

AN ORDINANCE AUTHORIZING THE CITY MANAGER TO NEGOTIATE AND EXECUTE PURCHASE AGREEMENT WITH MPT OF WHEELING-ALECTO, LLC FOR THE PURCHASE OF FORMER OHIO VALLEY MEDICAL CENTER HOSPITAL AND VALLEY PROFESSIONAL CENTER MEDICAL OFFICE BUILDING AS DETAILED FURTHER HEREIN

WHEREAS, after an Executive Session held on April 7, 2020 City Council moved to authorize the City Manager to negotiate and enter into a Letter of Intent with Medical Properties Trust (MPT) with respect to the transfer of the properties constituting the OVMC campus, minus the Robert C. Byrd Youth Adolescent Center; and

WHEREAS, as reflected the April 7, 2020 meeting and approved on April 21, 2020 all members of City Council voted in favor of entering the Letter of Intent; and

WHEREAS, The Letter of Intent is on file in the Office of the City Solicitor; and

WHEREAS, the City Manager is authorized to negotiate and execute finalize a draft purchase agreement with MPT of Wheeling-Alecto, LLC for the purchase of the former Ohio Valley Medical Center Hospital and Valley Professional Center Medical Office Building; and

WHEREAS, a draft copy of the Sales Agreement is on file in the Office of the City Clerk and is attached and incorporated herein; and

Section 1. This ordinance shall be effective from and after the date of its passage.

By the Administration

PURCHASE AND SALE AGREEMENT

THIS PURCHASE AND SALE AGREEMENT (this “Agreement”) is made and entered into effective as of _____, 2020, between **MPT OF WHEELING-ALECTO, LLC**, a Delaware limited liability company (the “Seller”), and **THE CITY OF WHEELING**, a West Virginia municipal corporation (the “Buyer”).

WITNESSETH:

WHEREAS, Seller owns those certain parcels of land upon which the former Ohio Valley Medical Center hospital and Valley Professional Center medical office building are located in Wheeling, Ohio County, West Virginia, more particularly described on Exhibit A attached hereto and made a part hereof by reference and incorporation (together with all hereditaments, easements, mineral rights, rights of way and other appurtenances related thereto, the “Land”), along with all Improvements (as defined herein) located thereon (collectively, the “Real Property”); and

WHEREAS, Seller desires to sell to Buyer, and Buyer desires to purchase from Seller, the Real Property and certain related assets, upon and subject to the terms and conditions provided herein.

NOW, THEREFORE, in consideration of the promises and mutual agreements contained herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto do hereby agree as follows:

**ARTICLE I
DEFINED TERMS**

Section 1.1 Defined Terms. Capitalized terms used herein and not otherwise defined shall have the respective meanings ascribed to them in this Section 1.1.

“Affiliate” means, with respect to any Person, (i) any Person that, directly or indirectly, controls or is controlled by or is under common control with such Person, (ii) any other Person that owns, beneficially, directly, or indirectly, Ten Percent (10%) or more of the outstanding capital stock, shares or equity interests of such Person, or (iii) any officer, director, employee, shareholder, partner, member, manager, or trustee of such Person, or any Person controlling, controlled by or under common control with such Person (excluding trustees and persons serving in similar capacities who are not otherwise an Affiliate of such Person). For the purposes of this definition, “control” (including the correlative meanings of the terms “controlled by” and “under common control with”), as used with respect to any Person, shall mean the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of such Person, through the ownership of voting securities or otherwise.

“Agreement” has the meaning set forth in the preamble hereto.

“Approval Period” has the meaning set forth in Section 6.4.

“Assets” has the meaning set forth in Section 2.1.

“Business Day” means each Monday, Tuesday, Wednesday, Thursday and Friday that is not a day on which money centers in the City of New York, New York are authorized or obligated by Law or executive order to close.

“Buyer” has the meaning set forth in the preamble hereto.

“City Council Approval” has the meaning set forth in Section 6.4.

“Closing” has the meaning set forth in Section 9.1.

“Closing Date” has the meaning set forth in Section 9.1.

“Deed” has the meaning set forth in Section 9.2(a).

“Encumbrance” means any mortgage, deed of trust, pledge, hypothecation, assignment, charge or deposit arrangement, lien (statutory or otherwise) or preference, security interest, defect, restriction, easement, matter of record, or other encumbrance of any kind or nature whatsoever.

“Equity Constituents” means, with respect to any Person, as applicable, the members, general or limited partners, shareholders, stockholders, council members, owners, or other Persons, however designated, who are the owners or holders of the issued and outstanding equity interests or other ownership or similar interests of such Person.

“Governing Documents” means, with respect to any Person, as applicable, such Person’s charter, articles or certificate of incorporation, bylaws, limited partnership agreement, limited liability company agreement, stockholders’ agreement, ordinances, regulations, or other documents or instruments which establish the rules, procedures and rights with respect to such Person’s governance, and relations among such Person’s Equity Constituents, in each case as amended, restated, supplemented and/or modified and in effect as of the relevant date.

“Governmental Body” means any United States federal, state or local, or any supra national or non-U.S., government, political subdivision, governmental, regulatory or administrative authority, instrumentality, agency body or commission, court, tribunal or judicial or arbitral body, in each case of competent jurisdiction, including the Securities and Exchange Commission.

“Improvements” means all improvements on the Land existing now or on the Closing Date, including, but not limited to, all buildings, structures, fixtures, and other improvements of every kind, and all hereditaments, easements, rights of way and other appurtenances related thereto.

“Independent Contract Consideration” has the meaning set forth in Section 2.3.

“Inspection Period” has the meaning set forth in Section 6.1.

“Investigations” has the meaning set forth in Section 6.1.

“Knowledge” means, with respect to any Person, such Person’s actual knowledge, without inquiry or investigation, of a particular fact or matter if any of such Person’s current officers or directors (or other Persons, however designated, currently or formerly possessing and/or exercising similar authority with respect to such Person) has actual knowledge of such fact or matter.

“Land” has the meaning set forth in the recitals hereto.

“Law” means any federal, state or local statute, law, rule, regulation, ordinance, order, code, policy or rule of common law, now or hereafter in effect, and in each case as amended, and any judicial or administrative interpretation thereof by a Governmental Body or otherwise, including, without limitation, any judicial or administrative order, consent, decree or judgment.

“Northwood Lease” has the meaning set forth in Section 3.7.

“OFAC” has the meaning set forth in Section 3.6.

“Patriot Act” has the meaning set forth in Section 3.6.

“Person” means an individual, a corporation, a limited liability company, a general or limited partnership, an unincorporated association, a joint venture, a Governmental Body or another entity or group.

“Real Property” has the meaning set forth in the recitals hereto.

“Seller” has the meaning set forth in the preamble hereto.

“Seller’s Broker” means Real Property Solutions, LLC, 71 Edmond Road, Suite 7, Kearneysville, West Virginia 25430, Attn: Michael Bush, Broker.

“Tax Assumption Agreement” has the meaning set forth in Section 9.2(c).

“Third Party Reports” has the meaning set forth in Section 6.1.

“Title Commitment” has the meaning set forth in Section 6.1.

“Title Company” means Stewart Title Guaranty Company, 5901 Peachtree Dunwoody Road, Atlanta, Georgia 30328, Attn: Robert (Rob) M. Reeder.

“Title Policy” has the meaning set forth in Section 6.1.

“Updated Survey” has the meaning set forth in Section 6.1.

“Warranties” means all warranties, representations and guaranties with respect to any of the Assets, whether express or implied, which Seller now holds or under which Seller is the beneficiary.

Section 1.2 Interpretation; Terms Generally. The definitions set forth in Section 1.1 and elsewhere in this Agreement shall apply equally to both the singular and plural forms of the terms defined. All references herein to Articles, Sections, and Exhibits shall be deemed to refer to Articles and Sections of, and Exhibits to, this Agreement, unless the context shall otherwise require. Unless the context shall otherwise require, any references to any agreement or other instrument or statute or regulation are to it as amended and supplemented from time to time (and, in the case of a statute or regulation, to any corresponding provisions of successor statutes or regulations). Any reference in this Agreement to a “day” or number of “days” that does not refer explicitly to a “Business Day” or “Business Days” shall be interpreted as a reference to a calendar day or number of calendar days. If any action or notice is to be taken or given on or by a particular calendar day, and such calendar day is not a Business Day, then such action or notice shall be deferred until, or may be taken or given on, the next Business Day.

ARTICLE II PURCHASE AND SALE OF ASSETS

Section 2.1 Purchase of Assets. Based upon the representations and warranties of Seller as set forth herein, and subject to the terms and conditions hereof, at the Closing, Seller, for the consideration set forth in Section 2.3, shall grant, assign, transfer, convey and deliver to Buyer, and Buyer shall acquire from Seller the following assets of Seller (collectively, the “Assets”):

- (a) the Real Property; and
- (b) to the extent assignable, all rights in all intangible property relating exclusively to the Real Property, including, but not limited to, zoning rights and all Warranties (to the extent the same are in Seller’s actual possession) affecting or inuring to the benefit of the Real Property or the owner thereof.

Section 2.2 Excluded Assets. Seller and Buyer acknowledge and agree that Seller does not own any furniture, trade fixtures, or equipment located at the Real Property (if any), nor does Seller own any licenses or certificates used or required in the operation of the Real Property (if any). Buyer shall be solely responsible for acquiring any licenses, certificates, furniture, trade fixtures, or equipment that Buyer deems necessary for its intended use of the Real Property. To the extent that any such items of personal property are located at the Real Property at Closing, Seller shall [transfer/relinquish] any right, title, and interest Seller may have in the same to Buyer without representation or warranty in their as-is, where-is condition for nominal consideration pursuant to an appropriate instrument of conveyance in form reasonably satisfactory to Buyer and Seller.

Section 2.3 Consideration. In consideration of Seller’s conveyance of the Assets to Buyer, at Closing, Buyer shall assume liability for and hold Seller harmless from and against payment of all accrued and unpaid ad valorem taxes and assessments relating to the Assets for all periods prior to and including the Closing Date and thereafter. The parties acknowledge that Buyer has deposited One Hundred Dollars (\$100) cash in hand paid to Seller on the date hereof (the “Independent Contract Consideration”) as consideration for Seller’s execution and delivery of this Agreement and Buyer’s right to purchase the Assets pursuant to the terms hereof. The

Independent Contract Consideration is in addition to and independent of any other consideration or payment provided for in this Agreement and is nonrefundable in all events.

ARTICLE III REPRESENTATIONS, WARRANTIES AND COVENANTS OF SELLER

With the understanding that Buyer shall rely hereon, and as a material inducement to Buyer to enter into this Agreement, Seller hereby represents, warrants and covenants to Buyer as of the date hereof as follows:

Section 3.1 Organization. Seller is a limited liability company as indicated in the preamble of this Agreement, and is duly formed, validly existing and in good standing under the laws of the State of Delaware. Seller is qualified to do business and in good standing in every jurisdiction in which its ownership of property or the conduct of business as now conducted requires it to qualify, except where the failure to be so qualified would not prevent or materially delay consummation of the transactions contemplated hereby.

Section 3.2 Authorization; Enforcement. Seller has the requisite power and authority to conduct its business as it is now being conducted and to execute, deliver and carry out the terms of this Agreement and all documents and agreements necessary to give effect to the provisions of this Agreement, and to consummate the transactions contemplated hereby and thereby. All actions required to be taken by Seller to authorize the execution, delivery and performance of this Agreement, as well as all documents, agreements and instruments executed by Seller which are necessary to give effect thereto and all transactions contemplated hereby, have been duly and properly taken or obtained in accordance and compliance with Seller's Governing Documents and no other action on the part of Seller, or the Equity Constituents thereof, is necessary to authorize the execution, delivery and performance of this Agreement and all transactions contemplated hereby and thereby. This Agreement, and all other agreements to which Seller will become a party contemplated hereby, are and will constitute the valid and legally binding obligations of Seller and are and will be enforceable against Seller in accordance with their respective terms, except as enforceability may be restricted, limited or delayed by applicable bankruptcy, insolvency or other similar Laws affecting creditors' rights generally and except as enforceability may be subject to and limited by general principles of equity (regardless of whether considered in a proceeding in equity or at law).

Section 3.3 Absence of Conflicts. The execution, delivery and performance of this Agreement by Seller, the execution, delivery and performance by Seller of any and all other documents contemplated by this Agreement, and the consummation of the transactions contemplated hereby and thereby will not, with or without the giving of notice and/or the passage of time, (a) violate or conflict with any provision of the Governing Documents of Seller, (b) violate or conflict with any judgment, order, writ or decree of any court applicable to Seller, (c) materially violate or cause a material default (with notice or passage of time) under any material agreement to which Seller is a party, or (d) require the consent of any Person which shall not have been obtained as of the Closing Date.

Section 3.4 Litigation.¹ To Seller's Knowledge, there is no suit, action, proceeding, inquiry or investigation against or involving Seller or the Real Property, pending or threatened that would prevent or materially delay consummation of the transactions contemplated hereby or that would materially and adversely affect the Real Property, taken as a whole.

Section 3.5 Brokers. Other than Seller's Broker, no Person is or will be entitled to any brokerage, finder's or other fee, commission or payment in connection with or as a result of the transactions contemplated by this Agreement based upon arrangements made by or on behalf of Seller. Seller agrees to indemnify and hold Buyer harmless from and against any claims or demands for such commissions by any such Person contracted for in writing with Seller, other than claims or demands for such commissions by Seller's Broker which are the responsibility of Buyer pursuant to Section 9.4(b)(viii).

Section 3.6 Patriot Act Compliance. To the extent applicable to Seller, Seller has complied in all material respects with the International Money Laundering Abatement and Anti-Terrorist Financing Act of 2001, which comprises Title III of the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001 (the "Patriot Act") and the regulations promulgated thereunder, and the rules and regulations administered by the U.S. Treasury Department's Office of Foreign Assets Control ("OFAC"), to the extent the same are applicable to Seller. Seller is not included on the List of Specially Designated Nationals and Blocked Persons maintained by the OFAC, or is not a resident in, or organized or chartered under the laws of, (a) a jurisdiction that has been designated by the U.S. Secretary of the Treasury under Section 311 or 312 of the Patriot Act as warranting special measures due to money laundering concerns or (b) any foreign country that has been designated as non-cooperative with international anti-money laundering principles or procedures by an intergovernmental group or organization, such as the Financial Action Task Force on Money Laundering, of which the United States is a member and with which designation the United States representative to the group or organization continues to concur.

Section 3.7 Existing Leases. The ground floor and the first floor of the building located at 2121 Eoff Street situated on the Land is currently being leased to Northwood Health Systems pursuant to the terms of that certain Ohio Valley Medical Center/Northwood Health Systems Settlement Agreement, dated February 8, 2006 (as modified, amended, or restated from time to time, the "Northwood Lease"). To Seller's Knowledge, other than the party or parties in possession of such portion of the Real Property as permitted by the Northwood Lease, there are no parties in possession of any portion of the Real Property.

Section 3.8 Limitation and Disclaimers. EXCEPT FOR THE REPRESENTATIONS AND WARRANTIES EXPRESSLY PROVIDED IN THIS AGREEMENT, SELLER HAS NOT MADE, DOES NOT MAKE AND SPECIFICALLY DISCLAIMS ANY REPRESENTATIONS, WARRANTIES, PROMISES, COVENANTS, AGREEMENTS OR GUARANTIES OF ANY KIND OR CHARACTER WHATSOEVER, WHETHER EXPRESS OR IMPLIED, ORAL OR WRITTEN, PAST, PRESENT OR FUTURE, OF, AS TO,

¹ Note: An MPT property tax appeal is pending with respect to the Real Property. We understand the City will want to continue with the appeal; please confirm.

CONCERNING OR WITH RESPECT TO THE ASSETS, INCLUDING WITHOUT LIMITATION, (A) THE NATURE, QUALITY OR CONDITION OF THE REAL PROPERTY, INCLUDING THE WATER, SOIL AND GEOLOGY, (B) THE INCOME TO BE DERIVED FROM THE REAL PROPERTY OR THE FINANCEABILITY OF THE REAL PROPERTY, (C) THE SUITABILITY OF THE REAL PROPERTY AND BUILDINGS THEREON FOR ANY AND ALL ACTIVITIES AND USES WHICH BUYER MAY CONDUCT THEREON, (D) ANY PROPOSED OR THREATENED CONDEMNATION OF ALL OR ANY PORTION OF THE REAL PROPERTY, (E) THE COMPLIANCE OF OR BY THE REAL PROPERTY OR ITS OPERATION WITH ANY LAWS, RULES, ORDINANCES, DESIGNATIONS OR REGULATIONS OF ANY APPLICABLE GOVERNMENTAL BODY OR PERSON, (F) THE PAST, CURRENT OR FUTURE REAL ESTATE TAX LIABILITY, ASSESSMENT OR VALUATION OF THE REAL PROPERTY, (G) THE AVAILABILITY OR NON-AVAILABILITY OR WITHDRAWAL OR REVOCATION OF ANY BENEFITS OR INCENTIVES CONFERRED BY ANY FEDERAL, STATE OR MUNICIPAL AUTHORITIES, (H) THE PHYSICAL CONDITION OF THE LAND AND IMPROVEMENTS INCLUDING THE STATE OF MAINTENANCE AND REPAIR THEREOF, OR (I) ANY OTHER MATTER RESPECTING SELLER, ITS AFFILIATES, THE REAL PROPERTY, AND ANY OTHER ASSETS. BUYER FURTHER ACKNOWLEDGES AND AGREES THAT, EXCEPT TO THE EXTENT PROVIDED IN THIS AGREEMENT, BUYER IS RELYING SOLELY ON ITS OWN INVESTIGATIONS OF THE ASSETS AND NOT ON ANY INFORMATION PROVIDED OR TO BE PROVIDED BY SELLER. BUYER FURTHER ACKNOWLEDGES AND AGREES THAT, EXCEPT AS EXPRESSLY PROVIDED IN THIS AGREEMENT, AND AS A MATERIAL INDUCEMENT TO SELLER'S EXECUTION AND DELIVERY OF THIS AGREEMENT, THE SALE AND CONVEYANCE OF THE ASSETS TO BUYER (AND THE ACCEPTANCE THEREOF BY BUYER) AS PROVIDED FOR HEREIN IS ON AN "AS IS, WHERE IS" CONDITION AND BASIS WITH ALL FAULTS, AND WITHOUT ANY WRITTEN OR ORAL REPRESENTATIONS OR WARRANTIES WHATSOEVER (INCLUDING THE IMPLIED WARRANTY OF MERCHANTABILITY), WHETHER EXPRESS OR IMPLIED OR ARISING BY OPERATION OF LAW. BUYER ACKNOWLEDGES, REPRESENTS AND WARRANTS THAT BUYER IS NOT IN A SIGNIFICANTLY DISPARATE BARGAINING POSITION WITH RESPECT TO SELLER IN CONNECTION WITH THE TRANSACTIONS CONTEMPLATED BY THIS AGREEMENT; THAT BUYER FREELY AND FAIRLY AGREED TO THIS WAIVER AS PART OF THE NEGOTIATIONS FOR THE TRANSACTIONS CONTEMPLATED BY THIS AGREEMENT; AND THAT BUYER IS REPRESENTED BY LEGAL COUNSEL IN CONNECTION WITH SUCH TRANSACTIONS AND BUYER HAS CONFERRED WITH SUCH LEGAL COUNSEL CONCERNING THIS WAIVER. THE TERMS AND PROVISIONS OF THIS SECTION 3.8 SHALL SURVIVE THE CLOSING AND/OR TERMINATION OF THIS AGREEMENT.

ARTICLE IV REPRESENTATIONS AND WARRANTIES OF BUYER

With the understanding that Seller shall rely hereon, and as a material inducement to Seller to enter into this Agreement, Buyer hereby represents, warrants and covenants to Seller as of the date hereof as follows:

Section 4.1 Organization. Buyer is a municipal corporation as indicated in the preamble of this Agreement, and is duly formed, validly existing and in good standing under the laws of the State of West Virginia. Buyer is qualified to do business and in good standing in every jurisdiction in which its ownership of property or the conduct of business as now conducted requires it to qualify, except where the failure to be so qualified would not prevent or materially delay consummation of the transactions contemplated hereby.

Section 4.2 Authorization; Enforcement. Buyer has the requisite power and authority to conduct its business as it is now being conducted and to be conducted and to execute, deliver and carry out the terms of this Agreement and all documents and agreements necessary to give effect to the provisions of this Agreement, and to consummate the transactions contemplated hereby and thereby. Except as set forth in Section 6.4, all actions required to be taken by Buyer to authorize the execution, delivery and performance of this Agreement, as well as all documents, agreements and instruments executed by Buyer which are necessary to give effect thereto and all transactions contemplated hereby, have been duly and properly taken or obtained in accordance and compliance with Buyer's Governing Documents and no other action on the part of Buyer, or any other Person, is necessary to authorize the execution, delivery and performance of this Agreement and all transactions contemplated hereby and thereby. This Agreement, and all other agreements to which Buyer will become a party contemplated hereby, are and will constitute the valid and legally binding obligations of Buyer and are and will be enforceable against Buyer in accordance with their respective terms, except as enforceability may be restricted, limited or delayed by applicable bankruptcy, insolvency or other similar Laws affecting creditors' rights generally and except as enforceability may be subject to and limited by general principles of equity (regardless of whether considered in a proceeding in equity or at law).

Section 4.3 Absence of Conflicts. The execution, delivery and performance of this Agreement by Buyer, the execution, delivery and performance by Buyer of any and all other documents contemplated by this Agreement, and the consummation of the transactions contemplated hereby and thereby will not, with or without the giving of notice and/or the passage of time, (a) violate or conflict with any provision of the Governing Documents of Buyer, (b) violate or conflict with any judgment, order, writ or decree of any court applicable to Buyer, (c) materially violate or cause a material default (with notice or passage of time) under any material agreement to which Buyer is a party, or (d) require the consent of any Person which shall not have been obtained as of the Closing Date.

Section 4.4 Litigation. There is no suit, action, proceeding, inquiry or investigation against or involving Buyer or any of its properties or assets, pending or threatened that would prevent or materially delay consummation of the transactions contemplated hereby or that would materially and adversely affect Buyer.

Section 4.5 Brokers. No Person is or will be entitled to any brokerage, finder's or other fee, commission or payment in connection with or as a result of the transactions contemplated by this Agreement based upon arrangements made by or on behalf of Buyer. Buyer agrees to indemnify and hold Seller harmless from and against any claims or demands for such commissions by any such Person contracted for in writing with Buyer.

Section 4.6 Patriot Act Compliance. To the extent applicable to Buyer, Buyer has complied in all material respects with the International Money Laundering Abatement and Anti-Terrorist Financing Act of 2001, which comprises Title III of the Patriot Act and the regulations promulgated thereunder, and the rules and regulations administered by the OFAC, to the extent the same are applicable to Buyer. Buyer is not included on the List of Specially Designated Nationals and Blocked Persons maintained by the OFAC, or is not a resident in, or organized or chartered under the laws of, (i) a jurisdiction that has been designated by the U.S. Secretary of the Treasury under Section 311 or 312 of the Patriot Act as warranting special measures due to money laundering concerns or (ii) any foreign country that has been designated as non-cooperative with international anti-money laundering principles or procedures by an intergovernmental group or organization, such as the Financial Action Task Force on Money Laundering, of which the United States is a member and with which designation the United States representative to the group or organization continues to concur.

ARTICLE V PRE-CLOSING COVENANTS

From and after the execution and delivery of this Agreement to and including the Closing Date (unless a later date or time is specified), the applicable party shall observe the following covenants:

Section 5.1 Regulatory and other Authorizations, Notices and Consents. Each party hereto shall use commercially reasonable efforts to obtain all authorizations, consents, orders and approvals of all Governmental Bodies and third parties that may be or become necessary for its execution and delivery of, and the performance of its obligations pursuant to, this Agreement and each such party will cooperate fully with the other party hereto in promptly seeking to obtain all such authorizations, consents, orders and approvals.

Section 5.2 Mutual Covenants. The parties shall use their good faith commercially reasonable efforts to satisfy the conditions to the closing of the transactions contemplated hereby. Without limiting the generality of the foregoing, the respective parties shall execute and/or deliver, or cause to be executed and/or delivered, the documents contemplated to be executed and/or delivered by them or their Affiliates at Closing.

Section 5.3 No Transfer. Seller covenants and agrees that, during the period from the date hereof and continuing until the earlier of the termination of this Agreement or the Closing Date, unless Buyer shall otherwise agree in writing, Seller shall not (a) convey or encumber the Assets, or (b) enter into any binding agreement with any other Person that obligates Seller to convey or encumber the Assets.

Section 5.4 Default by Seller. If the sale and purchase of the Assets contemplated by this Agreement is not consummated because of Seller's default hereunder, for any reason other than a default by Buyer hereunder, then Buyer may either (a) terminate this Agreement, or (b) seek specific performance of Seller's obligations hereunder, in each case, as Buyer's sole and exclusive remedy.

Section 5.5 Default by Buyer. If the sale and purchase of the Assets contemplated by this Agreement is not consummated because of Buyer's default hereunder, for any reason other than a default by Seller hereunder, then Seller may terminate this Agreement and Buyer shall reimburse Seller for Seller's documented out-of-pocket costs and expenses (including attorneys' and other professional fees and costs) incurred by Seller in connection with this Agreement and the transactions contemplated herein as Seller's sole and exclusive remedy.

Section 5.6 Northwood Lease. On or prior to the Closing Date, Seller shall use commercially reasonable efforts to cause the Northwood Lease to be assigned to Buyer.

ARTICLE VI INSPECTION AND APPROVALS

Section 6.1 Investigations and Access. During the period commencing on the date hereof and expiring on April 30, 2020 (the "Inspection Period") and subject to the following terms and conditions of this Article VI, Buyer and its authorized representatives (including its designated engineers, architects, surveyors and/or consultants) shall be granted access to the Real Property, during normal business hours and upon prior notice and coordination with the Seller, for the sole purpose of inspecting the Real Property and conducting and preparing, at Buyer's sole cost and expense, such investigations and reports with respect to the Real Property as Buyer may reasonably require (collectively, the "Investigations"), including, if applicable, a title commitment (the "Title Commitment") for an owner's policy of title insurance for the Real Property from the Title Company (the "Title Policy"), a new survey of the Real Property (an "Updated Survey"), and property condition reports and environmental reports (collectively, the "Third Party Reports"). Buyer shall provide to Seller copies of any results of Investigations, Title Commitment, Updated Survey and Third Party Reports promptly upon receipt of same at no cost to Seller; *provided, however*, that all such reports and written results shall be and remain the property of Buyer. For the avoidance of doubt, Seller shall have no obligation to cure any matters or defects discovered in or disclosed by any Investigations, the Title Commitment, the Updated Survey, or the Third Party Reports. Subject to Section 6.2 below, Seller shall cooperate with Buyer and its authorized representatives in conducting such Investigations. If, within the Inspection Period, Buyer determines that any facts, conditions or risks with respect to the Real Property are unacceptable to Buyer, then Buyer shall have the right to terminate this Agreement by written notice to Seller prior to the expiration of the Inspection Period, and the parties shall have no further rights or obligations under this Agreement, except those which expressly survive such termination. If Buyer does not terminate this Agreement during the Inspection Period, then Buyer shall be deemed to have elected to proceed to Closing, subject to Section 6.4.

Section 6.2 Limitations. Notwithstanding anything to the contrary contained in Section 6.1, Buyer and its authorized representatives shall not conduct any invasive or destructive tests in connection with Investigations without Seller's prior written consent (not to be unreasonably withheld, conditioned, or delayed). Buyer shall exercise reasonable diligence not to disturb the use or occupancy of the tenant under the Northwood Lease. After performing any Investigation, Buyer shall promptly restore the Real Property to its condition immediately prior to any such Investigation. Buyer shall keep the Real Property free and clear of any Encumbrances (including, but not limited to, mechanics' liens or materialmen's liens) arising out of the performance of any Investigations or Buyer's entry onto or inspection of the Real Property.

Section 6.3 Indemnification. Buyer agrees to protect, indemnify, defend (with counsel reasonably satisfactory to Seller) and hold Seller and its employees, officers, directors, representatives, consultants, Affiliates, successors and assignees, free and harmless from and against any claim for liabilities, losses, costs, expenses (including reasonable attorneys' fees), damages or injuries arising out of, or resulting from the inspection of the Real Property by Buyer or its representatives or consultants. This Section 6.3 shall survive Closing or any termination of this Agreement.

Section 6.4 City Council Approval. During the period commencing on the date hereof and expiring on May 31, 2020 (the "Approval Period"), Buyer shall use commercially reasonable efforts to secure (at Buyer's sole cost and expense) approval of the City Council of the City of Wheeling, West Virginia to consummate the transactions contemplated by this Agreement (the "City Council Approval"). Buyer shall provide to Seller updates on the status of such City Council Approval upon request. Upon Buyer's request, Seller shall reasonably cooperate with Buyer and its authorized representatives in securing City Council Approval; *provided, that*, Seller shall not be required to incur any cost or expense in connection with such cooperation. If, within the Approval Period, Buyer is unable to obtain City Council Approval, or the City Council does not provide City Council Approval, then Buyer shall have the right to terminate this Agreement by written notice to Seller on or prior to the expiration of the Approval Period, and the parties shall have no further rights or obligations under this Agreement, except those which expressly survive such termination. If Buyer does not terminate this Agreement during the Approval Period, then Buyer shall be deemed to have elected to proceed to Closing.

ARTICLE VII DAMAGE, DESTRUCTION OR CONDEMNATION

In the event of condemnation or receipt of notice of condemnation or taking of any part of the Real Property by a Governmental Body prior to the Closing, or any material casualty loss to the Real Property prior to Closing, Buyer may terminate this Agreement by written notice to Seller, and the parties shall have no further rights or obligations under this Agreement, except those which expressly survive such termination.

ARTICLE VIII CLOSING CONDITIONS

Section 8.1 Conditions to the Obligations of Seller. The obligations of Seller to effect the transactions contemplated hereby shall be further subject to the fulfillment of the following conditions, any one or more of which may be waived by Seller:

(a) All of the representations and warranties of Buyer set forth in this Agreement shall be true and correct in all material respects when made and as of the Closing Date as if made on the Closing Date except where the failure to be so true or correct does not prevent or materially delay consummation of the transactions contemplated hereby.

(b) Buyer shall have delivered, performed, observed and complied in all material respects with all of the items, instruments, documents, covenants, agreements and conditions

required by this Agreement to be delivered, performed, observed and complied with by it prior to, or as of, the Closing Date.

(c) Buyer shall have executed or caused to be executed, where applicable, and delivered to Seller the documents referenced in Section 9.3 for the Closing.

(d) City Council Approval shall have been obtained within the Approval Period.

Section 8.2 Conditions to the Obligations of Buyer. The obligations of Buyer to effect the transactions contemplated hereby shall be further subject to the fulfillment of the following conditions, any one or more of which may be waived by Buyer:

(a) All of the representations and warranties of Seller set forth in this Agreement shall be true and correct in all material respects when made and as of the Closing Date as if made on the Closing Date except where the failure to be so true or correct does not prevent or materially delay consummation of the transactions contemplated hereby.

(b) Seller shall have delivered, performed, observed and complied in all material respects with all of the items, instruments, documents, covenants, agreements and conditions required by this Agreement to be delivered, performed, observed and complied with by it prior to, or as of, the Closing Date.

(c) Seller shall have executed or caused to be executed, where applicable, and delivered to Buyer the documents referenced in Section 9.2 for the Closing.

(d) City Council Approval shall have been obtained within the Approval Period.

ARTICLE IX CLOSING

Section 9.1 Closing. The closing of the transactions contemplated hereby (the “Closing”) shall occur as soon as reasonably practicable following the expiration (or Buyer’s written waiver of) the Approval Period, but in no event later June 30, 2020 (the “Closing Date”), through delivery of documents in escrow to the Title Company.

Section 9.2 Seller Closing Deliverables. On the Closing Date, Seller shall deliver (or cause to be delivered) to Buyer the following items listed below:

(a) A duly executed quitclaim deed conveying fee simple title to the Real Property to Buyer in its as-is, where-is condition, subject to any and all Encumbrances, tenancies (including under the Northwood Lease), and other matters as of the Closing Date, which quitclaim deed shall be in form and substance mutually satisfactory to the parties (the “Deed”);

(b) A duly executed bill of sale and assignment transferring all Assets (other than the Real Property) to Buyer, in their as-is, where-is condition, subject to any and all Encumbrances, in form and substance mutually satisfactory to the parties;

(c) A duly executed tax assumption agreement in recordable form (the “Tax Assumption Agreement”), pursuant to which Buyer shall assume liability for and hold Seller harmless from and against payment of all accrued and unpaid ad valorem taxes and assessments relating to the Assets for all periods prior to and including the Closing Date and thereafter, in form and substance satisfactory to Seller;

(d) A copy of the resolutions or consents of the governing body of Seller authorizing Seller’s execution, delivery and performance of this Agreement and all other documents to be executed by Seller in connection herewith;

(e) A certificate dated the Closing Date signed by Seller certifying that the conditions set forth in Sections 8.2(a) and (b) have been satisfied in all respects;

(f) A certificate of existence and good standing of Seller from the secretary of state of the State of Delaware, dated the most recent practical date prior to the Closing Date;

(g) A certificate of good standing and foreign qualification of Seller from the secretary of state of the State of West Virginia, dated the most recent practical date prior to the Closing Date;

(h) A closing statement in form and substance mutually satisfactory to the parties; and

(i) Such other certificates, tax filings, instruments and documents as Buyer or the Title Company reasonably deems necessary to effect the transactions contemplated hereby.

Section 9.3 Buyer Closing Deliverables. On the Closing Date, Buyer shall deliver (or cause to be delivered) to Seller the following items listed below:

(a) The Tax Assumption Agreement;

(b) A copy of the resolutions or consents of the governing body of Buyer authorizing Buyer’s execution, delivery and performance of this Agreement and all other documents to be executed by Buyer in connection herewith, including, to the extent not previously delivered to Seller, the City Council Approval and any other requisite approvals of Governmental Bodies respecting the transactions contemplated by this Agreement;

(c) A certificate dated the Closing Date signed by Buyer certifying that the conditions set forth in Sections 8.1(a), (b), and (d) have been satisfied in all respects;

(d) A certificate of existence and good standing of Buyer from the secretary of state of the State of West Virginia, dated the most recent practical date prior to the Closing Date;

(e) A closing statement in form mutually satisfactory to the parties; and

(f) Such other certificates, tax filings, instruments and documents as Seller or the Title Company reasonably deems necessary to effect the transactions contemplated hereby.

Section 9.4 Closing Expenses.

(a) Except as otherwise set forth in this Section 9.4, each of Seller, on the one hand, and Buyer, on the other hand, shall be responsible for their respective attorneys' and other professional fees and costs incurred by them in connection with this Agreement and the transactions contemplated herein. Notwithstanding the foregoing, Buyer shall be responsible for Seller's documented out-of-pocket costs and expenses (including attorneys' and other professional fees and costs) incurred by Seller in connection with this Agreement and the transactions contemplated herein in an amount not to exceed Thirty-Five Thousand and No/100 Dollars (\$35,000.00).

(b) Buyer shall pay all costs and expenses of or relating to (i) the Title Policy, including any excess Title Policy premiums, costs of any extended coverage, or special Title Policy endorsements (including survey matters), (ii) the Updated Survey, (iii) the Third Party Reports, (iv) Investigations, inspection, and testing costs, (v) all escrow fees, closing costs, and related charges from the Title Company, (vi) obtaining City Council Approval, (vii) any commission payable to any broker or finder engaged by Buyer, and (viii) any commission payable to Seller's Broker.

(c) There shall be no proration of ad valorem taxes and assessments at Closing. All ad valorem, real and personal property taxes and assessments, utility charges (including any taxes thereon) and other taxes and charges related to the Real Property and the other Assets for all periods prior to and including the Closing Date and thereafter shall be the sole and exclusive liability of Buyer.²

(d) Buyer shall also pay all of the costs and expenses of and relating to recording the Deed and any other instruments documenting conveyance of the Real Property, all recording and filing fees, all document stamps, transfer, excise, recording, sales, bulk sales, use and similar conveyance taxes and fees payable upon recordation of the Deed or otherwise imposed by reason of and associated with the transactions contemplated hereby, and all early termination penalties for any service contracts associated with the Real Property. All other costs and expenses in connection with the transaction contemplated by this Agreement not expressly provided for in this Agreement shall be the responsibility of Buyer.

(e) The provisions of this Section shall survive the Closing or earlier termination of this Agreement.

ARTICLE X PUBLIC DISCLOSURE

Prior to and after the Closing, any press release or other written release to the public of information with respect to the sale contemplated herein or any matters set forth in this Agreement will be made only in the form approved in writing by Seller; *provided, however*, that any release of information required to be made pursuant to applicable Law, including, without limitation, federal and state securities laws and the rules and regulations of the NYSE or

² Parties to discuss how to allocate costs of tax protest and prosecution of tax protest after closing.

NASDAQ, shall not require approval from the other party hereto; *further provided that*, for the avoidance of doubt, any press release or similar voluntary written communication to the general public shall require Seller's prior written consent. The provisions of this Article shall survive Closing or any termination of this Agreement.

**ARTICLE XI
DISPUTE RESOLUTION**

Section 11.1 Governing Law; Jurisdiction and Venue. THIS AGREEMENT SHALL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF WEST VIRGINIA APPLICABLE TO CONTRACTS EXECUTED AND PERFORMED IN SUCH STATE, WITHOUT GIVING EFFECT TO CONFLICTS OF LAWS PRINCIPLES. THE PARTIES HEREBY CONSENT TO PERSONAL JURISDICTION IN THE STATE OR FEDERAL COURTS LOCATED IN WEST VIRGINIA.

Section 11.2 Waiver of Jury Trial. TO THE MAXIMUM EXTENT PERMITTED BY LAW, THE PARTIES HEREBY KNOWINGLY, VOLUNTARILY AND INTENTIONALLY WAIVE THE RIGHT TO A TRIAL BY JURY IN RESPECT OF ANY LITIGATION BASED HEREON, ARISING OUT OF, UNDER OR IN CONNECTION WITH THIS AGREEMENT, OR ANY COURSE OF CONDUCT, COURSE OF DEALING, STATEMENT (WHETHER VERBAL OR WRITTEN) OR ACTION OF ANY PARTY OR ANY EXERCISE OF ANY PARTY OF THEIR RESPECTIVE RIGHTS HEREUNDER OR IN ANY WAY RELATING TO THIS AGREEMENT OR THE ASSETS (INCLUDING ANY CLAIM OR DEFENSE ASSERTING THAT THIS AGREEMENT WAS FRAUDULENTLY INDUCED OR IS OTHERWISE VOID OR VOIDABLE). THIS WAIVER IS A MATERIAL INDUCEMENT FOR SELLER TO ENTER INTO THIS AGREEMENT.

**ARTICLE XII
MISCELLANEOUS**

Section 12.1 Assignment. This Agreement is not assignable by any party without the prior written consent of the other party hereto and any assignment without proper consent shall be null and void.

Section 12.2 Notice. All notices, demands, consents, approvals, requests and other communications under this Agreement shall be in writing and shall be either (a) delivered in person, (b) sent by certified mail, return receipt requested, (c) delivered by a recognized delivery service, or (d) sent by facsimile transmission and addressed as follows:

If to Buyer: [_____]
[_____]
[_____]
Attn.: [_____]
Fax: [_____]

With a copy to: [_____]
[_____]

[_____]
Attn.: [_____]
Fax: [_____]

If to Seller: MPT of Wheeling-Alecto, LLC
c/o MPT Operating Partnership, L.P.
1000 Urban Center Drive, Suite 501
Birmingham, Alabama 35242
Attn: Legal Department
Fax: (205) 969-3756

With a copy to: Baker, Donelson, Bearman, Caldwell & Berkowitz, PC
420 20th Street North, Suite 1400
Birmingham, Alabama 35203
Attn: Thomas O. Kolb, Esq.
Fax: (205) 322-8007

or to such other address as any party may hereafter designate in writing, and shall be effective upon receipt. A notice, demand, consent, approval, request and other communication shall be deemed to be duly received if delivered in person or by a recognized delivery service, when left at the address of the recipient and if sent by facsimile, upon receipt by the sender of an acknowledgment or transmission report generated by the machine from which the facsimile was sent indicating that the facsimile was sent in its entirety to the recipient's facsimile number; provided that if a notice, demand, consent, approval, request or other communication is served by hand or is received by facsimile on a day which is not a Business Day, or after 5:00 p.m. (based upon Birmingham, Alabama time) on any Business Day, such notice or communication shall be deemed to be duly received by the recipient at 9:00 a.m. (based upon Birmingham, Alabama time) on the first Business Day thereafter.

Section 12.3 Captions. The section and paragraph headings or captions appearing in this Agreement are for convenience only, are not a part of this Agreement, and are not to be considered in interpreting this Agreement.

Section 12.4 Severability. In case any one or more of the provisions contained in this Agreement shall for any reason be held to be invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect any other provision hereof, and this Agreement shall be construed as if such invalid, illegal or unenforceable provision had never been contained herein.

Section 12.5 Joint Drafting. The parties hereto and their respective counsel have participated in the drafting and redrafting of this Agreement and the general rules of construction which would construe any provisions of this Agreement in favor of or to the advantage of one party as opposed to the other as a result of one party drafting this Agreement as opposed to the other or in resolving any conflict or ambiguity in favor of one party as opposed to the other on the basis of which party drafted this Agreement are hereby expressly waived by all parties to this Agreement.

Section 12.6 Counterparts. This Agreement may be executed in any number of counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument. Executed signature pages to this Agreement may be delivered by facsimile and electronic transmission and any such signature page shall be deemed an original.

Section 12.7 Binding Effect. This Agreement shall bind and inure to the benefit of the parties hereto and their successors and assigns; *provided, however,* that this Agreement shall not inure to the benefit of any assignee pursuant to an assignment which violates the terms of this Agreement.

Section 12.8 Time of the Essence. Time is of the essence of each and every provision of this Agreement.

Section 12.9 Entire Agreement; Modification. This Agreement supersedes any prior oral or written agreements between the parties with respect to the subject matter of this Agreement. No prior oral or written agreement or understanding, and no contemporaneous oral representations between the parties with respect to the subject matter of this Agreement shall be of any force and effect, and the parties have not relied upon, and shall not be entitled to rely upon, any such prior or contemporaneous agreements, understandings, representations or statements (oral or written) other than this Agreement in effecting the transactions contemplated herein or otherwise. It is further expressly agreed that there are no verbal understandings or agreements which in any way change the terms, covenants, and conditions set forth in this Agreement, and that no modification of this Agreement and no waiver of any of its terms and conditions shall be effective unless it is made in writing and duly executed by the parties.

[Signatures are on the following pages]

IN WITNESS WHEREOF, the parties hereto, intending to be legally bound hereby, have caused this Agreement to be executed by their duly authorized officers on the date first written above.

SELLER:

MPT OF WHEELING-ALECTO, LLC

By: MPT Operating Partnership, L.P.
Its: Sole Member

By: _____
Name: _____
Its: _____

DRAFT

BUYER:

THE CITY OF WHEELING

By: _____
Name: _____
Its: _____

DRAFT

EXHIBIT A

[Legal description of the Real Property to be determined]

DRAFT