTY OF MONONGALIA, TO-WIT:

The undersigned, a Notary Public in and for the County and State aforesaid, does hereby CERTIFY that Jeffrey Mikorski, The City Manager of City of Morgantown, West Virginia, a municipal corporation, whose name is signed to the foregoing agreement, have this day sworn to, affirmed, subscribed and acknowledged the same before me in said County, as the free act and deed of said corporation, upon authority duly granted.

Given under my hand this \_\_\_\_ day of \_\_\_\_\_, 2015.

My commission expires: \_\_\_\_\_.

{SEAL}

\_\_\_\_\_  
Notary Public

Prepared without title examination on behalf of Grantee by Heather Gentile, Jackson Kelly PLLC, P.O. Box 619, Morgantown, West Virginia 26507-0619.

**EXHIBIT  
ORDINANCE**