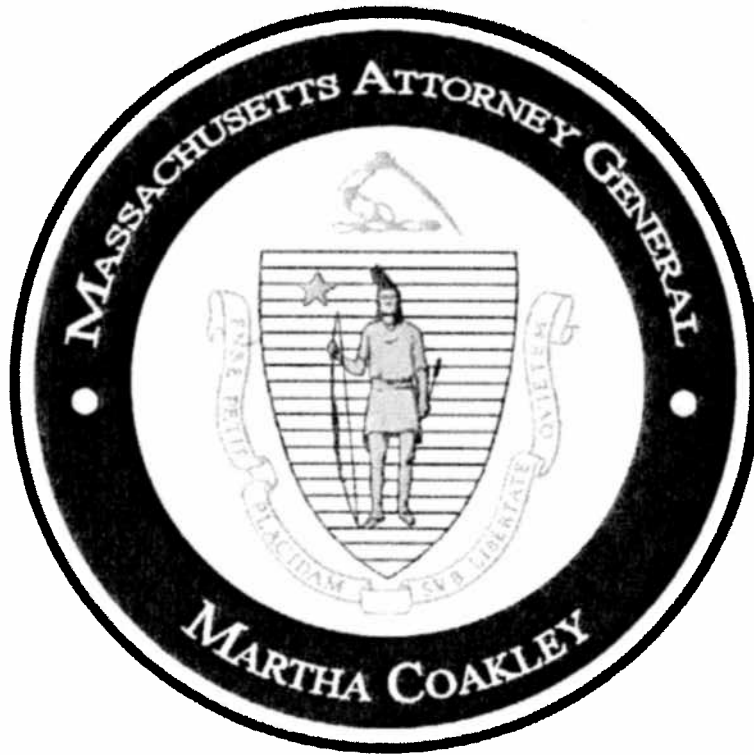


**Exhibit M**

Statement of Attorney General as to the Caritas Christi Transaction



**Statement of the Attorney General  
as to the**

**Caritas Christi Transaction**

October 6, 2010

**OFFICE OF ATTORNEY GENERAL MARTHA COAKLEY**  
ONE ASHBURTON PLACE | BOSTON, MA 02108

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**STATEMENT OF ATTORNEY GENERAL  
AS TO THE  
CARITAS CHRISTI TRANSACTION**

October 6, 2010

The Attorney General, in accordance with her statutory duties under G.L. c. 180, § 8A(d), issues this statement (the “Statement”) regarding the proposed transaction (the “Transaction”) by which Caritas Christi and its affiliated entities (collectively, “Caritas”), propose to sell and transfer substantially all of its health care assets and operations to Steward Health Care System LLC and its designated subsidiaries (collectively, “Steward”), an affiliate of Cerberus Capital Management, L.P. (“Cerberus”).

**I. INTRODUCTION**

**1.1 Transaction Overview**

Caritas is a Massachusetts non-profit, charitable health care system that includes the following six hospitals in eastern Massachusetts: Carney Hospital in Dorchester, Good Samaritan Medical Center in Brockton, Holy Family Hospital in Methuen, Norwood Hospital in Norwood, St. Anne’s Hospital in Fall River, and St. Elizabeth’s Medical Center in Brighton (each a “Caritas Hospital”). Other affiliates in the Caritas system include Caritas Christi Physician Network, a physician practice organization with approximately 400 employed Caritas physicians, Caritas Christi Network Services, a contracting network with approximately 1,100 affiliated physicians, and Caritas Home Care, a home care provider organization. Caritas is a Catholic faith-based health care system. It has an affiliation with the Roman Catholic Archbishop of Boston, a corporation sole (“RCAB”). While the Roman Catholic Archbishop of Boston (the “Archbishop”) retains certain reserve powers with respect to Catholicity, certain governing body appointments, and major transactions,<sup>1</sup> since the adoption of Caritas governance reforms on May 22, 2008, neither the Archbishop nor RCAB has any membership in, or other corporate role in the ownership, governance, or operations of, Caritas.

The Transaction is the culmination of a multi-year review and evaluation process by Caritas to address its financial difficulties, including its significantly underfunded pension plans, outstanding debt, outdated facilities, and need for capital. During this process, which started in 2006, Caritas engaged outside consultants and advisors and reviewed and explored its options, including (i) remaining as an independent system, (ii) affiliating with a non-profit organization, including with a national Catholic health care system and with a local non-profit, (iii) transferring its assets to a non-profit/for-profit

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<sup>1</sup> Article II, Section 12 of the Eighth Amended and Restated Bylaws of Caritas Christi requires the approval of the Archbishop with respect to any sale of all or a substantial portion of the assets of Caritas Christi. The Archbishop approved the Transaction by letter dated August 27, 2010.

joint venture, and (iv) transferring its assets to a for-profit entity, including both for-profit health care companies and start-ups.

On March 19, 2010, the Caritas Christi Board of Governors (the “Board”) approved execution of the Asset Purchase Agreement with Steward, which subsequently was amended by a First Amendment to Asset Purchase Agreement dated October 5, 2010 (as amended, the “APA”). Key elements of the APA and the Transaction prior to the amendment of the APA include the following.

*Initial Terms of the APA and the Transaction*

(a) Purchase consideration for the assets to be transferred of between \$430 million and \$450 million consisting of Steward’s (i) assumption of all pension obligations for approximately 13,000 current and former Caritas employees, (ii) payment of virtually all of Caritas’ outstanding debt, and (iii) assumption of certain liabilities.

(b) Steward will spend or commit to spend, within four years from the Transaction closing date (the “Closing”), no less than \$400 million in capital expenditures to promote the financial health, well-being, or growth of the health system post-Closing. If Steward fails to so spend or commit to spend no less than \$400 million, then Steward shall donate such shortfall to a charitable foundation selected by the Attorney General.<sup>2</sup> Part of this \$400 million commitment is to complete funding of approximately \$116 million in major construction projects identified by Caritas as priority capital projects, which have been initiated at the Caritas Hospitals.

(c) Steward will adhere to and comply with the current Caritas policies concerning indigent and charity care, which Caritas estimates at approximately \$37 million annually.

(d) Steward will maintain community benefit expenditures at the current level for Caritas Hospitals, which Caritas estimates at approximately \$26 million annually, plus an additional \$3 million annually in pastoral care and related services.

(e) Steward will continue to accept Medicare and Medicaid patients consistent with current practices, to accept emergency room patients regardless of ability to pay consistent with relevant law, and to provide culturally and linguistically appropriate services consistent with those currently provided at the Caritas Hospitals.

(f) Steward will not close, or limit the general purpose of, any Caritas Hospital within three years from the Closing.

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<sup>2</sup> In the unlikely event that this occurs, the Attorney General will establish a selection committee to advise her. The membership of that committee will include representatives of the Department of Public Health and health care providers from, and representatives of, the affected communities.

(g) Steward will not engage in any initial public offering, sale, issuance of debt for the purpose of making dividends or distributions, or certain other fundamental transactions (the “Prohibited Transactions”) within three years from the Closing.

(h) The Catholic identity of the Caritas Hospitals will be preserved through a Stewardship Agreement between Steward and RCAB dated April 30, 2010 (the “Stewardship Agreement”), which, among other things, provides that Caritas Hospitals will continue to abide by the Ethical and Religious Directives for Catholic Health Care Services (the “Directives”).

(i) Steward will preserve jobs for the approximately 12,000 Caritas employees by offering continued employment on the same terms, and Steward will recognize existing union and collective bargaining agreements.

(j) All commitments made in the past to Caritas donors will be honored.

(k) Local governing boards for each Caritas Hospital will be continued, in function and general composition.

(l) Steward will be a health care system with headquarters in the greater Boston area. Current Caritas senior management is expected to remain in place, two current Board members have agreed to serve on the initial Steward board (the “Steward Board”), and one additional Massachusetts based Steward Board member is expected to be appointed. It is anticipated that local participation and continuity will help promote stability.

*Additional Terms of the Amended APA and the Transaction*

In addition, at the urging of the Attorney General, Steward has agreed to the following.

(m) The purchase consideration, referenced in subsection (a), above, has been increased by \$45 million to \$495 million to cover, among other increased liabilities, increases in the pension liability since the APA was first executed in March.

(n) During the three-year hold period referenced in subsection (g), above, Steward has agreed to expand the scope of Prohibited Transactions to include selling or transferring a majority ownership interest in, or all or substantially all of the assets of, any of the Caritas Hospitals.

(o) During the no-close period referenced in subsection (f), above, Steward has agreed that it will not close or reduce the number of any inpatient psychiatric and detoxification hospital beds in any of the Caritas Hospitals. The need for inpatient psychiatric and detoxification hospital beds is critical and their availability, in part due to unfavorable reimbursement, is well-below demand. Any further reduction in these

services would have a significant negative impact on the ability of the Commonwealth to provide for mental health services.

(p) In addition to agreeing to maintain inpatient psychiatric beds, Steward has also agreed to conditionally extend the three-year period referenced in subsection (f), above, for an additional two years. During that additional two-year period, Steward may not close a Caritas Hospital, limit its general purposes, or close any of its inpatient psychiatric and detoxification beds, unless the following conditions are met: the Caritas Hospital has experienced two consecutive years of negative operating margins, an eighteen-month review and reporting period has been completed, and a six-month closure notice has been provided. This provision will ensure that any closure during years four and five post-Closing will occur only after a robust and open dialogue in which all stakeholders will have the ability to seek both solutions to the underlying problems and alternatives to the closure.

(q) Steward will comply with the Recommended Hospital Debt Collection Practices set forth in the Attorney General's Community Benefits Guidelines for Non Profit Hospitals.

(r) Community benefit and charity care provisions set forth in the APA will apply to any successor-in-interest to Steward; and further, any Massachusetts hospital acquired post-Closing by Steward from a for-profit entity will, at a minimum, comply with the for-profit hospital's then-existing community benefit and charity care obligations.

(s) The Attorney General shall have the right to enforce the Pension Transfer Agreement (described in Section V(b), below), and certain post-Closing provisions of the APA related to the public interest.

(t) Any enforcement action brought by the Attorney General under the APA or any of the ancillary agreements (described in Section V, below) shall be brought solely in the courts of the Commonwealth of Massachusetts.

(u) Steward will assure and fund the orderly reorganization, dissolution, and windup of the Caritas entities. This will assure that remaining assets, including endowment funds, are appropriately segregated and used for appropriate purposes.

(v) Steward, and any successor-in-interest to Steward, will, notwithstanding its for-profit status, fully cooperate with any investigation, inquiry, study, report, or evaluation conducted by the Attorney General under her oversight authority of the non-profit charitable hospital industry to the same extent and subject to the same protections and privileges as if Steward were a public charity.

(w) Steward will cooperate with, and fund with a Closing payment of \$1.5 million, a five-year monitoring, assessment, and evaluation of the impact of the Transaction on health care costs and services within the communities served by Steward.

Certain aspects of this monitoring will be conducted by the Attorney General, and certain other aspects by the Department of Public Health, consistent with an Assessment and Monitoring Agreement with the Attorney General (described in Section V(c), below).

The Attorney General received formal notice of the Transaction from Caritas, as required by G.L. c. 180, § 8A(d)(1), in a letter dated May 5, 2010, which initiated this review.

## **1.2 Statutory Basis for Attorney General Review**

Under G.L. c. 180, § 8A(d), the Attorney General reviews transactions involving the sale and transfer of non-profit hospital assets to for-profit entities. Section 8A(d)(1) provides, in part:

*“A nonprofit acute-care hospital . . . shall give written notice of not less than 90 days to the attorney general . . . before it enters into a sale, lease, exchange, or other disposition of a substantial amount of its assets or operations with a person or entity other than a public charity. . . . When investigating the proposed transaction, the attorney general shall consider any factors that the attorney general deems relevant, including, but not limited to, whether:*

- (i) the proposed transaction complies with applicable general nonprofit and charities law;*
- (ii) due care was followed by the nonprofit entity;*
- (iii) conflict of interest was avoided by the nonprofit entity at all phases of decision making;*
- (iv) fair value will be received for the nonprofit assets; and*
- (v) the proposed transaction is in the public interest.”*

The results of her review inform her in responding to the Complaint to be filed by Caritas with the Supreme Judicial Court of the Commonwealth of Massachusetts seeking approval of the Transaction. Approval by the Court is required for the Transaction to proceed.

## **1.3 Questions Posed**

In considering the above factors, the Attorney General sought to answer the following questions.

- (a) Is it impossible or impracticable for Caritas to continue operating the Caritas health care system in its non-profit, charitable form? Compliance with most aspects of applicable general nonprofit and charities law are addressed in paragraphs (b) through (e), below. In addition, consistent with relevant law, public charities cannot sell their assets and operations to a for-profit entity simply because they may operate better or more effectively with private equity. Caritas must establish that it is impossible or impracticable to continue operations in its current non-profit, charitable form.

(b) Did Caritas carefully, thoughtfully, and deliberately explore and evaluate available options? As a public charity, Caritas holds its assets in charitable trust for the benefit of the public. Their sale and transfer to a for-profit entity, where assets are no longer held for the benefit of the public, must have been considered and approved in a deliberative manner that carefully evaluated all options.

(c) Did Caritas appropriately and effectively assure disclosure of, and then manage, any conflicts of interest related to the Transaction? Consistent with relevant law, conflicts of interest concerning charitable organizations are not necessarily inappropriate or harmful, but they must be disclosed and appropriately handled to assure that individual interests do not take priority over those of the institution and the public it serves.

(d) Is the compensation to be paid, taken as a whole, fair and reasonable? Caritas should receive fair compensation for the charitable assets it holds for the benefit of the public.

(e) Is the Transaction in the public interest? While implicit in the first four factors, ultimately the public's interest must be better served with the Transaction than without it.

The Attorney General notes that the statute requires, but does not limit, her review to the above criteria. Given the relationship of Caritas to RCAB and the significance of the Stewardship Agreement to the Transaction, she also posed the following question.

(f) Are the terms and conditions of the Stewardship Agreement consistent with the Archbishop's fiduciary obligations to Caritas under Massachusetts law? Under Massachusetts law and the Governance Agreement entered into between the Archbishop and the Attorney General dated May 20, 2008 (the "Governance Agreement"), the Archbishop must act in all matters related to Caritas as a fiduciary, subject to the obligations of due care and loyalty. Consistent with the foregoing, the rights and privileges of RCAB under the Stewardship Agreement must have been negotiated and obtained for it by the Archbishop consistent with those obligations.

#### **1.4 Review Process**

The Attorney General, principally through her Non-Profit Organizations/Public Charities Division (the "Division"), conducted an investigation of the Transaction in the context of the above statutory factors and implementing questions by, among other actions: (i) holding public hearings in June and early July in the catchment area of each of the six Caritas Hospitals, (ii) posting the Transaction Statement, the APA, the Stewardship Agreement, and certain related attachments and schedules on the Attorney General's website, (iii) accepting comments from public interest groups, other providers, insurers, and members of the public, (iv) obtaining information from providers and insurers potentially impacted by the Transaction, (v) holding meetings and discussions



with interested parties, (vi) reviewing financial records, minutes, reports, and other documents provided, in response to document production requests of the Attorney General, (vii) submitting interrogatories to be answered under oath to all members of the Board and senior management and reviewing the responses to same, (viii) interviewing key Board members, the Chief Executive Officer, and the General Counsel of Caritas, (ix) consulting with other state agencies and with local and state officials, and (x) retaining the services of outside counsel and consultants to assist the Attorney General in her analysis.

During her review, the Attorney General urged and Steward agreed to expand its commitments to the Attorney General and the public through amendments to the APA as previously described in Section 1.1(m) through (v), above. Similarly, Steward has agreed to a five-year monitoring, assessment, and evaluation of the impact of the Transaction on health care costs and services within the communities served by Steward, as previously described in Section 1.1(w), above.

## **II. CONCLUSIONS AND FINDINGS: SUMMARY**

For the reasons and with the conditions set forth in Sections IV and V of this Statement, the Attorney General makes the following findings.

1. It is impracticable, if not impossible, for Caritas to continue to operate as a public charity. To do so would likely require (i) leaving the pensions of some 13,000 current and former employees substantially underfunded, uninsured, and at risk and (ii) closing at least one of the Caritas Hospitals. Charities law does not mandate such measures if there are other, viable options available.

2. The Board complied with standards of due care. Over a four-year period, the Board actively explored a variety of options, including (i) remaining a stand-alone, (ii) becoming part of another non-profit system, including a Catholic affiliated health care system and a local non-profit, (iii) transferring its assets to a non-profit/for-profit joint venture, and (iv) transferring its assets to a for-profit entity. In doing so, it retained the services of experienced consultants and reached a decision only after a deliberative and thoughtful process directed by the Board and in which the Board was fully involved.

3. The Board and senior management appropriately disclosed and managed conflicts of interest that existed. Members of the Board and senior management had no existing financial interests or business relationships with Cerberus. The interests of members of Caritas senior management in their future employment by Steward is a continuity condition sought and negotiated by the Board. No financial terms and conditions have been negotiated between Steward and members of Caritas senior management with respect to future service, and no member of Caritas senior management will receive an increase in salary, incentive payment or bonus, or other form of compensation in return for identifying, finding, negotiating, or entering into the Transaction. The interests of two independent members of the Board in future service on the Steward Board arises out of a continuity and local input condition sought and

negotiated by the Board. With respect to the independent Board members, initial selections were not made by Steward until after the APA was executed in March 2010, and no financial or other terms arising out of their service have been discussed or negotiated.

4. The price to be paid for the assets is fair and reasonable. Compensation for the charitable assets was the result of the evaluation of multiple options, significant negotiations with several parties, and final terms and conditions negotiated and determined in an arm's length manner. From perspective of market comparisons, the compensation is not inconsistent with the range of comparables for similar transactions. Moreover, Steward has committed to assume the pension liability. Initially estimated at \$430 million to \$450 million, the most recent actuarial based estimate of the purchase price is \$495 million. While this compensation, in and of itself, is fair and reasonable, it should be noted that the commitments of Steward to charity care, community benefits, minimum operational periods, capital, payment of taxes, and the like are of significant value to the public.

5. The Transaction serves the public interest. While there are risks to the public intrinsic in any change of control, including a non-profit to for-profit conversion, those risks are outweighed by the previously described risks of not undertaking the Transaction. Moreover, and with the additional protections and transparency obtained by the Attorney General, the benefits of maintaining the system as a system, avoiding Caritas Hospital closures, funding the pension liabilities, satisfying the debt, and beginning the process of addressing the deferred capital needs of Caritas are clear and compelling.

6. The terms and conditions of the Stewardship Agreement are not inconsistent with the Archbishop's fiduciary obligations to Caritas under the Governance Agreement or Massachusetts law. The Archbishop has a legitimate interest in both assuring compliance with the Directives and preserving for himself and RCAB the sole and exclusive right to interpret the Directives. Steward has a legitimate interest in assuring its ability to make and execute business and clinical decisions. Both parties recognized that at some point those interests might prove incompatible and that provisions had to be agreed upon to address such an impasse. The termination provisions of the Stewardship Agreement are a reasonable method to do so.<sup>3</sup> Moreover, any financial benefits derived by RCAB from the Transaction, such as continuation of pastoral care and other mission-related expenses and addressing pension funding

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<sup>3</sup> Under the Stewardship Agreement, the interpretation of the Directives, as they apply to the Caritas Hospitals, will be determined by RCAB in its sole discretion. Steward may terminate the Stewardship Agreement if Steward determines, in its sole discretion, that observance of any of the Directives would be materially burdensome to Steward or any of the Caritas Hospitals. In the event of such a termination by Steward, Steward would be obligated to pay \$25 million to a Massachusetts public charity designated by RCAB and subject to the jurisdiction of the Attorney General (the "Termination Contribution"). RCAB has the right to terminate the Stewardship Agreement if, in its sole discretion, any Caritas Hospital is being operated in a manner inconsistent with the Directives. In the event of such a termination by RCAB, Steward would be obligated to pay the Termination Contribution, unless such non-compliance with the Directives is a result of a legal requirement to which Steward is subject.

shortfalls, are in the best interests of Caritas and therefore are not inconsistent with the Archbishop's duty of loyalty to Caritas.

### **III. PUBLIC COMMENTARY AND RESPONSE**

During the review process, the Attorney General received comments and suggestions from a variety of sources. While much of the commentary was supportive of the Transaction, some was not. Some sought changes in the General Laws related to health care contracting, while others sought increased oversight of the system's compliance with existing laws. Such changes and actions, regardless of merit, are outside the scope of this review. Other commentators sought the imposition of additional or expanded post-Closing conditions on Steward. While the Attorney General is not in a position to respond to each of these comments and suggestions individually, consistent with her desire to inform the public, the Attorney General has provided responses to certain areas of concern in Appendix A.

### **IV. CONCLUSIONS AND FINDINGS: DETAIL AND DISCUSSION**

#### **4.1. The Transaction complies with applicable general non-profit and charities law.**

Caritas, which holds its assets in charitable trust for the benefit of the public, may not sell and transfer those assets and change its purpose simply because it believes the services can be operated better, or more effectively, in a for-profit structure with private equity. To do so, it must make an affirmative showing that it is impossible or impracticable to continue to operate as a public charity. For the reasons set forth hereinafter, the Attorney General finds that showing has been made.

The Attorney General requested and reviewed relevant documents and information, including financial, utilization, and market data pertaining to Caritas and the markets served, as well as interrogatory responses from, and interviews with, Board members and senior management concerning Caritas' financial and operational viability. Such data included the following: audited financial statements for FY 2005-2009 (Ernst & Young LLP, auditors), which included balance sheets, income statements, and cash flow statements, the FY 2010 capital budget, internal operating statements for the nine-month period ending June 2010, Annual Hospital Fact Sheets and Study of the Reserves, Endowments, and Surpluses of Hospitals in Massachusetts (published by the Massachusetts Division of Health Care Finance and Policy), select Massachusetts Health Data Consortium inpatient data, and Caritas inpatient and outpatient utilization statistics by Caritas Hospital for FY 2005 through April 2010. The Attorney General engaged Health Strategies & Solutions, Inc. ("HS&S") to assist with the review of this data and the Caritas health care system.

#### *Historical Perspective*

The Attorney General reviewed extensive information concerning the deteriorating finances and operations of Caritas and its inability to continue as a stand-

alone charitable organization, including reports and studies by Navigant Consulting, Inc. (“Navigant”) in both 2006 and 2009, HS&S in 2008, and Cain Brothers & Company, LLC (“Cain Brothers”) in 2008. Below is a brief recap of the key financial conclusions of each such consultant.

In 2006, Navigant reviewed Caritas’ strategic options and substantiated Caritas’ pressing need for capital, including Caritas’ aging facilities, as well as its debt and pension obligations.<sup>4</sup> Navigant concluded that the best options for Caritas’ continued survival were either an affiliation with a national Catholic system or a sale to a for-profit organization.

In 2008, HS&S reviewed the Caritas health care system and found that, because Caritas was not able to generate sufficient margins over the previous ten years, it was forced to delay or forego capital and reinvestment initiatives. This was a major contributing factor in its declining financial, operating, and market positions in the greater Boston service area. The HS&S review confirmed that capital constraints remained a major challenge to the success of Caritas. As set forth in Section 4.2, below, HS&S also recommended significant governance and operational restructuring at Caritas. HS&S concluded that Caritas’ failure to address those financial, governance, and management issues in a timely manner would result in the continued deterioration of Caritas’ competitive and financial positions.

In 2008, Cain Brothers reviewed Caritas’ access to capital markets. It found that: (i) any public capital available to Caritas would be very expensive for the next several years, (ii) Caritas’ current financial position did not include the capacity for significant additional debt, (iii) the most immediate strategy to access capital required balance sheet re-configuration, (iv) an asset sale or joint venture with a third party was the most viable option, (v) reliance on self-improved operating performance would likely yield the lowest amount of capital access and take the longest time to realize, and (vi) fundraising efforts would impose timing constraints as capital campaigns must be developed and funds are typically pledged over a multiple-year period, and that, in any event, the economic environment in Fall 2008 likely would negatively impact fundraising programs.

In 2009, Navigant confirmed its 2006 findings, which were consistent with the 2008 HS&S and 2008 Cain Brothers findings, that it was unrealistic for Caritas, in light of its cash flow, physician recruitment, and capital improvement needs, to meet its pension and debt obligations and survive as an independent system. Indeed, under four out of five operational and financial scenarios, Navigant projected that Caritas would default on its existing debt covenants (i.e., less than 30 days cash-on-hand) in less than one year and that Caritas would exhaust all cash-on-hand resources in approximately three years or less. The fifth scenario, which assumed a 4% operating margin, no

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<sup>4</sup> The pension funds for certain current and former Caritas employees are held and managed by the Archdiocese Health and Pension Benefit Trust (the “RCAB Retirement Trust”), and are not federally insured because they are a component of a Church pension plan. Caritas has provided funding for this component of RCAB’s pension plan, even though the liability does not technically belong to Caritas and does not appear on its financial statements.

depreciation catch-up (in terms of capital improvements), and no investment in physician strategies, was viewed as unrealistic by Caritas leadership.

### *Current Analysis*

An analysis of current data and Caritas' market and business trends shows a steady decline in utilization and weak financial performance, coupled with significant deferred capital expenditures and significant debt and pension liability. Caritas' internal data indicates a steady decline in utilization over each of the last five fiscal years, including the following<sup>5</sup>:

(a) Caritas discharges decreased by approximately 9% between FY 2005 and FY 2009. Over the same time period, total discharges from Massachusetts hospitals increased by nearly 4%.

(b) Caritas total patient days decreased by 14% between FY 2005 and FY 2009. Over the same time period, total patient days of Massachusetts hospitals decreased by approximately 2%.

(c) Outpatient surgery volume at Caritas decreased by nearly 25% between FY 2005 and FY 2009. Over the same time period, total outpatient surgery volume at Massachusetts hospitals decreased by approximately 7%.

Caritas has generated a relatively modest operating margin over the past five years (i.e., ranging from -1.6% in FY 2008 to 2.3% in FY 2009). Caritas' cash earnings margins were actually lower than the range cited above, due to (non-cash) prior period adjustments that were included. Further, the margin in 2009 was bolstered by the one-time gain (in excess of \$23 million) on the sale of Caritas Medical Labs to Quest Diagnostics. Because Caritas has not been able to generate sufficient margins over this period, it has had to delay or forego capital and reinvestment initiatives.

Although Caritas' cash and equivalents increased from approximately \$65 million as of the end of FY 2005 to nearly \$129 million as of the end of FY 2009, the organization's accounts payable increased over the same period of time, from approximately \$145 million as of the end of FY 2005 to nearly \$235 million as of the end of FY 2009. Every Caritas Hospital had an average payment period in FY 2009 that was at or above the Massachusetts hospital average payment period (i.e., 50 days).

As of the end of FY 2009, Caritas' net working capital (defined as current assets less current liabilities) was less than \$1 million. Had the current portion of Caritas' pension liabilities been included in full, Caritas would have had negative net working capital. As set forth below, none of the Caritas Hospitals has a current ratio (which measures current assets against current liabilities) above the Massachusetts hospitals FY 2009 median of 1.59.

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<sup>5</sup> Comparative data is referenced for FY 2005 through FY 2009. FY 2009 is the most recent year for which Commonwealth of Massachusetts data is available. Caritas utilization statistics for FY 2010 year-to-date show an increase as compared to the same period for FY 2009.

	<b>Current Ratio<sup>6</sup></b> <b>(as of 8/31/10)</b>
Caritas Carney Hospital	0.77
Caritas Good Samaritan Medical Center	1.02
Caritas Holy Family Hospital	1.15
Caritas Norwood Hospital	0.73
Caritas St. Anne's Hospital	1.16
Caritas St. Elizabeth's Medical Center	0.78
<b>MA Hospitals FY 2009 Median</b>	<b>1.59</b>

After reaching a high of approximately \$279 million as of the end of FY 2007, Caritas total net assets declined to approximately \$260 million as of the end of FY 2009. This represents a decline of approximately 7% in net worth over the two-year period.

Caritas' days cash-on-hand reached a low of 44 days in March 2009. Moody's Investor Service considers non-profit hospitals and health systems with less than 50 days cash-on-hand to be "below investment grade." Caritas was able to increase days cash-on-hand to 73 days by September 30, 2009 (as noted above, its cash position was artificially buoyed by extending days in accounts payable). Although the September 30, 2009 days cash-on-hand level is comparable to the median for hospitals in Massachusetts, it is consistently below the medians for hospitals nationally, hospitals and health systems with greater than \$150 million in revenue, and hospitals and health systems with greater than 500 beds.<sup>7</sup>

Caritas' long-term debt to capitalization, which measures the amount of debt in an organization's capital structure, was 48.4% as of the end of FY 2009. This is significantly higher than historical industry medians for both Massachusetts and the United States. This indicates that Caritas is highly leveraged (and has limited capacity for additional debt financing).

<b>Measure</b>	<b>9/30/05</b>	<b>9/30/06</b>	<b>9/30/07</b>	<b>9/30/08</b>	<b>9/30/09</b>
<b>Caritas Long-Term Debt to Capitalization</b>	57.9%	51.1%	46.5%	53.6%	48.4%
<b>MA Median Long-Term Debt to Capitalization</b>	33.7%	32.8%	26.9%	32.2%	N/A
<b>United States Median Long-Term Debt to Capitalization</b>	26.3%	28.3%	27.1%	32.7%	N/A

Caritas' equity financing, which measures the proportion of total assets that have been financed by equity, fluctuated between 25% and 33% between FY 2005 and FY

<sup>6</sup> Had the current portion of Caritas' pension liabilities been included in full, the Current Ratios for Caritas Hospitals would be significantly lower.

<sup>7</sup> Source: Ingenix Almanac of Hospital Financial and Operating Indicators, 2010.

2009. Lower percentages for this measure indicate that an organization has relied heavily upon debt financing in the past. By comparison, the Massachusetts and national medians for equity financing were nearly twice as high as the Caritas level as of the end of FY 2008. Moreover, these calculations for long-term debt to capitalization and equity financing exclude the obligation of approximately \$275 million in pension liabilities.

Given the limits on available capital, Caritas management reports that capital spending is limited to emergency requests only. As noted above, studies completed for Caritas by Cain Brothers and Navigant concluded that Caritas has little capacity for additional financing to fund capital initiatives. As of the end of FY 2009, Caritas' average age-of-plant was more than 15 years, compared to the 2008 industry median of 10.9. Based on current projections, Caritas would need in excess of \$500 million of capital investment over the next five years in order for its average age-of-plant to decline to ten years. Without the Transaction, Caritas does not have access to this level of funding.

In addition, Caritas is not currently contributing to the underfunded pension plan for current and former Caritas employees. If Caritas were currently funding such pension liabilities, it is estimated that it would entail an additional \$25 million in annual expenses. Caritas does not have sufficient resources or liquidity to meet this obligation over an extended period of time, and future financial performance is not likely to improve to the extent necessary to meet this obligation.

#### *Financial Capacity of Steward*

In her review of the Transaction, the Attorney General also considered the financial capacity of Steward. Steward itself currently has no direct financial capacity, as the Transaction will be funded by the resources of Cerberus, a private investment firm established in 1992. Together with its affiliates, Cerberus reportedly manages over \$24 billion in committed capital. Cerberus also reports that, in the aggregate, its portfolio companies generate in excess of \$45 billion in annual revenues. As Cerberus is privately held, its true size and the magnitude of its resources cannot be independently verified. While Cerberus has no direct legal obligation to support Steward, Cerberus will have committed hundreds of millions of dollars to fund the Transaction and will have a strong interest in protecting its investment.

In assessing the financial viability of Steward, the Attorney General also considered that, given the structuring of the purchase consideration, as of Closing, Steward will operate the health system essentially debt-free. Steward has also agreed to assume the pension liabilities and will complete funding of approximately \$116 million in major construction projects at the Caritas Hospitals. Without the carrying cost of principal and interest payments related to debt, as well as the pension liabilities, the health system's operating entities will be relieved of approximately \$70 million in annual expenses and payments. This will substantially improve the organization's ability to generate positive cash flow and fund ongoing operating and strategic priorities.

### *Key Findings*

Caritas is in a precarious and unsustainable financial situation and faces an increasingly challenging and turbulent environment. Health care industry factors are only likely to exacerbate the situation (e.g., changes in health care delivery, as well as future reimbursement increases that are projected to be lower than expense inflation). It is likely that, despite management's efforts, Caritas will continue to struggle financially and, ultimately, will be unable to meet its demands for capital in light of its aging facilities, the underfunded pension liability, and its debt obligations.

In addition, Caritas' market positions for its various services are stagnant or declining. Caritas' facilities, equipment, and technology continue to deteriorate. Caritas has neither the resources nor the independent access to external funding that is necessary to adequately invest in its facilities and operations. Moreover, if the impact of the pension obligation is accounted for, Caritas is unlikely to generate a sufficient margin, and is projected to run out of cash and cash equivalents within approximately three years or less. In the absence of the Transaction, Caritas would need to divest major assets, or close major facilities or services, in the hope of achieving and maintaining performance at levels that would be sufficient to survive.

In sum, based on a review of relevant financial, operational, utilization, and market data, the Attorney General finds that it is impracticable, if not impossible, for Caritas to continue to operate the system as a public charity. To do so would likely require (i) leaving the pensions of some 13,000 current and former employees substantially underfunded, uninsured, and at risk and (ii) closing at least one of the Caritas Hospitals. In addition, the Attorney General finds the financial capacity of Steward, in light of its anticipated debt-free operation of the health care system and its affiliation with Cerberus, to be a reasonably viable alternative, from a financial perspective, for the continued operation of the Caritas Hospitals.

#### **4.2 The Board and senior management complied with standards of due care.**

Members of the Board, as well as senior managers, are fiduciaries and must at all times in their dealings with Caritas act in a manner consistent with their obligations of due care and loyalty. While the duty of loyalty will be discussed in Section 4.3 below, the duty of care means that these individuals must act prudently, act in good faith, and exercise reasonable judgment. For the reasons set forth hereinafter, the Attorney General finds that the Board and senior management acted consistent with that duty.

The Attorney General requested and reviewed relevant documents and information, including financial data, organizational and governance documents, transactional documents, business records, and minutes of Board and Committee meetings, as well as interrogatory responses from, and interviews with, Board members and senior management concerning Caritas' consideration of alternative transactions as well as the Transaction.



The documents and information reviewed by the Attorney General, from 2006 to the present, reflect an engaged Board attentive to Caritas' needs and goals. The Board had ongoing discussions of the need for capital and the significant, underfunded, and growing pension liability. Board members had a clear focus and carefully considered all options for Caritas' survival. The Board reasonably involved and relied on the input from and opinions of qualified, independent third party consultants and advisors. The decision of the Board to sell to a private equity firm affiliate is, in essence, the end-result of an ongoing process begun in 2006, during which all other options available to Caritas were appropriately vetted and explored. The following is a description of that process, both before and after the governance reforms embodied in the Governance Agreement.

*Stage 1 (2006-2008): Leading to Governance Reforms*

In 2006, Caritas was struggling financially and capital constrained; it had outdated facilities, significant debt, and a significant shortfall in funding its pension plans (all of which became markedly worse and more pressing after the market collapse in 2008). RCAB, which controlled Caritas at that time, engaged Navigant to review its strategic options. In its report dated November 9, 2006, Navigant outlined four options: (i) remain as a solo system, but with restructured operations and empowered governance, (ii) affiliate with a national Catholic system, (iii) affiliate with a local, non-profit hospital or system, or (iv) sell to a for-profit. The Board reviewed all options and, consistent with Navigant's recommendation, determined that affiliation with a national Catholic system was the preferred approach to meet Caritas' need for capital consistent with its mission.

RCAB, on behalf of Caritas, began its efforts to affiliate with a national, non-profit Catholic health care system. Caritas issued a Request for Proposals. In December 2006, responses were received from Catholic Health East, Ascension Health ("Ascension"), and Catholic Health Initiatives ("CHI"). Caritas focused on both Ascension and CHI. In January 2007, RCAB decided to pursue an affiliation with Ascension. While Ascension conducted due diligence, the parties exchanged drafts of a Change of Sponsorship Agreement concerning the terms of a transaction under which Caritas would join Ascension. By the summer of 2007, negotiations had stalled, in part because Ascension was concerned about Caritas' continuing financial deterioration. These negotiations also confirmed for Caritas that Ascension, similar to other non-profit systems, could not provide the immediate access to capital that Caritas needed, particularly the capital needed for its underfunded pension plan and aging facilities, within the framework of Ascension's operating model. Instead, capital for Caritas would come in the form of better access to the debt markets on the basis of Ascension's strong credit rating.

On September 17, 2007, in response to a request from the Attorney General, RCAB sent Ascension a letter asking Ascension to resume negotiations. In October 2007, Ascension declined. In November 2007, CHI, after preliminary due diligence and for reasons similar to those expressed by Ascension, also declined to pursue an affiliation with Caritas.

The Attorney General then engaged HS&S to evaluate the Caritas health care system. In its March 6, 2008 report, HS&S found that Caritas, due to its poor financial performance, had delayed or foregone capital and reinvestment initiatives. The HS&S report confirmed that capital constraints remained a major challenge to the success of Caritas. HS&S also recommended significant governance restructuring at Caritas to vest the Board with independence and authority and therefore improve its ability to attract strong Board members and high-quality senior management. HS&S noted that Caritas needed strong, dynamic leadership whose accountability and reporting obligation ran only to the Board and recommended that the new leadership be effective, visionary, and stable. HS&S concluded that Caritas' failure to address successfully those financial, governance, and management issues in a timely manner would result in further deterioration of Caritas' competitive and financial positions.

On May 20, 2008, the Archbishop entered into the Governance Agreement with the Attorney General, which resulted in the governance reforms embodied in the May 22, 2008 amended and restated bylaws of Caritas. These governance reforms increased the independence and authority of the Board, consistent with the Navigant 2006 Report and HS&S Report recommendations.

*Stage 2 (2008—2010): Post-Governance Reforms*

By May 2008, Caritas had hired Ralph de la Torre, M.D., as its new President and Chief Executive Officer. In 2008, Caritas showed enhanced governance activity, with changes in composition of its Board, officers, and the Executive Committee of the Board (the "Executive Committee"). A new management team was recruited and focused on a complete operational restructuring. The Board focused on financing options, capital needs, liquidity problems, and the underfunded pension plan. As noted in footnote 4, above, the largest of the Caritas pension plans, the RCAB Retirement Trust, is not maintained by Caritas. However, the Board considered leaving these Caritas employees with underfunded pensions to be an unacceptable alternative for Caritas and focused on achieving funding and insurability.

Throughout 2008, Caritas continued to consider alternatives to address its capital needs. Caritas considered the possibility of an affiliation with a non-profit organization, but concluded that it did not have any realistic, viable non-Catholic, non-profit alternative. Of the few multi-state non-profit systems, in Caritas' experience, none was likely to have an interest in Caritas' competitive market. The only local non-profit system that might have had the capital resources to meet Caritas' needs was Partners HealthCare System, which is the largest health care system in the Commonwealth. As Caritas is the second largest system, the Board was advised that an effort to combine the two, both concentrated in eastern Massachusetts, would likely raise insurmountable market concentration issues.

In 2008, Caritas also had discussions with Ascension and Vanguard Health Systems ("Vanguard"), a national for-profit hospital system doing business in Massachusetts, concerning the possibility of a joint Ascension/Vanguard acquisition of

Caritas, but the parties were unable to develop a mutually-acceptable arrangement. Ascension also offered a credit facility to Caritas, but Caritas was unable to accept this offer due to deteriorating market conditions.

Caritas then hired Cain Brothers, an investment bank specializing in health care, to assist Caritas with obtaining capital, including evaluating Caritas' ability to access needed capital through traditional non-profit borrowing. At an all-day Board meeting on October 23, 2008, Cain Brothers made a presentation to the Board on the current state of the capital markets. Cain Brothers concluded that public financing would be very expensive for Caritas and that its current financial position would not support significant additional debt. Therefore, Caritas had limited access to capital.

During that meeting, the Board also focused on: (a) the underfunding of the pension plans, which was far more serious than previously understood, (b) Caritas' debt service obligations of approximately \$40 million annually, and (c) Caritas' worsening operating margins and investment losses for 2007 and 2008, leading to further deterioration in its facilities and cash reserves. Because the largest of the pension plans is structured as a non-electing Church plan, it is not insured by the federal government. Moreover, this pension plan is not an obligation of Caritas, and therefore, the plan's beneficiaries would have no recourse against Caritas in the event that Caritas filed for bankruptcy or was otherwise incapable of funding the plan. These factors, in the context of the sharp economic downturn and market collapse, made it clear to the Board that Caritas had a critical and increasing need for capital.

With no viable options among non-profit health care systems, and before reaching out to for-profit companies, the Board wanted to confirm the finding in the prior reports from Navigant (2006), HS&S (2008), and Cain Brothers (2008) that remaining an independent health care system was not a viable option for Caritas. The Board engaged Navigant to reexamine Caritas' pension and capital issues and to evaluate Caritas' ability to survive without a capital partner. In the interim, Caritas operated under a capital freeze, which included no additional funding of the pension plans.

In February 2009, Navigant delivered a report to the Executive Committee, which supported the Board's understanding that there was no reasonable way for Caritas to meet its pension and debt obligations and survive as an independent system. Navigant's report and presentation also detailed issues with Caritas' cash flow and capital needs. As noted in Section 4.1, above, Navigant presented five different scenarios based on varying operational and financial assumptions. Four scenarios projected Caritas defaulting on its existing debt covenants (i.e., less than 30 days cash-on-hand) in less than one year. One aggressive and generally unsustainable scenario projected such a Caritas default in less than two-and-one-half years. The Board recognized, notwithstanding Caritas' increased earnings in 2009 under its new management team, that Caritas still had no realistic prospect of generating margins sufficient to fund its pension plans and capital shortfall.

Having reasonably explored its other available alternatives, Caritas then turned to a sale to a for-profit. It considered Vanguard, with whom Caritas had had informal

discussions in 2008. On September 8, 2009, the Board approved entering into a letter of intent with Vanguard to sell substantially all of Caritas' assets.

During the Vanguard negotiation process, as well as a subsequent private equity firm solicitation described below, the Executive Committee and Board identified and communicated to senior management the Board's priorities concerning any transaction. These included: (i) a commitment to meet the pension plans' obligations to the pensioners, (ii) a commitment not to sell within a defined period of years post-Closing, (iii) a capital contribution sufficient to discharge the debt and upgrade the outdated facilities, (iv) commitment to its Catholic identity and mission, (v) commitments to community benefits and charity care, and (vi) a commitment to governance and operational continuity to promote stability.

Recognizing the inherent and unavoidable conflicts associated with directing management to participate in negotiating transactions in which it had a future economic interest, in November of 2009, the Board engaged separate legal counsel, Nutter, McClennen & Fish LLP, to advise the Board regarding Caritas' strategic alternatives, including the exploration of a transaction with a for-profit entity, as well as advising the Board members with respect to their fiduciary duties.

Caritas and Vanguard signed a letter of intent on November 4, 2009. However, after further negotiations, the parties were unable to reach agreement on material terms, including the increasing underfunded pension liability and a no-sale period. Consistent with the mutual agreement of the parties, the Executive Committee voted to terminate the Vanguard letter in December 2009, in order to explore other options. Cain Brothers was engaged to assist Caritas with this process.

Consistent with its past actions, the Board was involved in setting the parameters for Caritas' negotiations with a for-profit entity. The Board's priorities, as described above, remained essentially unchanged. The Board authorized Cain Brothers to identify private equity firms with an interest in hospital systems and with the willingness to embrace Caritas' vision and mission. These priorities meant that the Board was not looking to incorporate Caritas into an existing hospital operating company, but rather, sought an investor who would enable Caritas to retain its own culture and business philosophy, management team, and preferably, its eastern Massachusetts headquarters. In light of Caritas priorities at this stage, Cain Brothers recommended directly approaching private equity firms. Of the five approached, three responded. Of these three, two, including Cerberus, participated in full day presentations in January 2010.

After the initial due diligence, Caritas selected Cerberus because of its commitment to the Caritas vision and mission, its diligent approach to the evaluation process, its resources, its commitment to Caritas negotiation priorities, including the pension liability and the no-sale period, and its high level of interest in entering the health

care sector.<sup>8</sup> Caritas signed a letter of intent with Cerberus dated January 23, 2010. The Executive Committee and Board were aware of and actively involved in the APA negotiation process, giving appropriate oversight and direction to senior management. Two Board committees were established to oversee the negotiation process, one focusing on negotiations with Cerberus concerning the Transaction and one focusing on negotiations with RCAB concerning the Stewardship Agreement.

Prior to the APA execution, the Board engaged Navigant Capital Advisors, LLC (“Navigant Capital”) to provide a fairness opinion concerning the purchase consideration of the Transaction. (See APA and Transaction elements outlined in Section 1.1., above.) After reporting the basis for its opinion, Navigant Capital concluded that the purchase consideration for the Transaction “is fair from a financial point of view.” Board members relied on the Navigant Capital report and fairness opinion in concluding that Caritas was receiving fair value for the sale of its assets and operations under the Transaction.

At its March 19, 2010 meeting, the Board voted to approve the Transaction as set forth in the APA.

#### *Key Findings*

In total, the Attorney General finds a clear, deliberative progression of the Board in its exploration of potential alternative transactions, ultimately and not unreasonably leading to the Transaction. Throughout negotiations with the various third parties, the Board identified and communicated to senior management its priorities (e.g., unqualified commitment to fund the pension liability, commitment not to sell within a defined period of years post-Closing, capital contribution, and commitments to its Catholic identity, community benefits, and charity care). The Board reasonably relied on the advice of qualified, independent consultants and advisors, working with Navigant to assess its viability and market options, working with Cain Brothers to assess its access to capital markets and to solicit private equity firms, and engaging Nutter, McClennen & Fish, LLP for separate Board legal counsel and advice. Likewise, to confirm compliance with the statutory standard requiring that Caritas receive fair value for its assets, the Board reasonably relied on the fairness opinion from Navigant Capital, which concluded that the purchase consideration for the Transaction “is fair from a financial point of view.”

The record reviewed by the Attorney General demonstrates engaged and committed Board involvement over an extended period of time. The Board carefully evaluated all options, including the Transaction, and acted diligently, deliberatively, and in the best interests of Caritas, consistent with the fiduciary duty of care.

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<sup>8</sup> In 2009, Cerberus had contacted Caritas President and Chief Executive Officer, Dr. de la Torre, because Cerberus was interested in potentially hiring him; however, no direct or indirect financial relationship or business interest was established.

#### **4.3 The Board and senior management complied with standards for disclosure and managing conflicts of interest.**

Consistent with the duty of loyalty, the members of the Board and senior management, as fiduciaries, must act in the best interests of the organization rather than themselves. When their personal interests are implicated, the interests must be disclosed and appropriately handled to assure that decisions are truly made in the interests of the charity. For the reasons set forth hereinafter, the Attorney General finds that the Board and senior management acted consistent with those standards.

The Attorney General requested and reviewed relevant documents and information, including the Caritas conflict of interest policy and procedures, conflict of interest disclosure form, and Board and Committee minutes, as well as interrogatory responses from, and interviews with, Board members and senior management concerning conflict of interest disclosures and the Transaction.

Caritas has appropriate conflict of interest policies and procedures, including completion of conflict of interest disclosure forms by Board and senior management annually and within three business days of any material change. Conflict of interest disclosures are reviewed by the Compliance Department, Chief Compliance Officer, General Counsel, and the Board. The Caritas conflict of interest policy also outlines an appropriate process for reviewing and managing conflict of interest disclosures, including recusal by the interested person from the deliberative process and findings that the proposed related party transaction is in the best interests of Caritas and that there is no equally or more advantageous alternative.

With respect to the Transaction, the Board and senior management appropriately disclosed and managed such conflicts as existed. Board oversight of conflict of interest issues was diligent. As noted in Section 4.2, above, the Board engaged Nutter, McClennen & Fish LLP as separate legal counsel to advise the Board, including concerning the Transaction and the appropriate management of conflicts of interest.

Prior to the APA execution, no Board member, or any family member of any such individual, had any direct or indirect financial relationship with or business interest in Cerberus. Consistent with a desire by the Board for local participation and some governance continuity on the Steward Board, two community members of the current Board - James J. Karam, Chair, and Ruben Jose King-Shaw, Jr., Vice Chair - have agreed to serve on the Steward Board, along with Dr. de la Torre *ex officio*, in the event that he is employed as the President and Chief Executive Officer of Steward. Steward did not offer positions on the Steward Board to Mr. Karam and Mr. King-Shaw until several weeks after execution of the APA. However, no compensation or other financial terms or conditions concerning such future Steward Board service have been offered by Steward to date.

Prior to the APA execution, no member of the Caritas senior management team, or any family member of any such individual, had any direct or indirect financial

relationship with or business interest in Cerberus. As noted in Section 4.2., footnote 8, above, in 2009, Cerberus had contacted Caritas President and Chief Executive Officer, Dr. de la Torre, because Cerberus was interested in potentially hiring him due to his health care management skills and leadership ability; however, no direct or indirect financial relationship or business interest was established. In light of his future employment by, and board service with, Steward, Dr. de la Torre abstained from the March 19, 2010 vote by the Board to approve entering into the APA. The current Caritas senior management team is expected to be employed by, and the management team of, Steward; this is consistent with a desire by the Board for management continuity post-Closing. No financial terms and conditions have been negotiated between Steward and members of Caritas senior management with respect to future employment. Based on interrogatory responses from Caritas representatives, no member of Caritas senior management will receive an increase in salary, incentive payment or bonus, or other form of compensation in return for identifying, finding, negotiating, or entering into the Transaction. Moreover, any incentive compensation granted to members of the senior management team by Steward will be designed so as to reward individuals based on post-Closing performance.

#### *Key Findings*

The Attorney General finds that conflicts of interest were properly disclosed and managed and that the Board acted in the interests of Caritas in establishing the criteria for, negotiating, and entering into the APA and the Transaction.

#### **4.4 The Transaction purchase price is consistent with fair market value.**

The duty of care, to which the Board and senior management are subject, obligates the organization to obtain the best possible arrangement for its assets. The Attorney General requested and reviewed relevant documents and information, including documents and information referenced in Sections 4.1, 4.2, and 4.3, above, the March 19, 2010 Navigant Capital fairness opinion, as well as interrogatory responses from, and interviews with, Board members concerning the value of Caritas.

Transaction purchase consideration is defined to be the sum of: (i) the release or assumption of outstanding Caritas debt, (ii) the funding of underfunded pension liability (i.e., not a fixed, negotiated number, but rather, to be determined on an actuarial basis, based on the present value of the expected future benefit obligations of all of the pension plans less the value of all of the pension assets, which amount may change before Closing due to market conditions), and (iii) the assumption of outstanding liabilities of Caritas. This does not suggest or mandate that the “purchase price” is the sole determinant of what is fair and reasonable. Other material commitments, such as those negotiated by the Board for this Transaction and which are not technically part of the purchase price, may also be taken into account in determining overall fairness. The Attorney General looked at the following areas in evaluating the fairness of the purchase price.

### *Navigant Capital Fairness Opinion*

Prior to the APA execution, the Board engaged Navigant Capital to provide a fairness opinion concerning the purchase consideration of the Transaction. At the time of the Navigant Capital opinion letter, the purchase consideration was between \$430 million and \$450 million, subject to a final determination of specific liabilities to be assumed or retired (i.e., the debt, as well as the underfunded pension plans and other liabilities). After reporting the basis for its opinion, Navigant Capital concluded that the purchase consideration for the Transaction “is fair from a financial point of view.” Each Board member stated in his interrogatory response that he relied on the Navigant Capital report and fairness opinion in concluding that Caritas was receiving fair value for the sale of its assets and operations in connection with the Transaction.

As noted in Section 1.1 above, since execution of the APA and the issuance of the Navigant Capital opinion, the purchase consideration has increased to approximately \$495 million, due to changes in the value of pension plan assets, liabilities of Caritas, and accrued interest on Caritas’ existing debt. If the purchase price was fair at \$450 million, it is appropriate to conclude that it is even more advantageous to Caritas at \$495 million.

It is consistent with the fiduciary obligations of a Board member, including the duty of care, to rely on information, opinions, and reports of professional third parties as to matters which the Board member reasonably believes to be within the competence of such professional or expert. *See* G.L. c. 180, § 6C. The Attorney General finds that the reliance by the Board on the Navigant Capital opinion concerning the fairness of the purchase consideration of the Transaction was appropriate.

Moreover, there is substantial independent support for the fairness of the purchase consideration of the Transaction inherent in (i) a review of industry experience for health systems in a distressed financial position, (ii) the restrictions placed on the future use of the assets, and perhaps most importantly, (iii) the multi-year review and evaluation process that Caritas undertook to explore alternatives to the Transaction.

### *Industry Multiples*

The purchase price for the Transaction is estimated at approximately six times Caritas’ Earnings Before Interest, Depreciation, and Amortization (“EBIDA”). This calculation is based on the acquisition price of \$495 million, and EBIDA of \$80-\$85 million. Selected industry experts estimate that the current industry range for health systems in distressed financial position is four to seven times EBIDA. For example, a current proposed transaction involving the sale of Detroit Medical Center to Vanguard Health Systems is estimated at approximately five times EBIDA.<sup>9</sup> The Caritas Transaction price therefore falls into the high end of the cited industry range. This is despite the fact that the Caritas acquisition price would be expected to fall at the lower end of industry ranges, because there are few organizations that have the resources to

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<sup>9</sup> This estimate is based on data from Detroit Medical Center’s Consolidated Financial Statements 2009 and transaction information posted on the Michigan Attorney General’s Office website.



complete such a transaction, and organizations that could potentially access the resources indicated relatively little interest. This lack of demand and interest would typically result in a relatively low offer price.

#### *Other Restrictions and Terms*

In addition to the purchase consideration, other consideration or value to Caritas (and the public) of the Transaction includes all of the factors listed in Section 1.1, above, and Section 4.5, below. Theoretically, the Board might well have obtained a higher purchase price had it chosen to walk away from the pension liability, close one or more Caritas Hospitals, or forego any of its other APA negotiation priorities. It chose not to. As noted in Section 1.1(m)-(w), above, the Transaction elements of consideration or value to the public interest have been enhanced as a result of the Attorney General's review. The Attorney General concludes that the above conditions serve the public interest and support the acceptance of a purchase price that, at least theoretically, is less than that which could have been obtained had the assets been transferred with no restrictions.

#### *Market Response*

Ultimately, the best determinant of fair market value, particularly in the complex marketplace of health care where sellers may have significantly divergent conditions and negotiating positions, is neither opinions nor industry ranges. The best determinant is rather the market response to a carefully designed and managed sale process. The nearly four-year process undertaken by the Board has been detailed in Section 4.2, above. Toward the end of that process and in a final attempt to fully obtain its stated objectives, Caritas engaged Cain Brothers to reach out to other organizations that may have had an interest in an acquisition of Caritas. Caritas leadership and their advisors communicated and negotiated with several parties regarding a potential transaction involving the health system. The Board and management report that organizations (other than Cerberus) were ruled out because they did not offer, or did not have the financial resources, to defray Caritas' debt and other liabilities, meet pension obligations, and fund necessary and ongoing capital improvement needs of the health system. Ultimately, the Board concluded that the acquisition terms agreed upon by Cerberus were superior to any other.

#### *Key Findings*

The Attorney General finds that the Transaction affords Caritas, and the public it serves, fair value for the assets and operations of Caritas. In short, the Board and senior management, after exercising due care, reasonably concluded that the Transaction purchase consideration offered by Cerberus was stronger in value than any market alternative to date.

#### **4.5 The Transaction is in the public interest.**

Finding, as she has, that the first four factors have been satisfied, the Attorney General must ultimately find the Transaction to be in the public interest. To do so, she must determine that the public is better served with the Transaction than without it. For the reasons set forth previously and hereinafter, the Attorney General finds that the public is better off with the Transaction than without it and, consequently, that it is in the public interest.

The Attorney General requested and reviewed all of the documents, information, and interrogatory responses previously disclosed, as well as interviews with key Board members and members of senior management.

As noted in Section III, above, much of the public commentary that the Attorney General received was supportive of the Transaction. As noted in Sections 1.1 and 4.4, above, components of the Transaction that are beneficial to and consistent with the public interest include: (i) funding the pensions of approximately 13,000 current and former Caritas employees, which currently are at risk, (ii) satisfying outstanding Caritas debt, (iii) committing no less than \$400 million in Caritas capital expenditures within four years from Closing, with \$116 million already allocated towards priority capital projects at the Caritas Hospitals,<sup>10</sup> (iv) maintaining current levels of indigent and charity care (estimated by Caritas to be approximately \$37 million annually), (v) maintaining current levels of community benefit expenditures (estimated by Caritas to be approximately \$26 million annually, plus an additional \$3 million annually in pastoral care and related services), (vi) continuing to accept Medicare and Medicaid patients, to accept emergency room patients regardless of ability to pay consistent with relevant law, and to provide culturally and linguistically appropriate services consistent with those currently provided at the Caritas Hospitals, (vii) not closing any Caritas Hospital, or closing or reducing the number of any inpatient psychiatric and detoxification beds in any Caritas Hospital, within five years from Closing, subject to certain performance criteria for the final two years, (viii) not engaging in any initial public offering or sale, or selling or transferring a majority interest in any Caritas Hospital, within three years from Closing, (ix) preserving the Catholic identity of the Caritas Hospitals, (x) preserving the jobs of approximately 12,000 Caritas employees, (xi) honoring commitments made by Caritas in the past to donors, (xii) continuing local governing boards for each Caritas Hospital, in function and general composition, (xiii) being headquartered in the greater Boston area and maintaining current Caritas senior management, (xiv) complying with the Recommended Hospital Debt Collection Practices set forth in the Attorney General's Community Benefits Guidelines for Non Profit Hospitals, (xv) committing that the community benefit and charity care provisions set forth in the APA will apply to any successor-in-interest to Steward and that any Massachusetts hospital acquired post-Closing by Steward from a for-profit entity will, at a minimum, comply with the for-profit hospital's then existing

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<sup>10</sup> Caritas produced for review by the Attorney General a summary of proposed capital initiatives that make up in excess of \$400 million in capital expenditures. The proposed list is subject to change depending upon future priorities, but includes a variety of routine capital replacement/refurbishment needs, initial capital projects, infrastructure improvements, and other potential capital initiatives.

community benefit and charity care obligations, (xvi) agreeing that the Attorney General shall have the right to enforce the Pension Transfer Agreement (described in Section V(b), below) and certain post-Closing provisions of the APA related to the public interest, (xvii) agreeing that any enforcement action brought by the Attorney General under the APA or any of the ancillary agreements shall be brought solely in the courts of the Commonwealth of Massachusetts, (xviii) assuring and funding the orderly reorganization, dissolution, and windup of the Caritas entities, including assuring that endowment funds and other charitable assets are appropriately segregated and used for appropriate purposes, (ixx) committing that Steward, and any successor-in-interest to Steward, will, notwithstanding its for-profit status, fully cooperate with any investigation, inquiry, study, report, or evaluation conducted by the Attorney General under her oversight authority of the non-profit charitable hospital industry to the same extent and subject to the same protections and privileges as if Steward were a public charity, and (xx) cooperating with, and funding with a Closing payment of \$1.5 million, a five-year assessment, evaluation, and monitoring of the impact of the Transaction on health care costs and services within the communities served by Steward, certain aspects of such monitoring to be conducted by the Attorney General and certain other aspects by the Department of Public Health, consistent with an Assessment and Monitoring Agreement with the Attorney General (described in Section V(c), below).<sup>11</sup>

The Attorney General has determined that, absent the Transaction, it is highly likely that pensions of some 13,000 current and former employees would remain underfunded, uninsured, and at risk, and one or more Caritas Hospitals would be closed. In such case, much, if not all, of the commitments to community benefits, charity care, job retention, and the like would not be achievable.

There is risk inherent in any transaction. While the Board and the Attorney General are reasonably satisfied that the commitments obtained from Steward will minimize some of those risks, concern has been expressed that a strengthened and capitalized Caritas system will be better capable of the conduct previously identified by the Attorney General, and heretofore exercised exclusively by a sector dominated by public charities, as driving health care cost escalation in Massachusetts.<sup>12</sup> The risks identified in the Attorney General's Cost Drivers Report are not unique to Caritas, either in its current charitable structure as Caritas or under a for-profit structure as Steward, nor can they be addressed in a manner independent of the rest of the health care system in the

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<sup>11</sup> The Attorney General notes that the new jobs generated by the capital projects (estimated by Caritas to be 3,000 to 4,000) and the federal, state and local tax revenues (estimated by Caritas to be as much as \$100 million over the next five years) arising out of the Transaction, have been identified by some as being an important basis for supporting the Transaction. The Attorney General does not dispute the value of those jobs and revenues to employees, contractors, and local communities. Nevertheless, all of those expenditures, as with virtually any expenditure by a health care provider, will eventually be paid for by the public through state and federal taxes that support Medicare, Medicaid, and other state and federal payer programs, as well by premium dollars. As such, these factors were not necessary to the Attorney General finding that the Transaction is in the public interest.

<sup>12</sup> See the Attorney General's report entitled "Examination of Health Care Cost Trends and Cost Drivers Pursuant to G.L. c. 118G, § 6½(b)" dated March 16, 2010 (the "Attorney General's Cost Drivers Report").

Commonwealth. Nevertheless, as part of her continuing interest in better informing the public and policy makers, and consistent with the provisions of G. L. c. 180 § 8A(d)(5), the Attorney General, with the acknowledgement of the Department of Public Health, has entered into a five-year post-Closing Assessment and Monitoring Agreement with Steward. This monitoring, which will be further discussed in Section V, below, and Appendix A, Section 12, below, is designed, among other things, to identify and track the impact of the Transaction on costs, access, and services.

### *Key Findings*

While there are risks to the public inherent in any transfer of ownership of a hospital, under any tax or ownership structure, those risks are outweighed in this case by the known and quantifiable risks of not proceeding with the Transaction. On that basis alone, the Attorney General finds that the Transaction is in the public interest.

#### **4.6 The terms and conditions of the Stewardship Agreement are not inconsistent with the Archbishop's fiduciary obligations to Caritas under the Governance Agreement or Massachusetts law.**

The Governance Agreement provides that the Archbishop shall, when exercising the powers and authority vested in him under the bylaws of Caritas Christi, act as a fiduciary under Massachusetts law. Article II, Section 12(a)(ii) of the Eighth Amended and Restated Bylaws of Caritas Christi ("Bylaws") provides that the written approval of the Archbishop shall be required to "approv[e] a sale....of the Corporation." Therefore, when exercising his power of approval over a sale, the Archbishop is subject to a duty of loyalty to Caritas. This means the Archbishop must act in the best interests of Caritas, and not the Archbishop or RCAB. This does not mean that the Archbishop cannot consider his interests or those of RCAB, but he must put the interests of Caritas ahead of these interests.

In addition to reviewing the Governance Agreement, the Bylaws, and the terms and conditions of the Stewardship Agreement, the Attorney General interviewed a member of the Board committee responsible for overseeing the negotiation of the terms and conditions of the Stewardship Agreement.

Caritas is now, and has been since its inception, a Catholic faith-based health care system operating under the Directives. Continuing that status was a condition established by the Board and agreed upon by Steward. The application of the Directives to the system, the determination of their scope, and the continuance of certain mission objectives inherent in Catholic faith-based health care are all objectives that, by definition, require the continued involvement of the Archbishop and RCAB and therefore align the parties' interests and objectives. On that basis, the Attorney General sees nothing in the Stewardship Agreement with respect to the authority of RCAB over matters of Catholicity as being inconsistent with the Archbishop's duty of loyalty to Caritas.

With respect to funds flow, the Attorney General notes that seeking or receiving additional compensation for exercising, or failing to exercise, his right of approval over this Transaction would constitute a breach of the Archbishop's duty of loyalty. She does not, however, see any evidence that the Archbishop or RCAB is receiving additional compensation. Provision for the continued funding, based on historical experience, for pastoral care and other mission-related activities does not involve new or additional amounts and simply assumes such costs formerly borne by Caritas and now borne by Steward as an integral part of operating a Catholic faith-based health care system. As such, the Attorney General sees nothing in those terms that suggest a breach. With respect to the Termination Contribution, the Attorney General understands that the \$25 million was not based on any external formula, but rather, was intended to be at an amount that, if paid, was sufficiently low to not endanger the financial viability of the system while sufficiently high to deter Steward from exercising its termination rights as a matter of convenience rather than legitimate need. The Termination Contribution, if paid, will not go to RCAB but rather to a public charity designated by RCAB and subject to the jurisdiction of the Attorney General. In such event, the Attorney General expects RCAB, consistent with its fiduciary obligations, to use the Termination Contribution for new or expanded health care initiatives or to replace health care initiatives previously funded by Caritas or Steward. This will limit any possibility that the Termination Contribution would be used to replace funding previously provided by RCAB and therefore free those previously committed funds for other purposes. In such event, the Archbishop's duty of loyalty might be compromised.

#### *Key Findings*

Neither the Archbishop nor RCAB is receiving any compensation, direct or indirect, on account of, or as a condition of, issuing its approval for the Transaction. In the event of any Termination Contribution, the Attorney General expects that such funds will not simply replace funds previously committed from RCAB's own accounts. On the basis of the foregoing, the Attorney General finds that the terms and conditions of the Stewardship Agreement are not inconsistent with the Archbishop's fiduciary obligations to Caritas under the Governance Agreement or Massachusetts law.

### **V. ANCILLARY AGREEMENTS**

In connection with her review of the Transaction, the Attorney General, consistent with the authority of her office and G.L. c. 180, § 8A(d), has required the various parties to enter into the following agreements to better ensure compliance with Transaction matters related to the public interest.

(a) An Enforcement Agreement, materially in the form attached hereto as Exhibit V(a), by and among the Attorney General, Caritas, and Steward with respect to the enforcement of certain post-Closing provisions of the APA. Subsequent to the Closing and its provision for the continued use of remaining assets and endowments, Caritas may not be in a position, nor have the resources, to monitor and enforce the post-Closing obligations of Steward. The Attorney General's findings of public interest are

expressly predicated on those obligations and, as such, she obtained from Steward and Caritas the right to enforce those provisions on behalf of the public.

(b) A Pension Enforcement Agreement, materially in the form attached hereto as Exhibit V(b), by and among the Attorney General, Steward, RCAB, and the trustees of the RCAB Retirement Trust with respect to monitoring and enforcement of the RCAB Retirement Trust funding obligations of Steward, as set forth in the Pension Transfer Agreement by and among Steward, the RCAB Retirement Trust, and RCAB. Funding, stabilizing, and insuring the pensions of current and past Caritas employees was a critical component of the Attorney General's findings. While she has no reason to doubt that RCAB and the trustees of the RCAB Retirement Trust will vigorously enforce Steward's pension funding obligations, as an additional layer of security, she obtained from Steward, RCAB, and the RCAB Retirement Trust the right to enforce the parties' obligations thereunder on behalf of those current and past employees.

(c) An Assessment and Monitoring Agreement, materially in the form attached hereto as Exhibit V(c), between the Attorney General and Steward with respect to the scope, content, and funding of a five-year monitoring program of the impact of the Transaction on health care services, access, and cost, certain aspects of which will be conducted by the Department of Public Health consistent with G.L. c. 180A § 8A(d)(5). As will be more fully discussed in Appendix A, particularly paragraph 12, concern has been expressed that Steward will use its capital and market clout to raise prices and reduce services. While the Attorney General has no basis to conclude that Steward, solely on the basis of its for-profit status, will engage in such conduct, particularly given the fact that the current challenges facing the Commonwealth's health care market system are a product of the actions of non-profit providers and insurers, she is committed to transparency and has obtained from Steward the commitment, and the funds, to participate in an evaluation of the impact of the Transaction on access, services, and costs.

(d) A Transition, Windup, and Reorganization Agreement, materially in the form attached hereto as Exhibit V(d), by and among the Attorney General, Caritas, and Steward with respect to identification, segregation, and future use of donor-restricted funds, and other corporate transition, windup, and reorganization matters concerning charitable entities and assets. While much of the Attorney General's and the public's focus has been on the assets to be transferred as part of the Transaction, there are assets that will not be transferred, including donor-restricted funds to be held and used for charitable purposes. Because Caritas Christi and the other surviving Caritas entities will not have the resources or staff to assure an orderly reorganization and provision for future use of those assets, Steward has agreed to participate in that process and to fund it.

## **VI. CONCLUSION/SUMMARY**

For the reasons and subject to the conditions set forth above, the Attorney General finds that: (1) it is impracticable, if not impossible, for Caritas to continue to survive in its current charitable form and that the Transaction complies with applicable charities law,

(2) due care was followed by the Board and senior management, (3) the Board and senior management appropriately disclosed and managed such conflicts of interest as existed, (4) the Transaction affords Caritas fair value for its assets and operations, (5) the Transaction is in the public interest, and further (6) the Stewardship Agreement between RCAB and Steward is not inconsistent with the Archbishop's fiduciary obligations to Caritas under the Governance Agreement or Massachusetts law.

Based on the foregoing, and with the security and transparency afforded by the agreements set forth and described in Section V, above, the Attorney General states her intent to assent to a Complaint to be filed by Caritas with the Supreme Judicial Court seeking the Court's approval of the Transaction.

By:



David Spackman, Chief  
Non-Profit Organizations/Public Charities  
Division  
Office of the Attorney General

**APPENDIX A**  
**PUBLIC COMMENTARY AND RESPONSE**

As referenced in Section III of the Statement, the Attorney General received a wide range of comments and suggestions concerning the Transaction. While the Attorney General is not in a position to respond to each of these comments and suggestions individually, consistent with her desire to inform the public, the following areas of concern merit her response.

**1. Impact of For-profit Status.**

*Comments/Recommendations:* Concern over the for-profit, investor-owned, status of Steward as the acquirer and operator of Caritas' assets was a central thread among several commentators. Comments ranged from outright hostility towards for-profit operators in an industry heretofore occupied primarily by non-profit charitable organizations, to fears that Steward and Cerberus would prioritize investor returns over health care services, to concerns about the nature of the Cerberus business model. Recommendations ranged from outright rejection of the Transaction, to imposition of a variety of operational and contracting restrictions on Steward, to monitoring of the future impact of the Transaction on the marketplace and consumers.

*Response:* A full analysis and discussion of the relative risks and benefits of for-profit and non-profit health care operations is beyond the scope of this review and will likely remain an area of local, regional, and national debate for the foreseeable future. Nevertheless, several observations can be made.

First, charities law and the Attorney General's review favor the maintenance of charitable assets in charitable hands. In the event there were comparable proposals from a non-profit and a for-profit operator, absent other factors (such as market concentration issues), both the law and the Attorney General's Office would favor the non-profit operator. This preference for continued charitable status was reflected in the early endeavors by RCAB and the Board to forge a relationship with a non-profit Catholic system, and, failing that, a joint venture with a for-profit and non-profit entity. Neither came to pass. Despite the clear preference for maintenance of charitable status, the debt, the combined burden of the underfunded pension liability, and the deferred capital needs of the system (together now at almost one billion dollars) is beyond the current financial capacity of the Massachusetts non-profit sector. While a non-profit acquirer may well be preferred, in this case, it is not available.

Second, Massachusetts is not without experience with for-profit owners and operators of hospitals. While still a distinct minority, four of the Commonwealth's more than sixty acute care hospitals are for-profit entities; in the sub-acute area, the percentage is far higher. The Attorney General has no evidence to suggest that our for-profit hospital operators have failed to provide quality health care while supporting the service needs of their communities and all without the public financial support conferred by tax exempt status. Moreover, the trends driving health care costs, as identified in the Attorney



General's Cost Drivers Report, are the product of an overwhelmingly non-profit charitable sector, both hospital and insurer. As such, the Attorney General has no data or experience to suggest that the for-profit hospital sector is prone to acting in a manner so inconsistent with the non-profit charitable sector as to merit particular operating constraints.

Nevertheless, the size and complexity of this Transaction, the overnight presence of available capital and a clean balance sheet, the size of the system, the presence of disproportionate share hospitals in several of the Caritas markets, and the significant increase in the presence of the for-profit sector in our hospital marketplace, does merit close and on-going focus, attention, and monitoring, the particulars of which will be further discussed in paragraph 12, below.

## **2. Charitable Foundations.**

*Recommendations:* The Attorney General should require Steward to create and fund community foundations, under the control of local community members and providers, to further the charitable activities and operations of each Caritas Hospital. One commentator suggested a mitigation fund to serve as source of compensation for any unintended consequences of the Transaction.

*Response:* The Attorney General has not required or sought additional funds for community foundations for three principal reasons.

First, community foundations are most often viewed as a funding mechanism to replace the charitable benefits purportedly lost when charitable hospital assets are transferred to a for-profit entity. These charitable benefits, including the community benefit obligations provided under a voluntary program administered by the Attorney General, are a form of compensation to the public in return for the public's financial support in the form of favorable tax treatment. In this case, Steward has agreed to maintain the charitable benefits previously funded by Caritas, including community benefits programs and free care. At the Attorney General's request, Steward also confirmed that it will comply with the Recommended Hospital Debt Collection Practices set forth in the Attorney General's Community Benefits Guidelines for Non Profit Hospitals and agreed that its community benefits and free care obligations would apply to any successor-in-interest to Steward. Steward will maintain community benefit programs and free care while also paying the local, state, and federal taxes that Caritas did not pay and which, in lieu thereof, it provided those charitable benefits. In essence, Steward is assuming most of the burdens of charitable status with none of the tax benefits. To require it to assume the charitable obligations of Caritas, and to pay taxes and to fund community foundations, has no basis in law or sound public policy.

Second, the Attorney General has concluded that the purchase price is fair and reasonable. Requiring an increase in price to fund community foundations is neither appropriate nor reasonable. Moreover, any such increase would likely come at the expense of other financial commitments made by Steward to the system, all of which

were established as priorities of, and vigorously negotiated by, the Board. The Attorney General has no basis to second-guess the Board's decisions in establishing those priorities or to divert funds away from the priorities that the Board established to other uses.

Third, the Attorney General would not support this Transaction without a finding of impracticality or impossibility. A purchase price sufficient to fund community foundations in material amounts, while still satisfying the system's liabilities, would suggest that the financial status of Caritas was far stronger than has been documented. Simply stated, if there was sufficient value in the system to support the creation of significantly funded community foundations, a finding of impracticality or impossibility might well prove difficult, if not impossible.

There will however, be charitable assets not transferred to Steward, including donor-restricted funds. The Attorney General, Steward and Caritas have entered into the Transition, Windup, and Reorganization Agreement, materially in the form attached hereto as Exhibit V(d), to address, among other issues, the use of these remaining assets.

### **3. Benefits to RCAB or the Archbishop.**

*Question:* Why isn't RCAB or the Archbishop, as the "owner" of Caritas, deriving any financial benefit from the Transaction?

*Response:* As noted in Section 1.1, above, while the Archbishop retains reserve powers with respect to Catholicity, certain governing body appointments, and major transactions, neither the Archbishop nor RCAB has any membership in, or other corporate role in the ownership, governance, or operations of, Caritas. In any event, public charities, such as Caritas, must be held exclusively for the benefit of the public and, as such, are not owned in the sense that for-profit entities are owned by shareholders. Members, directors, trustees, management, and others that have influence or control over the public charity are fiduciaries and subject to a duty of loyalty to the public charity. This means that they must act in a manner that furthers the interests of the charitable entity rather than themselves. In the event that the Archbishop or RCAB sought or received compensation for or with respect to this Transaction, such actions might constitute self-dealing and constitute a breach of the duty of loyalty to the organization.

The Attorney General does, however, note that there will be indirect and ancillary financial benefits to the Archbishop and RCAB arising out of this Transaction. For reasons previously discussed in Section 4.6, above, the Attorney General has concluded that these indirect and ancillary benefits are appropriate and not inconsistent with the Archbishop's fiduciary obligations to Caritas.

### **4. Maintenance of Catholicity.**

*Recommendation:* The Attorney General should reject the Transaction because the decisions of RCAB, both reflected in the Stewardship Agreement and to approve the Transaction, constitute an abandonment of Catholic principles of health care.

*Response:* Matters of Catholicity, except as they impact compliance with the laws of the Commonwealth, are not within the purview of the Attorney General's review.

## **5. Reproductive Health Issues.**

*Recommendation:* The Attorney General should assure women are entitled to reproductive health services.

*Response:* Caritas is now subject to the Directives, as Steward will be post-Closing. As such, this Transaction does not, in and of itself, diminish women's access to reproductive health services. Steward will be obligated, to the same extent as Caritas is now obligated, to comply with the laws of the Commonwealth in all respects, including matters related to women's health.

## **6. Minimum Maintenance Period.**

*Recommendations:* The minimum three-year period Steward has committed to maintaining all of the Caritas Hospitals and their significant services should be extended. Recommendations ranged from five years to ten years.

*Response:* The Board identified, sought, and obtained an unconditional three-year minimum period to maintain each of the six Caritas Hospitals and their core services. In this volatile and unpredictable marketplace, particularly in the context of the fragile condition of some of the Caritas Hospitals, a three-year commitment is significant, particularly given the lack of any assurances in the absence of the Transaction.

However, in order to provide greater protection for the Caritas Hospitals and the communities they serve, the Attorney General sought and obtained from Steward an agreement to extend the three-year period for an additional two years, conditional upon any closure of any Caritas Hospital during years four and five meeting certain conditions, both in substance and process. These additional provisions will ensure that any closure of any Caritas Hospital during years four and five post-Closing will occur only after a robust and open two-year dialogue in which all stakeholders have the ability to seek solutions to the underlying problems and consider alternatives to closure.

Similarly, at the Attorney General's urging and given the critical need for such services, Steward has agreed that it will not close or reduce the number of inpatient psychiatric beds at any of the Caritas Hospitals during the same five-year period, subject to the same conditions.

There are several other reasons that the Attorney General has not sought any further extension.

First, commitments to all six Caritas Hospitals, of any duration, inherently risk the entire system for the continued support of one or two. Ultimately, the future of each of the

Caritas Hospitals will be based in large part upon the willingness of their respective communities, both public and commercial pay, to support them with their patronage.

Second, while not technically part of the purchase price, long-term commitments to hospital operations and services constitute an inherent risk that impacts the price a buyer is willing to pay for the Caritas assets. Increasing that risk by further extending the minimum maintenance period simply means that Steward would have to explore adjusting other commitments in order to maintain an acceptable risk profile.

Third, over the past twenty years, Massachusetts has lost several acute care hospitals, the most recent of which was Hubbard Hospital that closed in 2009. All were owned and operated by public entities or by non-profit charitable organizations. The Attorney General has no basis to impose a stricter limitation on a for-profit operator.

## **7. Minimum Hold Period.**

*Recommendation:* The minimum three-year hold period under which Steward may not change majority ownership in, or sell all or substantially all of the assets of, Steward, incur debt for the purposes of dividends or other distributions, or go public, should be extended.

*Response:* This provision was of particular concern to the Board and among the primary reasons Steward was selected. The Attorney General did seek and obtain a commitment from Steward to expand the scope of Prohibited Transactions (transactions that Steward may not engage in during this three-year hold period) to include changes in majority ownership in, or sales of all or substantially all of the assets of, any of the Caritas Hospitals. The Attorney General has not, however, required an extended minimum hold period for two reasons.

First, the Board appropriately identified, vigorously negotiated, and obtained from Steward the three-year limitation, a contractual commitment Caritas was unable to attain from any other party. The Attorney General has no basis to require a longer period than that sought and obtained by the Board.

Second, the Commonwealth has experience with ownership changes in both the non-profit and for-profit sector; the latter most recently with the ownership shift of MetroWest Medical Center and St. Vincent Hospital from Tenet to Vanguard Health Systems. The Attorney General has no evidence that those changes caused any disruption to the delivery system or the services offered.

## **8. Limitations on Growth.**

*Recommendations:* Suggestions included prohibiting or limiting additional hospital acquisitions, satellite campus development, or physician recruitment for a period post-Closing.

*Response:* The Attorney General’s Cost Drivers Report has previously identified and reported the negative impacts of health care system leverage on prices, access to capital, and disproportionate share providers. To date, those cost drivers are exclusively the province of non-profit, charitable organizations and systems. Market position, leverage, prices unrelated to quality or efficiency, and the growing gap between the “haves” and the “have nots” are all issues that remain areas of significant concern to the Attorney General, the executive branch, and the legislature. Nevertheless, the Attorney General has no basis to conclude that these concerns are unique to the Caritas system under any form of ownership, operations, or tax structure. To impose one set of conditions on Steward in addition to the requirements of law, while leaving others without those additional restrictions, would, at best, be unproductive and unfair, and at worst, could actually better enable others to engage in the very same activity such proposed restraints on Steward would be intended to prevent.

Steward will be subject to the same laws that regulate (i) any hospital or large physician group acquisition or combination, and (ii) the acquisition of physician practices and compensation.

#### **9. Limitations on Contracting.**

*Recommendations:* Suggestions included prohibitions on entering into exclusive network contracts and mandating favorable pricing terms for other providers within risk-based networks operated by Steward.

*Response:* As previously stated, the marketplace dynamics identified by the Attorney General and that give rise to these concerns and recommendations are not unique to Caritas in its current charitable form or Steward under for-profit ownership. The Attorney General is disinclined to restrain one while leaving others, many of whom are engaged in the same conduct, unrestrained, and instead will continue to support system-wide, versus operator-specific, reform.

#### **10. Limits on Pricing.**

*Recommendations:* One commentator recommended that Steward (a) be barred from raising prices for three years, and (b) if it lowered prices, which the commentator alleged would likely be for predatory pricing reasons, that Steward be barred from raising them for the following four years.

*Response:* The Attorney General is not inclined to use this review process to set prices for one entity, simply because of its for-profit status, particularly when it would leave others unfettered. Given the current marketplace dynamics, and the increasing level of transparency inherent in the new Massachusetts cost containment law, Chapter 288 of the Acts of 2010, the Attorney General restates her preference for system-wide, versus operator-specific, initiatives.

## 11. Need for Formal Valuation Opinion.

*Recommendation:* Several commentators suggested hiring a third party to value the Transaction in order to further validate the purchase price.

*Response:* The purchase price is the result of an approximately four-year active search for a partner or buyer that would address the problems facing Caritas. Absent process failures or mismanaged conflicts of interest, none of which have been identified in the Attorney General's review (see Section IV, above), it is that process that is by far the best indicator of market value. Nevertheless, the Board also sought an opinion of Navigant Capital, which confirmed that the price, at the \$450 million level and prior to its increase to \$495 million, was fair from a financial perspective. Other indicators of value like the EBIDA test as detailed in Section 4.4, above, were also satisfied. Finally, the Attorney General's financial advisor, HS&S, reviewed the Navigant Capital fairness opinion, as well as the indicators of value, and did not find any reason that an additional fairness opinion was needed. As such, the Attorney General has concluded that any further opinions are unnecessary.

## 12. Leverage, Cost, and Access.

*Comments/Recommendations:* A concern expressed by several commentators was that, in order to satisfy investors' desire for maximum financial returns, Steward would use its alleged market power and capital to acquire physicians, raise prices, cut services, re-direct commercial insured patients, and further disadvantage disproportionate share hospitals in its markets. Recommendations included limits on pricing, physician acquisitions, and contracting, as well as extending the no-sale provision from three to seven years.

*Response:* While many of these recommendations are addressed above, certain of these concerns do reflect factors previously identified by the Attorney General as primary drivers of the continued escalation in the cost of health care to the citizens of Massachusetts and the increasing divide between the "haves" and the "have nots." In the Attorney General's Cost Drivers Report, the Attorney General made the following findings, all of which occurred in a market dominated, virtually exclusively, by non-profit charitable hospitals and insurers.

(a) *Prices paid by health insurers to hospitals and physician groups vary significantly within the same geographic area and amongst providers offering similar levels of service.*

(b) *Price variations are not correlated to (1) quality of care, (2) the sickness of the population served or complexity of the services provided, (3) the extent to which a provider cares for a large portion of patients on Medicare or Medicaid, or (4) whether a provider is an academic teaching or research facility.*

*Moreover, (5) price variations are not adequately explained by differences in hospital costs of delivering similar services at similar facilities.*

*(c) Price variations are correlated to market leverage as measured by the relative market position of the hospital or provider group compared with other hospitals or provider groups within a geographic region or within a group of academic medical centers.*

*(d) Variation in total medical expenses on a per member per month basis is not correlated to the methodology used to pay for health care, with total medical expenses sometimes higher for risk-sharing providers than for providers paid on a fee-for-service basis.*

*(e) Price increases, not increases in utilization, caused most of the increases in health care costs during the past few years in Massachusetts.*

*(f) Higher priced hospitals are gaining market share at the expense of lower priced hospitals, which are losing volume.*

*(g) The commercial health care marketplace has been distorted by contracting practices that reinforce and perpetuate disparities in pricing.*

Steward's stated objective is to improve and further develop a community-hospital based health care system capable of (i) managing risk, (ii) providing high quality, local, and accessible care, and (iii) reducing out-migration of patients who now obtain services, otherwise available at a Caritas Hospital, at higher cost, less accessible settings. By keeping significantly more of that patient care, and the associated revenues, within the Steward system, Steward states it will provide an appropriate return to its investors while providing a lower-cost alternative to the public. If achieved in the manner described, this model may well provide an attractive alternative to systems centered around academic medical centers or large physician groups. A community-hospital based health care system is, however, untested in Massachusetts, and the Attorney General is not in a position to evaluate or predict Steward's likelihood of success.

Consistent with documents provided to the Attorney General, Caritas has stated that the operational assumptions underlying a range of potential returns to Cerberus reflect the following:

- Projections that are not based on any increase in volume from patients not currently seen by a primary care physician within the Caritas contracting network. Instead, volume increases are projected solely on a reduction of Caritas patients seeking care at a non-Caritas facility.
- Projected price/rate increases that are limited to an amount below historical medical cost inflation.
- Projections that do not include any physician growth or service expansion.
- Projections that do not include any reductions in or closures of services.

These are assumptions only; they are not covenants of future activity or representations of current or past activity. The Attorney General takes no position on whether Steward will be successful in meeting its stated objectives or adhering to the above stated operational assumptions. Caritas and others currently engage, in varying degrees, in actions contrary to the above operational assumptions. Steward and others may engage, in varying degrees, in actions contrary to the above operational assumptions.

The Attorney General is committed to monitoring and evaluating the impact of the Transaction on the relevant marketplace. In order to do so, the Attorney General has entered into the Assessment and Monitoring Agreement, materially in the form attached hereto as Exhibit V(c), above. In the event that a community-hospital based health care system can provide effective care in a local setting without raising costs to the public, reducing services, or limiting access or choice, the public would be well served, and the Attorney General wants to document and understand the basis of that success. In the event the effort is not successful, the Attorney General wants to document and understand the basis of that failure. While some would prefer the Attorney General to use this process to, in essence, regulate the conduct of one, the Attorney General strongly supports transparency, believes solutions must be system-wide, and views her role as working, with others, to better inform the executive branch, the legislature, policy makers, and the public. The evaluations undertaken as part of the Assessment and Monitoring Agreement will further that objective.



## **TABLE OF EXHIBITS**

Exhibit V(a) Enforcement Agreement

Exhibit V(b) Pension Enforcement Agreement

Exhibit V(c) Assessment and Monitoring Agreement

Exhibit V(d) Transition, Windup, and Reorganization Agreement

Exhibit V(a) Enforcement Agreement

**ENFORCEMENT AGREEMENT**

This Enforcement Agreement (the "Agreement") is entered into as of the \_\_\_\_ day of October, 2010 by and among **MARTHA COAKLEY**, as she is the Attorney General of the Commonwealth of Massachusetts (hereinafter on behalf of herself and her successors and assigns, the "Attorney General"), **CARITAS CHRISTI**, a Massachusetts not-for-profit corporation, and its affiliates **CARITAS HOLY FAMILY HOSPITAL, INC., ST. ANNE'S HOSPITAL CORPORATION, CARITAS NORWOOD HOSPITAL, INC., CARITAS ST. ELIZABETH'S MEDICAL CENTER OF BOSTON, INC., CARITAS CARNEY HOSPITAL, INC., CARITAS GOOD SAMARITAN MEDICAL CENTER, INC., CARITAS HOME CARE, INC., CARITAS CHRISTI NETWORK SERVICES, INC., and CARITAS CHRISTI PHYSICIAN NETWORK, INC.** (collectively the "Sellers"), **STEWARD HEALTH CARE SYSTEM LLC**, a Delaware limited liability company ("Purchaser"), and **STEWARD HOSPITAL HOLDINGS LLC, STEWARD ST. ELIZABETH'S MEDICAL CENTER OF BOSTON, INC., STEWARD HOLY FAMILY HOSPITAL, INC., STEWARD GOOD SAMARITAN MEDICAL CENTER, INC., STEWARD ST. ANNE'S HOSPITAL CORPORATION, STEWARD NORWOOD HOSPITAL, INC., STEWARD CARNEY HOSPITAL, INC., STEWARD OPERATIONS HOLDINGS LLC, and STEWARD ST. ELIZABETH'S REALTY CORP.**, each an affiliate of Steward, as guarantors (the "Guarantors").

**RECITALS**

The Sellers and the Purchaser are parties to an Asset Purchase Agreement, dated March 19, 2010, as amended by a First Amendment to Asset Purchase Agreement, dated October 5, 2010 (as so amended, the "Asset Purchase Agreement"), pursuant to which the Sellers are selling substantially all of their assets used in the operation of a health care system to the Purchaser.

The transactions contemplated by the Asset Purchase Agreement are required to be reviewed by the Attorney General pursuant to G.L. c.180, § 8A(d). In connection with such review, the Attorney General has identified certain provisions of the Asset Purchase Agreement that relate to the public interest, which include certain post-closing commitments of the Purchaser, and wishes to have the right to enforce such provisions as a third party beneficiary thereof, as more specifically set forth herein.

**TERMS**

NOW THEREFORE, for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged by the parties, it is agreed as follows:

1. Defined Terms. All capitalized terms used herein and not otherwise defined herein shall have their meanings as defined in the Asset Purchase Agreement.

2. Enforcement of Certain Provisions. Notwithstanding the provisions of Section 11.9 of the Asset Purchase Agreement, the Attorney General shall be a third-party beneficiary of, and shall have the right to enforce Sections 8.6(a) (Employee Matters), 8.8(a) (Capital Expenditures), 8.9 (Community Benefit and Prior Owner Obligations), 8.10 (Indigent and Low Income Care), 8.11 (No Initial Public Offering; Sale), 8.12 (No Closure), 8.15 (Named Portion of Acute Care Hospitals), 8.16 (Regulatory Cooperation), 8.17 (Obligations of Successors), and 8.18 (Other Acquired Hospitals) of the Asset Purchase Agreement (the “AG’s Enforceable Provisions”), in each case in accordance with the terms and conditions of the Asset Purchase Agreement.

3. Consent Required. The written consent of the Attorney General shall be required for any waiver of, or amendment to, Section 4.18 (Pension Liabilities) of the Asset Purchase Agreement, any amendment to the AG’s Enforceable Provisions, or any other amendment to the Asset Purchase Agreement that affects the Attorney General’s rights hereunder.

4. Effect on Agreement. All of the terms, conditions, covenants, provisions, representations, and warranties contained in the Asset Purchase Agreement and any documents executed in connection therewith shall remain in full force and effect except as modified hereby.

5. Remedies. Each of the Purchaser and the Guarantors recognizes that monetary damages will be inadequate for the Purchaser’s breach of the AG’s Enforceable Provisions and this Agreement. In addition to any legal remedies the Attorney General may have, the Attorney General shall be entitled to specific performance, injunctive relief, and such other equitable remedies as a court of competent jurisdiction may deem appropriate, without the requirement to post any bond in connection therewith.

6. Enforceability. The invalidity or unenforceability of any term or provision of this Agreement shall not affect the validity or enforceability of any other term or provision of this Agreement or contained in the Asset Purchase Agreement.

7. Amendment. This agreement may be amended only by a writing executed by each of the parties.

8. Waiver. Any waiver by any party of any breach hereof by another party shall not be deemed to be a waiver of any subsequent or continuing breach or breach of any other provision hereof, by such party.

9. Execution. This Agreement may be executed in any number of counterparts, all of which taken together shall constitute one agreement, and any of the parties hereto may execute this Agreement by signing any one counterpart.

10. Contract Under Seal. This Agreement shall be deemed to be a contract under seal, to be governed by and construed in accordance with the laws of the Commonwealth of Massachusetts.

As of 10-5-10

11. Jurisdiction/Venue. Any action or proceeding seeking to enforce any provision of, or based on any right arising out of, this Agreement shall be brought against any of the parties solely in the courts of the Commonwealth of Massachusetts and each of the parties (a) consents to the jurisdiction of such courts in any such action or proceeding and (b) waives any objection to venue laid therein and any defense of inconvenient forum to the maintenance of any action or proceeding so brought.

**D R A F T**

As of 10-5-10

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed on the first day above written.

**ATTORNEY GENERAL OF THE  
COMMONWEALTH OF MASSACHUSETTS**

By: \_\_\_\_\_  
Name:  
Title:

**CARITAS CHRISTI**

By: \_\_\_\_\_  
Name:  
Title:

**CARITAS HOLY FAMILY HOSPITAL, INC.**

By: \_\_\_\_\_  
Name:  
Title:

**ST. ANNE'S HOSPITAL CORPORATION**

By: \_\_\_\_\_  
Name:  
Title:

**CARITAS NORWOOD HOSPITAL, INC.**

By: \_\_\_\_\_  
Name:  
Title:

**D R A F T**

As of 10-5-10

**CARITAS ST. ELIZABETH'S MEDICAL  
CENTER OF BOSTON, INC.**

By: \_\_\_\_\_  
Name:  
Title:

**CARITAS CARNEY HOSPITAL, INC.**

By: \_\_\_\_\_  
Name:  
Title:

**CARITAS GOOD SAMARITAN MEDICAL  
CENTER, INC.**

By: \_\_\_\_\_  
Name:  
Title:

**CARITAS HOME CARE, INC.**

By: \_\_\_\_\_  
Name:  
Title:

**CARITAS CHRISTI NETWORK  
SERVICES, INC.**

By: \_\_\_\_\_  
Name:  
Title:

**D R A F T**

As of 10-5-10

**CARITAS CHRISTI PHYSICIAN  
NETWORK, INC.**

By: \_\_\_\_\_  
Name:  
Title:

**STEWARD HEALTH CARE SYSTEM LLC**

By: \_\_\_\_\_  
Name:  
Title:

The undersigned Guarantors hereby guarantee the obligations of the Purchaser under the AG's Enforceable Provisions and this Agreement.

**STEWARD HOSPITAL HOLDINGS LLC**

By: \_\_\_\_\_  
Name:  
Title:

**STEWARD ST. ELIZABETH'S MEDICAL  
CENTER OF BOSTON, INC.**

By: \_\_\_\_\_  
Name:  
Title:

**STEWARD HOLY FAMILY HOSPITAL, INC.**

By: \_\_\_\_\_  
Name:  
Title:



**D R A F T**

As of 10-5-10

**STEWARD GOOD SAMARITAN MEDICAL  
CENTER, INC.**

By: \_\_\_\_\_  
Name:  
Title:

**STEWARD ST. ANNE'S HOSPITAL  
CORPORATION**

By: \_\_\_\_\_  
Name:  
Title:

**STEWARD NORWOOD HOSPITAL, INC.**

By: \_\_\_\_\_  
Name:  
Title:

**STEWARD CARNEY HOSPITAL, INC.**

By: \_\_\_\_\_  
Name:  
Title:

**STEWARD OPERATIONS HOLDINGS LLC**

By: \_\_\_\_\_  
Name:  
Title:

**D R A F T**

As of 10-5-10

**STEWARD ST. ELIZABETH'S REALTY  
CORP.**

By: \_\_\_\_\_  
Name:  
Title:

Exhibit V(b) Pension Enforcement Agreement

**D R A F T**

As of 10/5/10

*[Attorney General's Office Letterhead]*

October \_\_, 2010

Steward Health Care System LLC  
c/o Cerberus Capital Management, L.P.  
299 Park Avenue  
New York, New York 10171  
Attention: W. Brett Ingersoll

Roman Catholic Archdiocese of Boston

Attn:

Board of Trustees of the Caritas Christi Retirement Plan  
c/o

Attn:

Gentlemen,

Each of you are parties to that certain Pension Transfer Agreement, dated as of October \_\_\_\_, 2010 (the "Pension Transfer Agreement") among Steward Health Care System LLC, a Delaware limited liability company ("Steward"), the Board of Trustees of the Caritas Christi Retirement Plan, and the Roman Catholic Archdiocese of Boston (each a "Party," and collectively, the "Parties"), which is being executed in connection with the Asset Purchase Agreement, dated March 19, 2010, among Caritas Christi, a Massachusetts not-for-profit corporation and its affiliated entities named on Annex A thereto (collectively the "Sellers") and Steward, as amended by a First Amendment to Asset Purchase Agreement, dated October 5, 2010 (as so amended, the "Asset Purchase Agreement"), whereby Steward has agreed to purchase substantially all of the assets of the Sellers used in connection with the operation of a health care system. In accordance with our review under G.L. c.180, § 8A(d) of the transactions contemplated by the Asset Purchase Agreement, this office has identified certain provisions of the Asset Purchase Agreement that relate to the public interest, which include the transfer of certain pension assets and liabilities as set forth in the Pension Transfer Agreement.

This letter shall confirm that: (1) any Party sending a notice pursuant to the terms of the Pension Transfer Agreement shall provide a copy of such notice to the Office of the Attorney General, Non-Profit Organizations/Public Charities Division (the "Division"), (2) the Parties shall provide the Division with prompt notice of any dispute concerning the Pension Transfer Agreement, (3) this office shall be a third party beneficiary of and shall have the right, but not

Steward Health Care System LLC  
Roman Catholic Archdiocese of Boston  
Trustees of the Caritas Christi Retirement Plan

**D R A F T**  
As of 10-5-10

October \_\_, 2010  
Page 2

the obligation, to enforce any breach by a Party of its obligations under the Pension Transfer Agreement (notwithstanding the provisions of Section 6.10 thereof), and (4) the consent of the Division shall be required for any amendment to, or waiver of, the provisions of the Pension Transfer Agreement after the date hereof.

By your signature below, you hereby consent to the enforcement of the Pension Transfer Agreement by the Attorney General (pursuant to Section 6.4 thereof), agree to the provision of notice to the Attorney General, each as set forth herein, and consent to the jurisdiction of the courts of the Commonwealth of Massachusetts in any action or proceeding seeking to enforce any provision of, or based on any right arising out of, this Agreement and waive any objection to venue and any defense of inconvenient forum in connection with any action or proceeding so brought.

Please arrange for signature of a copy of this letter where indicated below and return it to my attention at your earliest convenience. Thank you.

Very truly yours,

\_\_\_\_\_  
David G. Spackman, Chief  
Non-Profit Organizations/Public Charities  
Division

Acknowledged and Agreed to:  
STEWARD HEALTH CARE SYSTEM LLC

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

ROMAN CATHOLIC ARCHDIOCESE OF BOSTON

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

Steward Health Care System LLC  
Roman Catholic Archdiocese of Boston  
Trustees of the Caritas Christi Retirement Plan

**D R A F T**  
As of 10-5-10

October \_\_, 2010  
Page 3

THE TRUSTEES OF THE CARITAS CHRISTI RETIREMENT PLAN

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

Exhibit V(c) Assessment and Monitoring Agreement

**ASSESSMENT AND MONITORING AGREEMENT**

This Assessment and Monitoring Agreement (the “Assessment and Monitoring Agreement”) is entered into as of the \_\_\_\_\_ day of October, 2010 by and among **MARTHA COAKLEY**, as she is the Attorney General of the Commonwealth of Massachusetts (hereinafter on behalf of herself and her successors and assigns, the “Attorney General”), **CARITAS CHRISTI**, a Massachusetts non-profit, charitable corporation (“Caritas”), for itself and on behalf of its non-profit charitable affiliates (collectively, together with Caritas, the “Caritas Entities”), and **STEWARD HEALTH CARE SYSTEM LLC**, a Delaware limited liability company (together with its current and future affiliates, successors and assigns, collectively, “Steward”).

**RECITALS**

The Caritas Entities and Steward are parties to an Asset Purchase Agreement, dated March 19, 2010, as amended by a First Amendment to Asset Purchase Agreement, dated October 5, 2010 (as so amended, the “APA”), pursuant to which the Caritas Entities are selling substantially all of their assets used in the operation of a health care system to Steward.

The transactions contemplated by the APA (the “Transaction”), are required to be reviewed by the Attorney General, pursuant to G.L. c.180, § 8A(d). In connection with such review, which review includes consideration of the public interest, as well as the health care assessment provisions of G.L. c. 180, § 8A(d)(5), the Attorney General wishes to evaluate, assess, and monitor the impact of certain aspects of the Transaction, and wishes to better enable the Department of the Public Health (the “Department”) to evaluate, assess, and monitor the impact of certain other aspects of the Transaction on the availability, access, and cost of health care services within the communities served by the six Caritas acute care hospitals and any other Massachusetts hospitals acquired by Steward (the “Communities”) for the five-year period commencing upon the closing of the Transaction (the “Closing”), subject to the rights and responsibilities of Steward under Section 8.12 of the APA, all as more specifically set forth herein.

**TERMS**

For good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties agree as follows:

1. Attorney General Monitoring Responsibilities. The Attorney General shall, on behalf of the public, (a) oversee Steward’s compliance with certain post-Closing conditions of the APA pursuant to that certain Enforcement Agreement by and among the Attorney General, Steward, and Caritas dated as of October \_\_\_\_, 2010, including, without limitation, establishing a baseline for the commitments set forth in Sections 8.9 and 8.10 of the APA, and (b) evaluate, assess, and monitor the impact of the Transaction on (i) the cost of health care, by price, total medical expense, or other appropriate measure or measures of cost impact as determined by the Attorney General, (ii) changes in treatment



As of 10-5-10

and referral patterns including, without limitation, those related to physician recruitment and contracting, and (iii) consumer options and choice within the Communities, all in accordance with the terms and conditions of this Assessment and Monitoring Agreement. Notwithstanding the foregoing, the parties hereto acknowledge that (x) the health care system is rapidly changing and the Attorney General may, in consultation with Steward but otherwise in her sole discretion, determine that additional metrics or areas of inquiry, not otherwise under the primary responsibility of the Department pursuant to Section 4 hereinafter, are required to adequately measure and assess the impact of the Transaction on the provision of health care services to the Communities and (y) certain aspects of the evaluation and assessment may incorporate, rely upon, or support otherwise independent investigations by the Attorney General of costs within the Massachusetts health care system. For purposes of this Assessment and Monitoring Agreement, the evaluation, assessment, and monitoring undertaken by the Attorney General, including all responsibilities referenced in this Assessment and Monitoring Agreement, shall be referred to as the "Attorney General Study." While focused on the Communities, the Attorney General Study will take into account, incorporate, and provide comparisons to broader regional and state trends and use, to the extent possible, publicly available information.

2. Cooperation with Attorney General. Steward shall cooperate, at its sole cost and expense, in providing information reasonably required by the Attorney General, and any individual or firm retained by the Attorney General, in connection with the Attorney General Study. Consistent with applicable law including, without limitation, that governing public records, information provided shall be subject to appropriate safeguards with respect to the confidentiality of information that Steward provides and nothing in this Assessment and Monitoring Agreement is to be construed as a waiver by Steward of any rights it may have to assert that information it provides pursuant hereto is not subject to public disclosure under applicable law. Notwithstanding the foregoing, Steward recognizes and acknowledges that the purpose and intent of this Assessment and Monitoring Agreement and the Attorney General Study conducted hereby is to periodically inform the public about the impact of the Transaction and, in the furtherance thereof, information and data provided by Steward may be used in an aggregated form in reports released to the public. Steward shall be provided with a draft copy of any report prior to its issuance and shall have a reasonable opportunity to comment on the form or content of the aggregated information released therein. The provisions of this Section 2 relate only to information requested and provided with respect to the Attorney General Study and do not alter, restrict, limit, waive, expand, or further define any rights or obligations of the Attorney General, with respect to information demanded, requested, obtained from, or delivered by, Steward pursuant to the authority of either under existing law in matters other than the Attorney General Study.

3. Payment of Costs, Fees and Expenses of the Attorney General Study. Upon the Closing, Steward shall deposit with the Attorney General the amount of One Million US Dollars (\$1,000,000) to be held in a separate trust account or accounts and to be expended for costs, fees, and expenses of the Attorney General in undertaking the Attorney General Study including, without limitation, the fees and expenses of any

As of 10-5-10

individuals or firms retained by the Attorney General to assist in conducting the Attorney General Study. Steward shall have no further obligation to the Attorney General or any individual or firm retained by the Attorney General under this Assessment and Monitoring Agreement for such costs, fees and expenses. In the event that, at the end of the Attorney General Study, not all of the funds have been expended, the balance shall be used by the Attorney General to support studies or evaluations regarding the functioning of the Massachusetts health care system.

4. Department Monitoring Responsibilities under G.L. c.180 § 8A(d)(5).

The Attorney General, Steward, and Caritas acknowledge that the Department will conduct an evaluation, assessment, and monitoring of the impact of the Transaction on the availability of, and access to, health care services within the Communities in accordance with the provisions of G.L. c. 180, § 8A(d)(5) (the "Department Study"). Upon the Closing, Steward shall deposit with the Department the amount of Five Hundred Thousand US Dollars (\$500,000), to be held in a separate trust account or accounts and to be expended for costs, fees, and expenses of the Department in undertaking the Department Study including, without limitation, the fees and expenses of any individuals or firms retained by the Department to assist in conducting the Department Study. Steward shall have no further obligation to the Department, or any individual or firm retained by the Department, under G.L. c.180 § 8A(d)(5), for such costs, fees and expenses. By his signature hereinafter, the Commissioner of the Department of Public Health hereby acknowledges the provisions of this paragraph 4.

5. Enforceability/No Assignment. The invalidity or unenforceability of any term or provision of this Agreement shall not affect the validity or enforceability of any other term or provision of this Agreement. This Agreement may not be assigned by Caritas or Steward without the written consent of the Attorney General or by the Attorney General without the written consent of Caritas and Steward. The terms hereof shall be binding upon any successor to the interests of Caritas or Steward.

6. Amendment. This Assessment and Monitoring Agreement may be amended only by a writing executed by each of the parties.

7. Waiver. Any waiver by any party of any breach hereof by another party shall not be deemed to be a waiver of any subsequent or continuing breach or breach of any other provision hereof, by such party.

8. Execution. This Assessment and Monitoring Agreement may be executed in any number of counterparts, all of which taken together shall constitute one agreement, and any of the parties hereto may execute this Assessment and Monitoring Agreement by signing any one counterpart.

9. Contract Under Seal. This Assessment and Monitoring Agreement shall be deemed to be a contract under seal, to be governed by and construed in accordance with the laws of the Commonwealth of Massachusetts.

As of 10-5-10

10. Jurisdiction/Venue. Any action or proceeding seeking to enforce any provision of, or based on any right arising out of, this Assessment and Monitoring Agreement shall be brought against any of the parties solely in the courts of the Commonwealth of Massachusetts and each of the parties (a) consents to the jurisdiction of such courts in any such action or proceeding and (b) waives any objection to venue laid therein and any defense of inconvenient forum to the maintenance of any action or proceeding so brought.

**[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]**

**D R A F T**

As of 10-5-10

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed on the first day above written.

**ATTORNEY GENERAL OF THE  
COMMONWEALTH OF  
MASSACHUSETTS**

By: \_\_\_\_\_  
Name:  
Title:

**CARITAS CHRISTI**

By: \_\_\_\_\_  
Name:  
Title:

**STEWARD HEALTH CARE SYSTEM  
LLC**

By: \_\_\_\_\_  
Name:  
Title:

Acknowledged:

\_\_\_\_\_  
John Auerbach, Commissioner  
Department of Public Health

Exhibit V(d) Transition, Windup, and Reorganization Agreement

# D R A F T

As of 10/5/10

## TRANSITION, WINDUP, AND REORGANIZATION AGREEMENT

This Transition, Windup, and Reorganization Agreement (the "Agreement") is entered into as of the \_\_\_\_\_ day of October, 2010 by and among **MARTHA COAKLEY**, as she is the Attorney General of the Commonwealth of Massachusetts (hereinafter on behalf of herself and her successors and assigns, the "Attorney General"), **CARITAS CHRISTI**, a Massachusetts non-profit, charitable corporation ("Caritas"), for itself and on behalf of its non-profit charitable affiliates (collectively, together with Caritas, the "Caritas Entities" and each a "Caritas Entity"), and **STEWARD HEALTH CARE SYSTEM LLC**, a Delaware limited liability company ("Steward").

### RECITALS

The Caritas Entities and Steward are parties to an Asset Purchase Agreement, dated March 19, 2010, as amended by a First Amendment to Asset Purchase Agreement, dated October 5, 2010 (as so amended, the "Asset Purchase Agreement"), pursuant to which the Caritas Entities are selling substantially all of their assets used in the operation of a health care system to Steward.

The Attorney General, through her Non-Profit Organizations/Public Charities Division (the "Division") wishes to establish a framework for the orderly dissolution or reorganization of the Caritas Entities and the handling of all funds donated to a Caritas Entity and held for charitable purposes (the "Caritas Endowment Funds") following the closing of the transactions contemplated by the Asset Purchase Agreement (the "Closing"), all as more specifically set forth herein.

### TERMS

For good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties agree as follows:

1. Effective Date; Termination. This Agreement shall be effective as of the date hereof. This Agreement (a) shall automatically terminate if the Asset Purchase Agreement is terminated prior to the Closing and (b) may be terminated in writing by the Attorney General if she determines that the obligations of the parties hereunder have been fulfilled.
2. Windup, Dissolution, Consolidation, or Merger. On or prior to the first anniversary of the Closing date, Caritas shall, consistent with the applicable provisions of G.L. c. 180, other public charities law, and federal and state tax law, cause the windup and dissolution, or the consolidation or merger, of the Caritas Entities, such that only those Caritas Entities with remaining assets, missions, and purposes shall survive (each, a "Surviving Caritas Entity").
3. Reorganization. On or prior to the first anniversary of the Closing date and as may be appropriate or necessary, Caritas shall cause each Surviving Caritas Entity

As of 10/5/10

to be reorganized consistent with its mission and purpose. Any change to the mission or purpose of any Surviving Caritas Entity shall be approved by the Division, and, if required, by order of the appropriate Massachusetts court.

4. Caritas Endowment Funds. On or prior to the first anniversary of the Closing date, Caritas, and to the extent held by Steward, Steward shall cause all Caritas Endowment Funds, together with all applicable donor instruments and use and financial documentation, to be (a) transferred to, or retained by, the appropriate Surviving Caritas Entity and (b) thereafter held and used for the donor-specified purposes and term. Any changes in the ownership, management, or use conditions of any fund constituting a Caritas Endowment Fund shall be approved by the appropriate Massachusetts court, with the prior assent of the Attorney General, or as otherwise provided by G.L. c. 180A, § 5.

5. Retention and Payment of Advisors. Caritas shall retain the services of an accounting firm and a law firm to assist it with the performance of its obligations hereunder. Any and all fees, costs, and expenses of such services, shall be assumed and paid for by Steward. Such accounting firm and law firm shall be designated by Caritas in a writing provided to the Division prior to the Closing, which designation may be changed at any time by Caritas by similar written notice.

6. Support Staff. Caritas and Steward shall retain and dedicate sufficient administrative and support staff to effectively and efficiently carry out and support their obligations under this Agreement. The costs of such staff shall be paid for by Steward.

7. Schedules. Attached hereto are the following schedules, each of which is incorporated herein by reference. Caritas shall provide the Division with any updates and amendments of and to such schedules within two calendar weeks of any changes, and shall provide information to supplement such schedules as may be reasonably requested by the Division from time to time.

7.1 Caritas Entities. A listing of all Caritas Entities together with their principal address, EIN, AGO registration number, and principal contact person.

7.2 Caritas Endowment Funds. A listing of all Caritas Endowment Funds held by each Caritas Entity together with the name of the fund, the purpose, restriction or other limitations on the fund, the value of the fund at the last date of determination, and the location where information regarding the fund, including donor, use and financial history, are maintained.

7.3 Remaining Assets. A listing of all other assets held by each Caritas Entity subsequent to the Closing, including, by category and Caritas Entity, a description of the assets and their estimated aggregate value.

8. Segregation of Documents and Instruments. Notwithstanding the provisions of Section 4, all instruments and other documents evidencing the donation of any part of the Caritas Endowment Funds and any reports of activities involving the

**D R A F T**

As of 10/5/10

Caritas Endowment Funds shall be segregated by Caritas from the assets being sold pursuant to the Asset Purchase Agreement. To the extent any such instruments, documents, or reports are transferred to Steward, Steward shall use its best efforts to maintain such assets separately until they are transferred to Caritas, pursuant to Section 4 hereof.

9. Enforceability/No Assignment. The invalidity or unenforceability of any term or provision of this Agreement shall not affect the validity or enforceability of any other term or provision of this Agreement. This Agreement may not be assigned by Caritas or Steward without the written consent of the Attorney General or by the Attorney General without the written consent of Caritas and Steward. The terms hereof shall be binding upon any successor to the interests of Caritas or Steward.

10. Amendment. This agreement may be amended only by a writing executed by each of the parties.

11. Waiver. Any waiver by any party of any breach hereof by another party shall not be deemed to be a waiver of any subsequent or continuing breach or breach of any other provision hereof, by such party.

12. Execution. This Agreement may be executed in any number of counterparts, all of which taken together shall constitute one agreement, and any of the parties hereto may execute this Agreement by signing any one counterpart.

13. Contract Under Seal. This Agreement shall be deemed to be a contract under seal, to be governed by and construed in accordance with the laws of the Commonwealth of Massachusetts.

14. Jurisdiction/Venue. Any action or proceeding seeking to enforce any provision of, or based on any right arising out of, this Agreement shall be brought against any of the parties solely in the courts of the Commonwealth of Massachusetts and each of the parties (a) consents to the jurisdiction of such courts in any such action or proceeding and (b) waives any objection to venue laid therein and any defense of inconvenient forum to the maintenance of any action or proceeding so brought.

**[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]**



**D R A F T**

As of 10/5/10

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed on the first day above written.

**ATTORNEY GENERAL OF THE  
COMMONWEALTH OF  
MASSACHUSETTS**

By: \_\_\_\_\_  
Name:  
Title:

**CARITAS CHRISTI**

By: \_\_\_\_\_  
Name:  
Title:

**STEWARD HEALTH CARE  
SYSTEM LLC**

By: \_\_\_\_\_  
Name:  
Title: