

LAW OFFICES OF
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August 20, 2024

Via Electronic Mail - sharon.c.boyle@mass.gov

Sharon Boyle, General Counsel
Executive Office of Health and Human Services
Commonwealth of Massachusetts
One Ashburton Place
Boston, MA 02108

Re: St. Elizabeth's Medical Center

Dear Ms. Boyle:

We write on behalf of ACREFI CS U, LLC ("ACREFI"), as directing lender under the mortgage loan extended to MPT of Brighton-Steward, LLC, as owner of the real property underlying St. Elizabeth's Medical Center, in response to your letter dated August 16, 2024. The letter indicates that Governor Healey is preparing to take by eminent domain "all or a portion of the St. Elizabeth's Medical Center" and includes an offer from the Commonwealth to purchase the "fee and other necessary property interests" in St. Elizabeth's for the sum of \$4,500,000, to which a response is requested by 11:00 a.m. on August 20, 2024.

Both as it relates to St. Elizabeth's and all of the hospitals involved in the Steward Bankruptcy proceedings, the lenders have made every effort to reach a solution that supports the continued operation of hospitals that are important to the health of Massachusetts residents, while also maintaining our rights as creditors. Over the past several weeks, ACREFI has attempted to work with the Commonwealth to explore a number of different structures that would both (a) respond to the Commonwealth's concerns, including about the long-term viability of St. Elizabeth's as a hospital and (b) provide ACREFI with a fair result. Specifically, ACREFI has proposed structures featuring short-term leases, long-term leases, purchase options and other upside protections – in many cases, in direct response to the Commonwealth's request for ACREFI to consider those options. Given the significant time and effort ACREFI has expended to date to try to reach terms on a consensual transfer for St. Elizabeth's, ACREFI was surprised to learn of the Commonwealth's decision to proceed with a taking of the St. Elizabeth's property via the Commonwealth's press release and Governor Healey's press conference on the afternoon of August 16, 2024.

In any event, ACREFI rejects the Commonwealth's proposed offer of \$4,500,000, which significantly undervalues the real property underlying St. Elizabeth's. Essentially, the

Commonwealth is offering – for the fee estate – an amount that is less than the *annual taxes* paid on that fee estate (i.e., \$5,141,772.40, over the past twelve months), which has a tax-assessed value of over \$200,000,000. To the extent the Commonwealth proceeds with the exercise of its eminent domain powers with respect to this property, ACREFI intends to exercise its constitutional and statutory rights to vigorously challenge any proposed award at the valuation reflected by the Commonwealth’s proposed offer, and expects that such a challenge will be successful and result in a substantially larger award.

In Massachusetts, a property owner is entitled to the “fair market value” of its property taken in fee. “Fair market value” is determined by the highest and best use to which the property could reasonably be put by an unaffiliated third party in a free and open market and arm’s-length transaction.¹

St. Elizabeth’s sits on 14 acres of real estate in a prime location, adjacent to the city’s most prestigious educational institutions. There are a number of highly valuable changed uses to the property that would be similarly valuable for the community and for which a developer or educational institution would likely obtain permits. Multiple appraisers agree with ACREFI that there is no realistic scenario in which the “fair market value” of the property is \$4.5 million.

Based on Governor Healey’s comments, the Commonwealth’s intent is to deliver the St. Elizabeth’s property to Boston Medical Center (BMC) after exercising its eminent domain power, “so that [the Commonwealth] can facilitate a transition to a new owner and keep this hospital open.”² It is unclear, however, that BMC has undertaken any obligation to continuously operate the hospital for any specific period of time. If it has not, given the concerns about the hospital’s long term viability, the Commonwealth’s taking of the property is effectively little more than a transfer of the significant value in the real estate that rightfully belongs to its owner (and ACREFI as mortgage lender) to BMC. Furthermore, assuming (as ACREFI does) that the Commonwealth’s proposed valuation of \$4.5 million is determined to be insufficient, it will be the Commonwealth (not BMC) who is responsible for paying any incremental amounts, after having delivered the property to BMC. It appears that BMC fully appreciated that the Commonwealth would ensure the hospital ended up in its hands one way or another, as BMC informed ACREFI during the bidding process that it had no reason to improve its bid because the Commonwealth would simply exercise eminent domain to deliver the hospital property to BMC in the event a consensual agreement was not reached.

Accordingly, should the Commonwealth move forward with its proposed plan to exercise eminent domain and compensate ACREFI only \$4.5 million for the property, ACREFI will have

¹ See M.G.L c. 79, § 12; *Colonial Acres, Inc. v. Town of North Reading*, 3 Mass. App. Ct. 384 (1975).

² Press Release, dated August 16, 2024, “Governor Healey Announces Actions to Save Remaining Steward Hospitals.”

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no choice but to exercise its constitutional and statutory rights and take any and all actions necessary to protect the interests of the investors to which it has fiduciary obligations. ACREFI believes there are numerous procedural and constitutional issues raised by the Commonwealth's proposed plan and conduct to date that it will vigorously challenge.

As conveyed to you as recently as Saturday, August 17th, ACREFI remains open to discussing terms for a consensual transfer of the St. Elizabeth's property, as ACREFI has been attempting to do for the last several weeks, over which it has made no fewer than five proposals to the Commonwealth, as described above. Continued negotiations with both parties focused on achieving an outcome that is consistent with fair market value of the property will avoid the time, expense and distraction of litigation for all. The Commonwealth has, however, rejected all such proposals and indicated this past weekend that it is no longer interested in negotiating any consensual solution in respect of St. Elizabeth's, at least in the near term. Nevertheless, ACREFI would welcome a further dialogue on this subject if the Commonwealth is open to it.

ACREFI reserves all rights, claims, arguments and defenses with respect to any issues that may currently exist or subsequently arise between ACREFI and the Commonwealth.

Best regards,

THE McLAUGHLIN BROTHERS, P.C.

By: /s/ Joel E. Faller
Joel E. Faller

cc: Scott Weiner, Apollo (sweiner@apollo.com)
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