

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, ss

LAND COURT
CIVIL ACTION NO.

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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.

COMPLAINT

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Plaintiff SAINT ELIZABETH LLC, through the undersigned counsel, brings this action 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 had to approve the taking, and the government 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.”

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 is now used as 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 used for “founding, 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 effectively gift it to a private, non-profit hospital operator. Yet, that is exactly what the Commonwealth plans to do and has threatened to do here. The Commonwealth has orchestrated the bid landscape and

dialogue around St. Elizabeth's to take the land and property where St. Elizabeth's operates (the "**Hospital Property**"). The Commonwealth intends to do so by eminent domain, not for a proper public purpose, but to convey it to a private party at a deeply discounted price to support a private hospital, violating both Article 10 and the Anti-Aid Amendment.

6. Plaintiff is an affiliate of accounts or investment vehicles managed by an affiliate of Apollo Global Management, Inc. Plaintiff owns the Hospital Property. The property's tax assessed value is approximately **\$200 million**, and its annual property taxes exceed \$5 million. The Commonwealth, however, has threatened to pay Plaintiff **only \$4.5 million** for the Hospital Property so that it can transfer the property to its hand-picked new operator.

7. Plaintiff has no role in St. Elizabeth's operations, and it is not standing in the way of transferring hospital operations from the current bankrupt operator—Steward Health Care System LLC ("**Steward**")—to a better one. To be clear, Plaintiff is **not** trying to close St. Elizabeth's. Plaintiff has the 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.

8. The Commonwealth is intentionally interfering in the negotiations over Plaintiff's real property. The Commonwealth has effectively chosen 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.

9. Not only did Defendants steer St. Elizabeth's to BMC, but they intend 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 decisionmaker behind the scenes, rejected each of Apollo's proposals. Because BMC was told by the Commonwealth that the Commonwealth is willing to condemn the property and flip it to BMC cheaply—likely for as little as \$4.5 million—BMC has no reason to engage in arm's length negotiations for a lease or purchase of the Hospital Property.

10. 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.

11. In short, the Commonwealth is giving BMC a lucrative option contract. If BMC cannot turn the hospital around and it is ultimately closed, BMC will take ownership of land for just a small fraction of its true fair value.

12. At bottom, the proposed taking is for an improper purpose because it is not necessary or even primarily motivated by a public purpose. Rather, it is designed to benefit a private entity, BMC, and give it a gift, a subsidy in the form of the ability to own valuable real property for a paltry sum. In addition, Defendant has threatened to plow forward with condemnation without first obtaining legislative approval, which is also unconstitutional.

13. Plaintiff seeks permanent and preliminary injunctive relief as well as a declaratory judgment to bar the Commonwealth and its officers (collectively, “**Defendants**”) from taking further actions towards completing the taking of the Hospital Property through eminent domain. Without this relief, Plaintiff will suffer irreparable harm.

PARTIES

Plaintiff and Related Entities

14. Plaintiff is a limited liability company organized in Delaware and qualified to do business in Massachusetts. On or about September 3rd, 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.

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

Defendants

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

17. Maura Healey is the Governor of the Commonwealth.

18. 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

19. 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.

20. MPT of Brighton-Steward, LLC (the "**Former Owner**") is a Massachusetts limited liability company. Until recently, it owned the Hospital Property. It is 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 3rd, the Former Owner transferred ownership of the Hospital Property to Plaintiff.

21. Medical Properties Trust, Inc. ("**MPT**") is a real estate investment trust based in Birmingham, Alabama.

22. 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). For now, it operates the Hospital.

JURISDICTION AND VENUE

23. 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.

24. 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.

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

26. 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

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

28. 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.

29. MPT caused the various SPVs to lease the properties back to Steward under the 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.

30. 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.

31. Because Plaintiff's affiliates' relationship to St. Elizabeth's was, until recently, 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. Plaintiff just recently became the owner of the Hospital Property. Nevertheless, Steward's failed management has damaged Apollo.

32. 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 example, the Lenders had the right to receive any condemnation award. Thus, even

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; (v) MPT of Fall River-Steward; (vi) MPT of Haverhill-Steward, LLC; (vii) MPT of Methuen-Steward, LLC; and (viii) MPT of Taunton-Steward, LLC.

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.

33. Now that Plaintiff recently became the owner of the Hospital Property, it alone has all legal and equitable interests in the Hospital Property.

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

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

35. 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, 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.

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

37. 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

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

39. 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.

40. 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.

41. 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

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

43. 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) 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.

44. 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.

45. 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.

46. 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 because these hospitals are closing.

47. 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.

48. 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. At the Commonwealth's request, 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.

49. 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. Plaintiff is prepared to resume good-faith negotiations, which may not happen until Defendants' improper threats to condemn the property are removed as an impediment.

50. In the meantime, Plaintiff is not obstructing transitioning hospital operations to BMC. Indeed, the transitioning of all Steward hospitals to new operators is about to begin once the bankruptcy court approves the transition arrangements and Steward is removed as the current operator. But the transition process will likely not be complete until at least the end of September, if not even later.

51. 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 had veto power over any proposal. 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.

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

52. Early-to-mid August 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, Apollo responded promptly and demonstrated that it was flexible and committed to getting a fair deal done. Each time, the response was "no."

53. 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.

54. 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.

55. 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.

56. As for St. Elizabeth's, the Governor announced that she was "taking action today to seize control of St. Elizabeth's [meaning the Hospital Property] through an eminent domain proceeding."

57. 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.

58. 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.

59. 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.

60. 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.

61. 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.

62. For further context of how facially absurd Defendants’ \$4.5 million offer is, 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.

63. 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.

64. 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 taking.

65. 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.

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

67. Contrary to the Governor's assurances that deals had been reached already for the other hospitals, the negotiations were ongoing and continued over the next more than 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.

68. 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. Plaintiff will suffer irreparable harm from any condemnation of the Hospital Property

69. Plaintiff would have no adequate remedy at law for damages it has suffered.

70. First, real property is unique, so money damages are inherently insufficient to remedy the loss of Plaintiff's rights in the Hospital Property if Defendants proceed with condemnation.

71. Second, Plaintiff has suffered the loss of constitutional rights for which there is no adequate remedy at law.

72. 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 a putative taking that is later invalidated. 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.

CLAIMS FOR RELIEF

COUNT ONE

DECLARATORY JUDGMENT FOR VOID PROPOSED TAKING UNDER ARTICLE X OF THE DECLARATION OF RIGHTS IN THE MASSACHUSETTS CONSTITUTION and CHAPTER 79 OF THE MASSACHUSETTS GENERAL LAWS

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

74. The proposed taking is unconstitutional under Article X of the Declaration of Rights for two reasons. The first is substantive, and the second is procedural.

75. The substantive violation is based on the plain language of Article X, which provides that "[e]ach individual of the society has a right to be protected by it

in the enjoyment of his life, liberty and property according to the standing laws.” It also 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.”

76. In addition, Article X provides that “whenever the public exigencies require that the property of any individual should be appropriated to public uses, he shall receive a reasonable compensation therefor.”

77. Article X restricts the government from taking private property except for “public” uses. Thus, separate 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 is for a public use.

78. Defendants’ actions were solely or predominantly intended to aid a private party (BMC), which is not a public purpose. Defendants wielded the proposed taking as a cudgel to benefit a private hospital operator, BMC.

79. Indeed, as summarized above, the Governor’s press release announced that deals in principle had been reached for the remaining Steward hospitals—deals that were negotiated with MPT, Macquarie, and Apollo. Thus, Defendants implicitly concede 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.

80. An improper purpose is also established by Defendants’ admission in their 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.”

81. The August 16th Letter raises additional issues that undermine 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 the property’s fair market value

82. 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.

83. Lastly, the Commonwealth’s plan underlying the proposed taking — flipping the property to BMC for as little as \$4.5 million—violates the Anti-Aid Amendment, rendering the whole plan as one with an improper purpose.

84. Besides these substantive constitutional violations, the Governor’s announced plan for seizing the property is also unconstitutional as a matter of procedure. The August 16th letter claims that the Governor has authority to take the Hospital Property under Chapter 79 § 2. The Governor never mentioned in her letter, press release, or news conference that she would seek the Legislature’s approval.

85. But Article X of the Declaration of Rights requires legislative approval for a taking. Chapter 79 § 2 does not delegate unilateral authority to take property

to the Governor without legislative approval. Thus, absent some legislative grant of authority, if the Governor ordered the seizure of the Hospital Property and recorded her order in the land registry, that action would be null and void.

86. There is an actual controversy concerning whether any putative taking would be valid and whether it would affect the current ownership of the Hospital.

87. 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.

88. 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

VIOLATION OF ARTICLE XVIII OF THE MASSACHUSETTS CONSTITUTION

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

90. 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’ current and prospective conduct for the Hospital.

91. 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.

92. 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.”

93. On information and belief, the Commonwealth intends to sell the Subject Property to BMC for at most \$4.5 million, a small fraction of its fair market value. Based on recent filings on the bankruptcy docket, it is unclear if BMC would be obligated to make any payment.

94. At the August 16th press conference, the Governor wrongly asserted that the Subject Property’s fair market value was \$4.5 million, indicating that the Commonwealth intends take the Subject Property and resell it at that price.

95. 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 has decided in advance of the taking that it will be taking the Subject Property to aid a specific private hospital operator.

96. The Commonwealth’s proposed condemnation of St. Elizabeth’s for a small fraction of its assessed value bears no relation to compensation for care or support. Given the Commonwealth’s apparent plan to flip St. Elizabeth’s to BMC after it takes over the Hospital’s operations—in effect, a planned multi-million

dollar gift—could not constitute “compensation.” It is a gift of real property at far below market value.

97. The threatened condemnation’s improper purpose violates the Anti-Aid Amendment in several respects.

98. First, the Commonwealth’s public and private statements have made clear that it views the paltry amount that it plans to pay Plaintiff under Massachusetts General Laws, chapter 79 as part of a plan to support St. Elizabeth’s. In other words, the Commonwealth has staked out a position that the condemnation and related use of public funds is part of a plan to “maintain” or “aid” the Hospital rather than having it close.

99. Second, the Commonwealth’s two-step plan of condemning the Hospital Property and flipping it to BMC is unconstitutional. The first step is the taking, which subjects the Commonwealth (and not BMC) to liability in a later valuation dispute over the taking. The second step, delivering St. Elizabeth’s for \$4.5 million or some other price substantially below its market value, would be a use of public “property”—meaning the Hospital Property, once the Commonwealth acquires ownership via condemnation—also for the purported purpose of aiding or maintaining the Hospital.

100. Defendants have not announced any limiting features on their aid. For example, they have not announced that BMC will be barred from selling St. Elizabeth’s in the coming years or required to keep it operating as a hospital. Nor

does there appear to any requirement that BMC cover the amount of a judgment that the Commonwealth faces in a valuation dispute over the taking.

101. Defendants' course of conduct implicates 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.

102. Threatening condemnation to influence bids and negotiations over the acquisition of hospitals whose operator went bankrupt is unfair insofar as this effort 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.

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

104. Plaintiff respectfully requests that the Court declare that any proposed taking of the Hospital Property violates the Anti-Aid Amendment. Plaintiff seeks declaratory relief alternatively under Chapter 231a or the common law.

105. 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

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

107. The Commonwealth's announced plans to take the Hospital Property and to transfer it to BMC for as little as \$4.5 million will cause irreparable harm to Plaintiff as the owner of the Hospital Property and must be halted immediately.

108. In light of the lack of a valid proper purpose for the proposed 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 does not oppose the transfer of the operation of St. Elizabeth's to BMC, and enforcing provisions of the Massachusetts Constitution serves the public purpose.

109. The Court should enter an Order preliminarily and permanently enjoining the taking of all or some of the Hospital Property.

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 steps to take the Hospital Property under the powers of eminent domain and condemnation under the currently announced plan, or except with the express approval of this Court;
 - (iii) enjoining any agreement among Defendants and BMC concerning a sale or a promise to sell or otherwise transfer the Hospital Property to BMC;
 - (iv) requiring Defendants to cause the invalidation or removal of any filing made in the registry concerning the condemnation of the Hospital Property;
- b. Enter an Order declaring that: (i) any proposed or putative 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; and (iii) that any taking of the Hospital Property pursuant to the currently announced plan improperly confers a benefit to a private party as its dominant purpose;
- c. Enter an Order declaring that any proposed or actual taking of the Hospital Property pursuant to the currently announced plan is void *ab initio* and of no effect because its dominant purpose is to transfer the Subject Property in violation of Article XVIII of the Constitution of the Commonwealth of Massachusetts;
- d. Grant Plaintiff any and all other relief that the Court deems just and proper.

Dated: September 4, 2024

Respectfully submitted,

Plaintiff SAINT ELIZABETH LLC

By its attorneys,

/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.