COMMONWEALTH OF MASSACHUSETTS

SUPREME JUDICIAL COURT

SUFFOLK, SS. NO. __________

MORTON HOSPITAL AND MEDICAL CENTER, INC., Plaintiff, v. MARTHA COAKLEY, as she is the Attorney General of the Commonwealth of Massachusetts, Defendant.	)	COMPLAINT

INTRODUCTION

1. Plaintiff, Morton Hospital and Medical Center, Inc. ("Morton"), for itself and on behalf of its affiliate, Morton Physician Associates, Inc. ("MPA"), brings this action, consistent with G.L. c. 180, § 8A(d), pursuant to this Court's equity jurisdiction (G.L. c. 215, § 6), and its jurisdiction to enter declaratory judgments (G.L. c. 231A, § 1). Morton seeks a declaratory judgment that Morton and MPA may sell and transfer substantially all of their assets and operations (together with the assets and operations of Morton Property, Inc., the "Purchased Assets") to one or more affiliates of Steward Health Care System LLC (individually and together, "Steward"), on the terms and conditions set forth in that certain Asset Purchase Agreement, dated March 29, 2011, as amended by Amendment No. 1 to the Asset Purchase Agreement, dated September 6, 2011, each by and among Morton, MPA, Morton Property, Inc. ("MPI" which is a for-profit affiliate of Morton), Steward Medical Holdings Subsidiary Three, Inc., (which is an affiliate of Steward and is now known as Morton Hospital, A Steward Family Hospital, Inc.), and, with respect to the assets of MPA only, Steward Medical Group, Inc. (which is also an affiliate of Steward) (the Asset Purchase Agreement, as so amended, hereinafter

referred to as the "APA" and such sale and transfer hereinafter referred to as the "Transaction"). *See* Exhibit A.

2. Morton is a Massachusetts charitable corporation that owns and operates an acute care hospital (the assets and operations of such hospital are referred to hereinafter as the "Hospital") that provides community-based care in Taunton and surrounding communities (together, the "Greater Taunton Community"). MPA is a Massachusetts charitable corporation that employs physicians providing professional medical services in and to the Greater Taunton Community.

3. Steward is a Delaware limited liability company. Steward acquired, through affiliates, substantially all of the assets, liabilities, and operations of Caritas Christi and its affiliates in 2010, which acquisition was approved by this Court by Memorandum and Judgment dated October 29, 2010 (SJ-2010-0453). Currently Steward, through affiliates, owns and operates eight acute care hospitals in Massachusetts.

4. Morton and MPA come to this Transaction out of necessity. For the past several years, MPA has been unable to generate sufficient revenues to cover its expenses and has consistently required the financial support of Morton to remain solvent. During this period, Morton has also struggled financially and is significantly, and increasingly, capital constrained. Morton has aging facilities, a substantially-underfunded pension plan covering approximately 1,800 current and former employees, and an outstanding debt in the principal amount of approximately $28 million. To meet its financial obligations, Morton has, among other actions, eliminated certain clinical services and paid operating expenses with reserve funds previously set aside to fund its significant capital requirements. Accordingly, Morton determined that without access to significant additional capital and other financial and operational resources, its mission of operating a full-service acute care hospital in Taunton could not continue. Based on this determination, the Morton Board of Trustees (the "Board") concluded that it needed a strategic partner to provide the necessary capital and other financial and operational resources required to meet the health care needs of the Greater Taunton Community.

5. With the guidance of its outside advisors, the Board engaged in a search for such a strategic partner. Based on that search and its subsequent evaluation of the alternatives,

the Board determined that: (a) Morton could not continue to survive in its charitable form as a stand-alone community hospital, and (b) there was no reasonably viable non-profit alternative because the sole bid from a non-profit health care system was not a reasonably viable proposal for continuing Morton's charitable mission of operating a full-service, acute care hospital for the Greater Taunton Community over the long term. The Board determined that the Transaction is the only reasonably viable option to maintain the Hospital as a full-service, acute care hospital serving the Greater Taunton Community.

6. Because Morton believes that the Transaction is necessary for the continuation and enhancement of the services heretofore provided by Morton and MPA, is in the best interests of Morton, MPA, and the Greater Taunton Community, is in the public interest, and is otherwise appropriate and proper, Morton respectfully seeks the issuance of a declaratory judgment approving the Transaction pursuant to the terms and conditions of the APA.

PARTIES

7. Morton and MPA are Massachusetts charitable corporations. MPI is a party to, and will be transferring assets pursuant to, the APA. However, MPI is a for-profit business corporation and therefore is not a party to this Complaint. The sole member of both Morton and MPA is Morton Health Foundation, Inc. (the "Foundation"). The Foundation will not be transferring assets pursuant to the APA and therefore is not a party to this Complaint.[1]

8. Defendant, Martha Coakley, as the Attorney General of the Commonwealth of Massachusetts (the "Attorney General"), is named as a party to this action pursuant to G.L. c. 12, § 8G.

[1] As sole member of Morton and MPA and as sole stockholder of MPI, the Foundation has approved Morton's, MPA's, and MPI's participation in the Transaction. However, none of the Foundation's assets will be transferred to Steward. The Foundation is also the sole member of two other Massachusetts charitable corporations, Morton Hospital Auxiliary, Inc. (the "Auxiliary") and Community Counseling of Bristol County, Inc. ("CCBC"). Neither the Auxiliary's nor CCBC's assets or operations will be transferred to Steward. Certain endowment assets of Morton will also not be transferred to Steward. The disposition, if any, of the assets of the Foundation, the Auxiliary, and any non-transferred or otherwise remaining assets of Morton will be reviewed by the Attorney General and be considered by this Court in a separate proceeding. CCBC's assets and operations are expected to continue as is.

FACTS

Impracticable or Impossible Standard; Morton's Inability to Continue as an Independent, Stand-Alone Charitable Institution.

9. Morton has served the Greater Taunton Community for more than 120 years. The Hospital is the only acute care hospital within its primary service area ("PSA").

10. Morton has approximately 1,200 employees, of whom approximately 410 are nurses and other medical personnel who belong to a collective bargaining unit affiliated with the Massachusetts Nurses Association ("MNA").

11. The Greater Taunton Community, due in large part to economic challenges, has an insufficient number of primary care and other physicians to serve the needs of its residents. This shortage is reflected in its designation as a primary care Health Professional Shortage Area by the federal Department of Health and Human Services. Due in part to this shortage, over 80% of the Hospital's inpatients are admitted through the emergency room, which sees more than 50,000 patients per year.

12. The Hospital's substantial Medicare and Medicaid payor mix (which government rates are significantly lower than private insurers' rates), combined with its relatively low rates from private payors (*see* Exhibit B, pp. 10-12, the Attorney General's *"Examination of Health Care Cost Trends and Cost Drivers"* dated March 16, 2010) contributes to its financial challenges.

13. During the past decade, Morton's operating margins were not sufficient to fund necessary capital expenditures. As a result of these capital constraints, Morton has only been able to finance the replacement of equipment and limited upgrades of technology and facilities on an emergency basis. This deferral of routine capital expenditures, estimated at $25 million, has resulted in an average-age-of plant of approximately 19 years.

14. Morton's pension plan presents an additional financial challenge. As of May 26, 2011, it was underfunded by approximately $36 million. In November of 2010, Morton was able to achieve some additional savings by freezing its defined benefit pension plan for its non-

union employees and replacing it with a defined contribution plan, but it has been unable to reach an agreement with its unionized employees to do the same.

15. Morton has been able to continue to service its debt in part by laying off employees and, more recently, by eliminating certain clinical services. During 2010, Morton was forced to close two services (a 21-bed transitional care unit and an occupational health service) which, while providing services needed by the community, had been operated at a loss.

16. In summary, at this point in its long history, Morton has been able to continue the Hospital's operations only by deferring necessary capital expenditures, laying off needed employees, and eliminating two needed but unaffordable clinical services. Even these steps are insufficient. Morton's days-cash-on-hand is less than one-half of the median level for hospitals in Massachusetts and the United States, and its ratio of current assets to current liabilities is significantly below industry medians. Morton is unable to sustain current Hospital operations. The Board concluded that alternatives to its independent, stand-alone status had to be explored.

Due Care; Process Leading to Decision to Seek an Alternative by Merger or Acquisition

17. During the Fall of 2009, the Board[2] initiated a process to pursue a contractual affiliation, with the goals of obtaining: (a) improved payor contracting; (b) infrastructure support; (c) clinical service line support; (d) co-branding opportunities; and (e) capital. An Affiliation Taskforce was charged with considering opportunities to meet these goals working with a health care consulting firm, Hinckley, Allen & Tringale. Four eastern Massachusetts non-profit health care systems, each with physician networks, expressed an interest in pursuing a contractual affiliation.

18. In March 2010, the Board took note of the announcement of the agreement by Steward to acquire the assets and operations of Caritas Christi, which included hospitals in Brockton and Fall River.

19. By April of 2010, each of the four non-profit health care systems submitted proposals. However, in light of Morton's worsening financial situation and the contractual

[2] The Board consists of 26 trustees: 18 from the community, 7 from the Medical Staff, and the Chief Executive Officer.

proposals' lack of firm commitments with respect to Morton's role under the proposed affiliations, implementation timing, and access to capital, at its July 14, 2010 meeting, the Board concluded that a contractual affiliation would not enable the Hospital to survive and that alternatives of a merger or acquisition had to be explored.

20. To pursue a merger or acquisition, the Board engaged Navigant Consulting, a healthcare consulting firm that specializes in advising clients facing strategic, financial and other challenges, and its affiliate Navigant Capital Advisors, which specializes in mergers and acquisitions (collectively referred to as "Navigant"), as well as Ankner & Levy, P.C. ("Ankner & Levy") as legal counsel.

21. At its September 8, 2010 meeting, the Board met with Navigant and Anker & Levy and heard presentations regarding the Board's fiduciary duties of care, loyalty and confidentiality concerning the process and alternatives. In particular, the Board was informed of the distinctions between a merger with a non-profit system and an acquisition by a for-profit provider, including, in the case of a for-profit acquisition, that the Board must determine first that: (a) it is impossible or impracticable to continue it its current form; and (b) there is no reasonably viable non-profit alternative.

22. On October 6, 2010, Navigant delivered a report to the Board that confirmed that it was unlikely Morton could survive as a stand-alone hospital for more than five years. *See* Exhibit C. In reaching this conclusion, Navigant considered the national context for Morton's challenges, including: (a) the decades-long decline in hospital inpatient admissions, length-of-stay, average daily census, staffed beds, and number of community hospitals; (b) changes in payor policies designed to reduce admissions and resource utilization; (c) the long-term trend for stand-alone, independent hospitals to become part of multi-hospital systems to, among other reasons, gain better access to capital and expertise; and (d) national health reform's emphasis on national quality and cost metrics and the consequent need for greater investments in infrastructure and information technology ("IT") to enable providers to effectively measure and manage cost of services and utilization. Navigant also addressed its assessment of issues and trends unique to Morton including: (a) the eastern Massachusetts context for Morton's challenges, which encompassed the Hospital's relatively low (and declining) market share in its

PSA (despite being the only hospital physically located in the PSA), other hospitals' significant market shares in the PSA, and Morton's status as the smallest hospital serving the PSA, in terms of staffed beds, admissions, average daily census, and net revenue; (b) Morton's very weak financial condition, (including low days cash-on-hand, high leverage ratio, and high age of plant), posing a grave risk to Morton's ongoing operations, and, combined with Morton's historically low operating margins and lack of access to capital, requiring Morton to operate with virtually no margin for error; (c) Morton's inability to generate cash flow sufficient to adequately fund its debt service and pension plan liability, much less to fund essential capital expenditures and to recruit and adequately compensate physicians needed by the Greater Taunton Community; and (d) the likelihood that Morton's financial situation would continue to deteriorate and lead to the imposition of corrective actions by its creditors. Navigant also concluded that Morton had a small window of opportunity to negotiate an affiliation or acquisition on favorable terms while Morton still had some short-term financial viability, and while the market for hospital acquisitions and affiliations in eastern Massachusetts remained competitive and active.

23. Based on the Navigant report, and its judgment regarding Morton's current and future financial prospects, the Board again concluded that contractual affiliations would not address its long-term issues, that it was impracticable for Morton to continue to operate the Hospital on an independent, stand-alone basis, and that alternatives for merger or acquisition had to be explored.

Due Care: Process For Evaluating and Selecting an Alternative by Merger or Acquisition.

24. Having reached that conclusion, the Board created an Affiliation Subcommittee[3] to work closely with Navigant and legal counsel to develop evaluation criteria, communicate with organizations that were potentially interested in addressing the needs of Morton and the Greater Taunton Community, and solicit proposals.

25. At its November 2, 2010 meeting, the Board approved the evaluation criteria recommended by the Affiliation Subcommittee, with the advice and assistance of Navigant and counsel, as expressed in a draft Request for Proposals ("RFP"). Copies of the RFP and a

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[3] The Affiliation Subcommittee consisted of 8 trustees: 5 from the community, 2 from the Medical Staff, and the Chief Executive Officer.

Confidential Information Memorandum ("CIM") are attached as Exhibits D and E. The evaluation criteria included: (a) a long-term commitment to maintaining a full-service acute care hospital in Taunton, including the clinical services currently offered by Morton and MPA, as well as an explanation of how the provision of health care services in the Greater Taunton Community would be consistent with the respondent's strategic plans; (b) the capacity and commitment to fund future capital expenditures, in light of Morton's estimate that over the next five years the Hospital would require a minimum of $25 million in deferred routine capital expenditures, plus additional capital expenditures for facility improvements and service initiatives; (c) a plan for continuing and meaningful community input into the Hospital's clinical and operational decisions; (d) plans to retain Morton's and MPA's employees, including the assumption of the existing collective bargaining agreement with MNA, the Hospital's medical staff ("Medical Staff") and physician contracts, as well as plans with regard to any employees displaced in connection with a transaction, including severance benefits and opportunities to relocate within the respondent's system; (e) assumption and payment of outstanding debt and pension liabilities; and (f) access to such resources as a physician network,[4] competitive managed care contracts, better discounts on purchasing hospital supplies, participation in research and teaching programs, administrative and operational support, and clinical specialty services not currently provided by Morton.

26. In October 2010, Navigant had presented Morton with a list of ten potential partners, eight non-profit and two for-profit. By November 2010, five potential partners were interested and had signed confidentiality agreements, three of whom were non-profit and two for-profit. Upon Board approval, RFPs and the accompanying CIMs were issued to these five entities.

27. The following three entities submitted written proposals in response to Morton's RFP: (a) Southcoast Health System, Inc. ("Southcoast"), a non-profit corporation that operates one licensed acute care hospital, with three hospital facilities, in Fall River, New Bedford, and Wareham; (b) Vanguard Health Systems, Inc. ("Vanguard"), a national operator of

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[4] The term "physician network," as used by Morton, is meant to mean the capability of providing case management, referral management and other care management modalities.

for-profit hospitals, with corporate offices in Nashville, Tennessee, which operates two licensed acute care hospitals, with three hospital facilities, in Worcester, Framingham, and Natick; and (c) Steward, which has corporate offices in Boston and operates eight licensed acute care hospitals in eastern Massachusetts.

28. At its December 20, 2010 meeting, the Board considered each of the three written proposals. The Board received presentations by Navigant on the process to date, a summary by counsel of Massachusetts law relevant to the Board's decision, and recommendations from the Affiliation Subcommittee. The Board then selected the Southcoast proposal as its "first option," due to Southcoast's non-profit status and the fact that its proposal contained the highest initial capital commitment, and authorized the pursuit of due diligence and negotiations. Upon the recommendation of the Affiliation Subcommittee, the Board also authorized due diligence and negotiations with Steward as the for-profit alternative should the Southcoast proposal prove not to be viable.

29. By late February, 2011, initial concerns regarding certain aspects of the Southcoast proposal had arisen. They included: (a) the time frame during which the Hospital could not be closed; (b) the lack of specificity regarding capital commitments; (c) the lack of a locally-focused and locally-controlled governing body; (d) the need for a firmer commitment regarding pension liabilities; and (e) the extent of Southcoast's ability to avoid performance. As a result, while continuing negotiations with Southcoast, Morton also pursued its negotiations and due diligence activities with Steward.

30. Steward and Southcoast made separate presentations to the Medical Staff on March 14, 2011 and to the Board on March 23, 2011.

31. At the March 23, 2011 Board meeting, Navigant provided the Board with a comparative accountable care organization ("ACO") readiness assessment of Southcoast and Steward. ACO readiness was considered by the Board to be a critical component of the Hospital's ability to participate in the changing clinical, patient management, and financial risk landscape. On each of five criteria (i.e., leadership and development, quality and risk

management, care integration and coordination, physician alignment, and technology), Navigant ranked Steward higher, as being relatively more developed.[5] *See* Exhibit F.

32. On March 24, 2011, a Medical Staff member of the Board presented the Affiliation Subcommittee with the consensus of feedback from the Medical Staff regarding the two March 14, 2011 proposals to the Medical Staff. The same presentation was made to the full Board the following day. The Medical Staff consensus favored the Steward proposal on the basis of such physician-related issues as IT, electronic medical records, contract opportunities, physician recruitment and retention, and ACO readiness.

33. Navigant assisted the Affiliation Subcommittee and the Board in summarizing the proposals and the results of the due diligence reviews of Southcoast and Steward. *See* Exhibits G and H. The Affiliation Subcommittee, after discussion and deliberation at meetings held on March 24 and March 28, 2011, made a unanimous recommendation that the Board accept the Steward proposal. After discussion and deliberation at meetings held on March 25 and March 29, 2011, the Board (meeting together with the Foundation, MPA, and MPI boards) unanimously voted to accept the Steward proposal on March 29, 2011. That same day, the Asset Purchase Agreement was executed.

Due Care: The Board's Evaluation and Determination of Proposals

34. The Board carefully evaluated and made its determinations concerning the proposals by Southcoast and Steward, relied upon the advice of qualified, independent experts, exercised their judgment, and unanimously concluded, including for the reasons set forth below, that: (a) Morton could not continue to survive in its current charitable form as a stand-alone community hospital, and (b) the sole bid from a non-profit health care system was not a reasonably viable proposal for continuing Morton's charitable mission of operating a full-service, acute care hospital for the residents of Taunton and its surrounding communities over the long term.

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[5] As set forth in the Attorney General's Statement at p 21, footnote 18: "In recounting the Board's reasoning and process, the Attorney General is not endorsing Navigant's or the Board's determinations about factors contributing to ACO readiness (or the appropriateness of regional care delivery models; . ..), and is instead describing the basis for the Board's decisions."

35. The Board based its determination in large part upon its threshold finding that, under the non-profit proposal, Morton would not remain a full-service acute care community hospital, but rather, would become a fourth campus or branch of a regional community hospital system that developed "signature" services at the respective facilities to service, collectively, the health care needs of residents of the entire region, and further, that the proposal did not commit to the expansion and delivery of local (as opposed to regional) clinical services. The three Southcoast hospital facilities are in Fall River, New Bedford, and Wareham. As noted by Navigant and the Board, each Southcoast hospital facility is developed to have a "signature" service for the region. In the Board's judgment, patients in Taunton's PSA would be unlikely to travel to Fall River, New Bedford, or Wareham for treatment that they could not receive at Morton. The Board determined that, in its judgment, the regional approach to care envisioned for Morton and the community it serves under the non-profit proposal was: (a) not likely to be viable for Morton in the long term, and (b) would not result in the continued operation over the long term of full-service acute care hospital services at Morton for the residents of Taunton and its surrounding communities, which was the Board's vision of Morton's mission and for meeting the needs of the local community.[6]

36. The Board's determination that Morton would not remain over the long term a full-service acute care hospital under the non-profit proposal was supplemented by its other findings, including that Steward's proposal (unlike the non-profit proposal) had a long-term commitment to maintain a local governing board, that it had a larger, more front-loaded, and more specific capital commitment, and that it committed to a longer no-close period. As noted in the Attorney General Statement (pp. 9 and 25), the Attorney General found that the record supports a reasonable basis for the Board's determination, consistent with applicable general non-profit and charities law.

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[6] As noted in Exhibit J, the Statement of the Attorney General as to the Morton Hospital and Medical Center, Inc. Transaction dated September 7, 2011 (the "Attorney General Statement') at p. 9, footnote 10, the Attorney General did not endorse or detract from the Board's determination concerning the importance to its mission of retaining a full-service acute care hospital in Taunton (as opposed to a regional care approach, for example), but found that it was not unreasonable for the Board to make such determination.

37. *Scope of Services.* The Board determined that the non-profit proposal, including its model of service delivery, was not committed to maximizing the services available locally in Taunton and focusing capital and other system resources on Morton specifically (as opposed to a larger region that included Morton's service area). The Board determined that the non-profit proposal would not result in the preservation of full-service acute care hospital services at Morton for the Greater Taunton Community; the Board believed that such a result under the non-profit proposal was not consistent with either Morton's current charitable operations or the mission of Morton. The Board noted and valued Steward's commitment to maintain Morton as a full service community hospital, including its more specific commitment to the expansion and delivery of a full-range of acute care services at Morton. Steward committed in the APA to focus its capital expenditures and resources on building and developing services such as women's health, obstetrics, imaging, and creating a cancer care center, and to "recruiting specialists and providing a broader range of medical services locally, performed in the greater Taunton community with particular emphasis on neurosurgeons/spine surgeons and vascular medicine physicians." APA, Section 11.6(d). Steward also committed to working with the local governing board and management concerning the planning and development of such services.[7]

38. *Capital Commitments.* The Board noted and valued Steward's larger, more front-loaded, and more specific, minimum capital commitment. Steward has committed to spend at least $110 million in capital expenditures and investments at the Hospital over the next ten years following the closing of the Transaction (the "Closing"), with at least $85 million in the first five years post-Closing, and with at least $25.5 million in the first year post-Closing. Steward's specific commitments concerning its minimum capital expenditures are set forth in the APA, Sections 11.6.[8]

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[7] Southcoast's proposal was not as specific in regards to the type or timetable of service development and delivery. Southcoast committed to engage in a six-month strategic planning process and to implement as soon as reasonably possible strategic initiatives, including the development at Morton of one or more "signature" services offered at each of the Southcoast facilities.

[8] Southcoast committed to spend $84 million in capital expenditures over the next seven years post-closing, but did not commit to any specific minimum up-front amount or any specific use of such capital expenditures at the Morton facility.

39. *Local Governing Board.* The Board noted and valued Steward's commitment to maintain over the long term a more locally-focused board post-Closing, with more governance participation and control by residents of Morton's PSA. Steward committed (APA Section 11.8) to maintaining post-Closing a local hospital board, composed of medical staff members, community leaders, and executive officers. The post-Closing local governing board, which shall operate subject to the authority of the Steward buyer's board, shall be responsible, subject to such authority, for the following decisions, consistent with DPH regulations: (a) approval of borrowings in excess of $500,000; (b) additions or conversions that constitute changes in service; (c) approval of capital and operating budgets, including prioritization of capital investments; (d) approval of the filing of an application for Determination of Need; (e) development of strategic plans for the community; (f) medical staff credentialing; and (g) community benefit planning. Its members initially shall be nominated by the Board, and later self-nominated, subject to appointment by the Steward buyer's board and approval by the Chairman of Steward.[9]

40. *No-Close Period.* The Board noted and valued Steward's longer commitment not to close the Hospital. Steward committed to a ten-year no-close period, which is qualified in years eight through ten by certain performance and notice criteria (the "No-Close Period").[10]

41. *ACO Readiness Factors.* Relying on the advice of Navigant and its ACO readiness assessment of the two suitors, the Board noted and valued input that Steward has pursued more advanced efforts concerning ACO development and implementation, including its leadership experience and human resources, its $100 million investment in IT that would be available to the Hospital post-Closing, as well as its physician recruitment and retention practices, including Steward's captive insurance company available to employed and non-

[9] Southcoast committed to having two Morton appointed directors on the 19-member Southcoast board, which has a broader, more regional focus than solely Morton's service area. These two Morton-appointed directors would serve for two years and then Southcoast's standard board practices would control the composition of the Southcoast board. Additionally, Southcoast would create a transitional local governing board (with five Southcoast representatives and four Morton representatives), which was intended to ease the integration of Morton into Southcoast post-Closing and which would not be permanent.

[10] Southcoast committed to a seven-year no-close period in its proposal.

employed physicians, its IT clinical and operating systems, and EMR compatibility and development.[11]

42. After considering these and other relevant factors, the Board concluded that the Steward proposal and the Transaction contemplated thereby was the only reasonably viable option for continuing Morton's current charitable operations and maintaining, over the long term, a full-service acute care hospital for the Greater Taunton Community.

Conflicts of Interest Avoided

43. Prior to execution of the APA, no Board member, officer, senior management employee, or any family member of such an individual, had any direct or indirect financial relationship with, or business interest in, Steward or its affiliates. No such individual will receive any financial or other benefit or reward for completing the Transaction or for any activity in furtherance of the Transaction prior to the Closing.

44. The Board members, officers, and senior management employees responded to interrogatories from the Attorney General with respect to conflicts of interest and other matters. By these interrogatories, the respondents confirmed, under oath, the absence of any financial or other benefits to be received by any of them as a result of the Transaction.

45. No member of the senior management team 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.[12] To date, no financial or other terms or conditions have been negotiated between Steward and members of Morton's senior management with respect to future employment.

46. Similarly, in order to maintain local participation and provide some continuity in governance, 20 Board members will initially serve on the local board established under the

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[11] See footnote 5, above.

[12] As set forth in the Attorney General's Statement at p. 27, footnote 29, the Morton President and Chief Executive Officer has an employment agreement and a deferred compensation plan, both of which are being assumed by the Steward Buyer at Closing. The deferred compensation plan contains a change of control provision that may accelerate payments otherwise due to her in 2011. In any event, the timing of the Closing mitigates any incremental benefit provided by any such accelerated payment.

APA. Steward does not currently compensate members of local boards within its system and has no plans to change that policy.

Fair Value

47. The Purchased Assets consist of substantially all of the assets and properties of Morton, MPA, and MPI, as more specifically set forth in Section 2.1 of the APA. The Transaction will bring between $160 and $180 million of value to Morton and the Greater Taunton Community, as set forth in Paragraphs 48 and 49 below.

48. As described in Section 2.5 of the APA, the consideration for the sale of the Purchased Assets, which will be finally determined at the Closing and is anticipated to be between $50 and $60 million, consists of: (a) the repayment, discharge, defeasance or release of liability from virtually all of Morton's, MPA's, and MPI's outstanding indebtedness; (b) the assumption of all pension obligations for Morton's current and former employees pursuant to Sections 2.3(d) and 10.1(c) of the APA, the total underfunded component of which was estimated as of May 26, 2011 to be approximately $36 million; and (c) the assumption of certain other liabilities set forth on Schedule 2.3(c) of the APA.

49. In addition to assuming or discharging the liabilities described in the paragraph above, within five years of the Closing, Steward is required to expend or commit to expend at least $85 million in capital expenditures for facility improvements at the Hospital, including an investment of $25.5 million in the first year, plus an additional minimum of $25 million and up to $35 million during the sixth through tenth years post-Closing for an aggregate commitment of at least $110 million and up to $120 million. These investments will permit Steward and its affiliates to make needed improvements to the Hospital.

50. Under G.L. c. 180, § 8A(d), Steward must pay fair value for the assets and operations of Morton and MPA. As initially set forth in the "Statement of the Attorney General as to the Caritas Christi Transaction, Appendix A-7" dated October 6, 2010, and as restated in the "Statement of Attorney General as to the Morton Transaction" dated September 7, 2011, a price obtained through an appropriate arm's length process with an absence of conflicts of interest, is the best indicator of fair value. The Board, with the assistance of advisors and consultants, with full knowledge of its fiduciary obligations and without conflicts of interest, put

in place and followed a diligent and arm's length RFP process to ensure that fair value was obtained. The Board also sought advice from Navigant, which advised that the purchase consideration for the Transaction is above the norm for hospital acquisitions in the country.[13] *See* Exhibit H, pp.8-11.

Public Interest: Post-Closing Operations and Steward Obligations

51. In addition to the assumption of debt and underfunded pension liabilities, which together constitute the purchase price for the Purchased Assets, the following post-Closing commitments are beneficial to and consistent with the public interest: (a) committing no less than $85 million in capital expenditures within five years post-Closing, with $25.5 million to be expended in the first year post-Closing; (b) committing no less than an additional $25 million in capital expenditures in years six through ten post-Closing; (c) not closing the Hospital and maintaining an acute care hospital that shall provide substantially the same scope of services as the Hospital currently provides during the No Close Period; (d) maintaining charity care pursuant to the Attorney General's Community Benefits Guidelines for Non Profit Hospitals for as long as Steward operates the Hospital, including maintaining the current levels of charity care during the No-Close Period; (e) maintaining community benefit programs pursuant to the Attorney General's Community Benefits Guidelines for Non Profit Hospitals for as long as the Steward operates the Hospital, including maintaining the current levels of community benefit expenditures during the No-Close Period; (f) not closing or reducing the number of the 14 inpatient, geriatric psychiatry beds during the No-Close Period; (g) maintaining the adult uninsured clinic and school based health centers, as well as providing culturally and linguistically appropriate services consistent with those currently provided at the Hospital, subject to such changes over time that may be necessary or appropriate to ensure that such community benefit programs remain properly aligned with the needs and interests of the Hospital's patients and the Greater Taunton Community post-Closing; (h) not selling or transferring a majority interest in the Steward affiliate operating the Hospital for five years post-Closing, except as part of an otherwise permitted sale of Steward as a whole or Steward Medical

[13] In addition to the foregoing, the Attorney General Statement (at pp. 29-30) notes that two indicators of fair market value, an earnings before interest, depreciation and amortization multiple and patient service income multiple, both supported a finding of fair value.

Holdings LLC; (i) offering comparable employment positions to the approximately 1,200 Morton employees active and in good standing at the time of Closing, as well as recognizing Morton unions and collective bargaining agreements; (j) honoring naming commitments made by Morton in the past to donors; (k) for as long as the Steward operates the Hospital, maintaining a local governing board for the Hospital, with designated responsibilities consistent with Massachusetts Department of Public Health ("DPH") requirements, subject to the authority of Steward's board of directors, organizing documents, and bylaws; (l) adopting and implementing charity care policies and debt collection practices generally consistent with Morton's current charity care policies and debt collection practices and consistent with the Recommended Hospital Debt Collection Practices set forth in the Attorney General's Community Benefits Guidelines for Non Profit Hospitals; (m) for as long as Steward operates the Hospital, continuing to accept Medicare and Medicaid patients consistent with current Morton practices and to accept emergency patients regardless of ability to pay consistent with applicable law; (n) committing that the following APA provisions will apply to any successor-in-interest to Steward (after 90 days prior notice of such sale to the Attorney General): ongoing obligations for community benefit and charity care, including debt collection practices; regulatory compliance; the no-closure commitments, including maintaining at least substantially the same services and maintaining current community benefit and charity care expenditure levels for the No-Close Period; the capital expenditures commitment in years six through ten post-Closing; the local governing board commitment; and the donor-naming commitment; provided that only the community benefit/charity care and regulatory cooperation obligations will apply if Steward satisfies the No-Close Period criteria and otherwise could close the Hospital rather than sell it; (o) agreeing that the Attorney General shall have the right to enforce certain post-Closing provisions of the APA related to the public interest; (p) agreeing that any enforcement action brought by the Attorney General under the APA or any of the ancillary agreements shall be brought in the courts of the Commonwealth of Massachusetts; (q) assuring and funding the reorganization or dissolution of the Morton entities, including assuring that endowment and other donor-restricted funds are appropriately segregated and used for appropriate purposes; (r) confirming that Steward, notwithstanding its for-profit status, will 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; (s) clarifying that the existing assessment and monitoring of Steward by the Attorney General and DPH includes the impact of the Transaction on health care costs, access, and services within the communities served by Steward; and (t) agreeing that if Steward fails to meet its minimum capital expenditure obligations under the APA in the first five years post-Closing, Steward shall donate such unspent amounts to a Massachusetts health care charity, after written notice to and approval by the Attorney General.[14]

LEGAL REQUIREMENTS, ATTORNEY GENERAL FINDINGS, AND REGULATORY APPROVALS

52. Pursuant to G.L c. 180, § 8A(d), a non-profit acute care hospital must provide written notice to the Attorney General (unless notice is waived by the Attorney General) not less than 90 days before it enters into a sale or other disposition of a substantial amount of its assets or operations with a person or entity other than a public charity. Morton provided written notice of the Transaction to the Attorney General on May 26, 2011, a copy of which is attached hereto as Exhibit I.

53. Pursuant to G.L. c. 180, § 8A(d), when investigating this Transaction, the Attorney General shall consider any factors she deems relevant, including whether: (a) the Transaction complies with applicable general non-profit and charities law; (b) due care was taken by the Board and senior management; (c) conflict of interest was avoided by Morton at all phases of decision-making; (d) fair value will be received for Morton's assets; and (e) the Transaction is in the public interest. As set forth above in this Complaint, the Board and senior management have adhered to and complied with these standards in connection with the actions and events leading to the Transaction.

54. Pursuant to G.L. c. 180, § 6C, the Board members and senior management of Morton must perform their duties with respect to the Transaction in good faith and in a manner

[14] While the Attorney General's public interest findings did not rely on such factors (*see* Attorney General Statement at p. 32, footnote 31), Steward estimates that its payments of local property tax and sales tax by the Hospital will be approximately $11 million over the first five years and that its capital expenditure projects will generate economic activity, much of it local.

that they reasonably believe to be in the best interests of Morton (and not any private interest), and with such care as an ordinarily prudent person in a like position with respect to a public charity would use under similar circumstances. Furthermore, 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. *Id.* As set forth above in this Complaint, the Board and senior management have adhered to and complied with these standards in connection with the actions and events leading to the Transaction.

55. After conducting her investigation, the Attorney General issued the Attorney General's Statement. *See* Exhibit J. The Attorney General's Statement includes an overview of the Transaction, a description of the statutory background, a summary of the questions posed by the Attorney General, a description of the Attorney General's review and investigation process, the Attorney General's findings, including information forming the bases thereof, a summary of public comments, including from the public hearing in Taunton, and educational process recommendations for charitable organizations. *Id.*

56. As set forth in the Attorney General's Statement, the findings of the Attorney General included the following: (a) that it is impracticable for Morton to continue to survive in its current charitable form and that the Transaction complies with applicable general non-profit and charities law;[15] (b) that the Board and senior management complied with standards of due care; (c) that the Board and senior management appropriately disclosed and managed conflicts of interest as existed; (d) that the consideration for the Purchased Assets is fair and that the Transaction affords Morton fair value for its operations and assets; and (e) that the Transaction is in the public interest. *Id.*

57. In connection with her review of the Transaction, the Attorney General, consistent with the authority of her office and pursuant to G.L. c. 180, § 8A(d), has required the

[15] In particular, the Attorney General found that the record supported a reasonable basis for the Board's determination that Morton could not survive in its current charitable form as a stand-alone community hospital, and that the sole bid from a non-profit health care system was not a reasonably viable proposal for continuing Morton's charitable mission of operating a full-service, acute care hospital for the residents of the Greater Taunton Community over the long term. *See* Statement of the Attorney General at pp. 9 and 25.

various parties to enter into the following agreements to ensure compliance with Transaction matters related to the public interest: (a) an Enforcement Agreement, materially in the form attached here to as Exhibit K, with respect to enforcement of certain post-Closing provisions of the APA; (b) an Assessment and Monitoring Agreement, materially in the form attached hereto as Exhibit L, with respect to ongoing monitoring of the impact of the Transaction by both the Attorney General and DPH; and (c) a Transition, Windup, and Reorganization Agreement, materially in the form attached hereto as Exhibit M, with respect to post-Closing activities, to be funded by Steward, as may be necessary to appropriately provide for the future custody and use of donor-restricted funds, including endowments funds, and the orderly windup and reorganization of Morton, MPA, and other entities as may be appropriate. *Id.*

58. On September 14, 2011, the Public Health Council considered and unanimously approved DPH staff's recommendation for approval, with conditions, of Steward's application for a Determination of Need for the transfer of ownership of the Hospital.

59. Consistent with her findings and conditions in the Attorney General's Statement, including execution of the three ancillary agreements described in paragraph 57 above, the Attorney General has assented to this Complaint. *See* Answer and Assent of the Attorney General, filed herewith.

REQUEST FOR RELIEF

60. As described above, Morton's continued existence in its current form is impracticable and consequently Morton's charitable purposes, for which Morton was established and is operated, will ultimately fail. The Transaction is the only reasonably viable alternative the Board has identified, after diligent and careful inquiry, and with the advice of qualified independent consultants and counsel, to enable the Hospital to continue its charitable mission of operating a full-service acute care hospital for the residents of the Greater Taunton Community.

61. The members of the Board and senior management have complied with their respective duties of care and loyalty under Massachusetts law with respect to the actions and events leading to the Transaction. Conflict of interest was avoided or managed during the

decision-making process, fair value will be received for the Purchased Assets, and the Transaction is in the public interest.

WHEREFORE, Morton respectfully prays that this Court enter an Order in the proposed form attached hereto as Exhibit N which Order would, *inter alia*:

1. Approve the Transaction, including the transfer of substantially all of Morton's and MPA's assets, liabilities, and operations in accordance with the terms of the APA.

2. Enter such other and further relief as this Court deems just and proper.

Respectfully submitted,

Morton Hospital and Medical Center, Inc.
By its attorneys,
Ankner & Levy, P.C.

By: ______________________
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Table of Exhibits

Exhibit A	Asset Purchase Agreement, as amended
Exhibit B	Office of the Attorney General in its *"Examination of Health Care Cost Trends and Cost Drivers,"* dated March 16, 2010.
Exhibit C	October 6, 2010 Navigant Report to Morton Board
Exhibit D	Request for Proposals
Exhibit E	Confidential Information Memorandum
Exhibit F	Navigant ACO Readiness Assessment
Exhibit G	March 17, 2010 Navigant Presentation to Board
Exhibit H	March 25, 2011 Navigant Presentation to Board
Exhibit I	Morton's Written Notice of Transaction to Attorney General
Exhibit J	Statement of the Attorney General as to the Morton Transaction
Exhibit K	Enforcement Agreement
Exhibit L	Assessment and Monitoring Agreement
Exhibit M	Transition, Windup and Reorganization Agreement
Exhibit N	Proposed Order of the Court