



RESOLUTION

**MEMORANDUM OF UNDERSTANDING
BY AND BETWEEN
THE CITY OF WHEELING,
OHIO VALLEY ADC, INC.
AND
ALECTO HEALTHCARE SERVICES OHIO VALLEY, LLC, AND
ALECTO HEALTHCARE SERVICES WHEELING, LLC.**

A Resolution of the Council of the City of Wheeling authorizing the City Manager to enter into a Memorandum of Understanding, by and between the City of Wheeling, Ohio Valley ADC, Inc., and Alecto Healthcare Services Ohio Valley, LLC, and Alecto Healthcare Services Wheeling, LLC., which engages in the business of delivering acute healthcare services to the public. The purpose of the agreement is fully set out in the Memorandum of Understanding, which is attached and incorporated hereto. The Memorandum of Understanding was created with the intention to promote job retention within the community, capital improvements of significant amount, and economic and community development.

Adopted by Council this 16th day of May, 2017.

Glenn F. Elliott, Jr., Mayor

MEMORANDUM OF UNDERSTANDING

BY AND BETWEEN

THE CITY OF WHEELING,

OHIO VALLEY ADC, INC.

AND

ALECTO HEALTHCARE SERVICES OHIO VALLEY LLC, and

ALECTO HEALTHCARE SERVICES WHEELING, LLC,

This Memorandum of Understanding ("MOU") is made and entered into as of the ____ day of May, 2017 (the "Effective Date") by and among **THE CITY OF WHEELING**, a West Virginia municipal corporation ("City"), **OHIO VALLEY ADC, INC.**, a West Virginia nonprofit corporation ("ADC"), **ALECTO HEALTHCARE SERVICES OHIO VALLEY LLC**, a Delaware limited liability company ("Alecto Ohio Valley"), **ALECTO HEALTHCARE SERVICES WHEELING LLC**, a Delaware limited liability company ("Alecto Wheeling"). Alecto Ohio Valley and Alecto Wheeling are also sometimes referred to collectively as "Alecto".

RECITALS

- A. Ohio Valley Medical Center (the "Hospital") engages in the business of delivering healthcare services to the public through operating an acute care hospital located at 2000 Eoff Street, Wheeling, West Virginia 26003.
- B. Alecto entered in to an Asset Purchase Agreement (the "APA") with an effective date of January 26th, 2017, to purchase the Hospital.
- C. The City is the owner in fee simple of a municipal parking garage located in Center Wheeling between Chapline and Market Street with an address of 2200 Chapline Street Wheeling, West Virginia 26003, that has approximately 830 parking spaces ("the "Garage").
- D. The ADC is a West Virginia nonprofit corporation which qualifies as an area development corporation under West Virginia Code § 8-32-2, and has agreed to assist the City in developing certain areas within the City, including with purchase, sale, lease or other development and/or disposition of properties within the corporate limits of the City, under a certain agreement between the City and ADC dated April 27, 1999, which agreement was approved by the City council as reflected in Ordinance No. 11777, a copy of which is recorded in the office of the Clerk of the County Commission of Ohio County, West Virginia, in Deed Book 724, at page 304.
- E. The City desires to sell to the ADC and the ADC desires to purchase from the City the Garage.

- F. The Garage is in need of significant capital improvements and repairs including the replacement of exiting elevators (the "Garage Improvements").
- G. The ADC will fund the Garage Improvements expected to have a cost of circa one million five hundred thousand dollars (\$1,500,000).
- H. Alecto desires to control the Garage and is willing to enter into a triple-net long-term lease agreement with the ADC for the use, control and operations of the Garage. The ADC desires to enter into a triple-net long-term lease agreement with Alecto for Alecto's use, control and operations of the Garage.
- I. The City Fire Department occupies a portion of the Garage, which will remain occupied by the City Fire Department after a lease is entered into by and between Alecto and the ADC. The parties to this MOU expect that the City Fire Department will enter into a separate lease agreement with the ADC for the spaces it occupies in the Garage. Alecto will not lease any portion of the Garage occupied by the City Fire Department.
- J. The parties to this MOU can only fulfil the obligations set forth herein if a redevelopment district is created to permit tax increment financing ("TIF") that will provide financing for this transaction through the issuance of revenue bonds ("TIF Bonds").
- K. The City and Alecto agree that local job retention is a paramount goal and that a special Business and Occupation Tax ("B&O Tax") classification and rate for hospitals is appropriate to accomplish that goal.

NOW, THEREFORE, in consideration of the mutual terms, covenants and conditions set forth, the parties to this MOU agree:

Section 1. Sale of the Garage. The City and the ADC agree to enter into a definitive Real Estate Purchase and Sale Agreement ("Sales Agreement") for the sale of the Garage for two million dollars (\$2,000,000). The Sales Agreement shall contain terms customary for such sales transactions.

Section 2. Capital Improvements to the Garage. Immediately after the ADC purchases the Garage, it shall begin the Garage Improvements which shall be completed in a commercially reasonable period of time.

Section 3. Lease to Alecto. The ADC agrees to enter into a definitive triple-net lease agreement with Alecto which shall include the following terms:

- (a) The initial term of the lease will be twenty (20) years with two (2) ten (10) year renewal options granted to Alecto;
- (b) Alecto will pay one dollar (\$1) annual rent to the ADC for the initial term and during each year the renewal terms;

- (c) Alecto shall be responsible for handling all customer complaints related to parking in the garages;
- (d) The financial risk of operating, managing and controlling the garage will be assumed by Alecto;
- (e) Alecto will not be responsible for any Garage structural issues during the any term of the lease. Provided however, in the event a significant structural issue arises during any term of the lease, the ADC shall offer to covey the Garage to Alecto in fee simple absolute for no consideration.
- (f) Alecto will have the sole right to establish charges for hourly, daily, monthly, and validated parking in the garages. Provided however, that Alecto will consult with the City prior to imposing any significant increases in the parking rates;
- (g) Alecto will not lease the area of the garage occupied by the Wheeling City Fire Department;
- (h) Alecto may grant a leasehold deed of trust;
- (i) The City and the ADC will terminate any existing management leases;
- (j) Alecto be granted an option to purchase the parking garage after an agreed upon terms of years, and at the end of the lease term be eligible to purchase the Garage for one dollar (\$1).
- (k) The ADC funded analysis to determine the nature and extent of the necessary Garage Improvements, and actual performance of the Garage Improvements shall begin immediately after lease is executed and be completed within a reasonable time as agreed to in writing by the ADC and Alecto; and
- (l) Such other terms customary for garage facility leases.

Section 4. Hospital B&O Tax Rate. The City shall promptly undertake all necessary action that will have the equivalent effect of creating a B&O Tax classification with a levy rate of .17% for organizations that engage in the business of delivering acute care services to the public through the operation of a licensed general acute care hospital which rate shall be effective as of the third quarter of 2017.

Section 5. Condition Precedent. The successful closing of the APA, the creation of a TIF district, and issuing TIF Bonds (collectively, the "Conditions") are all conditions precedent to this MOU. This MOU will be void and of no effect if any of the Conditions fail to occur.

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Section 6. Miscellaneous.

- (a) **Amendments.** This MOU may be modified or amended only in writing and signed by the parties to this MOU.
- (b) **No Third Party Beneficiary.** This MOU shall be exclusively to benefit the parties to this MOU, and shall not be construed to give any person other than the parties hereto any legal or equitable right, remedy or claim under or regarding this MOU.
- (c) **Notices.** Notices given under this MOU shall be in writing and shall be sufficiently given when mailed by first class mail, or by facsimile or electronic mail provided that the notice is also sent simultaneously by first class mail.
- (d) **Severability.** If any clause, provision or section of this MOU is held illegal or invalid by any court, the invalidity of such clause, provision or section shall affect none of the remaining clauses, provisions or sections hereof and this MOU shall be construed and enforced as if such illegal or invalid clause, provision or section had not been contained herein.
- (e) **Counterparts.** This MOU may be executed in counterparts, each of which shall be deemed an original and all of which shall constitute the same instrument. Delivery of an executed counterpart of a signature page of this MOU by facsimile or other electronic means shall be effective as delivery of a manually executed counterpart of this MOU.
- (f) **Entire Agreement.** This MOU constitutes the entire agreement between the parties to this MOU regarding the matters set forth herein and supersedes any other agreement or document between them to the extent such agreement or document may contravene this MOU.
- (g) **Costs and Expenses.** Each party shall be responsible for all of its costs and expenses associated with pursuing the transactions contemplated by this MOU, including, without limitation, (i) the performance of its obligations under this MOU, and (ii) and drafting and negotiating this MOU and the definitive agreements.
- (h) **Authority.** The undersigned acknowledge their authority to act on behalf of their respective principals.
- (i) **Good Faith Negotiations.** The parties shall negotiate in good faith and use their best efforts to bring about the execution and delivery of the definitive agreements at the earliest practicable time.
- (j) **Term and Termination.** The rights and obligations of the parties contained in this MOU shall expire upon the execution of the definitive agreements and passing the City B&O Tax classification and rate.

- (k) **Binding.** This MOU shall be binding upon and inure to the benefit of the parties hereto and their respective successors and permitted assigns.
- (l) **Confidentiality.** The terms and conditions of this MOU are confidential and shall not be disclosed to any third party except with the prior written consent of the other party; provided, however, the parties (1) may disclose the terms to their legal counsel, financial advisors, and/or agents or representatives, as long as the legal counsel, financial advisers, agents or representatives agree to be bound by this confidentiality obligation; and (2) may disclose any terms as are necessary to fulfill any obligations under this MOU and to comply with the requirements of any law or legal process.
- (m) **Governing Law.** This MOU shall be governed by and interpreted under the laws of the State of West Virginia.

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[Signatures Appear On Next Page]

IN WITNESS WHEREOF, the parties have caused this Memorandum of Understanding to be duly executed and delivered on their behalf by their duly authorized officers effective as of the _____ day of May, 2017.

THE CITY OF WHEELING

By: _____
Robert Herron, City Manager

OHIO VALLEY ADC, INC.

By: _____
Name: _____
Title: _____

**ALECTO HEALTHCARE SERVICES
OHIO VALLEY LLC**

By: _____
Name: _____
Title: _____

**ALECTO HEALTHCARE SERVICES
WHEELING LLC**

By: _____
Name: _____
Title: _____