GIBSON DUNN

Gibson, Dunn & Crutcher LLP

200 Park Avenue
New York, NY 10166-0193
Tel 212.351.4000
www.gibsondunn.com

Zainab N. Ahmad
[redacted]

CONFIDENTIAL

April 26, 2024

VIA ELECTRONIC MAIL

The Honorable Elizabeth Warren
The Honorable Edward J. Markey
United States Senate
309 Hart Senate Office Building
Washington DC 206510

Re: Response to April 15, 2024 Letter to Edward K. Aldag, Jr. and Karl Kuchel

Dear Senators Warren and Markey:

We represent Macquarie Infrastructure Partners ("MIP") in relation to your April 15, 2024 letter ("Letter"). We appreciate your affording us the opportunity to respond, and we write to provide background information on MIP, to explain the nature of MIP's interest here, and to clarify certain misconceptions in the Letter.

I. Macquarie Infrastructure Partners and the Medical Properties Partnership

MIP is a series of private, Americas-focused funds managed by Macquarie Asset Management ("MAM"). MAM is the world's largest infrastructure investor,[1] managing more than 175 infrastructure and real assets businesses that are relied on by more than 290 million people across the globe every day.

Over the past twenty years, MIP has invested broadly in essential infrastructure across the transportation, communications, energy, waste management, and social infrastructure sectors. MIP's investments include significant infrastructure projects throughout the U.S., including in one of the fastest growing data center platforms in the U.S., several large container terminals in the gateway Ports of New York and New Jersey and Los Angeles and Long Beach (including one of the world's largest near all-electric container terminals), the Goethals Bridge connecting New York and New Jersey, and one of New England's leading waste management companies. MIP does not have healthcare investments in the U.S. other than its interest in the Medical Properties Partnership (described further below), the entity through which it owns an

[1] Press Release, Macquarie, Macquarie Asset Management tops Infrastructure Investor's 100 largest infrastructure managers (Nov. 2023), https://www.macquarie.com/au/en/about/company/macquarie-asset-management/macquarie-asset-management-tops-infrastructure-investors-100-largest-infrastructure-managers.html

interest in the real estate housing the eight Massachusetts hospitals that are the subject of the Letter.

Through their over twenty-year track records of responsible ownership and investment in infrastructure across the Americas, MIP and MAM have earned reputations as trusted investors and partners in critical infrastructure. Consistent with the nature of these investments, MIP and MAM bring long-term perspectives to investing and strive to be thoughtful caretakers of those investments, the results of which benefit their clients—including state or municipal governmental pension plans, state or municipal government entities, and insurance companies, among others—and the communities in which MIP and MAM invest.

Macquarie Infrastructure Partners V ("MIP V") is one of MIP's Americas-focused, close-ended, infrastructure funds. MIP V is focused primarily on the transportation, communications, waste management, utilities, and energy sectors—those sectors where MIP has a demonstrated track record of expertise and success. MIP's investment hold period is generally up to ten years from the fund's final closing date, extendable by an additional four years under certain conditions.

One of MIP V's investments is the Medical Properties Partnership ("MPP"), MIP's sole partnership with Medical Properties Trust ("MPT"), which was formed in March 2022.[2] MIP V, through MPP, owns a 50% stake in the real estate that houses the eight high-quality acute care hospitals in Massachusetts cited in the Letter. MPP constitutes MIP's only investment in the healthcare sector and MIP's only collaboration with MPT; like MIP's investments generally, however, MPP involves essential assets that support critical community needs.

Below, we will explain the history of the transaction by which MIP V acquired a stake in MPP, the terms of MIP V's interest in the real estate described in the Letter, and the reasons why the concerns raised in the Letter do not implicate MIP V (or MIP generally) and are otherwise mistaken.[3]

---

[2] MPT is "one of the world's largest owners of hospitals with 439 facilities and approximately 43,000 licensed beds in nine countries and across three continents." *Investor Relations*, Medical Properties Trust, https://www.medicalpropertiestrust.com/investor-relations (last visited Apr. 26, 2024).

[3] Consistent with the Letter and for ease of reference, "MIP" will be used to describe MIP or MIP V, as context requires, for the remainder of this response.

II. MIP's Investment in Eight Massachusetts-Based Hospitals Through MPP

MIP's interest in these eight Steward-run Massachusetts hospitals (and, indeed, any MPT-owned or Steward-run hospitals at all) is a recent development.[4] MIP's discussions with MPT began in 2019—long after Cerberus Capital Management's initial acquisition of six Massachusetts-area hospitals in 2010, and several years after the 2016 sale-leaseback agreement between Steward Health Care Systems ("Steward") and MPT was consummated. Partly due to the pandemic, MIP and MPT's discussions remained preliminary until early 2021, and it was not until the end of 2021 that MIP entered into an agreement with MPT to form MPP, a transaction which itself did not close until March 2022. Based on the information available to MIP, since MIP's investment in March 2022, the eight Steward-run hospitals have together operated successfully, generating revenue that exceeded their operational expenses (including rent) in the aggregate through 2023.

MIP's investment—which, to be clear, is only and exclusively an interest in the lease income generated from the real estate leased by the eight Steward-run hospitals—is narrow. MIP acquired what is effectively a 50% interest in the real estate housing the eight hospitals from MPT, which was the sole owner of the hospitals' real estate after its sale-leaseback transaction with Steward. Although the creation of MPP resulted in Steward having, in effect, two landlords instead of one, it did not substantively alter the terms of Steward's lease (other than to extend the term), nor did the transaction increase the lease amounts or other liabilities owed by Steward. MIP does not currently have, and has never had, any equity or ownership stake (or other financial relationship) in MPT, Steward, or the eight Steward-run hospitals in Massachusetts.

Steward alone operates the eight Massachusetts hospitals referenced in the letter pursuant to a 20-year triple net master lease. Accordingly, Steward—not MIP—is responsible for all operations, expenses, capital expenditures, liabilities, and so on. The terms of the lease do not permit MIP to operate or influence the eight hospitals' day-to-day operations in any way whatsoever. And at the time MIP acquired a 50% interest in the entity owning the real estate housing the eight hospitals, MIP viewed Steward as having a demonstrated track record of strong performance: "Steward, as operator, has clearly demonstrated the ability to transform the performance of these acute care hospitals over the last five years, so that they are now

---

[4] Steward is "the largest private, tax-paying hospital operator in the country." *Our Network*, Steward, https://www.steward.org/network/our-hospitals (last visited Apr. 26, 2024).

world class, well-operated healthcare infrastructure facilities."[5] In fact, MIP understands that Steward had invested approximately $150 million in the eight hospitals in the years leading up to MIP's investment in MPP and had just recently announced an academic partnership with Boston University's School of Medicine.

MIP is, of course, aware of Steward's recent liquidity issues at the corporate level and the downstream effects of those entity-wide issues on the eight Steward-run hospitals at issue here and the communities they serve in Massachusetts. Soon after it became clear to MIP that Steward's corporate-wide liquidity issues threatened to negatively impact the operations of the eight Steward-run Massachusetts hospitals in December 2023, MIP began active communication with the Massachusetts Secretary of Health and Human Services, Kate Walsh, and her staff about the best path forward for preserving the eight hospitals' ability to provide top-notch health-care services to their communities. And while MIP's ability to influence Steward either directly or indirectly is significantly limited by the fact that MIP is, in effect, merely one of Steward's landlords for eight of the many hospitals it runs nationwide, and has no power to control its day-to-day operations in those eight hospitals, MIP has been working with relevant stakeholders to come to an agreeable resolution since Steward's liquidity issues became more clear to MIP, which will likely involve replacing Steward as the operator of the eight hospitals with another entity.[6]

MIP's commitment to that goal should be altogether unsurprising as both a matter of responsible proprietorship and its own financial interest. As should be apparent from the dynamics described above, the best outcome for MIP is the same as the best outcome for the eight hospitals themselves: *i.e.*, for the hospitals to continue operating successfully in the same manner they had been until Steward's recent corporate-wide liquidity crunch.

III. Clarifying MIP's Interest and Intent

As the Letter seems to acknowledge, MIP is differently situated from the other entities described therein. And to be clear, any suggestion that it is somehow in MIP's interest—or that MIP is intending—to see these hospitals struggle or to "plunder[]" them is mistaken. And the related claim that "MIP ha[s] played a key role" in the eight Steward-run hospitals'

[5] Press Release, Macquarie, Macquarie Infrastructure Partners V and Medical Properties Trust enter partnership for eight Massachusetts hospitals valued at $US1.78 billion (Sept. 1, 2021), https://www.macquarie.com/au/en/about/news/2021/macquarie-infrastructure-partners-v-and-medical-properties-trust-enter-partnership-for-eight-massachusetts-hospitals-valued-at-1-78-billion-usd.html.

[6] It is MIP's understanding that the eight hospitals would remain open and operational during any operator transition.

purportedly "steep financial decline" betrays a fundamental misunderstanding of MIP, MIP's investment, and the dynamics at issue here.

First, to the extent the central concern is Steward's operation of the eight hospitals, it bears emphasizing that MIP has no financial relationship to Steward other than its interest in the lease income via its investment in MPP; MIP has never loaned Steward money and holds no equity in it. MIP's foremost interest is in the long-term success of these eight Massachusetts hospitals. And our actions bear that out conclusively. Once it became clear to MIP that Steward was facing liquidity issues that could threaten the eight hospitals' ability to successfully operate in December 2023, MIP began working actively with a broad cross-section of stakeholders to determine the correct next steps. That includes not only Steward and MPT, but also government representatives. Those conversations continue in good faith; MIP meets regularly with representatives from the Massachusetts Department of Health and Human Services and continues to work with them to identify a potential replacement for Steward.

Second, any suggestion that MIP is in any way operating, or party to, a "Ponzi scheme" is incorrect (and would, with respect, be irresponsible), particularly in light of the discussion just above. A Ponzi scheme is generally understood to be one in which an entity pays existing investors "returns" with the income it earns from new investors, without ever actually generating value or investment returns for its investors. By contrast, MIP's relationship to the eight Steward-operated hospitals is, as noted, that it owns a 50% interest in the real estate leased by those hospitals through MPP and thus collects 50% of the rent they pay for that real estate as, effectively, one of the hospitals' two landlords. Rent was fixed before MIP acquired an ownership stake in the real estate, and the rent charge is fixed (other than annual adjustments linked to inflation) for the remaining 17 years of the lease's 20-year term. Thus, the expected investment return generated from MIP's investment in MPP is both real and not tied in any way to drawing in new investors.

Third, the claim that MIP would for any reason desire or intend to "plunder" the eight hospitals to which it has leased land through MPP (setting aside that it has no ability to do so) is just wrong and would be contrary to MIP's investment philosophy and inconsistent with over twenty years of history and practice. As noted, MIP invests with a long-term perspective and seeks stable, predicable cash flows generated by premier, long-lived assets for its investors. MIP also understands that as a critical infrastructure investor, it is in certain respects a public caretaker of the assets it holds and in which it invests. And MIP has worked hard over more than two decades to earn a reputation as a trusted investor and partner in critical infrastructure in the Americas and abroad. MIP takes pride in its reputation. So the notion that MIP would "plunder" these hospitals or drive them into financial decline neither makes sense at a theoretical level nor can be squared with the reality exemplified by years of practice.

CONFIDENTIAL

Fourth, the notion that MIP has any interest in "plundering" the eight hospitals or driving them into financial decline is illogical and would be counterproductive to MIP's success. Lease payments are MIP's only stream of income from MPP (and consequently from the eight hospitals), and those payments only change, subject to certain limits, in concert with inflation. To MIP's knowledge, that rent comprises ***a small, single-digit percentage*** of any of the eight hospitals' total operating expenses. By comparison, labor and supplies comprise, to MIP's knowledge, approximately 65% of such expenses. And hospital real estate is not readily repurposed, so a hospital tenant is effectively the only potential tenant capable of profitably paying rent for such real estate. Unsurprisingly, then, a central premise of MIP's investment thesis when it acquired a stake in MPP was that the tenant of the real estate—the eight hospitals under discussion—would continue delivering critical services and operating successfully, because it would only be under those circumstances that the hospitals could readily meet their rental obligations. And indeed, it is MIP's understanding that the eight hospitals generated revenue that exceeded their operational expenses (including rent) in the aggregate through 2023. Steward is facing a corporate-level liquidity crisis that, to MIP's knowledge, materialized in earnest in December 2023, but this was not caused in any way by the operations of the eight Massachusetts hospitals that MIP is aware of.

By contrast, any actions that could constitute "plunder[ing]," as you describe it, would only reduce the likelihood that the hospitals can pay their rent and would thus hardly serve MIP's financial interest. In short, because MIP's investment only makes sense if the hospitals are running well and able to meet their operating expenses, MIP has a vested interest in seeing the eight hospitals succeed, and ***no actual or logical interest whatsoever in driving them into financial ruin***. That is the very reason that, soon after it became clear to MIP that Steward's corporate-wide liquidity issues could threaten the eight hospitals' ability to successfully operate, MIP began to engage in discussions with the Massachusetts Department of Health and Human Services (as well as with MPT and Steward) to find a group, other than Steward, to take over the operation of the eight Massachusetts hospitals.

Fifth and relatedly, the nature of MIP's investment precludes the sort of behavior that the letter intimates is, or could be, occurring. Again, MIP owns, in effect, only a 50% interest in certain real estate. That's it. Steward—an entity in which MIP has no financial stake either directly or as a creditor—runs the day-to-day operations of the hospitals. And the provisions of the leases that could even conceivably bear on Steward's operation of the eight hospitals—*e.g.*, the requirements that Steward maintain appropriate licenses and continue to, in effect, operate the hospitals as hospitals—bear that out. These terms are the rough equivalent of a landlord requiring a tenant to obtain rental insurance or to continue using rental space in the same manner agreed to at the time of the lease. And in much the same way a commercial landlord does not dictate how well or poorly a business leasing space from it runs its operations through such requirements, MIP does not (and, indeed, cannot) dictate Steward's daily operational and business choices—either writ large or with respect to these eight hospitals.

Finally, insofar as the letter suggests that rental payments are a “key” contributor to Steward’s liquidity issues and threatening its financial health—either as a whole or as it relates to the eight Massachusetts hospitals—that is simply wrong. Aside from annual inflation-based increases effectively linked to the Consumer Price Index, Steward’s rent has and will remain flat throughout the 20-year life of the lease, of which only three years have elapsed. To MIP’s knowledge, that rent expense amounts to a small, single-digit percentage of total operating expenses at any of the eight hospitals—a figure that, based on information provided to MIP, pales in comparison to other operating expenditures—and in no way forms the dividing line between solvency and insolvency for these eight hospitals. In fact, it is MIP’s understanding that prior to Steward’s recent corporate-level liquidity crunch, the eight Steward-run hospitals generated revenue in excess of operational expenses (including rent) in the aggregate through 2023. In other words, rental payments are not a driving force behind the eight hospitals’ present financial difficulties, and so there is no good reason to believe that the terms of these leases would hamstring another operator’s ability to return the hospitals to the successful state they evidently enjoyed until only *four months ago*.

In sum, the concerns with MIP regarding the eight Steward-run hospitals raised in the letter are unwarranted. MIP has neither played a “key” role in the “financial crisis facing Steward Health Care . . . in Massachusetts” nor driven these eight Steward-run hospitals into “steep financial decline.” MIP also has not been involved in any purported “mismanagement, private equity schemes, [or] executive profiteering.” And MIP has no interest in doing any of that. To the contrary, MIP’s interest is in seeing these hospitals operate successfully, and its actions have consistently borne that out. MIP continues to meet regularly with Secretary Walsh and her representatives, and to work with the other stakeholders such as MPT and Steward, to replace Steward as the operator of the eight hospitals with another (likely nonprofit) entity that can restore—to the benefit of the patients and communities these hospitals serve—the eight hospitals to the high level of success they enjoyed only a few months ago.

* * *

GIBSON DUNN

 CONFIDENTIAL

Thank you again for the opportunity to respond. Please reach out if you have any questions concerning this letter.[7]

Sincerely,

GIBSON, DUNN & CRUTCHER LLP

/s/ Zainab Ahmad
Zainab N. Ahmad
Partner

Enclosures

cc: [redacted]

---

[7] This response is confidential and may contain proprietary information. We have marked this letter "Confidential" and request that it not be disclosed beyond its intended recipients or otherwise be made public. Likewise, we ask that you afford this letter the maximum protection available, and that you inform MIP of any proposed use of the information contained herein and provide MIP with an opportunity to be heard prior to any such proposed use. The information included in this response is based on MIP's best efforts undertaken within the timeframe provided and based on our understanding of the Letter. The representations made in this response are based on information reasonably available to MIP and may not reflect all existing relevant information. MIP reserves the opportunity to supplement information in this response and will do so as warranted by the identification of additional information. In providing information responsive to the Letter, MIP does not waive any rights or legal options relating to this inquiry.