

STATE OF RHODE ISLAND

SUPERIOR COURT

MEMORIAL REAL ESTATE GROUP, LLC  
A DELEWARE LIMITED LIABILITY  
COMPANY

Plaintiff

V.

C.A. No. PM-2023-01172

MEMORIAL DEVELOPMENT, LLC;  
MEMORIAL HOSPITAL; 111 BREWSTER  
CONDOMINIUM ASSOCIATION,  
JCT DEVELOPMENT, INC., BENTLEY  
BUILDERS, LLC, ADREN ENGINEERING  
CONSTRUCTORS, LLC

Defendant/ Party-in-Interest.

**MEMORANDUM OF LAW IN SUPPORT OF THE RHODE ISLAND  
ATTORNEY GENERAL'S MOTION TO INTERVENE OR ENTER AS  
INTERESTED PARTY**

Under R.I Gen. Laws § 18-9-5 and pursuant to Rhode Island Superior Court Rules of Civil Procedure 24(a), or in the alternative 24(b), the Rhode Island Attorney General (“Attorney General”), Peter F. Neronha in his capacity as Administrator of Charitable Trusts of the State of Rhode Island, submits this Memorandum of Law in Support of its Motion to Intervene or Enter as Interested Party.

**I. INTRODUCTION**

On or around March 8, 2023, the Memorial Real Estate Group, LLC (“MREG”), as the Plaintiff, filed an action for decree authorizing foreclosure, barring the right to redeem and vesting title in the successful purchaser and for declaratory judgment against Defendants-Parties-In-Interest, Memorial Development, LLC, Memorial Hospital, 111 Brewster Condominium Association, JCT Development, Inc., Bentley Builders, LLC, Arden Engineering Constructors, LLC. Plaintiff MREG makes the

following allegations in its complaint: Memorial Development, LLC acquired title to the property, 111 Brewster Street, Pawtucket, Rhode Island, Land Condominium Unit 2 by Quitclaim Deed, which was recorded in the land records of Pawtucket on January 7, 2021.<sup>1</sup> *See Complaint*, ¶ 12. After Memorial Development, LLC executed a Promissory Note in the amount of Three Million Five Hundred Thousand (\$3,500,000.00) to Nextbank International, Inc. (“Nextbank”), a mortgage was granted to Nextbank on or about March 22, 2022. *See Complaint*, ¶¶ 13-14. On or about December 28, 2022, Nextbank assigned the mortgage to MREG. *See Complaint*, ¶ 15. MREG alleges that Memorial Development, LLC defaulted on their Mortgage Loan by failing to make the required payments beginning with a payment due on December 1, 2022, and the default has not been cured. *See Complaint*, ¶¶ 16-17. MREG asserts that the mortgage contains a provision providing foreclosure by statutory power of sale and all conditions precedent to the acceleration of the Promissory Note and foreclosure of the Mortgage have been fulfilled or have occurred. *See Complaint*, ¶¶ 18-19. There are several liens subordinate to the mortgage. *See Complaint*, ¶¶ 20. As discussed in depth below, the property at issue in the current case was previously the subject matter of a Verified Petition for *Cy Pres* in Case No. P.C. 2020-06291, *In Re: THE MEMORIAL HOSPITAL* — to which the Attorney General was a party. *See Exhibit 1*.<sup>2</sup> That petition resulted in a Court Order entered on November 12, 2020 imposing certain conditions. *See Exhibit 2*. Furthermore, the

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<sup>1</sup> Unless otherwise noted, all facts recited are as alleged in the Complaint and the Attorney General neither admits nor denies any such facts.

<sup>2</sup> The Attorney General is referencing our Exhibits numerically since Plaintiff referenced their Exhibits alphabetically.

Unit Quitclaim Deed, included as Exhibit A in the Complaint in front of the Court today and made an exhibit and incorporated by reference by the Court in the November 12, 2020 Court Order, includes a covenant requiring the Attorney General to consent to any sale, transfer, or conveyance of the Property as well as a deed covenant setting forth permitted use, e.g. residential services for veterans and other health care services. The Attorney General did not consent to the conveyance of an interest in the Property by mortgage to Nationstar. *See generally Complaint* (no allegations that Attorney General consent was sought or obtained at any point).

## II. ARGUMENT

### A. Standard of Review

The Attorney General seeks intervention as a matter of right pursuant to Rule 24(a)(2) of the Rhode Island Superior Court Civil Rules, or in the alternative 24(b)(1). Under Rule 24(a)(2), an applicant will be granted intervention as a right if the applicant files a timely application, the applicant claims an interest relating to the property or transaction which is the subject matter of the action, the disposition of the action may as a practical matter impair or impede the applicant's ability to protect that interest, and the applicant's interest is not adequately represented by current parties to the action. *Tonetti Enterprises, LLC v. Mendon Road Leasing Corp.*, 943 A.2d 1063, 1072-1073 (R.I. 2008). If the applicant satisfies these four criteria, then the applicant shall be permitted to intervene. *Id.* at 1073. (internal citations omitted). Pursuant to Rule 24(b)(1), "[u]pon timely application anyone may be permitted to

intervene in an action \* \* \* [w]hen a statute of this state confers a conditional right to intervene.” Super. R. Civ. P. 24 (b)(1).

### **B. The Attorney General May Intervene as of Right**

As an initial matter, there is no concern with timeliness. This action was filed on Wednesday, March 8, 2023. This motion is filed on Thursday, March 30, 2023, before responsive answer by the defendants is required. There is therefore no risk of causing undue delay in the proceedings by granting the Attorney General’s motion.

The Attorney General also has an interest in this action and is a necessary party. The Memorial Hospital and Care of New England filed a *cy pres* petition to modify deed restrictions of the real property held by Memorial Hospital Inc. (“MHRI”) and to allow the related sale and use of proceeds in furtherance of charitable purposes consistent with donor intent. *See Exhibit 1*. The three deeds (the Sayles Deed, the Daisey Goff Deed, and the Darius Goff Land Deed) collectively required the MHRI Campus to operate as a single unified parcel. *See Exhibit 1 ¶¶ 20-28*. Due to the restrictions, the *cy pres* modification requested was for the consolidation of all three deeds into an aggregate master deed and allowing for the land to be split into two land condominiums, one condominium for the Primary Care Building Unit (Unit 1) and one condominium for the Main Hospital Building (Unit 2), representing the property in the Subject Deeds. *See Exhibit 1 ¶¶ 58-75*.

As mentioned in the Attorney General’s filing in *In re: The Memorial Hospital*, the Attorney General was informed by Care New England of the efforts to sell the MHRI Campus. *See Exhibit 2*, page 2. Given the profound loss of a local community

hospital on the Pawtucket area, the Attorney General had a preference that the MHRI Campus be sold to a non-profit entity, however the Attorney General was satisfied with the proposed uses of the MHRI by Lockwood Development Partners LLC, a Florida limited liability company, to the Veterans' community and the Pawtucket and Blackstone Valley communities as a whole. *See Exhibit 2*, page 2. Specifically, Lockwood Development Partners LLC proposed to repurpose the campus as a wellness center for U.S. Veterans (that would include adult day care services, a skilled nursing facility, an assisted living facility, and certain education programs). *See Exhibit 1* ¶ 17. The Attorney General's response to the *cy pres* petition noted that all three donors of the subject property intended for the MHRI Campus to serve as a hospital with ancillary services to the community, regardless of the individual's ability to pay, however donative intent with respect to a hospital could no longer be carried out per se. *See Exhibit 2*, page 3. Overall, the Attorney General found that Lockwood Development Partners LLC's planned healthcare services appeared to be as near as may be to original donative intent because Lockwood Development Partners LLC was the only prospective buyer that proposed healthcare service on the property. *See Exhibit 2*, page 3.

Ultimately, the Court approved the release of all restrictions, requirements, and obligations affecting the title to the property and MHRI was permitted to convey the property covered by the Unit Two deed to Lockwood Development Partners LLC, or its designee, subject to certain conditions. *See Exhibit 3*. The Unit Two Condominium Unit Quitclaim Deed includes language stating

Unless Grantor and the Attorney General of the State of Rhode Island consent to the sale, transfer or conveyance of the Property, which consent shall be evidenced by the Grantor and the Attorney General executing any deed conveying the Property, Grantee hereby covenants that Grantee shall not, directly or indirectly, sell, transfer or convey (except to an entity controlled by, or under common control with, Grantee, and of which Grantee owns at least 51% of the ownership interest thereof) the Property, or any portion thereof for a period of three (3) years following the date of recording this Quitclaim Deed with the City of Pawtucket Land Records....”

*Exhibit A.*<sup>3</sup> Moreover, the deed states that “[a]ny such conveyance, without said consent, shall be null and void.” *Id.* MREG has not pleaded (because it cannot) that the deed conditions were fulfilled. The restrictions in the Condominium Quitclaim Deed require consent by the Attorney General in the sale, transfer or conveyance of the Property, such that the Attorney General must take part in proceedings concerning an unconsented transfer, which would include any proceedings in foreclosure. This language of the Deed is also included in the Court’s Order — specifically, Lockwood Development Partners LLC cannot sell, transfer, or convey either directly or indirectly the Unit 2 property for a period of three years following

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<sup>3</sup> The deed for Unit 2 also provides that “[t]he property is conveyed subject to the restrictions set forth on **Exhibit A** attached hereto and incorporated herein by reference” which in turn provides:

Grantee covenants, for itself and its successors and assigns, that the Property may only be used for the following permitted uses: (i) residential and health care related services provided primarily to United States military veterans and their families, (ii) ambulatory medical care and/or physician's offices (including without limitation, primary care, family practice, orthopedic, cardiology, oncology, internists, nutritional services, diabetes care, respiratory therapy and clinical services, pediatric and adult rehabilitation and physical therapy, urgent/same day care, radiology, mammogram testing and ultrasound), (iii) physician residency programs, (iv) physician, nurse and other educational training programs, (v) medical research, and (vi) inpatient hospital as defined in and licensed under RIGL Chapter 23-17 and any successor laws, and for no other use or purpose.

the closing. *See Exhibit 3*, ¶ 14. The Court also explicitly ordered Lockwood Development Partners LLC to provide written notification to the Attorney General of all key milestones of redevelopment of the Main Hospital Building. *See Exhibit 3*, ¶ 13.

None of these conditions has occurred, and none were mentioned in the Complaint. The current foreclosure action, to which the Attorney General was not made a party, stands to impair the Attorney General's right to consent to any direct or indirect conveyance of the property. There is no party before the Court who will adequately protect the interests entrusted to the Attorney General both by prior Court order and by R.I Gen. Laws § 18-9-1, *et seq.*

For these reasons, the State respectfully submits it satisfies the test articulated in *Tonetti Enterprises, LLC* and pursuant to Rule 24(a)(2) and 24(b)(1) and prays that its motion to intervene be granted.

## II. CONCLUSION

For the reasons stated herein, the Attorney General prays that he be permitted under R.I Gen. Laws § 18-9-5 and pursuant to Rhode Island Superior Court Rules of Civil Procedure 24(a)(2), or in the alternative 24(b)(1), to intervene or enter as an interested party in this instant action, specifically including in the Complaint to foreclose a mortgage filed on or about March 8, 2023.

Respectfully submitted,

**PETER F. NERONHA**  
**ATTORNEY GENERAL**  
**In his capacity as Administrator**  
**of Charitable Trusts**

BY:

**PETER F. NERONHA,**  
**ATTORNEY GENERAL**

/s/ Marissa D. Pizaña  
Marissa D. Pizaña (#10468)  
Special Assistant Attorney General  
150 South Main Street  
Providence, RI 02903  
Tel: (401) 274-4400 ext. 2055  
Fax: (401) 222-2995  
mpizana@riag.ri.gov

/s/ Sarah W. Rice  
Sarah W. Rice (#10465)  
Assistant Attorney General  
150 South Main Street  
Providence, RI 02903  
Tel: (401) 274-4400 ext. 2054  
Fax: (401) 222-2995  
srice@riag.ri.gov

**CERTIFICATE OF SERVICE**

I, the undersigned, hereby certify that I e-filed and e-served the within document via the Rhode Island Superior Court E-filing system and that a copy is available for viewing and downloading to the attorneys of record on this 31<sup>st</sup> day of March, 2023.

/s/ Dana Diaz



# EXHIBIT 1

STATE OF RHODE ISLAND  
PROVIDENCE, SC

SUPERIOR COURT

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)  
IN RE: THE MEMORIAL HOSPITAL )  
d/b/a MEMORIAL HOSPITAL OF RHODE )  
ISLAND, a Rhode Island non-profit corporation, )  
CARE NEW ENGLAND HEALTH SYSTEM, a )  
Rhode Island non-profit corporation, )  
SOUTHEASTERN HEALTHCARE SYSTEM, )  
INC., a Rhode Island non-profit corporation, )  
KENT COUNTY MEMORIAL HOSPITAL, a )  
Rhode Island non-profit corporation, and )  
LOCKWOOD DEVELOPMENT PARTNERS )  
LLC, a Florida limited liability company, )

M.P. 2020-\_\_\_\_\_

**VERIFIED PETITION FOR *CY PRES***

The Memorial Hospital d/b/a Memorial Hospital of Rhode Island (“MHRI”), a Rhode Island non-profit corporation, Southeastern Healthcare System, Inc. (“SHS”), a Rhode Island non-profit corporation, Care New England Health System (“CNE”), a Rhode Island non-profit corporation, and Lockwood Development Partners, LLC (“Lockwood” or “Buyer”), a Florida limited liability company, respectfully request that this Honorable Court enter a decree, under the doctrine of *cy pres*, (1) approving the modification of certain deed restrictions on real property held by MHRI, (2) approving the conveyance and sale of certain real property held by MHRI, including the vacant building that previously housed MHRI’s emergency department and 290 licensed inpatient beds, in order: (i) to alleviate the financial burden of maintaining such property; (ii) to allow for repurposing of the vacant property to a productive use; and (iii) to ensure the continued provision of healthcare services on the remainder of the property; and (3) allowing CNE and/or Kent County Memorial Hospital (“Kent”) to use the sale proceeds to support the provision of healthcare services provided by Kent on the MHRI Campus (as defined herein) in a manner consistent with donor intent. The need to alleviate the significant on-going

maintenance costs of the vacant building is particularly necessary in the face of unprecedented financial strain on CNE due to the COVID-19 pandemic.

### INTRODUCTION

1. This Verified Petition for *Cy Pres* is being filed to seek approval of a proposed modification of deed restrictions on certain real property held by MHRI and to allow the related sale and use of proceeds in furtherance of charitable purposes consistent with donor intent.

2. MHRI is a non-profit corporation that is a tax-exempt organization under Section 501(c)(3) of the Internal Revenue Code (the "Code"). MHRI previously operated as an acute care teaching hospital with its main campus located at 111 Brewster Street in Pawtucket, Rhode Island (the "MHRI Campus"). SHS is the sole member of MHRI, and CNE is the sole member of SHS.

3. CNE is a non-profit corporation that is tax-exempt under Section 501(c)(3) of the Code. CNE operates a Rhode Island based health care system and currently provides health care and related services at the MHRI Campus through its affiliate, Kent.

4. Lockwood is a Florida limited liability company that proposes to purchase the land and real property that make up approximately half of the MHRI Campus, as described in more detail herein.

5. Peter F. Neronha, in his capacity as Attorney General of the State of Rhode Island, and pursuant to his statutory and common law responsibilities with respect to the preservation and protection of charitable assets, has been given notice of this Petition.

6. Over the last several decades, MHRI had incurred significant financial losses. In 2013, MHRI could no longer sustain the on-going financial losses and affiliated with CNE in a transaction in which CNE became the sole corporate member of SHS and, in turn, the ultimate

corporate parent of MHRI. While the affiliation with CNE delayed the inevitable fate of MHRI, the on-going and growing operational losses could not be sustained by the CNE system. Despite significant financial investment by CNE following the 2013 affiliation in an effort to improve the financial stability of MHRI, MHRI's significant operating losses continued.

7. As described in more detail herein, towards the end of 2016, MHRI solicited interest from third parties in an attempt to sell MHRI as a going concern and engaged in negotiations with a third party to purchase MHRI as a going concern. As those negotiations ensued, by the Fall of 2017 it was clear the parties would not be able to agree upon the terms of the transaction. With an average inpatient census of 15-20 patients per day, less than 10% of MHRI's licensed inpatient bed capacity, and the continuing financial losses, the Board of Directors of MHRI voted to terminate discussions and MHRI initiated steps to close MHRI as a licensed hospital.

8. Toward the end of 2017 and beginning of 2018, MHRI sought and obtained approvals from the Rhode Island Department of Health ("RIDOH") to close the emergency department and eliminate its provision of primary care services, and eventually close the hospital. MHRI stopped inpatient admissions as of December 1, 2017, closed the emergency department on January 1, 2018, and stopped providing primary care services under the MHRI license on February 1, 2018.

9. Beginning immediately following the closure of MHRI, MHRI leased to its CNE affiliate, Kent, certain medical office buildings and space located on the MHRI Campus and such location was added as an additional premise to Kent's RIDOH issued hospital license. The portion of the MHRI Campus leased to Kent is referred to herein as the "Primary Care Building."

10. Since the closure of MHRI, Kent has and continues to provide various primary and specialty health care services in the Primary Care Building. The type and scope of such primary and specialty care services is significantly similar to the health care services that had been provided by MHRI in the Primary Care Building before the closure of MHRI, and include, without limitation, the following services:

- a. Primary care and internal medicine outpatient health care services at the Family Care Center and Internal Medicine Clinic;
- b. Ancillary services, including laboratory and diagnostic imaging (x-ray, ultrasound, bone density), and physical, occupational and speech therapy;
- c. Pediatric primary care, including well child checks, sick visits, school/sport physicals, nutrition consultations, and management of chronic health problems for infants, children and adolescents at the Pediatric Family Care Center;
- d. Specialty services, including cardiology, dermatology, obstetrics and gynecology, oncology and hematology, orthopedics and sports medicine, pulmonary and sleep medicine, and general surgery, thoracic surgery, orthopedic surgery and vascular surgery follow-ups; and
- e. Express Care Services, on a walk-in basis, 6 days per week.

11. As noted above, CNE is a Rhode Island non-profit corporation that is a tax-exempt non-profit entity under Section 501(c)(3) of the Code. CNE operates a statewide integrated health care system serving the residents of Rhode Island and surrounding areas. CNE provides Rhode Islanders with a continuum of high quality health care and related services. CNE also advances medical education and research, with Butler Hospital serving as the major

affiliated teaching hospital for psychiatry and behavioral health of The Warren Alpert Medical School of Brown University (“WAMS”), Women & Infants Hospital of Rhode Island serving as the major affiliated teaching hospital of WAMS for activities unique to women and newborns, and Kent serving as a major affiliated teaching hospital of WAMS for activities relating to primary care and the major affiliated teaching hospital of WAMS for activities in family medicine. A significant portion of Kent’s family medicine residency program is conducted at the Primary Care Building on the MHRI Campus, and a portion of Kent’s internal medicine residency program is conducted at the Internal Medicine Clinic on the MHRI Campus.

12. It is the charitable mission of both CNE and previously MHRI to promote and improve access to health care and the health care status of the communities they serve, and to provide those communities with high quality, affordable health care and related services.

13. However, a significant portion of the MHRI Campus, including the 290 bed main hospital building and related adjacent buildings and grounds (the “Main Hospital Building”) remains vacant, and while not being utilized, it remains a financial drain on the overall CNE system due to on-going maintenance and security costs.

14. Per order of the City of Pawtucket Fire Marshal, MHRI is required to maintain the vacant, unutilized Main Hospital Building, by continuing to maintain heat, fire protection and on-site security on a 24/7 basis, costing MHRI over \$2,000,000 per year.

15. The requirement to maintain the vacant Main Hospital Building at such levels requires CNE to use operating revenues from its other affiliates to continue to cover MHRI related expenses, when such funds are urgently needed by CNE and its affiliates to support the provision of health care services. Since the operation of MHRI as an inpatient hospital is not financially viable, MHRI solicited proposals from third parties to purchase the MHRI Campus,

with the understanding the buyer would repurpose the property for uses that are more practical and beneficial. After a solicitation for proposals by MHRI, Lockwood and MHRI entered into a Purchase and Sale Agreement in which Lockwood would purchase the Main Hospital Building. To effectuate the sale to Lockwood, the entire MHRI Campus will be reformed as two (2) land condominium units with MHRI or a CNE affiliate retaining the land condominium unit comprising the Primary Care Building and approximately 5.72+/- acres of land (“Unit 1”) for the continued provision of health care services in the Pawtucket and Blackstone Valley service areas by Kent or other CNE affiliates, and Lockwood acquiring the other land condominium unit comprising the Main Hospital Building and approximately 7.68+/- acres of land (“Unit 2”). MHRI and Lockwood plan to complete the sale of Unit 2 as soon as possible following this Court’s approval. A true and accurate copy of the Unit 2 deed and restrictions are attached as Exhibit A.

16. As explained more specifically below, the purchase price for Unit 2 is \$250,000.

17. Lockwood proposes to repurpose the Main Hospital Building by using a majority of the space for a wellness center for U.S. Veterans (that would include adult day care services, a skilled nursing facility, an assisted living facility and certain educational programs as described in more detail herein).

18. MHRI and CNE believe that Lockwood is a uniquely qualified buyer who has experience and who has proposed a creative and workable solution for the Main Hospital Building and that time is of the essence to proceed with this sale to avoid the prospect that the Buyer may decide not to proceed if the deed restrictions are not modified in a timely manner. Further, due to the severe financial strain placed on CNE and its affiliates as they focus on the continued provision of urgently needed health care services during the COVID-19 pandemic, the

ability to repurpose the funds currently spent to provide on-going maintenance of the empty Main Hospital Building would be better used to meet those health care needs more consistent with charitable intent.

19. Accordingly, for the reasons set forth below, MHRI requests that certain deed restrictions in the three (3) underlying deeds that comprise the MHRI Campus properties be modified in order to allow for such property to be transitioned to a more productive use, to stop the on-going waste of funds currently spent maintaining the vacant and unused Main Hospital Building, to allow for the continued provision of healthcare services in the Primary Care Building on the MHRI Campus and to allow for the Main Hospital Building to be devoted and reapplied to such other uses as nearly as possible consistent with the uses upon which the property was granted.

## **THE MEMORIAL HOSPITAL PROPERTY**

### **Real Property**

20. The MHRI Campus is located at 111 Brewster Street, in Pawtucket, Rhode Island, and is comprised of three (3) contiguous and abutting tracts of land that were transferred to MHRI between 1910 and 1913. The MHRI Campus consists of approximately 13.4 acres with 13 buildings, many of which are interconnected, ranging in age from being constructed in 1890 to being constructed in 1986. For simplicity purposes, the entire MHRI Campus is described herein as being comprised of the Main Hospital Building and the Primary Care Building.

21. The Sayles Deed. The first deed, conveyed by Frank A. Sayles (the "Sayles Deed"), in his capacity as executor of the Estate of William F. Sayles in 1910, donated a certain parcel of real estate, which was comprised of land, a building and other improvements and



tangible personal property thereon to help establish MHRI. A copy of the Sayles Deed is attached as Exhibit B. The operative restriction in the Sayles Deed states that the property

“shall be forever occupied and used by [MHRI] as a hospital<sup>1</sup> where the rich and the poor, who may be suffering from sickness, accidents or injuries, may receive medical and surgical care and treatment, paying therefor such amounts, if any, as they respectively may be able to pay and said corporation may from time to time require; but no person shall be refused care and treatment in said hospital merely because of inability to make compensation therefor if the resources of said corporation for the time being are sufficient to enable it to receive, care for and treat persons without charge. All sums received from patients for care and treatment shall become a part of the general funds of the corporation and be used for the purpose of defraying its running expenses or otherwise used for supplying the needs of the hospital and increasing its efficiency as an instrument of public good.”

Other buildings may be erected on the property “to be used and occupied by [MHRI] for hospital purposes, or for other purposes incidental to or connected with the work of said hospital.” In addition, the Sayles Deed requires that the real estate be forever occupied by MHRI and always be known as “The Memorial Hospital.” The Main Hospital Building, the main parking areas and a significant portion of the Primary Care Building are located mainly on the parcel represented by the Sayles Deed. The assisted living and skilled nursing services for veterans proposed by Lockwood for the Main Hospital Building, and the continued provision of health care services by Kent in the Primary Care Building are consistent with the donor’s original intent that the property be used for the provision of health care services.

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<sup>1</sup> The Merriam-Webster Dictionary defines a “hospital” as “a charitable institution for the needy, aged, infirm or young” and “an institution where the sick or injured are given medical or surgical care...” [www.merriam-webster.com](http://www.merriam-webster.com). *There is no mention or limitation that a hospital needs to have or is limited to inpatient services.* This is particularly true given that what it means to be a “hospital” in 2020 is unforeseeably different than what it meant to be a “hospital” in 1910 when the original deeds were granted to MHRI. With scientific and technical advances in the provision of health care, more and more hospital services are delivered in outpatient and other non-inpatient hospital based settings. At their core, the donor intent was to support the provision of health care services for the Pawtucket / Blackstone Valley communities. Since the provision of inpatient hospital care as envisioned in 1910 is no longer viable, repurposing the property in a manner that ensures the continued provision of health care, wellness, housing and support services is consistent with the donor’s original intent.

22. The Daisy Goff Deed. The second deed, conveyed from Daisy B. Goff in 1910 (the “Daisy Goff Deed”), donated to MHRI a certain parcel of real estate, which was comprised of land and one building known as the Lyman T. Goff House (the “Goff Building”). A copy of the Daisy Goff Deed is attached as Exhibit C. The operative restriction in the original Daisy Goff Deed states that the property “shall be forever occupied and used by [MHRI] as a Dormitory or Home for the use of the nurses connected with and in the employ of [MHRI], as well as all persons connected with any Training School for Nurses which may be carried on by [MHRI].” Other buildings may be erected on the property “to be used and occupied by [MHRI] for hospital purposes, or for other purposes incidental to or connected with the work of said hospital.” In the intervening decades, due to lack of need and interest, nurses ceased to use the Goff Building as a dormitory. In connection with CNE’s acquisition of MHRI, on August 23, 2013, this Court entered an order (the “2013 Order”) granting *cy pres* relief to use the Goff Building for “the general hospital purposes” of MHRI, subject to specific conditions. A copy of the 2013 Order is attached as Exhibit D.

23. Paragraphs 4(a) through 4(f) of the 2013 Order placed the following conditions on CNE and MHRI: (4)(a) install a plaque at the Goff Building identifying the building and containing an outline of the history of the gift; (4)(b) make available to nurses at MHRI access to one or more of the following: CNE’s RN to MSN education program, CNE’s RN to BSN program, and CNE’s clinical coaching, consultation and professional training programs; (4)(c) invest not less than \$100,000 over a period of not more than three (3) years in: (i) converting the smaller room on the ground floor of the Goff Building to a meeting/reception room for nursing education and professional development and (ii) updating and improving the physical space, furniture, and equipment at MHRI available for nursing education, professional development,

and associated activities; (4)(d) provide periodic access, as scheduled and appropriate, to the Goff Board Room for nursing education and professional development, when a space larger than the smaller room on the ground floor of the Goff Building is needed; (4)(e) consult with the MHRI Chief Nursing Officer and the Attorney General regarding the improvements to be made to the Goff Building as required by the 2013 Order; and (4)(f) provide the Attorney General with evidence of implementation of Paragraph 4 acceptable to the Attorney General.

24. MHRI has regularly provided evidence of implementation of such conditions to the Attorney General of the State of Rhode Island. With respect to Paragraph (4)(a) of the 2013 Order, the condition requiring a plaque/history, CNE previously provided evidence to the Attorney General demonstrating that CNE has fulfilled this condition. With respect to Paragraph (4)(c) of the 2013 Order, CNE previously provided evidence to the Attorney General demonstrating that CNE has partially fulfilled this condition by spending \$62,208 on improvements to the Goff Building, leaving CNE with the continuing obligation to spend \$37,792 more on improvements to the Goff Building. Further improvements were not made due to the closure of MHRI as an inpatient hospital. CNE proposes to fulfill this remaining obligation as follows: CNE recently spent approximately \$850,000 on air conditioning upgrades and approximately \$500,000 on electrical upgrades to the Primary Care Building. The benefits of such upgrades to the Goff Building (which is part of the Primary Care Building) exceed the remaining \$37,792 that CNE is obligated to invest in the Goff Building pursuant to Paragraph (4)(c) of the 2013 Order.

25. Further, CNE understands that the conditions in Paragraph (4)(b) and Paragraph (4)(d) of the 2013 Order, both relating to nursing education, will continue in effect, as will the obligation to provide evidence of implementation of such conditions to the Attorney General.

26. A portion of the Primary Care Building (specifically including the Goff Building) and related parking area are in the parcel represented by the Daisey Goff Deed. CNE will continue to use the Goff Building for general hospital purposes and will continue to fulfill the conditions in the 2013 Order as described above, and thus the general intent of the donor continues to be effectuated.

27. The Darius Goff Land. The third deed, conveyed by Darius Goff in 1913 (the “Darius Goff Deed”), donated to MHRI a certain vacant parcel of real estate. The deed conveying such real estate requires that the land and any improvements thereon “shall be forever occupied and used by [MHRI] for the use and benefit of [MHRI]” for “hospital purposes, or for other purposes incidental to or connected with the work of said hospital”. A copy of the Darius Goff Deed is attached as Exhibit E. Certain parking areas and the central boiler plant are on the parcel represented by the Darius Goff Deed. The use of the land for parking and utilization of the boiler plant for the assisted living and skilled nursing services for veterans proposed by Lockwood for the Main Hospital Building, and the continued provision of health care services by Kent in the Primary Care Building are consistent with the donor’s original intent.

28. Collectively, the Sayles Deed, the Daisey Goff Deed, and the Darius Goff Deed are referred to herein as the “Subject Deeds.” In the approximately 110 years since the Subject Deeds were conveyed, the entire MHRI Campus has been operated as a single unified parcel and certain subsequent improvements straddle the original property lines of the Subject Deeds. As such, relief is being sought to modify the restrictions in each of the Subject Deeds and to approve the consolidation of the Subject Deeds into an aggregate master deed and two (2) land condominiums, one condominium for the Primary Care Building (Unit 1) and one condominium for the Main Hospital Building (Unit 2), representing the property in the Subject Deeds.

### Plaques

29. With regard to the numerous plaques throughout the MHRI Campus, MHRI believes that it is not practical to locate or identify all heirs or families of such prior donors. To the extent MHRI is contacted by a family or its heirs, MHRI and CNE plan to deliver the plaques to such families or will otherwise work with Lockwood to attempt to find a central location to display the major plaques, if feasible. For small plaques representing relatively minor gifts, a log of such plaques will be maintained for future reference.

### Personal Property

30. Aside from certain personal property and equipment excluded from the proposed sale, no other tangible personal property remains at the Main Hospital Building. Such excluded personal property will be relocated prior to the sale and includes: medical equipment for a catheterization lab, a MRI system, a CT system, all maintenance and ground-keeping tools, equipment and vehicles and all remaining personal property, trade fixtures, equipment and machinery in the physical therapy clinic situated on the ground floor of the Main Hospital Building. CNE believes that none of the remaining personal property are charitable assets or subject to donor restriction.

31. In connection with the closing of MHRI, CNE operations personnel conducted multiple walk-throughs of the Main Hospital Building with representatives from the other CNE Operating Units (“OUs”). Through the course of these visits, the representatives identified equipment that was in good operating condition and that could be used at other OUs. For instances in which certain equipment could be used at multiple OUs, it was awarded to the site with the greatest need. Any equipment that could be used by the operations remaining on the

MHRI Campus was not made available for transfer to other OUs. Such equipment remained onsite at the Primary Care Building.

32. Also in connection with the closing, CNE identified all equipment that was originally acquired with donated funds and the CNE Philanthropy Department contacted each of the donors personally by phone and advised them of CNE's intention as to its future use and no objections were received. CNE Accounting charged the receiving OU book value or, where that was not available, fair market value for equipment received by such OU.

33. Once all usable assets were transferred from the Main Hospital Building, all that was left was obsolete equipment and furniture that had to be properly disposed of. CNE brought in two firms specializing in hospital liquidations to tour the Main Hospital Building and submit bids to remove all equipment and leave the building "broom clean." CNE contracted with a vendor that removed all remaining equipment from the Main Hospital Building, with the vendor keeping what was of value to them and properly disposing of the rest. The only exceptions to this were the MRI, CT and Cath Lab, all of which remain in the Main Hospital Building, but all of which will be removed prior to the closing. For the Cath Lab, CT and MRI equipment, CNE plans to remove such equipment from their current locations for future replacement and use at other CNE locations with a clinical need for such equipment

34. In addition to those items noted above, all artwork and other tangible personal property has been removed from the Main Hospital Building. CNE relocated as many art pieces as possible to the Primary Care Building. Of the remaining pieces, most were framed reproductions or posters purchased as décor, which were divided among Butler, Kent and Women & Infants Hospitals. Eight original pieces of art are now catalogued with the Women & Infants art inventory. Two are hanging in the Day Hospital at 2 Dudley Street; six are in storage

at 300 Richmond Street. Historical portraits and building exterior renderings are also in storage at 300 Richmond Street.

35. Only one sculptural piece had a donor name and gift date. It was created by Samuel E. Gallo and given to Memorial Hospital in 1989 by TRO/The Richie Organization, architects. The CNE Philanthropy Department will seek an alternative location for such piece.

**ATTEMPTED SALE OF MHRI AS GOING CONCERN, EVENTUAL CLOSURE AND ONGOING FINANCIAL BURDEN AND SALE SOLICITATION PROCESS**

36. From the time CNE acquired MHRI in 2013 and through the present, in an attempt to keep MHRI operational in the hope that the financial difficulties could be corrected, CNE has advanced operating funds and covered pension and other liabilities of MHRI in an amount in excess of \$100 million. In addition, CNE transferred and assumed responsibility for the remaining MHRI debt (approximately \$16.7 million) and the MHRI pension shortfall (approximately \$72 million as of November 2019). In the month immediately preceding the closure of MHRI, MHRI had average operating shortfalls of \$2-3 million per month. Such losses could not continue to be sustained and continuation of MHRI as a hospital was clearly not feasible.

37. In retrospect, the intervention of CNE in 2013 when it acquired MHRI extended the operational life of MHRI for four additional years before it became increasingly apparent that the continued operation of MHRI as an inpatient hospital was no longer financially or clinically feasible and was a drain on the operating revenues of CNE and its other affiliates.

38. In light of the operational and financial challenges at MHRI, in December 2016, CNE engaged SOLIC Capital Advisors, LLC (“SOLIC”), a distressed asset advisory firm, to conduct an assessment of MHRI’s then current position and the feasibility of an array of strategic alternatives. In a presentation to the MHRI Board of Trustees (the “MHRI Board”) in February

2017, SOLIC recommended that MHRI solicit potential interest from strategic partners to acquire MHRI as a going concern, and if there was no interest from third parties, SOLIC recommended MHRI focus on rationalization of services or a controlled shut down in order to stem operating losses. Further, SOLIC recommended MHRI conduct a more extensive assessment of potential alternative uses for the campus in the event there was no interest from third parties as a going concern. Ultimately, the MHRI Board agreed with SOLIC's recommendation.

39. Accordingly, CNE engaged SOLIC to assist with the sale of MHRI as a going concern while simultaneously engaging Burr Investments, LLC ("Burr Investments") to conduct an assessment of potential alternative uses for MHRI in the event MHRI was unable to be sold as a going concern.

40. At the end of 2016, Burr Investments conducted a redevelopment and re-use study, in order to explore alternative, "highest and best" uses for the MHRI Campus. Burr Investments is a hospital redevelopment expert with significant experience in redevelopment of older properties, with particular experience with hospital properties. This study analyzed the physical, demographic, market, and financial aspects of the property, and made conclusions as to the potential alternative use scenarios. Burr Investments concluded that the MHRI Campus has very few alternative uses due to its site, location, condition, demographics, and special purpose configurations. A significant capital investment would be required to redevelop the property, including substantial costly asbestos remediation and possible demolition of obsolete structures. All of these factors adversely impact the value of the property and any possible re-use scenarios, and thus seeking a buyer to purchase MHRI as a going concern appeared to be a good approach.



41. Beginning in February 2017, SOLIC began the solicitation process to seek a strategic partner to acquire MHRI as a going concern. SOLIC solicited bids from 88 different parties, including 25 hospital operators (of which 7 were non-profit hospital providers) and 63 other entities that were either directly in the healthcare field or had investments in healthcare entities. As a result of the solicitation process, in Spring 2017, only two bids were received by MHRI and both were from for-profit hospital providers. Ultimately the MHRI Board approved proceeding with an acquisition of MHRI by Prime Healthcare, a California based, for profit hospital operator (“Prime”).

42. Prime, which owns and operates a hospital in Rhode Island, was one of 25 hospital operators contacted. Relative to the other submitted offer, the MHRI Board determined that the bid from Prime was more competitive. A Letter of Intent was signed on April 17, 2017 with Prime and the parties worked diligently in an attempt to negotiate the terms of a definitive agreement.

43. During the due diligence process, however, Prime modified the offer to less certain terms and indicated that it would not be in a position to obtain appropriate financing for 18-24 months.

44. Given the uncertainty and the fact that MHRI and CNE could not sustain the on-going operational losses for another year or longer, CNE terminated the Prime Letter of Intent in October 2017 and initiated steps to close MHRI.

45. After terminating the Prime Letter of Intent in October 2017, no other bidders approached CNE/MHRI regarding the acquisition of MHRI as a going concern,<sup>2</sup> and MHRI

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<sup>2</sup> An unsolicited offer letter was received by CNE from CharterCare Health Partners dated April 18, 2018, but it contained significant contingencies and timing issues and did not proceed.

initiated a detailed hospital closure process in accordance with RIDOH rules and regulations and closed MHRI as of February 1, 2018.

46. While RIDOH approved the closure of MHRI, RIDOH imposed certain obligations on MHRI and CNE. The Decision for Approval with Conditions from the Director of the Rhode Island Department of Health with Respect to the Application of Care New England Health System for the Elimination of the Emergency Department at Memorial Hospital of Rhode Island (dated December 28, 2017) is attached as Exhibit F, and The Decision for Approval with Conditions from the Director of the Rhode Island Department of Health with Respect to the Application of Care New England Health System for the Elimination of Primary Care Services Under the Hospital License of Memorial Hospital of Rhode Island (dated January 25, 2018) is attached as Exhibit G (collectively, Exhibits F and G are hereinafter defined as the “RIDOH Conditions”). The RIDOH Conditions, among other things, impose requirements for MHRI and CNE to continue to provide certain outpatient health care and express care services at the Primary Care Building.

47. Further, as noted in Paragraph 14 above, notwithstanding the closure of MHRI, the City of Pawtucket has required that significant maintenance and security services continue to be provided at the vacant Main Hospital Building. The required maintenance of MHRI’s unused and vacant property continues to cause a significant drain on the financial resources of MHRI and CNE, with the total maintenance cost for the unused, vacant portion of the Subject Deeds being approximately \$2 million a year.

48. This financial strain adversely impacts not only MHRI, but also its ultimate corporate parent, CNE and its affiliates.

49. At this point, due to the significant on-going maintenance costs associated with the Main Hospital Building, time was of the essence for CNE to find a suitable solution to stem the losses associated with MHRI.

50. Following the closure of MHRI, in June of 2018, CNE commissioned Cushman & Wakefield to perform a commercial appraisal of the MHRI Campus. Their findings included an analysis of a “highest and best use” for the property and coinciding value. Based on recent previous unsuccessful efforts by CNE to sell the property as a going concern hospital, the “highest and best use” for the property was deemed by the appraiser to be a single family residential development parcel. The land-only value for that purpose was estimated to be \$4,000,000. However, the cost to remediate asbestos and demolish the obsolete buildings was estimated to cost \$10,000,000, leaving an appraised value of negative \$6,000,000.<sup>3</sup>

51. Concurrent with these activities, CNE engaged the commercial real estate firm Hayes & Sherry to solicit interest from local developers. Because of the special nature of the property and the complexities of its potential reuse, at the advice of its real estate consultants, CNE chose targeted communications rather than mass marketing through any “RFP” or similar process. These efforts resulted in no substantive interest from developers, with the following exceptions:

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<sup>3</sup> MHRI is aware that the City of Pawtucket has assigned an assessment on the MHRI Campus in the amount of \$60,473,000 for purposes of the payment in lieu of taxes (“PILOT”) program under RI Gen Laws Section 45-13-5.1. MHRI believes that the valuation of the MHRI Campus estimated by several independent real estate valuation consultants, as summarized above, is a more realistic and accurate representation of the current value of the MHRI Campus. Further, the proposed purchase price to be paid by Lockwood for the Main Hospital Building is \$250,000.00.

- a. A national skilled nursing home operator toured the MHRI Campus, but concluded that the Main Hospital Building was far too big for a skilled nursing facility.
- b. A local developer offered to pay \$100,000 for the entire 13+ acres, with the caveat that a CNE entity must lease-back all the property on a long-term basis. The offer was rejected.
- c. A Connecticut-based developer offered \$250,000, “as is”, for the Main Hospital Building. This developer’s plan was to convert the entire building into low to moderate priced apartments. This developer had recently done such a project in Pawtucket and was well known to City officials. The only contingency was that MHRI convey the property with the deed restrictions removed. Though this was not a perfect alternative, discussion ensued with the developer in the hope that a suitable proposal could be developed.

52. While negotiations with the Connecticut developer were progressing, Lockwood emerged through an introduction by the Mayor of the City of Pawtucket. With MHRI’s consent, the City had included the entire MHRI Campus in a nation-wide marketing effort to tout the benefits of Pawtucket and its status as an Opportunity Zone, and Lockwood responded to the City.

53. CNE was advised that Lockwood had purchased similar closed hospital facilities in other states to develop similar Veteran-related programs.

54. MHRI entered into a Purchase and Sale Agreement with Lockwood dated as of July 3, 2019 (as amended, the “Purchase Agreement”) for the purchase of the Main Hospital Building at a purchase price of \$250,000.00.

55. Since the execution of the Purchase Agreement, CNE and Lockwood have discussed and considered various alternative sale transactions involving the MHRI Campus, however, with the pressures faced as a result of the COVID-19 pandemic, the parties believe that the sale of Unit 2 to Lockwood is the most practical and expeditious way to repurpose the vacant Main Hospital Building to more productive uses and to stem the ongoing expenses.

56. Pursuant to the Purchase Agreement, Lockwood would purchase land condominium Unit 2 including the Main Hospital Building.

The sale of Unit 2 to Lockwood is preferable because it will allow for the repurposing of the Main Hospital Building for a more productive use, particularly the proposed veterans’ healthcare and related services, and will allow CNE to continue to maintain health care services in the Primary Care Building in accordance with the RIDOH Conditions.

57. Under the Purchase Agreement, Lockwood, either directly or through an affiliate, will pay a fair market price for the Main Hospital Building land condominium Unit 2 with a purchase price of \$250,000.00.

#### **RELIEF SOUGHT UNDER THE DOCTRINE OF CY PRES**

58. Each of the Subject Deeds contain a provision which contemplates the potential need for a subsequent *cy pres* action and states that a proper party shall have the right to apply to the Rhode Island Superior Court or other applicable court for the property to be “devoted and reapplied to such other charitable uses as nearly as possible akin to the uses upon which said Property was granted.”

59. MHRI is the proper party as contemplated by the Subject Deeds. The proposed modifications to the deed restrictions and sale of the property represented by the Subject Deeds is “as near as may be” to the original donors’ intent consistent with R.I. General Laws § 18-4-1. Further, there is no automatic or springing interest that would result in forfeiture and the proposed relief is appropriate.

60. MHRI being the proper entity to bring the cy pres petition is separate from and irrespective of the consideration of who may be a “proper party” as described in the Subject Deeds. The Subject Deeds suggest that a “proper party” may have a right of entry upon a condition broken. That is, that a “proper party” may be able, subsequent to the owner’s breaking of an applicable condition, to apply to the Superior Court for an order and decree to reapply the subject properties for a different charitable use.

61. However, any such right that could have possibly accrued to a “proper party” is no longer valid pursuant to R.I. Gen Laws § 34-4-24, which provides in relevant part:

“No proceeding based upon any right of entry for condition broken or possibility of reverter to which a fee simple or fee simple determinable in land is subject, created before May 11, 1953, shall be maintained in any court after December 31, 1987, unless on or before December 31, 1987: (i) the condition has been broken or the reverter has occurred, and a person or persons have the right of entry or reverter shall have taken possession of the land, or (ii) a person or persons having the right of entry, or who would have it if the condition were broken, or would be entitled to a right if a reverter occurred or one of them if there be more than one, shall by himself or herself, or by his or her attorney, agent, guardian, conservator, or parent have filed in the town or city clerk’s office or recorder of deeds office for the town or city in which the land is situated, a statement in writing, duly sworn to, describing the land, the nature of the right, the deed or other instrument creating it, and where it may be found, and naming the person or persons appearing of record to own the fee subject to the right or possibility.”

Because the grantors (or other relevant “proper party,” if any) did not satisfy any of the requirements of R.I. Gen Laws § 34-4-24 prior to December 31, 1987, the “right of entry upon a

condition broken” created by the Subject Deeds was not properly reserved. Accordingly, by operation of law, no heir of any grantor would have any possible interest in the subject properties as a proper party.

62. The Rhode Island Department of Attorney General (the “Attorney General”) has a statutory and common law duty to protect charitable assets within the State of Rhode Island and has the duty and authority to review the proposed modification of the restrictions in the Subject Deeds and the impact of such modification on the charitable assets of MHRI. *See* R.I. Gen. Laws §§ 18-9-1 to 18-9-17.

63. The circumstances here clearly meet the standard for application of *cy pres*.

64. The subject real estate should have the above-described restrictions modified to allow for the sale of the Main Hospital Building land condominium Unit 2 and the alleviation of the significant financial and administrative burden of maintaining said property and to allow for a more productive use of the property as near as may be consistent with the intent of the donors, given the evolving nature of healthcare delivery and the fact that the original purpose, to operate as a “hospital” can no longer be satisfied on all of the properties of the Subject Deeds.

65. Modification of the deed restrictions on the Subject Deeds to two (2) land condominium units would enable MHRI to sell Unit 2, including the Main Hospital Building to a prospective buyer that would repurpose the property to a more productive use, would allow MHRI to lower the significant carrying costs being incurred to maintain the vacant Main Hospital Building and would allow the Primary Care Building to continue to be utilized by Kent (or another CNE affiliate) to provide ambulatory care services on a long-term basis. This would provide a benefit to the larger healthcare community by allowing for CNE to maintain health care services on the MHRI Campus while also alleviating the financial burden on MHRI and

CNE of maintaining the currently unutilized Main Hospital Building. This would allow CNE to better utilize such funds to support the provision of health care and related charitable services in the communities it serves. As confirmed by the various experts engaged by CNE and evidenced by MHRI's unsuccessful attempt to sell MHRI as a going concern, the Main Hospital Building is not suitable to reopen as an inpatient hospital, and significant financial and capital investment would be necessary to use the building for any habitable use. CNE and MHRI have identified Lockwood as a party that plans to devote additional resources, following a purchase of the Main Hospital Building from MHRI, to bring the Main Hospital Building to an operational condition for veteran-related health care and other services as well as other non-hospital uses.

66. For the Main Hospital Building, the Buyer has indicated and represented that it plans to develop and establish a Veterans Administration ("VA") focused wellness center for veterans, which wellness center the Buyer anticipates will include adult day care services, a skilled nursing facility and an assisted living facility for veterans along with education/training programs and healthcare services. The healthcare services, which may be provided by CNE or other healthcare providers, will be provided to resident military veterans on site. Under the circumstances, Lockwood's proposed use is as nearly as possible akin to the donor intent.

67. Certain restrictions on use shall apply to the use of Unit 2, the Main Hospital Building land condominium unit. As more specifically set forth in Section 7.1 of the Declaration of Condominium of the 111 Brewster Street Condominium, the following restrictions on the use of the Main Hospital Building will apply:

"Permitted Use. The following restrictions shall apply to the use of the Condominium:

(a) Unit 1 may be used for any lawful use.



(b) Unit 2 (including, without limitation, any Buildings<sup>4</sup>, structures or other improvements thereon) and any sub-units thereon or therein shall be subject to the following use restrictions:

I. The following uses shall not be permitted on Unit 2 or any portion thereof (except as expressly set forth herein):

- (a) Express care, urgent care, emergency room or similar emergent ambulatory acute care services (individually and collectively, “Emergent Care Services”). So long as Unit 1 (or any portion thereof) is being used for the provision of Emergent Care Services, Unit 2 shall not be used for the provision of Emergent Care Services. If Unit 1 (or any portion thereof) is not then being used to provide Emergent Care Services, the Owner of Unit 2 shall obtain the prior written consent of the Owner of Unit 1 prior to allowing the provision of any Emergent Care Services on Unit 2, which consent will not be unreasonably withheld (the Owner of Unit 1 agreeing to respond to the Owner of Unit 2’s written request to so use Unit 2 within fifteen (15) days of receipt of written request);
- (b) Medical research that includes clinical trials (“Clinical Trial Research”). The Owner of Unit 2 shall obtain the prior written consent of the Owner of Unit 1 prior to allowing Clinical Trial Research to be conducted at Unit 2, which consent will not be unreasonably withheld (The Owner of Unit 1 agreeing to respond to the Owner of Unit 2’s written request to so use Unit 2 within fifteen (15) days of receipt of written request);
- (c) Medical and allied health educational and training programs, including Graduate Medical Education (GME) residency programs and excluding nurse educational and nurse training programs (individually and collectively, “Medical Education Training Programs”). The Owner of Unit 2 may allow other educational training programs (i.e., programs that are not Medical Education Training Programs such as nurse educational and nurse training programs) to be conducted at Unit 2; and
- (d) Ambulatory medical care to the general public.

II. Unit 2 may be used only for the following permitted uses and for no other use or purpose:

- (a) the provision of the following services primarily to U.S. Military Veterans:
  - (i) Assisted Living;
  - (ii) Skilled Nursing;
  - (iii) Memory care;

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<sup>4</sup> As used in this Section, any capitalized term not otherwise defined in this Petition shall have the meaning assigned to such term in the Declaration of Condominium.

- (iv) PTSD and other behavioral health care;
- (v) Adult Day Care;
- (vi) Independent Living; and
- (vii) Education programs other than Medical Education Programs; and

(b) a Wet laboratory incubator and medical research other than Clinical Trial Research.

III. Unit 2 will not be used as a ‘Hospital’ as that term is usually defined under applicable law, or for the provision of health care services to the general public that would compete with the services then being offered at Unit 1.

IV. To the extent health care services are proposed to be offered at Unit 2 (subject to, and to the extent permitted by, the terms and provisions hereof), the Owner of Unit 2 will use good faith efforts to discuss such services with the Owner of Unit 1 (or its designee) and to provide the Owner of Unit 1 (or its designee) with the opportunity to provide such services before offering such opportunity to other qualified providers of such services.”

68. In cases like this one, where a charitable purpose can no longer be carried out due to a change in circumstances, the appropriate equitable proceeding is *cy pres*. See R.I. Gen. Laws § 18-4-1. Because the particular scheme of the grantors of the Subject Deeds for carrying out their primary paramount intent has ceased to be useful, *cy pres* gives this Court the power to modify the scheme so that the grantors’ general intent may be better effectuated, and the gift will not fail. See, e.g., Joslin Diabetes Center, Inc. v. Whitehouse, No. CIV.A WC 02-0333, 2002 WL 1804083, (R.I. Superior Ct., July 30, 2002) (granting *cy pres* petition and approving of sale and distribution of proceeds to two named charities in testator’s will).

69. The proposed intended uses of both the Main Hospital Building and the Primary Care Building are consistent with and are as nearly as possible akin to the intent of gift and the uses upon which the Subject Deeds were granted.

#### **CNE USE OF SALE PROCEEDS**

70. The proceeds to be derived by this transaction are fairly minimal. The real benefits are the elimination of on-going use of CNE operating assets to fund the significant

annual maintenance costs of the Main Hospital Building and to allow the property to be used for a more productive use.

71. Since the acquisition by CNE of MHRI in September 2013, CNE and its affiliates (primarily W&I Hospital and Kent Hospital) supported MHRI's operating shortfalls, capital acquisitions, pension funding requirements, long-term debt obligations and all other financial obligations. On January 1, 2018, CNE assumed sponsorship of the MHRI Defined Benefit Pension Plan. As of November 30, 2019 the Net Pension Liability (obligation) attributable to the MHRI Defined Benefit Pension Plan is \$72,296,545.

72. The obligations funded by CNE and its affiliates come from operational funds that would otherwise be available to and used by other CNE non-profit entities to provide health care services. CNE entities continue to support MHRI obligations and in the future will be obligated to cover the ongoing (future) MHRI obligations and debt. That is, among other things, CNE and its affiliates will still be required to fulfill MHRI's annual pension funding obligation (of approximately \$10.9-14.9M annually). CNE has also committed to continue to provide services at the Primary Care Building pursuant to the RIDOH Conditions.

73. The financial drain of MHRI to CNE is still being impacted by the current ongoing costs of maintaining the Main Hospital Building at an annual rate of approximately \$2,000,000. These costs relate to maintenance and boiler plant staff, utilities, security, and related services to maintain the Main Hospital Building.

74. The proposed use of the proceeds to support the continued provision of health care services by Kent at the Primary Care Building would support a charitable use consistent with donor intent.

75. Further, CNE and its affiliates are facing unprecedented need and demand for intensive respiratory care and other services to help meet the reasonably anticipated statewide needs due to the COVID-19 pandemic. The anticipated cost savings are urgently needed to help cover a portion of the near term and long term costs to be incurred from the provision of healthcare by the CNE affiliates.

### **RELIEF REQUESTED**

WHEREFORE, MHRI (the "Petitioner") requests that this Honorable Court enter judgment that decrees as follows:

1. That the Petitioner, CNE, Kent, SHS and Lockwood are proper parties to this action;
2. The Subject Deeds shall be revised to modify the deed restrictions to allow for the uses as set forth in the Condominium Declaration and related deeds to form two (2) land condominium units;
3. MHRI is permitted to convey the property covered by the Unit 2 Deed to Lockwood, or if the transaction does not close, to CNE or a designated CNE affiliate or another suitable buyer, and to market and sell in the property covered by the Unit 2 Deed and to transfer Unit 1 to CNE or a CNE affiliate;
4. That the modification of the deed restrictions and the proposed transaction are appropriate under the doctrine of *cy pres*;
5. That, in light of CNE's expenditures on air conditioning and electrical upgrades to the Primary Care Building, MHRI and CNE have fulfilled the obligations in Paragraph 4(c) of the 2013 Order;

6. That MHRI and CNE, and its affiliates, may receive, collect and use any proceeds received from the sale of the MHRI Campus to distribute to Kent to cover costs associated with the continued provision of health care and related services consistent with their charitable mission in the Pawtucket and Blackstone Valley service areas; and

7. Grant such other relief as this Court shall deem appropriate under the circumstances.

MEMORIAL HOSPITAL OF RHODE ISLAND  
CARE NEW ENGLAND HEALTH SYSTEM  
KENT COUNTY MEMORIAL HOSPITAL  
SOUTHEASTERN HEALTHCARE SYSTEM, INC.

By Its Attorneys,

Dated: September 4, 2020

/s/ Mitchell R. Edwards

Mitchell R. Edwards (# 6942)  
Thomas J. Pagliarini (# 9330)  
Hinckley, Allen & Snyder LLP  
100 Westminster Street, Suite 1500  
Providence, Rhode Island 02903  
Telephone: (401) 274-2000  
Facsimile: (401) 277-9600  
[medwards@hinckleyallen.com](mailto:medwards@hinckleyallen.com)  
[tpagliarini@hinckleyallen.com](mailto:tpagliarini@hinckleyallen.com)

LOCKWOOD DEVELOPMENT PARTNERS,  
LLC

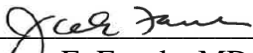
By its attorneys,

/s/ William P. Devereaux

William P. Devereaux (#2241)  
Pannone Lopes Devereaux & O'Gara LLC  
Northwoods Office Park  
1301 Atwood Avenue  
Suite 215n  
Johnston, RI 02919  
P: 401.824.5106  
F: 401.824.5123  
[WDevereaux@pdlolaw.com](mailto:WDevereaux@pdlolaw.com)

The undersigned representative of Care New England Health System swears, deposes, and states, under the pains and penalties of perjury, that the allegations contained in this Verified Petition are true and accurate to the best of such signatory's knowledge.

Date: September 4, 2020

  
\_\_\_\_\_  
James E. Fanale, MD  
President and CEO,  
Care New England Health System, on behalf  
of Memorial Hospital of Rhode Island, Kent  
County Memorial Hospital, and  
Southeastern Healthcare System, Inc.

**CERTIFICATION**

I certify that, on September 4, 2020, 2020, I sent by first class mail a copy of the foregoing Verified Petition for *Cy Pres* to:

Rhode Island Department of the Attorney General  
Attention: Jessica Rider  
150 South Main Street  
Providence, RI 02903

*/s/ Thomas J. Pagliarini*

\_\_\_\_\_  
Thomas J. Pagliarini

# EXHIBIT 2



STATE OF RHODE ISLAND  
PROVIDENCE, SC.

SUPERIOR COURT

IN RE: THE MEMORIAL HOSPITAL  
d/b/a MEMORIAL HOSPITAL OF RHODE  
ISLAND, a Rhode Island non-profit  
corporation, CARE NEW ENGLAND  
HEALTH SYSTEM, a Rhode Island non-profit  
corporation, SOUTHEASTERN  
HEALTHCARE SYSTEM, INC., a Rhode  
Island non-profit corporation, KENT COUNTY  
MEMORIAL HOSPITAL, a Rhode Island non-  
profit corporation, and LOCKWOOD  
DEVELOPMENT PARTNERS LLC, a Florida  
limited liability company,

C.A. No. PC-2020-06291

**ATTORNEY GENERAL’S RESPONSE TO VERIFIED PETITION FOR *CY PRES***

Now comes Peter F. Neronha, Attorney General of the State of Rhode Island, in his capacity as Administrator of Charitable Trusts and pursuant to the Office of Attorney General’s jurisdiction over charitable assets, and hereby responds to The Memorial Hospital, d/b/a Memorial Hospital of Rhode Island (“MHRI”), Southeastern Healthcare System, Inc. (“SHS”), Care New England Health System (“CNE”), and Lockwood Development Partners, LLC’s (“Lockwood”) (collectively, “Petitioners”), Verified Petition for *Cy Pres* (the “Petition”).

**I. Attorney General’s Role**

The Attorney General files this Response pursuant to his statutory and common law authority to protect charitable assets within the state and is charged with representing “the interests of beneficiaries and the public under charitable trusts and bequests for charitable uses.” See Israel v. National Bd. Of Young Men’s Christian Ass’n, 369 A.2d 646, 649 (R.I. 1977) (citing Powers v. Home for Aged Women, 179 A. 610, 612 (R.I. 1935)). Under this authority, it is the paramount

duty of the Attorney General to look out for the best interest of the public as charitable beneficiaries, while contemporaneously honoring the intent of the donor.

## **II. Background**

While the Petition provides a detailed history of MHRI and the closure of the hospital, the Attorney General thought it helpful to brief this Honorable Court on the Attorney General's involvement in reviewing the pending sale of the MHRI Campus. The Attorney General first reached out to CNE in the first half of 2019 to discuss plans for the MHRI Campus. Since then, CNE has continued to keep the Attorney General informed of the efforts to sell the MHRI Campus and the various forms that the proposed sale has taken, efforts which have included multiple document requests, meetings with the Petitioners, and a tour of the MHRI Campus. Throughout this process, the Attorney General has thoroughly analyzed the proposed sale in the context of the applicable law and the needs of the community.

It is important to recognize the profound loss of a local community hospital on any community, but especially in Pawtucket and the surrounding areas. The Attorney General is sensitive to the healthcare needs of this community, especially during the current global pandemic. Unquestionably, it would be the Attorney General's preference that the MHRI Campus be sold to a non-profit entity and one that would provide healthcare to the general public and this community in particular. However, this Office appreciates the difficulties in selling this property, especially the Main Hospital Building, the continued financial strain on CNE while maintaining a vacate building, and the limited buyers that have emerged in the more than two years since the hospital's closure. Further and most importantly, the proposed uses of the MHRI Campus by Lockwood appear to be a valuable resource to both the Veterans' community and the Pawtucket and Blackstone Valley communities as a whole. Practically, it appears that if the Petitioner's requested

relief is not approved, there is no alternative meaningful solution and the Main Hospital Building would continue to remain vacate indefinitely.

### **III. Deed Modifications and Proposed Sale**

The standard for application of the doctrine of *cy pres* is codified by Rhode Island General Laws § 18-4-1 (“where the purposes of the donor cannot be literally carried into effect, a complaint may be filed for a *cy pres* application of the trust property; and at that time all proceedings, orders, and decrees shall be had and taken in the suit, to carry out the intents of the donor as near as may be”). It is evident that the three donors of the subject property intended the MHRI Campus to serve as a hospital with ancillary services to the surrounding community, regardless of an individual’s ability to pay. Obviously, with the hospital’s closure, the donative intent with respect to a hospital per se can no longer be carried out. With that said, it is the Attorney General’s position that the services currently offered at the Primary Care Building by CNE are as near as may be to the original donative intent because they are akin to the services that were offered at that same location prior to the MHRI hospital closure.<sup>1</sup> As for the Main Hospital Building, the planned healthcare services by Lockwood also appear to be as near as may be to original donative intent because Lockwood was the only prospective buyer that proposed any form of healthcare service on the property.

It is for all of these reasons that the Attorney General does not object to the relief requested in the Petition.<sup>2</sup>

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<sup>1</sup> This Attorney General position on donative intent is meant only for this pending action, understanding that the charitable asset at issue (real estate) is unique and distinct from any other charitable assets. The Attorney General reserves the right to opine on the donative intent for any other charitable assets that may benefit MHRI and is not bound by the statements made herein concerning the real estate.

<sup>2</sup> The Attorney General notes that CNE has not been able to confirm whether the artwork described in Paragraphs 34-35 of the Petition are restricted assets. Therefore, the Attorney General reserves on taking a position as to the artwork and requests that the Court continue any decision on the artwork until a later date.

#### **IV. Conclusion**

The Attorney General has reviewed the Petition and the affected charitable assets. The Attorney General does not object to the relief requested by Petitioners, subject to the requested provisions to the Order as detailed below. Specifically, the Attorney General requests that this Honorable Court include the following provisions in any Order approving the Petition:

- (1) That Unit 1 be subject to the modified deed restrictions proposed by CNE.
- (2) That any proceeds from the sale distributed to MHRI and CNE be distributed to Kent to cover costs associated with the continued provision of health care and related services in the Pawtucket and Blackstone Valley service areas consistent with their charitable mission.
- (3) That CNE shall submit an accounting of use of the sale proceeds to the Attorney General, on a semi-annual basis, until such time as all sale proceeds have been expended. The accounting shall include the amount of the proceeds expended, the purpose for the expenditure, and all supporting documentation for the expenditure.
- (4) That Lockwood provide written notification to the Attorney General of all key milestones of redevelopment of the Main Hospital Building, including, but not limited to, construction progress, selection of an operator, and opening of the service lines.
- (5) That Lockwood be prohibited from selling, transferring, or conveying, either directly or indirectly, (except to an entity controlled by, or under common control with Lockwood and of which Lockwood owns at least 51% of the ownership interest thereof) Unit 2, or any portion thereof, for a period of three (3) years following the Closing, which obligation shall survive the

Closing and shall not merge with the Deed; provided however, this provision shall not apply to the sale, transfer or conveyance of Unit 2 or any portion thereof, to a non-profit corporation in connection with the U.S. Department of Housing and Urban Development (HUD)/Federal Housing Administration's (FHA) Section 232 loan program, and/or the issuance of tax exempt bonds in connection with the purchase, refinance or substantial rehabilitation of the same for assisted living facilities for United States Military veterans.

- (6) That the appropriate representative from CNE sign an Affidavit stating that the remaining medical equipment located at the Main Hospital Building was not purchased with donated funds and not subject to charitable restrictions.
- (7) That any decision related to the artwork discussed at Paragraphs 34-35 of the Petition be continued until CNE can ascertain the origin of the artwork and/or provide a more comprehensive plan for disposition of the artwork.

Respectfully submitted,

PETER F. NERONHA  
ATTORNEY GENERAL and  
In his capacity as Administrator of  
Charitable Trusts

By:

PETER F. NERONHA  
ATTORNEY GENERAL

/s/ Jessica D. Rider  
Jessica D. Rider #8801  
Special Assistant Attorney General  
150 South Main Street  
Providence, RI 02903  
Tel: (401) 274-4400 Ext. 2314  
Fax: (401) 222-2995  
Email: jrider@riag.ri.gov

**CERTIFICATE OF SERVICE**

I, the undersigned, hereby certify that on this 9<sup>th</sup> day of October, 2020, I electronically filed and served this document through the electronic filing system to all on record. The document electronically filed is available for viewing and/or downloading from the Rhode Island Judiciary's Electronic Filing System.

/s/Melissa DiFonzo

# EXHIBIT 3

STATE OF RHODE ISLAND  
PROVIDENCE, SC

SUPERIOR COURT

\_\_\_\_\_  
)  
IN RE: THE MEMORIAL HOSPITAL )  
d/b/a MEMORIAL HOSPITAL OF RHODE )  
ISLAND, a Rhode Island non-profit corporation, )  
CARE NEW ENGLAND HEALTH SYSTEM, a )  
Rhode Island non-profit corporation, )  
SOUTHEASTERN HEALTHCARE SYSTEM, )  
INC., a Rhode Island non-profit corporation, )  
KENT COUNTY MEMORIAL HOSPITAL, a )  
Rhode Island non-profit corporation, and )  
LOCKWOOD DEVELOPMENT PARTNERS )  
LLC, a Florida limited liability company, )

P.C. 2020-06291

**ORDER AND FINAL JUDGMENT**

This matter having come before the Court, the Honorable Brian P. Stern presiding, on Petitioners' Verified Petition for *Cy Pres*. After review of the Verified Petition, Supplement to Verified Petition, and Response from the Attorney General's Office, and hearing from counsel for the Petitioners and the Attorney General's Office it is hereby:

**ORDERED, ADJUDGED AND DECREED**

1. On September 4, 2020, Memorial Hospital d/b/a Memorial Hospital of Rhode Island ("MHRI"), Southeastern Healthcare System, Inc. ("SHS"), Care New England Health System ("CNE"), and Lockwood Development Partners, LLC ("Lockwood") (collectively "Petitioners") filed a Verified Petition for *Cy Pres* (a) approving the release of all restrictions, requirements and obligations affecting the title to the certain land and improvements thereon currently held by MHRI and commonly known and numbered as 111 Brewster Street, Pawtucket, Rhode Island and being currently designated by the City of Pawtucket Tax Assessor as Plat 35, Lot 305 and described on Exhibit 1 attached hereto and incorporated herein by reference (the "Property"); (b) approving the request of the Petitioners to subject the Property to new use restrictions as set forth herein; (c) approving MHRI's conveyance and sale of the Property or portions thereof, including the vacant building that previously housed MHRI's emergency department and 290 licensed inpatient beds; and (d) allowing CNE and/or its affiliates to use the sale proceeds from the sale of a portion of the Property to Lockwood (or its nominee) to support the provision of healthcare services provided by affiliates of CNE in the Pawtucket and Blackstone Valley service areas in a manner consistent with donor intent;

2. Petitioners, CNE, Kent, SHS and Lockwood are proper parties to this action;

3. The restrictions, requirements and obligations (collectively, the "Existing Restrictions") affecting title to the Property that the Petitioners seek the Court to release are all of the restrictions, covenants, obligations, requirements and other matters contained in the



following paragraphs in the following instruments: (a) Paragraphs numbered First, Second, Third, Fourth, Fifth, Sixth and Seventh in that certain Indenture between Frank A. Sayles and The Memorial Hospital dated June 21, 1910 and recorded in the Land Evidence Records of the City of Pawtucket (“Registry”) in Book 137 at Page 112 at 10:23 A.M. on July 1, 1910 (the “Sayles Deed”); (b) Paragraphs numbered First, Second, Third, Fourth and Fifth in that certain Indenture between Darius L. Goff and the Memorial Hospital dated February 27, 1913 and recorded in the Registry in Book 159 at Page 26 at 4:05 P.M. on May 29, 1913 (the “Darius Goff Deed”); and (c) Paragraphs numbered First, Second, Third, Fourth, Fifth, Sixth and Seventh in that certain Indenture between Daisey B. Goff and The Memorial Hospital dated November 25, 1910 and recorded in the Registry in Book 139 at Page 365 at 10:20 A.M. on November 30, 1910 (the “Daisey Goff Deed”);

4. The Existing Restrictions, which the Court finds have not been violated, are hereby terminated in their entirety, are of no further force or effect, and the title to the Property is hereby released for all purposes from the Existing Restrictions;

5. The parties intend to submit the Property to a condominium form of ownership and thereafter record two Condominium Unit Quitclaim Deeds (although nothing herein shall require that the Property be subjected to or remain in the condominium form of ownership);

6. The Condominium Unit Quitclaim Deed conveying a portion of the Property described therein as Unit 1 shall be in the form of deed set forth as Exhibit 2 to this Order and shall subject such portion of the Property to the new use restrictions set forth in said Condominium Unit Quitclaim Deed;

7. The Condominium Unit Quitclaim Deed conveying a portion of the Property described therein as Unit 2 shall be in the form of deed set forth Exhibit 3 to this Order and shall subject such portion of the Property to the new use restrictions set forth in said Condominium Unit Quitclaim Deed;

8. MHRI is permitted to convey the property covered by the Unit 2 Deed to Lockwood (or its nominee);

9. The release of the Existing Restrictions and the proposed transactions are appropriate under the doctrine of *cy pres*;

10. MHRI and CNE have fulfilled the obligations in Paragraph 4(c) of the 2013 Order in light of CNE’s expenditures on air conditioning and electrical upgrades to the Primary Care Building;

11. Any proceeds received from the sale of the MHRI Campus shall be distributed to MHRI and CNE to Kent to cover costs associated with the continued provision of health care and related services in the Pawtucket and Blackstone Valley service areas consistent with their charitable mission;

12. CNE shall submit an accounting of use of the sale proceeds, which shall include the amount of the proceeds expended, the purpose of the expenditure, and all supporting documentation for the expenditure, to the Attorney General, on a semi-annual basis, until such time as all sale proceeds have been expended;

13. Lockwood shall provide written notification to the Attorney General of all key milestones of redevelopment of the Main Hospital Building, including, but not limited to, construction progress, selection of an operator, and opening of the service lines;

14. Lockwood shall be prohibited from selling, transferring, or conveying, either directly or indirectly, (except to an entity controlled by, or under common control with Lockwood and of which Lockwood owns at least 51% of the ownership interest thereof) Unit 2, or any portion thereof, for a period of three (3) years following the Closing, which obligation shall survive the Closing and shall not merge with the Deed; provided however, this provision shall not apply to the sale, transfer, or conveyance of Unit 2 or any portion thereof, to a non-profit corporation in connection with the U.S. Department of Housing and Urban Development (HUD)/Federal Housing Administration's Section 232 loan program, and/or the issuance of tax exempt bonds in connection with the purchase, refinance, or substantial rehabilitation of the same for assisted living facilities for United States Military veterans;

15. An appropriate representative from CNE shall sign an Affidavit stating that the remaining medical equipment located at the Main Hospital Building was not purchased with donated funds and not subject to charitable restrictions; and

16. Any decision related to the artwork referenced in Paragraphs 34-35 of the Verified Petition shall be continued until CNE can ascertain the origin of the artwork and/or provide a more comprehensive plan for disposition of the artwork.

ENTERED:

BY ORDER:

Brian P. Stern, J.  
Stern, J.

/s/ Carin Miley  
Clerk Deputy Clerk I  
November 12, 2020

Dated: November, 12, 2020

## **Exhibit 1**

### **Legal Description of the Property**

Those certain lots or parcels of land with all the buildings and improvements thereon, situated on Brewster Street, Beechwood Avenue, Prospect Street and Pond Street in the City of Pawtucket, County of Providence, State of Rhode Island and more particularly bounded and described as follows:

#### **Parcel 1**

Beginning on the easterly side of said Prospect Street at the southwesterly corner of land formerly belonging to Claudius B. Farnsworth, thence running easterly bounding northerly on said Farnsworth land three hundred and eleven and nine-tenths (311.9) feet to a corner; thence turning a right angle with the last described line, and running northerly bounding westerly on said Farnsworth land thirty (30) feet to a corner; thence turning a right angle with the last described line and running easterly parallel with and one hundred and ninety-five (195) feet distant southerly from the southerly line of Pond Street four hundred and fifty (450) feet to a corner; thence turning a right angle with the last described line and running southerly seven hundred and five (705) feet to a corner; thence turning a right angle with the last described line and running westerly about five hundred and seventy-six and nine one-hundredths (576.09) feet to the easterly line of said Prospect Street; thence turning and running northerly bounding westerly on said Prospect Street about seven hundred and thirteen one-hundredths (700.13) feet to the place of beginning.

#### **Parcel 2**

Beginning at a point on the southwesterly corner of Pond Street and Brewster Street, being the northeasterly corner of said premises, thence southerly bounded easterly by said Brewster Street two hundred twenty-five (225) feet to land now or formerly of The Memorial Hospital; thence westerly, bounded southerly by land of said The Memorial Hospital four hundred fifty (450) feet to land now or formerly of C.B. Farnsworth; thence northerly, bounded westerly by land now or formerly of said Farnsworth two hundred twenty-five (225) feet to the southerly side of Pond Street; thence easterly along said southerly line of Pond Street four hundred fifty (450) feet to the point of beginning.

#### **Parcel 3**

A certain lot or parcel of land, situated in said City of Pawtucket and bounded and described as follows: Situate at the southeast corner of Pond and Prospect Streets bounded northerly by Pond Street on which it measures 373.83 feet; westerly by Prospect Street on which it measures 233.38 feet; southerly by land now or formerly of The Memorial Hospital on which it measures 311.90 feet and easterly also by land now or formerly of The Memorial Hospital on which it measures 225.00 feet.

Less and excepting from Parcel 3 the portion of the parcel conveyed by The Memorial Hospital to the City of Pawtucket for highway purposes by Quitclaim Deed dated August 25, 1916 and recorded August 30, 1916 at 10:25 A.M. in Book 181 at Page 349.

## Exhibit 2

### CONDOMINIUM UNIT QUITCLAIM DEED

**The Memorial Hospital**, a Rhode Island non-profit corporation (the "Grantor") with a mailing address of 45 Willard Avenue, Providence, RI 02905, for non-monetary consideration, grants to **The Memorial Hospital**, a Rhode Island non-profit corporation with a mailing address of 45 Willard Avenue, Providence, RI 02905 (the "Grantee"), with **QUITCLAIM COVENANTS**, the following described property (the "Property"):

Unit 1 (the "Unit") in 111 BREWSTER CONDOMINIUM (the "Condominium") located in the City of Pawtucket, State of Rhode Island, created by Declaration of Condominium, dated \_\_\_\_\_, 2020, and recorded on \_\_\_\_\_, 2020 in Book \_\_\_\_\_ Page \_\_\_\_\_ (the "Declaration") in the Records of Land Evidence in the City of Pawtucket (the "Records"), together with the Unit's undivided interest in the Common Elements of the Condominium, the exclusive right to use the Limited Common Elements, if any, assigned to the Unit as provided in the Declaration and shown on those plats and plans recorded with the Declaration, ("Plats and Plans"), and the rights and easements appurtenant to the Unit, all as set forth in the Declaration. Any capitalized terms not defined herein shall have the meaning set forth in the Declaration.

The term "Unit", "Common Elements", "Limited Common Elements" and any similar terms of art as they are used in this Deed are more particularly defined and set forth in the Declaration, as amended.

The Grantee, by accepting this Deed, accepts and agrees to be bound by the covenants, restrictions, easements, liens, charges, and other provisions contained in the Declaration and Bylaws or referred to herein and agrees to perform the obligations imposed by the Declaration and Bylaws on the Grantee as the owner of the Unit.

The Unit is conveyed subject to and with the benefit of the provisions of Rhode Island Condominium Act, R.I.G.L. §34-36.1-1.01 et seq., the Declaration, the Bylaws and the Rules and Regulations of the Condominium, as any and all of the above may be amended from time to time.

The Property is conveyed together with and subject to the benefit of easements, covenants and restrictions and other matters of record, if any, to the extent the same are in force and effect.

The Property is conveyed subject to the restrictions set forth on **Exhibit A** attached hereto and incorporated herein by reference.

This transfer is such that no withholding is required under Section 44-30-71.3 of the Rhode Island General Laws of 1956, as amended, since the Grantor is a resident corporation of the State of Rhode Island, as evidenced by Affidavit.

[SIGNATURE APPEARS ON THE FOLLOWING PAGE]

IN WITNESS WHEREOF, the Grantor has caused this Condominium Unit Quitclaim Deed to be executed by its duly authorized [insert name of officer] on this \_\_\_\_\_ day of \_\_\_\_\_, 2020.

The Memorial Hospital,  
a Rhode Island non-profit corporation

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

Grantee, by signing below, hereby accepts this Condominium Unit Deed and the terms hereof and consents to and agrees, on behalf of itself and its successors and assigns, to be bound by all of the terms and provisions hereof.

The Memorial Hospital,  
a Rhode Island non-profit corporation

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

STATE OF RHODE ISLAND  
COUNTY OF \_\_\_\_\_

In \_\_\_\_\_ on this \_\_\_\_\_ day of \_\_\_\_\_, 2020,  
before me personally appeared \_\_\_\_\_,  
\_\_\_\_\_ of The Memorial Hospital,  
proved to me through satisfactory evidence of identification, which was [ ] photographic  
identification with signature issued by a federal or state governmental agency, or [ ] personal  
knowledge of the undersigned, to be the party executing the foregoing instrument and he/she  
acknowledged said instrument, by him/her executed to be his/her free act and deed in his/her  
capacity and the free act and deed of The Memorial Hospital.

\_\_\_\_\_  
Notary Public  
Printed Name: \_\_\_\_\_  
My commission expires: \_\_\_\_\_

STATE OF RHODE ISLAND  
COUNTY OF \_\_\_\_\_

In \_\_\_\_\_ on this \_\_\_\_\_ day of \_\_\_\_\_, 2020,  
before me personally appeared \_\_\_\_\_,  
\_\_\_\_\_ of The Memorial Hospital,  
proved to me through satisfactory evidence of identification, which was [ ] photographic  
identification with signature issued by a federal or state governmental agency, or [ ] personal  
knowledge of the undersigned, to be the party executing the foregoing instrument and he/she  
acknowledged said instrument, by him/her executed to be his/her free act and deed in his/her  
capacity and the free act and deed of The Memorial Hospital.

\_\_\_\_\_  
Notary Public  
Printed Name: \_\_\_\_\_  
My commission expires: \_\_\_\_\_

## EXHIBIT A

Grantee covenants, for itself and its successors and assigns, that the Property may only be used for the following permitted uses: (i) medical and health care related services, including but not limited to outpatient, ambulatory medical care and/or physician's office based health care services (including without limitation, primary care, specialty care, express, urgent and/or emergency care and related diagnostic, administrative and similar support services), (ii) clinical, academic, and training programs for health and medical services practitioners and related administrative and support activities, (iii) medical research, and (iv) inpatient hospital as defined in and licensed under RIGL Chapter 23-17 and any successor laws, and for no other use or purpose.



**Exhibit 3**

**CONDOMINIUM UNIT QUITCLAIM DEED**

**The Memorial Hospital**, a Rhode Island non-profit corporation (the "Grantor") with a mailing address of 45 Willard Avenue, Providence, RI 02905, for consideration paid in the amount of Two Hundred Fifty Thousand and 00/100 (\$250,000.00) Dollars, grants to \_\_\_\_\_, [insert type of entity and the state in which it was created] with a mailing address of \_\_\_\_\_ (the "Grantee"), with **QUITCLAIM COVENANTS**, the following described property (the "Property"):

Unit 2 (the "Unit") in 111 BREWSTER CONDOMINIUM (the "Condominium") located in the City of Pawtucket, State of Rhode Island, created by Declaration of Condominium, dated \_\_\_\_\_, 2020, and recorded on \_\_\_\_\_, 2020 in Book \_\_\_\_\_ Page \_\_\_\_\_ (the "Declaration") in the Records of Land Evidence in the City of Pawtucket (the "Records"), together with the Unit's undivided interest in the Common Elements of the Condominium, the exclusive right to use the Limited Common Elements, if any, assigned to the Unit as provided in the Declaration and shown on those plats and plans recorded with the Declaration, ("Plats and Plans"), and the rights and easements appurtenant to the Unit, all as set forth in the Declaration. Any capitalized terms not defined herein shall have the meaning set forth in the Declaration.

The term "Unit", "Common Elements", "Limited Common Elements" and any similar terms of art as they are used in this Deed are more particularly defined and set forth in the Declaration, as amended.

The Grantee, by accepting this Deed, accepts and agrees to be bound by the covenants, restrictions, easements, liens, charges, and other provisions contained in the Declaration and Bylaws or referred to herein and agrees to perform the obligations imposed by the Declaration and Bylaws on the Grantee as the owner of the Unit.

The Unit is conveyed subject to and with the benefit of the provisions of Rhode Island Condominium Act, R.I.G.L. §34-36.1-1.01 et seq., the Declaration, the Bylaws and the Rules and Regulations of the Condominium, as any and all of the above may be amended from time to time.

The Property is conveyed together with and subject to the benefit of easements, covenants and restrictions and other matters of record, if any, to the extent the same are in force and effect.

The Property is conveyed subject to the restrictions set forth on **Exhibit A** attached hereto and incorporated herein by reference.

This transfer is such that no withholding is required under Section 44-30-71.3 of the Rhode Island General Laws of 1956, as amended, since the Grantor is a resident corporation of the State of Rhode Island, as evidenced by Affidavit.

Unless Grantor and the Attorney General of the State of Rhode Island consent to the sale, transfer or conveyance of the Property, which consent shall be evidenced by the Grantor and the Attorney General executing any deed conveying the Property, Grantee hereby covenants that Grantee shall not, directly or indirectly, sell, transfer or convey (except to an entity controlled by, or under common control with, Grantee, and of which Grantee owns at least 51% of the ownership interest thereof) the Property, or any portion thereof, for a period of three (3) years following the date of recording this Quitclaim Deed with the City of Pawtucket Land Records; Provided however, this restriction shall not apply to the sale, transfer or conveyance of the Property, or any portion thereof, to a non-profit corporation in connection with the U.S. Department of Housing and Urban Development (HUD)/Federal Housing Administration's (FHA) Section 232 loan program, and/or the issuance of tax exempt bonds in connection with the purchase, refinance or substantial rehabilitation of the Property for assisted living facilities for United States Military Veterans. Any such conveyance, without said consent, shall be null and void.

Subject to taxes assessed as of December 31, 2019.

[SIGNATURE CONTINUED ON THE FOLLOWING PAGE]

IN WITNESS WHEREOF, the Grantor has caused this Condominium Unit Quitclaim Deed to be executed by its duly authorized [insert name of officer] on this \_\_\_\_\_ day of \_\_\_\_\_, 2020.

The Memorial Hospital,  
a Rhode Island non-profit corporation

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

Grantee, by signing below, hereby accepts this Condominium Unit Deed and the terms hereof and consents to and agrees, on behalf of itself and its successors and assigns, to be bound by all of the terms and provisions hereof.

[Insert name of Buyer] \_\_\_\_\_

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

STATE OF RHODE ISLAND  
COUNTY OF \_\_\_\_\_

In \_\_\_\_\_ on this \_\_\_\_\_ day of \_\_\_\_\_, 2020,  
before me personally appeared \_\_\_\_\_,  
\_\_\_\_\_ of The Memorial Hospital,  
proved to me through satisfactory evidence of identification, which was [ ] photographic  
identification with signature issued by a federal or state governmental agency, or [ ] personal  
knowledge of the undersigned, to be the party executing the foregoing instrument and he/she  
acknowledged said instrument, by him/her executed to be his/her free act and deed in his/her  
capacity and the free act and deed of The Memorial Hospital.

\_\_\_\_\_  
Notary Public  
Printed Name: \_\_\_\_\_  
My commission expires: \_\_\_\_\_

STATE OF \_\_\_\_\_  
COUNTY OF \_\_\_\_\_

In \_\_\_\_\_ on this \_\_\_\_\_ day of \_\_\_\_\_, 2020,  
before me personally appeared \_\_\_\_\_,  
\_\_\_\_\_ of [insert name of Buyer], proved to me through satisfactory  
evidence of identification, which was [ ] photographic identification with signature issued by a  
federal or state governmental agency, or [ ] personal knowledge of the undersigned, to be the  
party executing the foregoing instrument and he/she acknowledged said instrument, by him/her  
executed to be his/her free act and deed in his/her capacity and the free act and deed of [insert  
name of Buyer].

\_\_\_\_\_  
Notary Public  
Printed Name: \_\_\_\_\_  
My commission expires: \_\_\_\_\_

### Exhibit A

Grantee covenants, for itself and its successors and assigns, that the Property may only be used for the following permitted uses: (i) residential and health care related services provided primarily to United States military veterans and their families, (ii) ambulatory medical care and/or physician's offices (including without limitation, primary care, family practice, orthopedic, cardiology, oncology, internists, nutritional services, diabetes care, respiratory therapy and clinical services, pediatric and adult rehabilitation and physical therapy, urgent/same day care, radiology, mammogram testing and ultrasound), (iii) physician residency programs, (iv) physician, nurse and other educational training programs, (v) medical research, and (vi) inpatient hospital as defined in and licensed under RIGL Chapter 23-17 and any successor laws, and for no other use or purpose.

Notwithstanding the foregoing, Grantee also covenants, for itself and its successors and assigns, not to use or permit the Property to be used in any manner that violates any other or more restrictive use restrictions set forth in the Declaration.

Respectfully submitted,

MEMORIAL HOSPITAL OF RHODE ISLAND  
CARE NEW ENGLAND HEALTH SYSTEM  
KENT COUNTY MEMORIAL HOSPITAL  
SOUTHEASTERN HEALTHCARE SYSTEM, INC.

By Its Attorneys,

Dated: October 30, 2020

/s/ Mitchell R. Edwards

---

Charles W. Normand (#4357)  
Mitchell R. Edwards (# 6942)  
Thomas J. Pagliarini (# 9330)  
Hinckley, Allen & Snyder LLP  
100 Westminster Street, Suite 1500  
Providence, Rhode Island 02903  
Telephone: (401) 274-2000  
Facsimile: (401) 277-9600  
[cnormand@hinckleyallen.com](mailto:cnormand@hinckleyallen.com)  
[medwards@hinckleyallen.com](mailto:medwards@hinckleyallen.com)  
[tpagliarini@hinckleyallen.com](mailto:tpagliarini@hinckleyallen.com)

LOCKWOOD DEVELOPMENT PARTNERS, LLC

By its attorneys,

/s/ William P. Devereaux

---

William P. Devereaux (#2241)  
Pannone Lopes Devereaux & O'Gara LLC  
Northwoods Office Park  
1301 Atwood Avenue  
Suite 215n  
Johnston, RI 02919  
P: 401.824.5106  
F: 401.824.5123  
[WDevereaux@pldolaw.com](mailto:WDevereaux@pldolaw.com)

/s/ Peter Brent Regan

Peter Brent Regan (#3421)  
SAYER REGAN & THAYER, LLP  
130 Bellevue Avenue  
Newport, Rhode Island 02840  
(401) 849-3040  
[pregan@srt-law.com](mailto:pregan@srt-law.com)

ASSENTED TO:

RHODE ISLAND OFFICE OF THE ATTORNEY GENERAL

By,

/s/ Jessica Rider  
Jessica Rider (#8801)  
The State of Rhode Island  
Office of the Attorney General  
150 South Main Street  
Providence, RI 02903  
(401) 274-4400  
JRider@riag.ri.gov