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Land Court
Docket Number: 24 MISC 000512

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, ss

LAND COURT
CIVIL ACTION
NO. 24 MISC 00512 (KTS)

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SAINT ELIZABETH LLC,

Plaintiff,

-against-

COMMONWEALTH OF MASSACHUSETTS, MAURA HEALEY, GOVERNOR, and KATHLEEN WALSH, SECRETARY OF HEALTH AND HUMAN SERVICES,

Defendants.

AMENDED COMPLAINT

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Plaintiff SAINT ELIZABETH LLC, through the undersigned counsel, brings this Amended Complaint against the Commonwealth of Massachusetts (the "**Commonwealth**"), Maura Healey (the "**Governor**"), the Governor of the Commonwealth, and Kathleen Walsh (the "**Secretary**"), the Commonwealth's Secretary of Health and Human Services, and alleges as follows:

SUMMARY OF ACTION

1. For centuries, the Massachusetts Constitution has protected the rights of landowners to be free from the taking of their property unless some urgent need required taking the property to use it for a public purpose. And even then, a legislative body has had to approve the taking, so that an executive branch official, such as the Governor, could not take property unilaterally. And once approved by the people's legislative representatives, the government has had to pay fair market

value, as determined by the highest and best use for the property in an open market and accounting for potential zoning changes.

2. Article 10 of the Declaration of Rights protects these rights through its protection of the rights to enjoy life, liberty, and property. It requires that a taking be approved by the landowner's "constitutional representative body" when the landowner does not consent. It also requires paying "reasonable compensation" when "public exigencies require that the property of any individual should be appropriated to public uses." Even where the government states a valid public purpose for a taking, the taking is nevertheless invalid if undertaken for an improper purpose if, for example, the taking was made primarily to benefit a private party.

3. This fundamental constitutional right applies to all types of private property, including the relevant property here—a 14-acre parcel of prime real estate in Brighton on which St. Elizabeth's Medical Center ("**St. Elizabeth's**" or the "**Hospital**") sits and where it provides healthcare services to the community.

4. Because the land (the "**Hospital Property**") is used for a private operator to operate a hospital, another and less well-known constitutional right comes to the fore. Section 2 of Article 18 of the Constitution, as adopted in 1917 (the "**Anti-Aid Amendment**"), prohibits any "grant, appropriation or use of public money or property" when it is "for the purpose of … maintaining or aiding any" private hospital or private school. Section 3 of the same Article provides a limited exception that does not apply to real property: it permits providing "reasonable

compensation" to directly compensate for the care and support that hospitals or similar institutions provide.

5. Taken together, these constitutional provisions limit the government's right to take real property and prohibit it from doing so for the purpose of maintaining or aiding a private hospital. Yet, that is exactly what the Commonwealth has done. The Governor has purported to seize Plaintiff's property—without first obtaining legislative authority—and recorded an Order of Taking on September 27, 2024 for the expressly stated purpose "of maintaining a hospital," which hospital has remained under private control at all relevant times.

6. The Commonwealth's plan started months ago when it orchestrated the bid landscape and dialogue around St. Elizabeth's that made it inevitable that the Commonwealth would seize the Hospital Property. The Commonwealth executed on its plan and abused the power of eminent domain when the governor unilaterally took the land without express legislative authority, without a proper public purpose, and for a fraction of its value. Its purpose for doing so was to convey it to a private party at a likewise deeply discounted price to support a private hospital, violating both Article 10 and the Anti-Aid Amendment. Because the purported taking violated the Massachusetts constitution, it was invalid and has no effect.

7. Plaintiff is an affiliate of accounts or investment vehicles managed by an affiliate of Apollo Global Management, Inc. Plaintiff is the proper owner of the Hospital Property, notwithstanding the filing of the unconstitutional Order of

Taking that purported to seize the property. The property's tax assessed value is approximately ***$200 million***, and its annual property taxes exceed $5 million.

8. In the weeks before the Commonwealth recorded the Order of Taking, Defendants threatened to seize the property, both publicly and privately, unless Plaintiff accepted a mere $4.5 million for the Hospital Property so that Defendants could transfer the property to its hand-picked new operator.

9. Plaintiff refused to accept Defendants' offer to pay only a small fraction of the Hospital Property's fair market value. Plaintiff had and has no role in St. Elizabeth's operations, and it did not stand in the way of transferring hospital operations from its prior bankrupt operator—Steward Health Care System LLC ("**Steward**")—to a better one. To be clear, it was unnecessary to take the Hospital Property as a prerequisite for changing the hospital operator. Plaintiff has never tried to or wanted to close St. Elizabeth's. Rather, Plaintiff merely wanted to exercise its right, as the owner of the real property on which the Hospital sits, to negotiate a reasonable lease or sale of the property to the new operator.

10. The Commonwealth intentionally interfered in the negotiations over Plaintiff's real property. The Commonwealth effectively chose a private hospital, Boston Medical Center ("**BMC**"), as the winning bidder for the hospital's operations. Defendants also anointed BMC as the successful bidder for Good Samaritan (a more successful hospital than St. Elizabeth's) in what appears to have been a package deal blessed by the Governor and the Secretary. At least one potential qualified bidder for another former Steward-run hospital knew of the Commonwealth's plan

and avoided bidding. It was also clear that BMC wanted Good Samaritan and St. Elizabeth's as a package deal.

11. Not only did Defendants steer St. Elizabeth's to BMC, but they are now about to give BMC a sweetheart deal on the purchase of the Hospital Property. BMC's low-ball, $4.5 million bid to take over St. Elizabeth's appears to have been predicated on promises of substantial governmental assistance. Apollo offered—at the Commonwealth's requests—several structures of possible purchase agreements or leases to support hospital operations (including leases with several years of free rent) in the short-term that also allowed Apollo to capture the fair market value if the hospital was later closed. BMC, with the government acting as the real decision-maker behind the scenes, rejected each of Apollo's proposals. Because BMC was told by the Commonwealth that the Commonwealth would condemn the property and flip it to BMC cheaply, BMC had no reason to engage in arm's length negotiations for a lease or purchase of the Hospital Property.

12. Despite Plaintiff's requests, the Commonwealth and BMC have not disclosed to Plaintiff the terms of the intended transfer of the Hospital Property to BMC. But whatever price the Commonwealth sets up on paper for a transfer of the Hospital Property to BMC, on information and belief, it is likely to involve promises of governmental assistance. Additionally, on information and belief, BMC is currently operating on the Hospital Property at a below-market lease amount, if it is paying anything at all. Finally, on information and belief, the Commonwealth, not BMC, has assumed the liability for any additional amounts due to Plaintiff for

the taking. Directly or indirectly, the Commonwealth is funding BMC's acquisition of the hospital or providing improper aid to maintain the hospital while allowing it to use the Hospital Property for no rent or a below-market rent.

13. Defendants should not be allowed to let BMC receive the full fair market value after paying only a small fraction of it. The Hospital Property is in an extremely valuable location, close to Harvard, Boston University, and Boston College, and adjacent to new residential developments. The property is adaptable to a variety of purposes. Even as it exists, the Hospital Property contains two parking garages with substantial value that are not necessary to operate the hospital.

14. In short, the Commonwealth is about to give BMC a lucrative option contract when it completes its plan by transferring the property to BMC. If BMC cannot turn the hospital around and it is ultimately closed, BMC will have acquired ownership of land for just a small fraction of its true fair value.

15. When Plaintiff filed this action on September 4, 2024, the Governor had threatened to seize the Hospital Property but had not yet done so. Plaintiff moved for temporary and injunctive relief that would have stopped the taking from happening until the Court resolved Plaintiff's constitutional claims on their merits. Defendants repeatedly, and as recently as September 24, 2024, told this Court that it was only possible, and far from certain or imminent, that Defendants would seize the Hospital Property. For this reason, Defendants insisted that any lawsuit over its threat to seize the property was premature.

16. Yet just two days after the Commonwealth filed a brief on September 24th telling this Court that there was no ripe dispute over an imminent taking, the Governor signed the Order of Taking. And even though Plaintiff's original Complaint and injunction papers explained why the Governor was powerless to try to seize real property without an express delegation of power from the Legislature, the Governor purported to do exactly that.

17. In the Order of Taking, the Commonwealth expressly admitted that the taking was: "for the purpose of maintaining a hospital and related health care facilities at and on the [Hospital] Property for continuity of care to the public."

18. The Governor tried to raise a fig leaf of a supposed health care emergency in the Order of Taking to cover up a naked power grab. But there was no emergency that required taking the Hospital Property: hospitals around the country lease their real property. There was also no emergency because Plaintiff took no action that could have led to closing the hospital. Quite the opposite, since Plaintiff had offered BMC (and the Commonwealth, who was funding the deal) terms to lease or acquire the property that would have given BMC a chance to turn the hospital around.

19. At bottom, the Order of Taking lacked legislative authority and had an improper purpose because it was not necessary or even primarily motivated by a proper public purpose. Rather, it was designed to maintain an existing private hospital and to benefit a private entity, BMC, giving it a subsidy in the form of the

ability to own valuable real property for a paltry sum and in violation of the Anti-Aid Amendment of the Massachusetts Constitution.

20. As of the filing of this Amended Complaint, the Commonwealth's unconstitutional plan is only half-complete. It recorded the unconstitutional Order of Taking, but has not ***yet*** flipped the Hospital Property to BMC. Notwithstanding, Defendants have already violated the Massachusetts Constitution because they took the Hospital Property for the improper "purpose" of maintaining the private hospital and to benefit BMC. The taking is thus invalid under both the Anti-Aid Amendment and Article 10.

21. Plaintiff seeks permanent and preliminary injunctive relief to bar the transfer of the Hospital Property to BMC (or anyone else) as well as a declaratory judgment that declares the Order of Taking void and quiets Plaintiff's title as the fee simple owner of the Hospital Property. Without this relief, Plaintiff will suffer further irreparable harm.

PARTIES

Plaintiff and Related Entities

22. Plaintiff is a limited liability company organized in Delaware and qualified to do business in Massachusetts. On or about September 3, 2024, it became the owner of the Hospital Property. Affiliates of Plaintiff are Lenders ("**Lenders**") under a Loan Agreement dated as of March 14, 2022 (the "**Loan Agreement**"). Under the Loan Agreement, Lenders extended a mortgage loan to the former owners of the Hospital Property.

23. Plaintiff is owned by certain accounts or investment vehicles managed by affiliates of Apollo Global Management, Inc.

Defendants

24. The Commonwealth has acted in all relevant respects herein by and through its officers, including the Governor and the Secretary.

25. Maura Healey is the Governor of the Commonwealth.

26. Kathleen Walsh is the Commonwealth's Secretary of Health and Human Services. From 2010 until 2023, she was the president and chief executive officer of BMC.

Relevant Non-Parties

27. BMC is a private, not-for-profit hospital and academic medical center located in Boston. It is a partner of the Boston Medical Center Health System, which operates more than a dozen hospitals in the greater Boston area. A BMC affiliate, BMC Community Hospital Corporation, owns St. Elizabeth's Hospital.

28. MPT of Brighton-Steward, LLC (the "**Former Owner**") is a Massachusetts limited liability company. Until recently, it owned the Hospital Property. It was a lessor to St. Elizabeth's Medical Center of Boston, Inc. (controlled by Steward) under a Master Lease Agreement (Master Lease II) ("**Master Lease II**"), dated March 14, 2022 and any amendments thereto. On or about September 3, 2024, the Former Owner transferred ownership of the Hospital Property to Plaintiff. The Former Owner is a special purpose vehicle formed by Medical Properties Trust, Inc. ("**MPT**"), a real estate investment trust based in Birmingham, Alabama.

29. Steward Health Care System LLC and its affiliated debtors are debtors and debtors-in-possession in a bankruptcy pending in the United States District Court for the Southern District of Texas, Case No. 24-90213 (CML). It operated the Hospital through September 30, 2024, but BMC has now taken over operations.

JURISDICTION AND VENUE

30. Under Chapter 185, Section 1, this Court has original jurisdiction, as it invokes the Court's equity jurisdiction over matters relating to rights, title, and interests in land. Defendants previously objected to the Court's jurisdiction, but they withdrew that objection in a status update filed with the Court on September 27, 2024.

31. Under Massachusetts General Laws chapter 223, § 2, this Court has personal jurisdiction over the individual Defendants because they maintain their usual place of business in Massachusetts.

32. Under Massachusetts General Laws chapter 223, §1, this Court is a proper venue for this action, because one or more of Defendants maintain their usual place of business in Suffolk County, Massachusetts.

33. Venue is also appropriate because the Hospital Property is located in Suffolk County.

FACTUAL BACKGROUND

A. The management of St. Elizabeth's and its obligations as a lessee

34. Steward was formed in 2010 after it acquired six hospitals in Massachusetts. It later acquired two more local hospitals.

35. In 2016, Steward recapitalized its business. MPT acquired the real estate interests in Steward's eight hospitals in Massachusetts and took ownership of each hospital in a separate special-purpose vehicle.[1] A description of the real estate that is the Hospital Property is attached as Exhibit A.

36. MPT caused the various SPVs to lease the properties back to Steward under Master Lease II. In 2022, the fee interest in the real estate was transferred from MPT alone to a joint venture between MPT and Macquarie, an Australia-based banking and financial services company.

37. Affiliates of Plaintiff were not involved with Steward's Massachusetts properties until 2022, when it entered into the Loan Agreement. The Loan Agreement had an original principal amount of $919 million, and its mortgage was secured by the borrowers' properties and its interests in Master Lease II, among other collateral.

38. Because Plaintiff's affiliates' relationship to St. Elizabeth's was solely as the lenders to the parties who owned the real properties, the Lenders had no direct contractual relationship with Steward relating to the conduct of hospital operations. Nevertheless, Steward's failed management has damaged Apollo.

39. The Loan Agreement gave the Lenders substantial rights and protections in the case of a future condemnation of all or some of the hospitals. For

[1] These entities are: (i) MPT of Ayer-Steward, LLC; (ii) The Former Owner [MPT of Brighton-Steward, LLC]; (iii) MPT of Brockton-Steward, LLC; (iv) MPT of Dorchester-Steward, LLC; (iv) MPT of Fall River-Steward; (vi) MPT of Haverhill-Steward, LLC; (vii) MPT of Methuen-Steward, LLC; and (viii) MPT of Taunton-Steward, LLC.

example, the Lenders had the right to receive any condemnation award. Thus, even before Plaintiff became the owner of the Hospital Property, its affiliates had a substantial legal and equitable interest in the outcome of plans to transfer the operations of the hospitals that Steward operated as well as the real property on which those hospitals sit.

40. Since Plaintiff became the owner of the Hospital Property on September 3, 2024, it alone has all legal and equitable interests in the Hospital Property.

B. Steward's bankruptcy and the agreement on bidding procedures

41. On May 6, 2024, Steward filed a Chapter 11 bankruptcy petition in the United States District Court for the Southern District of Texas.

42. Shortly after Steward filed the petition, the debtors filed a motion asking the bankruptcy court to approve bidding procedures to sell their assets, such as their ability to operate Steward's hospitals. The sale process did not include the sale of any of the properties the hospitals sat on, including the Hospital Property. Rather, the sale process anticipated that bidders would have to negotiate with the property owners to assume the current leases, enter new leases, or buy the real property.

43. On June 2, 2024, the bankruptcy court entered an order that approved bidding procedures, including the rules for and timing of bids.

44. Any new operator would have to either negotiate a lease or the purchase of the real property, although the Commonwealth later rejected the

possibility of a lease altogether for the Hospital Property. But for purposes of placing bids, real estate issues were deferred until after a bid had been selected by the Debtor, with the Commonwealth exercising its influence behind the scenes. Apollo had no say in whether bids were deemed to be "qualified" or not, or which ones were successful.

C. Plaintiff joined the in-progress negotiations over the real estate in July 2024.

45. Through June 2024, the Lenders did not have up-to-date information about the bids for all the hospitals, including St. Elizabeth's.

46. Once the Lenders obtained access to this information in early July, they began negotiating with all stakeholders. They tried to consummate transactions that both reflected a compromise valuation for the real estate and provided for the continuation of operations at all the hospitals. These objectives included ensuring ongoing patient access and preserving jobs at the hospitals.

47. As of early August, the Lenders resolved certain outstanding business issues with MPT and its affiliates, including the Former Owner of the Hospital Property. This ensured that any possible dispute between the Lenders and the Former Owner would not interfere with the ongoing negotiations with bidders. In other words, bidders did not have to negotiate separately with MPT's affiliates, who then owned the real property for all the hospitals, and with Plaintiff's affiliates, which were then the mortgagees.

48. Apollo took a fair bargaining position. As of early August, it was prepared, for the sake of resolving a crisis and in the interest of compromise, to

accept a loss of hundreds of millions of dollars, collectively, on all its collateral for all the Steward hospitals. In support of its good-faith efforts, Apollo circulated proposed form of sale and purchase agreements to the leading bidders for the hospitals in early August.

D. Defendants' interference made the negotiations difficult and drawn out for the Hospital and the Hospital Property.

49. The negotiations over St. Elizabeth's were particularly fraught because its financial condition under Steward was weak.

50. The negotiations over St. Elizabeth's were also negatively impacted by the relationship between the Secretary and BMC. The Secretary had served as BMC's president and chief executive officer from 2010 to 2023. Plaintiff understands that the Secretary had helped select BMC as the winning bidder for St. Elizabeth's. Indeed, another well-respected and qualified hospital operator admitted that it did not bid on Good Samaritan (another Steward-run hospital that was recently transferred to BMC) because the government wanted that hospital to go to BMC, who also was taking on the difficult task of trying to turn around St. Elizabeth's.

51. A valuation based on the highest and best use of the Hospital Property—which is on 14 acres of prime real estate close to several prestigious universities—would show that the $4.5 million suggested by the Commonwealth is just a small fraction of the total fair market value. It is easy to envision transitioning the property in a similar fashion to how the adjacent Overlook at St. Gabriel's was converted from an abandoned church and monastery into much-

needed apartments. That kind of use would serve the public interest because it would help alleviate the housing crisis. Apollo understandably does not want to sell the Hospital Property for such an undervalued and unfair sum.

52. BMC was well aware of the Commonwealth's plans, as the parties to the negotiations recognized. Indeed, BMC's advisors remarked during negotiations that BMC was unlikely to increase its initial bid because it was prepared to let the Commonwealth take the Hospital Property through eminent domain and then flip it to BMC. Other lawyers involved in the negotiations also acknowledged that the threat of eminent domain put a chill on BMC's desire to change its offer in a meaningful way.

53. On or about July 20th, Steward announced that two of its Massachusetts hospitals would close, Nashoba Valley Medical Center and Carney Hospital. Understandably, there was enormous public concern about the effects of closing those hospitals on their communities, employees, and patients. The Governor has faced criticism following the revelation that these hospitals are closing.

54. Under this political climate, the Governor could ill afford allowing St. Elizabeth's to close, even if no one bid for it (which is what happened for Nashoba Valley and Carney). Even a low-ball bid—and the Commonwealth later disclosed that BMC's bid was close to $4.5 million, and premised on guarantees of additional support from the Commonwealth—would have to do, with the Governor and Secretary threatening to use eminent domain to ram the deal through.

55. Apollo tried to negotiate in a way that gave room for the possibility that relevant stakeholders, including the Commonwealth, could decide in a few years if it would not be prudent to continue to operate St. Elizabeth's. St. Elizabeth's is not designated as a safety net hospital, which is a designation that Apollo understands could complicate closing a hospital. Apollo reasonably wanted the ability to realize fair market value if the Hospital Property was rezoned and sold for a different and higher use. In response to the Commonwealth's direct requests, Apollo submitted various proposals, including one where there would be free rent for a period of years after the transaction closed. Another proposal let BMC pay for the property over a long period of time. Apollo suggested many creative approaches, and it never hindered helping BMC try to turn St. Elizabeth's around in a few years. The Commonwealth rejected all the proposals outright, without engaging in any back-and-forth to work within any of the frameworks the Commonwealth had requested.

56. The negotiations went nowhere. BMC told Apollo that it had no reason to improve its offer because the Commonwealth would seize the Hospital Property through eminent domain and hand it over to BMC. BMC is a respected hospital operator and is expected to manage St. Elizabeth's in a far more responsible manner than Steward. For this reason, with BMC as its new operator, St. Elizabeth's can afford to pay reasonable rental terms. Once Plaintiff's title is quieted, it is prepared to resume good-faith negotiations with BMC.

57. In light of the Commonwealth's power of the purse over hospital reimbursements, BMC had little choice but to take direction from the government. The most reasonable inference is that while Apollo was ostensibly negotiating with BMC, Defendants exercised their veto power over Apollo's proposals. In fact, most of the negotiations were conducted through the Commonwealth's counsel. And Defendants held and were prepared to wield the nuclear option of trying to take the Hospital Property through its power of eminent domain—which the Commonwealth eventually used rather than allowing a fair sale of the Hospital Property.

E. Defendants quash the negotiations by calling a press conference and promising to condemn the Hospital Property and turn it over to BMC.

58. Early-to-mid August 2024 was filled with practically round-the-clock negotiations as the various stakeholders made progress bridging their differences for all the hospitals except for St. Elizabeth's. Whenever the Commonwealth asked for a different type of proposal for the Hospital Property, Apollo responded promptly and demonstrated that it was flexible and committed to getting a fair deal done. Each time, the response was "no."

59. Nevertheless, through August 15th, Apollo had not given up and hoped that a deal in principle could soon be reached on St. Elizabeth's. But the Commonwealth decided to publicly bring the negotiations to a screeching halt by purporting to invoke its nuclear option of proceeding with condemnation of the Hospital Property.

60. On the afternoon of August 16th, the Governor and the Secretary convened a press conference at which they announced that the relevant parties had "reached agreements" for the transfer of operations of all the hospitals (other than the two that were the subject of the prior announcement that they would close, Carney and Nashoba Valley) except for St. Elizabeth's. On August 16th, the Governor announced that BMC will purchase Good Samaritan, Lifespan will purchase Morton and St. Anne's, and Lawrence General Hospital will purchase both campuses of Holy Family. The Governor referred to all the new operators as "high quality" operators. The implication of the Governor's remarks was that the Commonwealth expected the hospitals to perform much better under their new operators as compared to under Steward's management.

61. The Governor described her plans for St. Elizabeth's at the press conference in remarks that she delivered with the Secretary standing beside her.[2] The Governor reflected both her intent to take the Hospital Property and transfer it to BMC:

> **Excerpt from the Governor's opening remarks at 5:07-6:13**
>
> Which brings me to St. Elizabeth's. St. Elizabeth's also received a highly qualified bid from an excellent hospital operator. Unfortunately, after endless go-rounds, back and forth in negotiations, the landlord has refused to move. So, as governor, ***I am taking action today to seize control of St. Elizabeth's through an eminent domain proceeding***, that will facilitate the transition of St. Elizabeth's to a responsible new owner, namely Boston Medical Center. This will make sure that the hospital continues to stay open and operating in that community. And it means that with today's news and the work that

[2] https://www.youtube.com/watch?v=4dDEoCaXalA.

has been done, we have preserved and will keep open and operating, five of the seven Steward hospitals that went bankrupt.

Excerpt of Governor's response to question about use of eminent domain generally for Steward hospitals. Question at 10:13-22; Response excerpted below at 11:10-11:37.

I am taking control of St. Elizabeth's. We are taking back, remember the property is owned by Apollo and what is going to happen there is the state is going to take that property and we are going to work to transition the hospital to Boston Medical Center, which submitted in contrast to Carney and Nashoba, a bid to continue to operate that hospital.

Excerpt of Governor's response to mostly inaudible question at 12:15 asking whether Governor needs to "go through the legislature." Answer at 12:27-12:53

Well, I'll tell you how it works. ***Today we'll be sending what is called an offer letter to Apollo, the owner of the real estate, and our offer letter will be for $5 million, which is $4.5 million, which is the appropriate fair market value of that property*** and we will go forward from there with a further submission of an order essentially to take that property. [Inaudible audience remark] It's one of those things I can do.

62. On the same day as the August 16th press conference, the Governor also issued a press release about how she intended to proceed with the Steward hospitals. The Governor's August 16th press release tried to pin the blame for the difficult negotiations on Apollo (then as mortgagee) and MPT (then as the owner/landlord):

When it comes to finalizing a deal for Saint Elizabeth's, MPT, Macquarie and Apollo have repeatedly chosen to put their own interests above the health and wellbeing of the people of Massachusetts of the people of Massachusetts… Enough is enough. Our administration is going to seize control of Saint Elizabeth's through eminent domain so that we can facilitate a transition to a new owner and keep this hospital open.

63. At 4:45pm Eastern time the same day, the Secretary's General Counsel sent a letter to Apollo and the Former Owner (the "**August 16th Letter**"). It framed the already-announced commencement of eminent domain proceedings as an "offer"—a take-it-or-leave-it one that expired on August 20th. In relevant part, the August 16th Letter stated:

> Although the Governor is proceeding with the necessary pre-taking requirements, the Commonwealth hereby offers the sum of $4,500,000 to purchase the fee and any other necessary property interests in St. Elizabeth's Medical Center. This sum is based on the current third-party offer for St. Elizabeth's Medical Center.

64. The August 16th letter also stated that the Governor "is preparing to take by eminent domain all or a portion of St. Elizabeth's Medical Center." In her letter, the Governor claimed that she was basing her authority to take this action on "G.L. c. 79 § 2." In other words, the Governor claimed—incorrectly—to have the authority to condemn the property on her own accord, as opposed to having first obtained legislative approval.

65. Consistent with Defendants' decision to leave the bargaining table and try to publicly blame Apollo, Defendants promptly leaked the August 16th Letter to the press.

66. Defendants' "offer" of $4.5 million pales in comparison to the current assessed value for Hospital Property, which is approximately $200 million. Since the City of Boston determined that value, under a duty to assess real property at fair cash value, the Commonwealth cannot seriously contend that the property has a fair market value of anywhere close to $4.5 million.

67. For further context of how facially absurd Defendants' $4.5 million August 16th offer was, in 2024 alone, the annual property tax payments for the Hospital Property will be $5,141,772.40. It is not remotely plausible that one year's worth of tax payments for a property such as the real estate interest in St. Elizabeth's could exceed its proposed fair market value.

68. The Lenders, acting through their eminent domain counsel, responded to the government's letter on August 20th. The response noted that the Lenders had proposed, at the Commonwealth's requests, several different deal structures and terms, such as short-term leases, long-term leases, and purchase options to address uncertainty about St. Elizabeth's long-term viability as a hospital.

69. In their August 20th response, the Lenders rejected the $4.5 million "offer" because it significantly undervalued the real property interest. The Lenders also observed that any valuation for the purposes of eminent domain would be the property's "fair market value," which is determined by the highest and best use that an unaffiliated third-party would have for the party in an open market, arm's length transaction. For these reasons, Apollo stated that it planned to challenge the threatened taking.

70. Nevertheless, Apollo's letter concluded with an olive branch, by stating that it was prepared to continue a dialogue on the various deal structures that it had put on the bargaining table. Further discussions were possible because there was no imminent risk that St. Elizabeth's would close for financial reasons. If

anything, Defendants' interference in the negotiations made brinkmanship more likely, rather than by serving as a constructive party to the negotiations.

71. Defendants chose not to respond to the August 20th letter.

72. Contrary to the Governor's assurances that deals had been reached already for the other hospitals, the negotiations were ongoing and continued for more than another two weeks. The bankruptcy court several times adjourned a hearing scheduled to address the status, first on August 20th, again on August 22nd, once again on August 27th, until the court set the hearing for September 4th. This shows that the Governor's statements on August 16th were premature, as they were designed to cajole the stakeholders into finalizing the deals by inaccurately telling the public that deals had in fact been completed. It also shows that no emergency required threatening immediate condemnation of St. Elizabeth's because the negotiations were ongoing for weeks without that threat for the other Steward hospitals.

73. On August 30th, the Governor issued another press release. This time, she announced that deals had been reached (between BMC and affiliates of MPT, and not involving Apollo) to transfer the operations of St. Elizabeth's and Good Samaritan to BMC. The press release also doubled down on the Governor's prior promise that she was moving forward to condemn the Hospital Property:

> We've said from the start that our focus was on protecting access to care, jobs and the stability of our health care system – and getting Steward out of Massachusetts. With this third agreement signed, we are delivering on those promises. We'll continue to press ahead with our plans to take St. Elizabeth's by eminent domain to keep that hospital open.

F. Defendants seized the Hospital Property and recorded an order of taking after the parties fully briefed and argued a motion for injunctive relief and the Commonwealth argued such relief was not ripe because a taking was not sufficiently imminent.

74. On September 4, 2024, Plaintiff filed the original Complaint in this action. Plaintiff simultaneously moved for an ex parte temporary restraining order and a preliminary injunction. Plaintiffs served the initiating papers on Defendants, and the Court set a hearing for September 10, 2024.

75. Also on September 4, 2024, the bankruptcy court supervising the Steward bankruptcy held a hearing and approved the sale of the *operations* of St. Elizabeth's to BMC, as well as the sale of the operations and real estate for other hospitals Steward operated in the Commonwealth. The agreements that the bankruptcy court approved did not mention transferring the Hospital Property since there was no agreement to do so. At no point did anyone at the September 4th hearing suggest that there was a risk of St. Elizabeth's closing unless there was also an agreement to sell the Hospital Property.

76. Defendants filed opposition papers in this Court the day before the September 10th hearing. Defendants insisted that the dispute was not yet ripe because its plan to seize the Hospital Property was only tentative, as opposed to imminent and certain to happen. Defendants also contested the Land Court's jurisdiction over the matter unless and until it seized the Hospital Property. (Defendants withdrew that objection once they recorded the Order of Taking.)

77. Even after the hearing, Defendants persisted in claiming in supplemental submissions to the Court that a taking was merely possible, but not

certain, including in the supplemental brief they filed on September 24, 2024. Meanwhile, outside of Court, the Governor's representatives (not BMC) were promising to go through with the taking.

78. The Governor signed the Order of Taking on September 26, 2024, which was recorded on September 27, 2024. The Order of Taking confirms that the Governor did not obtain specific approval from the Legislature to take the Hospital Property, as required by the Massachusetts Constitution. Rather, the Order of Taking cited Section 2 of Chapter 79, but that section does not delegate the power to take property to the Governor. The Order of Taking also cited section 2A of Chapter 17 as a purported basis for the taking, but that provision also does not give the Governor power to take real property by eminent domain.

79. The Order of Taking states, without further explanation or rationale, that the Governor has "deemed that public necessity and interest require that the Commonwealth should take charge of and take by eminent domain" the fee interest in the Hospital Property. But there was no threatened barrier to the continued operations of St. Elizabeth's as a hospital run by BMC. Many hospitals across the country lease, rather than own, the real estate on which the hospitals sit. There was no public emergency—there was no imminent risk of the hospital closing absent Defendants taking the Hospital Property by eminent domain.

80. Moreover, the Order of Taking seized the entire Hospital Property, including two parking garages. One of the garages is more than 24,000 square feet and contains 260 spaces, and the other is more than 38,500 square feet with 425

spaces. These garages hold substantial value and are not needed to operate the Hospital. Moreover, it is not necessary for reasons of public health that the operator of the hospital own these parking garages.

81. The Governor issued a press release about the Order of Taking on September 27, 2024. The press release unnecessarily smeared Apollo as greedy, but it offered no details about why the Governor believed there had been a risk of St. Elizabeth's closing unless it took the property by eminent domain.

82. Shortly after the Governor issued the September 27, 2024 press release, Defendants sent Plaintiff a Notice of Taking. The Notice of Taking stated that Plaintiff would receive a pro tanto award of $21.9 million in connection with the taking of the Hospital Property. The Notice of Taking did not state how that amount had been determined, but given the Governor's public statements about transferring the Hospital Property to BMC and that she believed that $4.5 million was the fair market value, it is unlikely that Defendants would ask BMC to spend a substantial sum when Defendants transfer to Hospital Property to BMC. It is also likely that any amount that BMC is prepared to pay for the real property would use funds provided in some form from the Commonwealth.[3]

83. On October 1, 2024, BMC took over the operations of St. Elizabeth's. Through today, no deed was been recorded transferring the Hospital Property to

[3] The amount of the pro tanto award and how Defendants derived it is relevant and its admission at trial would not be protected by any settlement privilege. The amount of the award was not delivered or offered as a proposed settlement of Plaintiff's constitutional claims. Defendants had already leaked to the press their prior settlement demand, and the press has since reported the amount of the pro tanto award.

BMC. Thus, from the moment BMC purchased St. Elizabeth's and took over the operations, the Commonwealth has been contributing property it purports to own to BMC. On information and belief, BMC is being permitted to operate the hospital on the Hospital Property for no rent or below-market rent.

G. Plaintiff will suffer irreparable harm from any subsequent transfer or encumbrance of the Hospital Property.

84. Plaintiff would have no adequate remedy at law for damages it has suffered and would continue to suffer from any further disposition of the invalidly-taken Hospital Property.

85. First, real property is unique, so money damages are inherently insufficient to remedy the loss of Plaintiff's rights in the Hospital Property. A further transfer of the Hospital Property to BMC would cause additional harm that could not be remedied by money damages.

86. Second, Plaintiff has suffered the loss of constitutional rights, and faces the imminent risk of the additional damages from the loss of constitutionally protected rights for which there is no adequate remedy at law. For this reason, the ultimate relief Plaintiff seeks via a declaration that the purported taking was invalid would establish that Plaintiff remains owner of the property, as opposed to an award to Plaintiff of money damages.

87. Third, Plaintiff's damages as the property owner could not be fully recovered under Chapter 79. For example, since damages under Chapter 79 are based on the value of the property before the recordation of a valid taking order, it is unclear how Plaintiff could adequately recover losses associated with the

invalidation of the Order of Taking. Chapter 79 does not expressly provide for damages in tort for an invalid taking, such as one that is not for a public purpose. Thus, those damages too will be difficult, if not impossible, to ascertain.

88. Fourth, if the Commonwealth were to transfer the property to BMC, it would require BMC to be added as an additional party to this action, thereby complicating the process of returning the Hospital Property to its rightful owner.

CLAIMS FOR RELIEF

COUNT ONE

DECLARATORY JUDGMENT FOR INVALID TAKING UNDER ARTICLE X OF THE DECLARATION OF RIGHTS IN THE MASSACHUSETTS CONSTITUTION (LACK OF LEGISLATIVE AUTHORIZATION)

89. Plaintiff incorporates by reference the allegations set forth above.

90. The Order of Taking and the taking of the Hospital Property are unconstitutional as a matter of procedure (in addition to the substantive violations of Article X alleged in Count Two).

91. Article X provides that "no part of the property of any individual can, with justice, be taken from him, or applied to public uses, without his own consent, or that of the representative body of the people."

92. To satisfy Article X, the legislature must expressly delegate the power of eminent domain. The Order of Taking purports to take Plaintiff's property without Plaintiff's consent and purports to justify the taking by Chapter 79 § 2. But Chapter 79 § 2 does not delegate unilateral authority to take property to the Governor without legislative approval. Rather, that provision identifies the officers authorized to exercise eminent domain power when the legislature has separately

authorized the use of eminent domain by the Commonwealth for a specified purpose without directing who can perform the taking. It does not grant the Governor blanket authority to use eminent domain for any purpose the Governor deems proper. Such a supposed blanket delegation, if it existed, would violate Article X.

93. The Legislature has not authorized the Governor (or the Governor with the consent of the Governor's Council, which used to be a procedural prerequisite for the exercise of power otherwise delegated to the Governor to use eminent domain) to take property under any facts and circumstances relevant here. Thus, there is no express delegation to the Governor to use eminent domain in response to public health emergencies or otherwise.

94. The reference in the Order of Taking to a claim of "implied" power and authority is a further acknowledgement that there has been no relevant express legislative delegation of authority.

95. A taking without legislative authority is invalid. Thus, the Order of Taking should be declared invalid and thus null and void.

96. There is an actual controversy concerning whether the Order of Taking is valid and whether it improperly interferes with Plaintiff's right, title or interest in the Hospital Property.

97. Plaintiff respectfully requests that the Court declare the rights, duties, and obligations of the parties with respect to the subject property. Plaintiff seeks declaratory relief alternatively under Chapter 231a or the common law.

98. The Court should also enter a permanent and preliminary injunction barring Defendants from taking further actions contrary to the declaration of rights and obligations sought herein.

COUNT TWO

DECLARATORY JUDGMENT FOR INVALID TAKING UNDER ARTICLE X OF THE DECLARATION OF RIGHTS IN THE MASSACHUSETTS CONSTITUTION (LACK OF PROPER PURPOSE)

99. Plaintiff incorporates by reference the allegations set forth above.

100. The Order of Taking and the taking of the Hospital Property are also unconstitutional because they violate the Massachusetts Constitution substantively.

101. There are two related substantive violations. First, the Order of Taking is invalid because the taking was not for a proper public purpose. Rather, it was intended to help a private entity, and not to prevent an imminent threat to public health. Second, the Order of Taking was not for a proper public purpose because Defendants' actions, motivations, and future plans violate the Anti-Aid Amendment.

Defendants had an improper purpose to assist BMC and not to prevent an imminent threat to public health.

102. Article X restricts the government from taking private property except for a "public purpose." Thus, separately and before any issue can arise about what is a "reasonable compensation," the property can be taken only if the government—here Defendants—can establish that the taking was made for a proper public purpose.

103. Thus, even if a taking by eminent domain properly proceeds under an express delegation of power from the Legislature, it nevertheless is invalid if the taking was made for an improper purpose or in bad faith. When the predominant reason was to benefit private interests or for other improper reasons, as was the case here, the taking is invalid.

104. Defendants' actions in taking the Hospital Property by eminent domain were solely or predominantly intended to aid a private party (BMC), which is not a public purpose. The taking was not necessary to transfer operations of the hospital to a new operator. Rather, Defendants took the Hospital Property to benefit a private hospital operator, BMC.

105. Further, even the Commonwealth's stated purpose—to maintain a hospital—is improper, where, as here, the hospital is owned and controlled by private parties and has been operated historically as a hospital.

106. Defendants' statements leading up to the taking demonstrate that their intent was not to protect an imminent threat to public health. As summarized above, the Governor's August 16th press release announced that deals in principle had been reached for the other Steward hospitals in Massachusetts—deals that were negotiated with MPT, Macquarie, and Apollo. Thus, Defendants implicitly conceded these same counterparties were negotiating in good faith and took seriously the health and safety issues underlying the transition of Saint Anne's Hospital, Good Samaritan Medical Center, the Holy Family Hospitals, and Morton Hospital.

107. The Commonwealth's purpose was also not stopping an imminent threat to public health because the Commonwealth had long acquiesced to the fact that historically, some hospitals in the Commonwealth leased the real property on which they sat. Hospitals leasing property are no emergency: many hospitals outside the Commonwealth do so today. In fact, similar structures have been proposed for non-Massachusetts hospitals being sold in the Steward bankruptcy proceedings. True public health emergencies are unexpected or arise from particular events—but a financial arrangement or the existence of absence of a sale of real property does not constitute a public health emergency.

108. An improper purpose is also established by Defendants' admission in their August 16th press release that they planned to immediately flip the Hospital Property to BMC: "Boston Medical Center would take over Good Samaritan, as well as Saint Elizabeth's after the taking process is complete." The Governor's press release after the recording of the Order of Taking further confirms that intent.

109. The August 16th Letter further undermines the bona fides of Defendants' purpose. Defendants' sole attempt to justify their $4.5 million "offer" was to say it was *based on* BMC's offer. But BMC had made that offer with knowledge of Defendants' plan to exercise their power of eminent domain. Defendants' explanation amounts to circular reasoning and BMC's offer is a wholly unreliable basis for determining or even opining on the property's fair market value. In fact, the $21.9 million pro tanto award—which is itself a small fraction of the

Hospital Property's value—further that demonstrates that the public offer of $4.5 million was not made in good faith.

110. In addition, Defendants' choice to present the August 16th Letter as a take-it-or-leave-it offer—after weeks of refusing to engage with Apollo's various proposals—further reflects a lack of proper public purpose.

111. The Order of Taking's equivocal reference to Section 2A of Massachusetts General Laws Chapter 7 further demonstrates the improper intent for the taking. The lack of a formal declaration of an "emergency" (outside of the Order of Taking) renders the public health stated rationale a mere pretext for an improper purpose. The cursory statement that the failure to enter into a sale of real property "has created a public health emergency" is insufficient because the existence or nonexistence of real estate purchase agreements cannot create or solve actual public health emergencies. Moreover, the *Governor* may not justify the taking by Section 2A of Massachusetts General Laws Chapter 7 because that provision refers only to actions taken by the Commissioner of the Massachusetts Department of Public Health, not the Governor.

112. Lastly, the transition of hospital operations to BMC has proceeded smoothly without BMC owning the property, which shows that it was never necessary to transfer ownership of the Hospital Property to BMC. The transition to BMC as operator would have proceeded similarly if Plaintiff still owned the property and had been able to enter into a market lease with BMC.

Defendants had an improper purpose because they violated the Anti-Aid Amendment.

113. The Commonwealth's actions thus far—its statements and conduct leading up and then recording the Order of Taking, allowing BMC to use the property for what Plaintiff understands is no rent or a below-market rent—and its stated plan to flip the property to BMC for as little as $4.5 million violate the Anti-Aid Amendment. Defendants' past, ongoing, and likely future wrongful conduct thus renders the Order of Taking void as lacking a proper purpose. In addition, this constitutional violation should bar Defendants from transferring the Hospital Property. Even if the Commonwealth requires BMC to pay as much as the pro tanto award in a future transfer, Defendants' conduct would still violate the Anti-Aid Amendment.

114. Article XVIII of the Massachusetts Constitution bars the use of public funds or public property for private purposes, including "founding, maintaining, or aiding" a private hospital. The amendment has a limited carve-out for permissible aid, which does not apply to Defendants' past, current, and intended future conduct for St. Elizabeth's and the Hospital Property.

115. The plain language of the amendment is sweeping. Section 2 forbids any:

> grant, appropriation, or use of public money or property or loan of credit . . . by the Commonwealth or any political subdivision thereof for the purpose of founding, maintaining or aiding any . . . hospital . . . which is not publicly owned and under the exclusive control, order and supervision of public officers or public agents authorized by the Commonwealth or federal authority or both.

116. Section 3 contains a limited, and inapplicable carveout. It states that the amendment shall not be construed to bar "paying to privately controlled hospitals . . . not more than the ordinary and reasonable compensation for care or support actually rendered or furnished by such hospital . . . to such persons as may be in whole or in part unable to support or care for themselves." The Commonwealth's condemnation of St. Elizabeth's for a small fraction of its assessed value bears no relation to compensation for care or support.

117. The Commonwealth's conduct thus far, such as by allowing BMC to maintain the hospital without having to pay a market rent, and its intended plan to flip St. Elizabeth's to BMC could not qualify as permissible "compensation" under Section 3 of Article XVIII. Rather, it is a gift of the use and then ownership of real property at far below market value. Even if giving free/below-market rent to BMC and giving BMC the opportunity to profit on a future sale of the Hospital Property somehow was deemed "compensation" under the Anti-Aid Amendment, it would not be "ordinary and necessary" compensation. The type and extent of assistance provided is, upon information and belief, unprecedented.

118. Defendants have already violated the Anti-Aid Amendment and plan to violate it further in several respects.

119. First, Defendants have used public money for the purpose of maintaining St. Elizabeth's, which is unquestionably a private hospital. The Commonwealth obligated itself to pay Plaintiff just compensation for the Hospital Property, including its agreed *pro tanto* payment and any additional amounts

determined to be owed to Plaintiff as fair market value of the Hospital Property. The Order of Taking itself admits that these payments are for "for the purposes of ***maintaining*** [one type of conduct prohibited by the Anti-Aid Amendment] a hospital and related health care facilities at and on the Property."

120. By recording the Order of Taking and purporting to be the owner of the Hospital Property, the Commonwealth has allowed BMC to occupy the Hospital Property since October 1, 2024, either rent-free or not for a market rent. The Commonwealth is using "property" it took for the purpose of "aiding" or "maintaining" St. Elizabeth's.

121. Second, Defendants' public and private statements have made clear that the purpose of the taking of the Hospital Property is to aid or maintain BMC, a private hospital operator, by providing the property to it for a small fraction of its fair market value. The fact that BMC submitted only a paltry bid during the bankruptcy proceedings reflects its lack of interest in acquiring the Hospital Property for anything close to fair market value.

122. At the August 16th press conference, the Governor wrongly asserted that the Hospital Property's fair market value was $4.5 million, indicating that the Commonwealth intended to take the Hospital Property and resell it at that price.

123. In the August 16th press release, the Commonwealth expressly stated that BMC "would take over … Saint Elizabeth's after the taking process is complete." Accordingly, the Commonwealth decided in advance of the taking that it will be taking the Hospital Property to aid a specific private hospital operator.

Likewise, the press release issued on September 27th confirms the plan to have BMC take over. The Order of Taking further confirms the plan to turn the property over to BMC.

124. Further aggravating the violation of the Anti-Aid Amendment, Defendants have not announced any limiting features on their past, ongoing, or future aid to St. Elizabeth's. Defendants have also not publicly disclosed the terms of any interim or long-term operating agreement for St. Elizabeth's. Yet it is unlikely that the current arrangement bars BMC from being required to keep St. Elizabeth's operating as a hospital for a set period of time. It is also unlikely that the Commonwealth has required BMC to cover the amount of a judgment that the Commonwealth faces in a valuation dispute over the taking. Once the Commonwealth exposes the terms of its deal with BMC to public scrutiny, it will also likely reveal that BMC would be able to pocket whatever it could obtain from a future sale of the Hospital Property, such as if BMC stops operating it.

125. Defendants' past and present conduct, as well as its future plans for the Hospital Property, implicate the risks and concerns that led to the passage of the Anti-Aid Amendment. It is improper for the Commonwealth to interfere with the negotiations between private market participants and quell those negotiations with the threat of eminent domain and a proposal to pay compensation that is a small fraction of the property's assessed value. The Commonwealth is not permitted constitutionally to pick winners and losers for services such as hospitals and

schools, where both public and private entities participate in the market for these services.

126. In addition, Defendants' conduct was unfair when it threatened condemnation to influence bids and negotiations over the acquisition of hospitals whose operator went bankrupt. This effort was also conduct that violated the Anti-Aid Amendment because it was designed to uniquely benefit BMC. Defendants did not announce their veiled threat of condemnation until *after* BMC had placed its bid, as opposed to disclosing its plan earlier. BMC then had no rational economic incentive to increase or change its bid due to Defendants' threats.

127. BMC's failure to respond to the various alternative proposals suggested by Apollo demonstrates that the Government solely or mainly used its power to aid BMC rather than trying to promote public health.

128. Plaintiff respectfully requests that the Court declare that the recording of the Order of Taking of the Hospital Property is void because it was not for a proper public purpose for reasons that include, but are not limited to, the violation of the Anti-Aid Amendment. Plaintiff seeks declaratory relief alternatively under Chapter 231a or the common law.

129. The Court should also enter a preliminary and permanent injunction barring Defendants from taking further actions contrary to the declaration of rights and obligations sought herein.

COUNT THREE

TEMPORARY AND PERMANENT INJUNCTION

130. Plaintiff incorporates by reference the allegations set forth above.

131. Now that the Commonwealth has recorded the Order of Taking, its further plan to transfer it to BMC will cause irreparable harm to Plaintiff as the rightful owner of the Hospital Property and must be halted immediately.

132. In light of the lack of a valid proper purpose for the Order of Taking and the attendant violation of the Anti-Aid Amendment, Plaintiff has a high likelihood of success on the merits and will suffer irreparable harm from the denial of an injunction. Furthermore, enjoining the proposed acts would not adversely affect the public, particularly since Plaintiff did not oppose the transfer of the operation of St. Elizabeth's to BMC, and enforcing provisions of the Massachusetts Constitution serves the public purpose.

133. The Court should enter an Order preliminarily and permanently enjoining the Commonwealth from transferring or encumbering the Hospital Property.

COUNT FOUR

DECLARATORY RELIEF TO QUIET TITLE

134. Plaintiff incorporates by reference the allegations set forth above.

135. Plaintiff is the proper owner in fee simple of the Hospital Property.

136. The Commonwealth has no right, title or interest in the Hospital Property. Any putative transferee from the Commonwealth would also have no right, title or interest in the Hospital Property.

137. Defendant's Order of Taking is void because it violates the Massachusetts Constitution and for the reasons stated above.

138. There is an actual controversy over the right, title or interest in the Hospital Property.

139. The Court should enter an Order quieting Plaintiff's title to the Hospital Property. If necessary, the Commonwealth or any further transferee should be directed to convey the Hospital Property back to Plaintiff.

RELIEF REQUESTED

Wherefore, Plaintiff respectfully requests that the Court enter judgment and grant it the following relief against Defendants:

a. enter a preliminary and permanent injunction against Defendants and all its officers, agents, and those under its control:

   (i) enjoining any interference with Plaintiff's rights as the owner in fee simple of the Hospital Property, as defined in Exhibit A;

   (ii) enjoining any agreement among Defendants and BMC concerning a sale or a promise to sell or otherwise transfer the Hospital Property to BMC;

   (iii) requiring Defendants to cause the invalidation or removal of the Order of Taking or any other filing made in the registry concerning the condemnation of the Hospital Property;

b. Enter an Order declaring that: (i) the taking of the Hospital Property is void and of no effect, *ab initio*; (ii) that Plaintiff holds full and sole fee simple title in the Hospital Property; (iii) that the taking of the Hospital Property improperly conferred a benefit to a private party as its dominant purpose and (iv) that the Commonwealth has no right, title or interest in the Hospital Property;

c. Enter an Order declaring that the taking of the Hospital Property is void *ab initio* and of no effect because its dominant purpose was to maintain a private hospital and transfer the Hospital Property to aid a private hospital operator in violation of Article XVIII of the Constitution of the Commonwealth of Massachusetts;

d. Enter an Order quieting Plaintiff's title to the Hospital Property, and if necessary, to reconvey the Hospital Property to Plaintiff;

e. Grant Plaintiff any and all other relief that the Court deems just and proper.

Dated: October 21, 2024

Respectfully submitted,

Plaintiff Saint Elizabeth LLC

By its attorneys,

BROWN COUNSEL, LLC

By: */s/ Philip Y. Brown*

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Exhibit A
(LEGAL DESCRIPTION)

PARCEL I (253 Washington Street), Book 10091, Page 239; Confirmatory Book 15050, Page 314
A certain parcel of land with all buildings, facilities, and improvements now and hereafter thereon, situate in Boston (Brighton District) Suffolk County, Massachusetts, the same being shown as "Parcel 1" on a plan entitled "Subdivision Plan of Land in Boston, Mass. Brighton District – Suffolk County", scale 1 inch = 40 feet, dated August 20, 1982, drawn by Miller & Nylander Co., recorded in the Suffolk County Registry of Deeds at the end of Book 10075, bounded and described as follows: WESTERLY by Washington Street, 273.88 feet; NORTHWESTERLY by Parcel 2 shown on said plan, 100.00 feet; WESTERLY by Parcel 2 shown on said plan, 53.66 feet; NORTHWESTERLY by Parcel 2 shown on said plan, 90.00 feet; NORTHERLY by Parcel 2 shown on said plan, 16.94 feet; NORTHWESTERLY by Parcel 2 shown on said plan, 64.40 feet; NORTHEASTERLY by Parcel 2 shown on said plan, 101.19 feet; NORTHWESTERLY by Parcel 2 shown on said plan, 84.22 feet; NORTHEASTERLY by Parcel 2 shown on said plan, 58.20 feet; and SOUTHEASTERLY by land now or formerly of St. Elizabeth's Hospital Foundation, Inc., by two lines respectively measuring, 240.79 feet and 99.47 feet.
Containing 73,505 square feet of land, more or less, or 1.687 acres, more or less, according to said plan.
Parcel I is also shown as the "Parcel I" containing 73,505+/- square feet on plan at Book 16789, End (plan shows two Parcel Is).

PARCEL II (261 Washington Street), Book 3503, Page 545; Book 3552, Page 61; Book 3561, Page 165; Book 3561, Page 167; Book 4022, Page 521; Book 5596, Page 38; Book 6496, Page 90
The land on Washington Street in Boston (Brighton District) Commonwealth of Massachusetts and being shown as Parcel 2, containing 415,382+/- square feet, on Plan entitled "Mortgage Plan of Land, St. Elizabeth's Hospital North Complex Project, Brighton District Boston, Mass.," dated June 14, 1988 prepared by BSC Group and recorded at Book 14983, Page 1.
Specifically excepting therefrom Parcel 3 as shown on Plan at Book 14983, Page 1 and which parcel was conveyed to St. Elizabeth's Realty Corp. by Deed dated September 21, 1990 and recorded at Book 16521, Page 283.
Together with appurtenant rights and easements set forth in Deed to Saint Elizabeth's Realty Corp. dated September 27, 1990 and recorded at Book 16521, Page 283.
Parcel 2 is also shown as the "Parcel 2" containing 415,382+/- square feet on plan at Book 16789 End (plan shows two Parcel 2s).

[There is no PARCEL III]

PARCEL IV (Nevins Street)
That certain parcel of land at the end of Nevin Street in said Boston (Brighton), being shown as Parcel B on a plan entitled "Plan of Land in Boston (Suffolk County)," dated January 24, 2014, revised December 23, 2015, by Precision Land Surveying, Inc., recorded with the Suffolk Registry of Deeds at Plan 2015, Page 537 .

Together with the benefit of the non-exclusive drainage easement appurtenant to Parcel 2 above (the "Easement") running from Parcel 2 to Washington Street and shown as the "Proposed 20' Utility and Drainage Easement" on the plan at Book 16789 End, and bounded and described as follows: Beginning at the Southeast corner of the northwesterly line of Parcel 2 as shown on said Plan; thence S 39° 30' 44" W across said Parcel 1 one hundred seventy eight and 45/100 (178.45) feet to a point on the northerly side of Washington Street, said point lying on the arc of a curve concave northeasterly, from which said point a radial line bears N32° 15' 25" E; thence running Northerly along said sideline and said arc twenty and

14/100 (20.14) feet; thence running N 39° 30' 44" E across said Parcel 1 one hundred eighty and 84/100 (180.84) feet to the said northwesterly line of Parcel 2; thence running S50° 29' 16" E along said northwesterly line twenty and 00/100 (20.00) feet to the point of beginning.
Containing 3,560 square feet or 0.082 acres, more or less.

Together with the benefit of appurtenant rights and easement set forth in deed to St. Elizabeth's Hospital Foundation, Inc., Trustee dated October 14, 1982 and recorded at Book 10091, Page 239, as confirmed by Confirmatory Deed dated September 26, 1988 and recorded at Book 15050, Page 314.