

**Asset Purchase Agreement**

**By and Between**

**Essent Healthcare – Ayer, Inc.**

**And**

**The Nashoba Community Hospital Corporation  
Nashoba Management Services, Inc.  
James Brook Properties, Inc.**

**Dated October 31, 2002**

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## **Asset Purchase Agreement**

This **Asset Purchase Agreement** (the “Agreement”) is made and entered into as of October 31, 2002, by and among Essent Healthcare - Ayer, Inc., a Tennessee business corporation (“Buyer”), and The Nashoba Community Hospital Corporation (“Nashoba”), a non-profit, charitable corporation organized and existing under Chapter 180 of the Massachusetts General Laws, and Nashoba Management Services, Inc. (“NMS”), a non-profit, charitable corporation organized and existing under Chapter 180 of the Massachusetts General Laws, and James Brook Properties, Inc. (“JBP”), a non-profit corporation organized and existing under Chapter 180 of the Massachusetts General Laws (Nashoba, NMS and JBP each a “Seller” and collectively, “Sellers”, and Buyer and Sellers each a “Party” and collectively, the “Parties”).

### **WITNESSETH:**

This Agreement provides for the sale or lease to Buyer of: (i) substantially all of the assets, real, personal and mixed, tangible and intangible, associated with or employed in the business and operations of Nashoba with respect to its ownership and operation of the Deaconess-Nashoba Hospital, a general acute care hospital with 41 licensed beds located in Ayer, Massachusetts, with a street address of 200 Groton Rd, Ayer, MA 01432; (ii) substantially all of the assets, real, personal and mixed, tangible and intangible, associated with or employed in the business and operations of NMS with respect to its ownership, operation and support of physician practices associated with the Deaconess-Nashoba Hospital; and (iii) substantially all of the assets, real, personal and mixed, tangible and intangible, associated with or employed in the business of operations of JBP with respect to its ownership, lease or operation of certain real estate assets related to the Deaconess-Nashoba Hospital and the medical office building and medical offices associated with the Deaconess-Nashoba Hospital (the aforementioned businesses and operations of Nashoba, NMS and JBP hereinafter collectively, the “Hospital”).

**NOW, THEREFORE**, for and in consideration of the premises, and the agreements, covenants, representations and warranties hereinafter set forth, and other good and valuable consideration, the receipt and adequacy all of which are forever acknowledged and confessed, the Parties hereto agree as follows:

## 1.0 DEFINITIONS

When used in this Agreement, the capitalized terms set forth on Schedule 1.0 shall have the meanings specified or referred to therein.

## 2.0 ASSETS AND LIABILITIES

**2.1 Acquired Assets.** At the Closing and subject to the terms and conditions of this Agreement, Sellers shall sell or lease, as the case may be, transfer, convey, assign and deliver to Buyer, and Buyer shall purchase or lease, as the case may be, the assets described in this Section 2.1 (the “Acquired Assets”), which collectively comprise all of the real and substantially all of the personal property used or associated with the Hospital as of the date of this Agreement including, without limitation, those assets reflected on the unaudited balance sheets of Sellers (the “Balance Sheet”) as of June 30, 2002 (the “Balance Sheet Date”), and all assets acquired by each Seller in connection with the Hospital between the Balance Sheet Date and 12 midnight on the Closing Date (the “Effective Time”).

**2.1.1 Certain Real Property.** That certain real property as is described on Schedule 2.1.1 (the “Real Property”) as follows.

(a) Sellers shall lease a portion of the Real Property (the “Hospital Real Property”) to Buyer pursuant to the terms and conditions of this Agreement and the Hospital Property Lease without further consideration except as provided in Section 3.1, which Hospital Real Property is more particularly described on Schedule 2.1.1(a).

(b) Buyer shall have an option to purchase all of the Real Property, without further consideration except as provided in Section 3.1, pursuant to the terms and conditions of this Agreement and the Hospital Property Lease.

(c) Sellers shall sell to Buyer those certain condominium units (the “Nashoba Medical Condominium Units”) located in the medical office building adjacent to the Deaconess-Nashoba Hospital (the “Nashoba Medical Condominium”), having an address of 190 Groton Road and located on the Real Property and adjacent to the Hospital Real Property, which Nashoba Medical Condominium Units are listed and described on Schedule 2.1.1(c). The Parties acknowledge that the “Real Property” shall not be deemed to include any condominium units of the Nashoba Medical Condominium that are not owned by Sellers as of the date hereof.

**2.1.2 Hospital Personal Property.** All tangible personal property owned, used, maintained or operated by each Seller in connection with the Hospital, including, without limitation, all equipment, furniture, fixtures, machinery, vehicles, office furnishings, instruments, leasehold improvements, spare parts and, to the extent assignable or transferable by the applicable Seller, all rights in all warranties of any manufacturer or vendor with respect thereto (collectively, the

“Hospital Personal Property”), which Hospital Personal Property is more specifically described on Schedule 2.1.2.

**2.1.3 Hospital Accounts Receivable.** All accounts receivable (including, Government Patient Receivables and other patient receivables, but excluding Cost Report Settlements and Uncompensated Care Pool Settlements) of Nashoba and NMS arising from the Hospital’s rendering of services to patients of a Seller, billed and unbilled, recorded or unrecorded, accrued and existing, up to the Effective Time (collectively, the “Hospital Accounts Receivable”).

**2.1.4 Licenses.** To the extent transferable or assignable, rights to all licenses, rights for the use of software, determinations of need, certificates of exemption, franchises, accreditations, registrations, permits, approvals, consents and all applications therefor and waivers of any requirements pertaining thereto, if any, issued in connection with the Hospital as set forth on Schedule 2.1.4 (each a “License” and collectively, the “Licenses”).

**2.1.5 Leases.** All of each Seller’s interest (as a lessor or as a lessee) in, to and under those real property and personal property leases relating to the Hospital (including, without limitation, leases of the Nashoba Medical Condominium Units where a Seller is the lessor and leases of certain physician office space located off of the Real Property where a Seller is the lessee) that: (i) are described in Schedule 2.1.5 (each a “Lease” and collectively, the “Leases”); and (ii) are assigned or transferred by the applicable Seller to Buyer, with all such consents or approvals to such assignment and transfer as may be required under each such Lease; and (iii) are assumed by Buyer at the Closing pursuant to the Assignment and Assumption Agreement (each Lease meeting the criteria of clauses (i) through (iii) above an “Assumed Lease” and collectively, the “Assumed Leases”). Notwithstanding the foregoing, the SNF Ground Lease and the Nashoba Medical Condominium Ground Lease (and the related unit ground leases) shall not be assigned and assumed at the Closing but shall be subject to assignment and assumption at a later date pursuant to the provisions of the Hospital Property Lease.

**2.1.6 Contracts and Agreements.** All of each Seller’s interest in, to and under those contracts and agreements relating to the Hospital that: (i) are described in Schedules 2.1.6, 5.8.1 and 5.8.2 (each a “Contract” and collectively, the “Contracts”); and (ii) are assigned or transferred by the applicable Seller to Buyer with all such consents or approvals to such assignment or transfer as may be required under each such Contract; and (iii) are assumed by Buyer at the Closing pursuant to the Assignment and Assumption Agreement (each Contract meeting the criteria of clauses (i) through (iii) above an “Assumed Contract” and collectively, the “Assumed Contracts”).

**2.1.7 Hospital Operating Inventory.** All inventories of usable goods and supplies, including pharmaceuticals and medications, food, janitorial supplies,

office supplies, forms, consumables, disposables, linens, and medical supplies, existing and wherever located on the Closing Date and acquired or used by each and any Seller in connection with the ownership and operation of the Hospital (collectively, the “Hospital Operating Inventory”).

**2.1.8 Prepaid Expenses.** Any deposits, other current assets, other assets, escrows, prepaid taxes or other advance payments relating to any expenses of the Hospital to the extent assumable and usable by Buyer, as listed on Schedule 2.1.8 (collectively, the “Prepaid Expenses”).

**2.1.9 Hospital Records.** To the extent transferable or assignable, all documents, books, records, operating and policy manuals and files and computer software owned by each and any Seller, pertaining to or used in connection with the business and operation of the Hospital, whether in hard copy or other form, including all patient records, medical records, medical staff records, clinical records, financial records, equipment records and medical and administrative libraries and personnel records, but excluding each and any Seller’s corporate record books, minute books and tax records.

**2.1.10 Hospital Intellectual Property, Goodwill and Intangible Assets.** All intangible assets, patents, patent applications, trade names, trademarks, service marks, intellectual property and goodwill associated with the business and operation of the Hospital, including the exclusive rights to use the name “Nashoba” and other trade names listed on Schedule 2.1.10 and logos and, to the extent assignable by the applicable Seller, all warranties (express or implied) and rights and claims that may be asserted by (but not against) such Seller related to the Hospital, and all telephone and facsimile numbers as currently used by each and any Seller primarily in support of the Hospital, provided, however, that: (i) the name “CareGroup”, “Deaconess”, “Joslin” and derivations of any of the foregoing; and (ii) electronic mail addresses and domain names, shall not be transferred, assumed or assigned and are further defined as Excluded Assets under Section 2.2.4.

**2.1.11 Interests in Joint Ventures.** All of each and any Seller’s ownership interests in the joint ventures that are: (i) listed on Schedule 2.1.11; and (ii) are assigned or transferred by the applicable Seller to Buyer with all such consents or approvals to such assignment or transfer as may be required under each such joint venture; and (iii) are assumed by Buyer at the Closing pursuant to the Assignment and Assumption Agreement as an Assumed Contract.

**2.1.12 Plans and Surveys.** All plans and surveys, including without limitation those related to utilities, easements and roads, “as-built” plans, plats, specifications, engineers’ drawings and architectural renderings and similar items in each and any Seller’s possession relating to the Real Property.



**2.1.13 Insurance Proceeds.** All insurance proceeds (including applicable deductibles, co-payments or self-insured requirements) arising in connection with damage to the Acquired Assets occurring before or after the date of this Agreement and prior to Closing, but only to the extent not expended for the repair and restoration of the Acquired Assets prior to the Closing.

**2.1.14 Other Property.** Except as expressly excluded herein or in Section 2.2 below, all other property owned by each and any Seller, whether tangible or intangible, located at the Hospital or used in connection with the Hospital, whether or not reflected on the Balance Sheet (including any rights of first refusal, options or claims against third parties by each and any Seller relating to the Acquired Assets, whether known or unknown, contingent or otherwise).

**2.2 Excluded Assets.** The following assets of Sellers, and any and all rights, obligations, responsibilities, liabilities and claims related thereto, are not being purchased, leased, acquired or assumed by Buyer (the “Excluded Assets”).

**2.2.1 Interests in Apple Valley Nursing and Rehabilitation Center.** Except with respect to Buyer’s right to acquire each and any Seller’s interests in the Real Property, as such right is set forth in the Hospital Property Lease, all of each and any Seller’s ownership, equity, contractual and other interests, and any and all claims, liabilities, responsibilities and obligations with respect to such ownership, equity, contractual and other interests, in The Apple Valley Limited Partnership.

**2.2.2 Cash.** All cash, which shall not include cash equivalents defined as Prepaid Expenses under Section 2.1.8 above.

**2.2.3 Endowments.** All current and future cash and accounts: (i) whose use is limited or restricted; or (ii) which are derived from gifts, grants, bequests and donations and held in trust for charitable purposes, all as listed on Schedule 2.2.3.

**2.2.4 Names, Electronic Addresses and Domain Names.** All of each and any Seller’s interests in: (i) the names CareGroup, Deaconess or derivations thereof; and (ii) electronic mail addresses and domain names.

**2.2.5 Cost Report and Uncompensated Care Pool Settlements.** All amounts receivable arising out of Uncompensated Care Pool Settlements and Cost Report Settlements for and with respect to periods prior to the Effective Time.

**2.3 Assumed Liabilities.**

**2.3.1 Liabilities Assumed.** As of Closing, Buyer agrees to assume, perform and discharge when due only the following liabilities of Sellers (collectively, the “Assumed Liabilities”): (i) the obligations, restrictions and conditions arising under the Assumed Leases and the Assumed Contracts, but only with respect to and for services to be assumed or performed after the Effective Time; and (ii) the

accounts payable, including appropriate accruals, of each and any Seller arising out of each and any Seller's operation of the Hospital up to the Effective Time, but only as are set forth on Schedule 2.3.1(ii) (the "Assumed Hospital Accounts Payable"). Pursuant to the provisions of Section 12.1.5, certain of Sellers' liabilities may become Assumed Liabilities post Closing.

**2.3.2 Certain Ground Leases.** In the event Buyer exercises its right to purchase the Real Property pursuant to the terms set forth in this Agreement and the Hospital Property Lease, Buyer shall take title to said Real Property subject to: (i) that certain ground lease (the "SNF Ground Lease") entitled "Second Amended and Restated Ground Lease" dated July 31, 1996, by and between Nashoba as landlord and The Apple Valley Limited Partnership as tenant; (ii) if still in effect, that certain ground lease (the "Nashoba Medical Condominium Ground Lease") relating to the Nashoba Medical Condominium and recorded with that certain master deed (the "Master Deed") dated June 18, 1990, recorded with the Middlesex South Registry of Deeds at Book 20629, Page 227, establishing the Nashoba Medical Condominium; and (iii) each of the unit ground leases between the unit owners of the Nashoba Medical Condominium and the lessor of the Nashoba Medical Condominium Ground Lease.

**2.3.3 Exception to Liabilities Assumed.** Notwithstanding anything herein to the contrary, and in addition to the Excluded Liabilities set forth in Section 2.4 below, Buyer shall not be liable for: (i) any claims or liabilities arising directly or indirectly from Sellers' assignment and Buyer's assumption of the Assumed Liabilities (other than the underlying obligations of the Assumed Liabilities themselves); (ii) uncured defaults in, or claims with respect to, performance of the Assumed Liabilities for periods prior to and including the Closing Date; (iii) unpaid amounts in respect of the Assumed Liabilities that are past due as of and including the Closing Date in accordance with the terms of the obligation, regardless of whether such obligation is reflected on the Balance Sheet; or (iv) rights or remedies claimed by third parties under any of the Assumed Liabilities which broaden or vary the rights and remedies such third parties would have had against the applicable Seller if the transfer and acquisition of the Acquired Assets were not to occur.

**2.4 Excluded Liabilities.** Except as expressly provided to the contrary in Section 2.3 above, under no circumstance shall Buyer be obligated to pay or assume, and none of the Acquired Assets shall be or become liable for or subject to, any liability or obligation of a Seller, whether fixed or contingent, recorded or unrecorded, known or unknown, currently existing or hereafter arising (collectively, the "Excluded Liabilities"). Without limiting the foregoing, Excluded Liabilities shall include, without limitation, the following:

- (a) except for any debt obligation assumed by Buyer pursuant to the assignment and assumption of an Assumed Lease that is a capital lease as determined in accordance with GAAP, any liabilities arising out of or related to debt incurred by a Seller with respect to

or on behalf of the Hospital including, without limitation, all debt that comprises a portion of the CareGroup Related Obligations;

**(b)** any liabilities or obligations of a Seller in respect of periods through the Effective Time with respect to the Programs (including Cost Report Settlements) or any other third-party payor programs or private pay patients including recapture or recoupment of previously paid or reimbursed expenses, whether as a result of the normal course of business of the Hospital through the Closing or as a result of the sale and lease of the Acquired Assets to Buyer;

**(c)** except for any contractual obligation assumed by Buyer pursuant to the assignment and assumption of an Assumed Contract, any liabilities or obligations for contracts and agreements between a Seller and any Affiliate of a Seller, regardless of whether or not such contracts and agreements relate to the ownership or operation of the Hospital;

**(d)** any liabilities or obligations for environmental matters relating to the ownership of the Real Property or the operation of the Hospital through the Effective Time;

**(e)** any liabilities or obligations for professional or general liability claims or other causes of action arising from the ownership of the Real Property or the operation of the Hospital (including the employment of physicians) through the Effective Time;

**(f)** any liabilities or obligations for claims or causes of action against a Seller or the Hospital under state or federal false claims laws, anti-kickback statutes or physician self-referral laws arising from the ownership of the Real Property or the operation of the Hospital through the Effective Time;

**(g)** any liabilities arising out of any joint venture in which a Seller's interest has not been assumed by Buyer as an Assumed Contract;

**(h)** any liabilities or obligations, other than Assumed Liabilities, existing on the Closing Date that were required to be reflected on the Balance Sheet were they prepared in accordance with GAAP and that were not so recorded;

**(i)** any liabilities or obligations for costs, expenses, penalties, fines, settlements, or interest arising out of or incurred as a result of any actual or alleged violation by a Seller of any Legal Requirement;

**(j)** any liabilities or obligations for: (i) property, income, sales, excise, escheat or use taxes, including fines and penalties related thereto; (ii) the retention of abandoned property, including fines and penalties related thereto; or (iii) fines or penalties arising out of or related to patient credit balances, in relation to a Seller's operation of the Hospital through the Effective Time or resulting from the consummation of the Contemplated Transactions;

**(k)** any liabilities or obligations associated with any Excluded Assets;

(l) any liabilities or obligations excluded under Section 2.3.2, and liabilities arising under any lease, contract or agreement that did not constitute an Assumed Contract or an Assumed Lease;

(m) liabilities or obligations arising out of or in connection with any Proceeding (whether instituted prior to, on or after Closing) for acts or omissions which allegedly or in fact occurred prior to the Effective Time, including any acts or omissions in connection with the business or operation of the Hospital, the Acquired Assets, or any Program or other third-party payor programs;

(n) any liabilities or obligations to a Seller's trustees, directors, officers, agents or employees relating to periods through the Effective Time, including liabilities or obligations arising under any Equal Employment Opportunity Commission claim, unfair labor practice, or wage and hour practice;

(o) any liabilities or obligations of a Seller with respect to the Uncompensated Care Pool for operations of the Hospital through the Effective Time;

(p) any other liability, fixed or contingent, relating to the Hospital or the Acquired Assets occurring through the Effective Time and not expressly assumed by Buyer pursuant to Section 2.3.1; and

(q) any liabilities or obligations of a Seller with respect to any and all of any Seller's Benefits Plans, or any employee benefit plans as defined in Section 3(e) of the Employment Retirement Income Security Act of 1974, as amended ("ERISA") of an ERISA Affiliate (as defined in Section 5.29(e)), and any current or future liabilities of a Seller with respect to post retirement health care benefits to a Seller's employees that provide or have provided services at or in support of the Hospital, and all other employee benefits, plans, programs and arrangements. "Sellers' Benefit Plans" shall mean all of Sellers' agreements and plans which are presently in effect and under which Sellers, with respect to employees of a Seller, have any outstanding, present or future obligation or liability, or under which any such employee has a present or future right to benefits, including, but not limited to: (i) any employee benefit plan as defined in Section 3(3) of ERISA, or (ii) any other pension, profit sharing, retirement, stock purchase, stock option, other equity-based incentive, bonus, performance, vacation, termination, retention, severance, disability, hospitalization, medical, life insurance or other employee benefit plan, program, policy or arrangement, whether written or oral.

### **3.0 CONSIDERATION AND CERTAIN OTHER FINANCIAL OBLIGATIONS.**

**3.1 Consideration.** Subject to the provisions of Sections 3.2 through 3.7, the amount to be paid or expended by Buyer in consideration for the Acquired Assets (the "Consideration") shall be equal to the sum of: (i) the Deposit (as hereinafter defined); plus (ii) the Closing Payments as defined in Section 3.1.1; plus (iii) the Capital Commitment as defined in Section 3.1.2, each and all of which shall be payable or expended in such amounts and at such times as set forth in this Section 3.1. Upon the execution of this Agreement, Buyer has

deposited the sum of fifty thousand dollars (\$50,000) to be held in escrow by Sellers' counsel, Krokidas & Bluestein LLP, as an escrow agent, in an interest-bearing bank account. In the event the Contemplated Transactions fail to close and this Agreement is terminated and such failure and termination is solely and exclusively due to Buyer's failure to perform its obligations under this Agreement, Nashoba shall be entitled to receive from Krokidas & Bluestein LLP the Deposit and all interest accrued thereon. In the event: (i) the Contemplated Transactions fail to close; and (ii) this Agreement is terminated in accordance with its terms; and (iii) the failure to close and the termination is not solely and exclusively caused by Buyer's failure to perform its obligations under this Agreement, Buyer shall be entitled to receive the Deposit and all interest accrued thereon. Notwithstanding any of the foregoing, the payment of the Deposit and all interest accrued thereon to Nashoba or Buyer, as the case may be, in the event of a failure to close the Contemplated Transactions and a termination of this Agreement, shall not operate as liquidated damages or a waiver of any rights any Party may otherwise have under this Agreement. In the event the Contemplated Transactions close, upon the Closing the Deposit and all interest accrued thereon shall be paid to Sellers and part of the Consideration.

**3.1.1 Closing Payments.** At the Closing Buyer shall pay the following amounts (the "Closing Payments"):

(i) four hundred fifty thousand dollars (\$450,000) (plus the Deposit and any interest earned thereon, which shall be released by Krokidas & Bluestein LLP to Sellers at the Closing); plus

(ii) eight million one hundred thousand dollars (\$8,100,000) for the purpose of enabling Sellers to: (a) obtain the release provided for in Section 4.2.14; and (b) convey to Buyer the Acquired Assets in accordance with the terms and conditions of this Agreement; plus

(iii) an amount equal to the Net Working Capital through the Effective Time, which amount shall be determined and adjusted post-Closing in accordance with the provisions of Section 3.2.

Other than the Deposit, which shall be released by Krokidas & Bluestein LLP to Nashoba in a manner determined by Nashoba, the Closing Payments shall be made, by wire transfer, as follows: (a) an amount equal to one million two hundred fifty thousand dollars (\$1,250,000) shall be paid to the Escrow Agent for deposit in the Escrow Account; and (b) the balance (as adjusted by the adjustments set forth in Schedule 3.3.1) to such account or accounts as may be designated by Nashoba.

**3.1.2 Capital Commitment.** Subsequent to the Closing, Buyer shall expend and invest an amount of not less than sixteen million dollars (\$16,000,000) to renovate, improve or replace the Hospital in accordance with the provisions of Sections 12.2.1 and 12.2.2.

### **3.2 Purchase Price Determinations and Adjustments.**

**3.2.1 Computation of Net Working Capital.** As used herein, the term “Net Working Capital” means the aggregate current assets of Sellers (excluding those Excluded Assets which would otherwise be included in current assets) sold to Buyer pursuant to Sections 2.1.3, 2.1.7 and 2.1.8 hereof, minus the aggregate current liabilities of Sellers assumed by Buyer as Assumed Hospital Accounts Payable pursuant to Section 2.3 hereof (excluding those Excluded Liabilities which would otherwise be included in current liabilities), all as determined in accordance with GAAP. The amount of the Hospital Accounts Receivable included in the computation of Net Working Capital shall be a mutually determined percentage of the net book value of such accounts receivable after reduction for contractual adjustments and set-offs, deductions, compromises, rebates and reductions agreed upon by Nashoba and Buyer before Closing.

**3.2.2 Closing Estimates and Post-Closing Adjustments.** At least three (3) business days prior to the Closing Date Nashoba shall deliver to Buyer a good faith estimate (to be thereupon scheduled as *Schedule 3.2.2*), based upon GAAP, of Net Working Capital as of the end of the calendar month immediately preceding the Closing Date and containing reasonable detail showing the derivation of such estimate, and the amount due at Closing pursuant to Section 3.1.1(iii) shall be determined using such estimate. Within sixty (60) days following the Closing, Nashoba shall prepare and deliver to Buyer, Nashoba’s final determination of Net Working Capital as of the Closing Date and containing reasonable detail showing the calculation of such amount (“Sellers Net Working Capital”). Buyer shall have full access to Sellers’ financial books and records pertaining to the Hospital prior to, and for ninety (90) days following, the Closing to confirm or audit working capital computations. Should Buyer disagree with the determination of Sellers Net Working Capital, it shall notify Nashoba within the later of: (i) ninety (90) days after the Closing or (ii) thirty (30) days subsequent to its receipt of Nashoba’s final determination of Sellers Net Working Capital. If Nashoba and Buyer fail to agree within one hundred eighty (180) days after the Closing on the amount of Net Working Capital, such disagreement shall be resolved in accordance with the procedure set forth in Section 3.2.3 hereof. The final determination or agreement as to Net Working Capital shall be referred to herein as the “Actual Net Working Capital.” The Net Working Capital shall be increased or decreased after Closing based on the determination or agreement after Closing of the Actual Net Working Capital as of the Effective Time, and within five (5) business days after determination or agreement thereof or resolution pursuant to Section 3.2.2 hereof, any increase shall be paid in cash by Buyer to Nashoba, and any decrease shall be paid in cash to Buyer by Nashoba, which payment by Nashoba shall be paid from the funds held pursuant to the Escrow Agreement.

**3.2.3 Dispute of Adjustments.**

(a) **Actual Net Working Capital.** In the event that Nashoba and Buyer are not able to agree on the Actual Net Working Capital within one hundred eighty (180)

days after the Closing, Nashoba and Buyer shall each have the right to require that such disputed determination be submitted to the Accountants for computation or verification in accordance with procedures to be agreed upon by Buyer and Nashoba. The results of such Accountant's computation and verification shall be binding upon Sellers and Buyer, and such Accountant's fees and expenses for such dispute resolution shall be borne equally by Buyer and Nashoba.

(b) Certain Other Disputes. In the event that a dispute arises between Nashoba and Buyer pursuant to Sections 3.4.2, 12.2.1 and 12.2.8(c) and, with respect to the amount of the claim but not with respect any Party's right thereto or obligation thereunder, Section 3.4.4, Nashoba and Buyer shall each have the right to require that such dispute be submitted to the Accountants for computation, verification and determination in accordance with the procedures to be agreed upon between the Buyer and Nashoba. The results of such Accountant's computation, verification and determination shall be binding upon Sellers and Buyer, and such Accountant's fees and expenses for such dispute resolution shall be borne equally by Buyer and Nashoba.

(c) Arbitration. In the event an Accountant cannot be qualified and retained pursuant to the provisions of this Section 3.2.4, the dispute shall be resolved in accordance with the provisions of Section 14.6.

**3.2.4 Accounts Receivable.** On the date that is one year subsequent to the Closing, Buyer shall calculate the actual collections of the Hospital Accounts Receivable that were included in the Acquired Assets and in the determination of the Actual Net Working Capital pursuant to Sections 3.2.2 and 3.2.3 (the "Collected Hospital Accounts Receivable") and within five (5) business days of such calculation, Buyer shall deliver such calculation to Nashoba. In the event the Collected Hospital Accounts Receivable are less than the Hospital Accounts Receivable, Nashoba shall pay to Buyer the amount of the difference within fifteen (15) business days, which amount shall be paid from the Escrow Account. In the event that the Collected Hospital Accounts Receivable exceed the amount of the Hospital Accounts Receivable, Buyer shall pay to Nashoba an amount determined as follows: (i) the amount of such excess, less (ii) fifteen percent (15%) of cash collections on accounts collected internally by Buyer's employees, less (iii) the actual payments by Buyer to third party collection agencies for such cash collections on accounts collected by such agencies. Buyer shall use commercially reasonable efforts to collect Hospital Accounts Receivable.

**3.2.5 Optional Establishment of Actual Net Working Capital and Collected Hospital Accounts Receivable at Closing.** The Parties acknowledge that it may be in their mutual best interests to estimate and finalize amounts due pursuant to Section 3.1.1(iii) without any of the post-Closing adjustments otherwise required by Sections 3.2.2 and 3.2.4. In such event, and subject to the mutual agreement of Buyer and Nashoba granted or withheld in each such Party's sole and complete discretion, such amounts shall be so estimated and finalized at the Closing, and

each such Party shall memorialize their agreement in a written document signed by each such Party.

**3.3 Additional Adjustments.** The following items shall be adjusted or prorated between Sellers and Buyer and reflected as adjustments to the payments provided for in Section 3.1.1(ii).

**3.3.1 Adjustments.** The adjustments set forth on Schedule 3.3.1.

**3.3.2 Post-Closing Adjustments.** If any of the items subject to proration under the provisions of Section 3.3.1 cannot be prorated at the Closing because of the unavailability of the information necessary to compute such proration, or if any errors or omissions in computing prorations at the Closing are discovered subsequent to the Closing, then such item shall be reapportioned and such errors and omissions corrected as soon as practicable after the Closing Date and the proper Party reimbursed, which obligation shall survive the Closing for a period (the "Proration Period") from the Closing Date until December 31, 2003. Neither Buyer nor Sellers shall have the right to require a re-computation of a Closing proration or a correction of an error or omission in a Closing proration unless within the Proration Period one of the Parties (i) has obtained the previously unavailable information or has discovered the error or omission, and (ii) has given notice thereof to the other Parties together with a copy of its good faith re-computation of the proration and copies of all substantiating information used in such re-computations. The failure of a Party to obtain any previously unavailable information or discover an error or omission with respect to an item subject to proration hereunder and to give notice thereof as provided above within the Proration Period shall be deemed a waiver of its right to cause a re-computation or a correction of an error or omission with respect to such item after the Closing Date.

**3.4 Escrow Account.** An amount equal to one million two hundred fifty dollars (\$1,250,000) of the amount otherwise due to Sellers by Buyer under Section 3.1.1 shall be paid at Closing into the Escrow Account established pursuant to the Escrow Agreement, in substantially the form attached hereto as Exhibit A. Except as otherwise provided in the Escrow Agreement, the provisions of this Section 3.4 shall govern the Parties' respective obligations with respect to payments into and disbursements from the Escrow Account.

**3.4.1 Purpose and Limitations.** Funds in the Escrow Account shall be held until the termination thereof for the purpose of providing available funds to cover any losses or damages of Buyer for which Buyer is entitled to indemnification under Section 13.1; provided, however, that the Parties acknowledge that such funds may be insufficient to cover any such losses or damages suffered by Buyer to which it is entitled to indemnification under Section 13.1, and any insufficiency of funds in the Escrow Account shall not operate as a limitation on any rights of Buyer otherwise held to recover damages otherwise due pursuant to this Agreement.



**3.4.2 Notice of Escrow Claim; Dispute.** In the event that: (i) Buyer incurs a loss or damage to which it is entitled to indemnification under Section 13.1, and for which it has not otherwise been compensated by any of Sellers; and (ii) Buyer seeks to be compensated for such loss or damage from funds held in the Escrow Account, Buyer shall provide Nashoba with a written notice setting out, in reasonable detail, the nature and amount of such claim (the “Escrow Claim”). Nashoba shall review said Escrow Claim, and Buyer shall cooperate with Nashoba in its review by responding to all reasonable requests for additional information related to the amount of the Escrow Claim or the basis upon which Buyer believes it is entitled to indemnification under Section 13.1. In the event that Nashoba desires to dispute, in whole or in part, the Escrow Claim, it shall provide Buyer with written notice, delivered to Buyer within twenty (20) business days of Nashoba’s receipt of the Escrow Claim, of the nature and amount of the dispute. In the event Nashoba and Buyer are unable to resolve any such dispute, either Nashoba or Buyer may refer the dispute to the Accountants for resolution in accordance with Section 3.2.3. Buyer may submit more than one Escrow Claim with respect to any underlying facts giving rise to a right of indemnification under Section 13.1.

**3.4.3 Disbursements to Buyer.** Upon: (i) Nashoba and Buyer’s agreement on any Escrow Claim; or (ii) the expiration of the period in which Nashoba may dispute all or any portion of an Escrow Claim; or (iii) the decision of the Accountants with respect to the amount of an Escrow Claim, Nashoba and Buyer shall jointly execute and file with the Escrow Agent (as defined in the Escrow Agreement) a Joint Request for Disbursement of Escrow Funds (in the form attached to the Escrow Agreement) in an amount equal to the amount of the Escrow Claim, or in the event only a portion of an Escrow Claim is in dispute the amount of the Escrow Claim that is not in dispute. Such disbursement to Buyer of funds from the Escrow Account in such amount shall constitute, with respect to and for the undisputed loss, damage or portion thereof, full performance of Sellers’ obligations to indemnify the Buyer under Section 13.1.

**3.4.4 Releases to Buyer; Term.**

(a) January 1, 2004. On or before January 1, 2004, Buyer shall provide Nashoba with a written notice specifying in reasonable detail the estimated amount, and the basis therefor, of any actual or potential losses or damages then threatened or asserted against Buyer to which Buyer is or may be entitled to indemnification under Section 13.1 and which, having been threatened or asserted, may give rise to an Escrow Claim. In the event Buyer fails to provide Nashoba with such notice, on or before January 15, 2004, Nashoba and Buyer shall jointly execute and file with the Escrow Agent a Joint Request for Disbursement of Escrow Funds in an amount, if a positive number, equal to all funds then remaining in the Escrow Account less the sum of: (i) any Escrow Claims submitted but not then paid, plus (ii) one million dollars (\$1,000,000). In the event Buyer provides Nashoba with such notice, on or before January 15, 2004, Nashoba and

Buyer shall jointly execute and file with the Escrow Agent a Joint Request for Disbursement of Escrow Funds in an amount, if a positive number, equal to all funds then remaining in the Escrow Account less the sum of: (i) the amount set forth in such notice, plus (ii) any Escrow Claims submitted but not then paid, plus (iii) one million dollars (\$1,000,000).

(b) January 1, 2005. On or before January 1, 2005, Buyer shall provide Nashoba with a written notice specifying in reasonable detail the estimated amount, and the basis therefor, of any actual or potential losses or damages then threatened or asserted against Buyer to which Buyer is or may be entitled to indemnification under Section 13.1 and which, having been threatened or asserted, may give rise to an Escrow Claim. In the event Buyer fails to provide Nashoba with such notice, on or before January 15, 2005, Nashoba and Buyer shall jointly execute and file with the Escrow Agent a Joint Request for Disbursement of Escrow Funds in an amount, if a positive number, equal to all funds then remaining in the Escrow Account less the sum of: (i) any Escrow Claims submitted but not then paid, plus (ii) seven hundred fifty thousand dollars (\$750,000). In the event Buyer provides Nashoba with such notice, on or before January 15, 2005, Nashoba and Buyer shall jointly execute and file with the Escrow Agent a Joint Request for Disbursement of Escrow Funds in an amount, if a positive number, equal to all funds then remaining in the Escrow Account less the sum of: (i) the amount set forth in such notice, plus (ii) any Escrow Claims submitted but not then paid, plus (iii) seven hundred fifty thousand dollars (\$750,000).

(c) January 1, 2006. On or before January 1, 2006, Buyer shall provide Nashoba with a written notice specifying in reasonable detail the estimated amount, and the basis therefor, of any actual or potential losses or damages then threatened or asserted against Buyer to which Buyer is or may be entitled to indemnification under Section 13.1 and which, having been threatened or asserted, may give rise to an Escrow Claim. In the event Buyer fails to provide Nashoba with such notice, on or before January 15, 2005, Nashoba and Buyer shall jointly execute and file with the Escrow Agent a Joint Request for Disbursement of Escrow Funds in an amount, if a positive number, equal to all funds then remaining in the Escrow Account less the sum of (i) any Escrow Claims submitted but not then paid, plus (ii) any amount due the Escrow Agent under the Escrow Agreement. In the event Buyer provides Nashoba with such notice, on or before January 15, 2006, Nashoba and Buyer shall jointly execute and file with the Escrow Agent a Joint Request for Disbursement of Escrow Funds in an amount, if a positive number, equal to all funds then remaining in the Escrow Account less the sum of: (i) the amount set forth in such notice, plus (ii) any amount due the Escrow Agent under the Escrow Agreement; plus (iii) any Escrow Claims submitted but not then paid. Any payment to the Escrow Agent from the Escrow Account pursuant to the foregoing shall not operate to relieve any Party from any obligation among the Parties with respect to the sharing of the Escrow Agent's fees and expenses.

(d) Final Release. In the event the Escrow Account has not been otherwise liquidated as of January 15, 2006, the Escrow Account shall remain in full force and effect for a period expiring on the date that any actual or potential loss or damage threatened or asserted against Buyer and contained in the written notice provided for under clause (c) above has been fully liquidated or the date that all funds of the Escrow Account have been disbursed in accordance with the provisions of this Section 3.4.

(e) Dispute. Any dispute with respect to the amount of any actual or potential losses or damages which have not been the subject of an Escrow Claim but were contained in the notice provided for under clause (c) above and upon which the Escrow Account is maintained subsequent to January 15, 2006 may be referred by either Nashoba or Buyer to the Accountants for resolution in accordance with Section 3.2.3.

**3.5 Interest.** Unless otherwise provided herein to the contrary, any payment required to be made by any Party pursuant to this Agreement, if not paid within fifteen (15) days after the date such payment is required to be made (the “Interest Commencement Date”), shall include interest from the Interest Commencement Date to the day such payment is made, computed at a rate equal to two percent (2%) in excess of the prime rate per annum from time to time announced by AmSouth Bank in Nashville, Tennessee. All requests for payment pursuant to this Section 3.5 shall be accompanied by a certificate of an officer of the Party entitled to receive such payment setting forth the amount of the payment due pursuant to this Agreement (without regard to any amounts payable through operation of this Section 3.5) and the applicable Interest Commencement Date.

**3.6 Right of Set-Off.** Buyer shall be entitled to withhold any payment otherwise due to Sellers under this Agreement post-Closing, each in an amount reasonably and in good faith determined by Buyer to be substantially equivalent to any amount claimed by Buyer arising out of Sellers’ alleged breach of any term or condition of this Agreement or Buyer’s right to indemnification pursuant to Section 13.1. Notwithstanding the foregoing, Buyer shall not set-off any amount with respect to which there are sufficient funds then available in the Escrow Account (taking into account all Escrow Claims then submitted but not paid under Section 3.4.2 and liabilities or obligations threatened or asserted against Buyer but not then giving rise to an Escrow Claim) to fund any such amount. In the event Buyer exercises its right of set-off hereunder, Buyer shall provide Nashoba with the written notice set forth in Section 13.4, and specifying in reasonable detail the nature and description of the facts upon which the right of set-off is claimed and the basis therefor.

**3.7 Casualty.** If any material part of the Acquired Assets are damaged, lost or destroyed (whether by fire, theft, vandalism or other cause or casualty) in whole or in part prior to Closing, and the fair market value of such damage or destruction is less than five hundred thousand dollars (\$500,000), Buyer may, at its option, either (i) reduce the Consideration by the fair market value of the material Acquired Assets destroyed, such value to be determined as of the date immediately prior to such destruction or, if less, by the estimated cost to restore the damaged material Acquired Assets (in which case Seller may retain the insurance proceeds) or

(ii) require Sellers at Closing to transfer the proceeds (or the right to the proceeds) of applicable insurance to Buyer, and Buyer may restore the improvements. If any part of the Acquired Assets are damaged, lost or destroyed (whether by theft, vandalism or other cause or casualty) in whole or in part prior to Closing, and the fair market value of such damage is greater than five hundred thousand dollars (\$500,000), Buyer may, at its option, either (i) require Sellers upon Closing to transfer the proceeds (or the right to the proceeds) of applicable insurance to Buyer, and Buyer may restore the improvements, (ii) terminate this Agreement in its entirety, if Buyer determines in its sole and reasonable discretion that it would be unable to accomplish the business purposes for which it entered into this Agreement, or (iii) reduce any portion of the Consideration by the lesser of the fair market value of the Acquired Assets destroyed, such value to be determined as of the date immediately prior to such destruction or, if less, by the estimated cost to restore damaged Acquired Assets (in which case Seller may retain the insurance proceeds). The reduction in Consideration shall be determined by an MAI appraiser to be mutually selected and paid equally by Sellers and Buyer.

#### **4.0 CLOSING AND CLOSING DELIVERIES.**

**4.1 Closing Date.** Subject to the satisfaction or waiver by the appropriate Party of all the conditions precedent to Closing specified in Articles 9 and 10 hereof, the consummation of the sale, purchase and/or lease, as the case may be, of the Acquired Assets and the other transactions contemplated by and described in this Agreement (the “Closing”) shall take place at the office of Buyer’s counsel, Greenberg Traurig LLP, One International Place, Boston, Massachusetts, at 10:00 a.m. on Tuesday, December 17, 2002, or at such other date and/or at such other location as the Parties may mutually designate in writing (the “Closing Date”). The Closing shall be, for all purposes, deemed effective as of the Effective Time. The Parties agree that time is of the essence.

**4.2 Actions of Seller at Closing.** At the Closing and unless otherwise waived in writing by Buyer, Sellers shall deliver to Buyer the following, each fully executed by the applicable Seller, Sellers or Sellers’ Parent as the case may be (collectively, the “Sellers’ Closing Documents”).

**4.2.1 Hospital Property Lease and Notice of Lease.** The Hospital Property Lease and Notice of Lease, substantially in the forms attached hereto as Exhibit B and Exhibit C. In connection with the delivery of the Hospital Property Lease and the Notice of Lease, Sellers shall deliver the following documents:

(a) Such documents as Buyer’s title insurance company reasonably and customarily requires in connection with the issuance of a leasehold title insurance policy including a standard title insurance agreement or affidavit certifying as to the absence of and providing for indemnity by the appropriate and applicable Seller from mechanics’ and materialmen’s liens and tenants and parties in possession, and Sellers authority documents and legal existence and good standing certificates; and

(b) Such documents as are necessary to record the Notice of Lease.

**4.2.2 Bill of Sale and Assignment.** A bill of sale and assignment, substantially in the form attached hereto as Exhibit D-1, conveying to Buyer good and clear record and marketable fee simple title to all tangible assets (other than Hospital Accounts Receivable) which are a part of the Acquired Assets and valid title to all intangible assets which are a part of the Acquired Assets, free and clear of all liabilities, claims, liens, security interests and restrictions. A bill of sale and assignment, substantially in the form attached hereto as Exhibit D-2, conveying to Buyer all of Sellers' title and interest in the Hospital Accounts Receivable.

**4.2.3 Assignment and Assumption Agreement.** An assignment and assumption agreement, substantially in the form attached hereto as Exhibit E: (i) conveying to Buyer all of Sellers' right, title and interest in, to and under the Assumed Leases and the Assumed Contracts and (ii) pursuant to which Buyer shall assume the future payment and performance of the Assumed Liabilities.

**4.2.4 Authorizing Resolutions.** Copies of resolutions duly adopted by the board of trustees of each Seller and by the board of trustees of Sellers' Parent authorizing and approving each Seller's performance of the transactions contemplated hereby and the execution and delivery of this Agreement and the Sellers' Closing Documents, certified by the appropriate officer or officers of each Seller and Sellers' Parent as true and in full force and effect as of the Closing.

**4.2.5 Bring-down Certificates.** Certificates of a duly authorized officer of each Seller certifying that as of the Closing Date all of the representations and warranties made by or on behalf of Sellers contained in this Agreement are true and correct in all material respects as of the Closing Date and that each covenant and agreement of each Seller to be performed prior to or as of the Closing pursuant to this Agreement has been performed in all material respects.

**4.2.6 Certificates of Incumbency.** Certificates of incumbency, dated as of the Closing Date, for the officers of Sellers executing this Agreement and the Sellers' Closing Documents or making certifications required for Closing. Certificates of incumbency, dated as of the Closing Date, for officers of Sellers' Parent executing the certification required by Section 4.2.4.

**4.2.7 Option to Repurchase Agreement.** An option to repurchase agreement by and between Buyer and Nashoba, substantially in the form attached here to as Exhibit F, providing for the terms and conditions under which Nashoba and its permitted assignees shall have and may exercise an option to repurchase certain of the Acquired Assets.

**4.2.8 Guarantee Agreement.** A guarantee agreement by and between Buyer's Parent and Nashoba, substantially in the form attached hereto as Exhibit G,

providing for Buyer's Parent's guarantee of certain of the financial obligations of Buyer under this Agreement.

**4.2.9 Escrow Agreement.** The Escrow Agreement, substantially in the form attached hereto as Exhibit A.

**4.2.10 Counsel Opinions.** The opinions of Sellers' counsel as described in and provided by Section 9.2 hereof.

**4.2.11 Insurance Certificates.** Certificates regarding insurance as required by Section 9.12 hereof.

**4.2.12 Regulatory and Governmental Approvals.** Written evidence that Sellers have obtained the approvals, authorizations, consents and otherwise complied with the notice and filing requirements as are set forth in Schedule 5.2(b).

**4.2.13 Consents to Assignment.** Written third party consents to the assignment of each of the Assumed Leases and the Assumed Contracts that are not, in the sole and complete discretion of Buyer, fully assignable by a Seller without action by any other party other than Buyer.

**4.2.14 CareGroup Release.** A release of claims and acknowledgement of satisfaction by Sellers' Parent and any Affiliate of Sellers' Parent whose acknowledgement and consent are required therefor, substantially in the form attached hereto as Exhibit H, warranting and representing that upon the payment and appropriate disbursement of funds from the Closing Payments, and without any other or further payments from Sellers or Buyer, the signatories thereto forever release Sellers and Buyer from, and forever acknowledge Sellers' satisfaction of, any and all claims, liabilities, responsibilities or obligations arising out of or in any way related to the CareGroup Related Obligations.

**4.2.15 Nashoba Medical Condominium Units.** In connection with the conveyance of the Nashoba Medical Condominium Units, the applicable and appropriate Seller shall deliver the following documents:

(a) a quitclaim deed from Seller to Buyer for each of the Nashoba Medical Condominium Units and, if required, any plan necessary or required to be recorded therewith, all in form adequate for recording or registration;

(b) a standard title insurance agreement or affidavit certifying as to the absence of and providing for indemnity by Sellers from mechanics's and materialmen's liens and tenants and parties in possession;

(c) a so-called "FIRPTA" certificate or affidavit, complying with Section 1445 of the Internal Revenue Code of 1986, amended (the "Code") stating that Seller is not a foreign person;

(d) a statement from the organization of unit owners in recordable form and setting forth, in accordance with Section 6(d) of M.G.L. Chapter 183A, that there are no outstanding common expenses assessed against any Nashoba Medical Condominium Unit as of the Closing Date;

(e) a ground lease (or the assignment of an existing ground lease, as the case may be) between Buyer and the applicable Seller for each of the Nashoba Medical Condominium Units; and

(f) such other certificates, affidavits and other documents customarily required by mortgage lenders, title insurance companies and purchasers of real property.

**4.2.16 Consents to Assignment.** Sellers shall: (a) cause the tenant of the SNF Ground Lease to execute, and Sellers shall deliver at the Closing, an irrevocable consent to the assignment of all of Sellers' right, title and interest in and to the SNF Ground Lease to Buyer; (b) cause the tenant of the Nashoba Medical Condominium Ground Lease to execute, and Sellers shall deliver at the Closing, an irrevocable consent to the assignment of all of Sellers' right, title and interest in and to the Nashoba Medical Condominium Ground Lease to Buyer; and (c) cause each of the unit owners of any Nashoba Medical Condominium whose consent is legally required (and to exert commercially reasonable efforts to cause the unit owners whose consent is not legally required), to execute, and Sellers shall deliver at the Closing, irrevocable consents to the assignment of all of Sellers' right, title and interest in and to each of the ground leases by and between said unit owners and a Seller entered into pursuant to the Nashoba Medical Condominium Ground Lease and related condominium documents, each of such consents to be executed by any party whose consent is legally effective, and each to be effective upon the exercise by Buyer of Buyer's right to acquire title to the Real Property.

**4.2.17 Shared Access Property Maintenance Agreement.** An agreement, in a form reasonably satisfactory to the Parties, providing for the maintenance of certain portions of the Real Property access to and use of which is shared between the Hospital, the Nashoba Medical Condominium and the nursing facility owned by The Apple Valley Limited Partnership.

**4.2.18 Sellers' Other Instruments and Documents.** Such other instruments and documents as Buyer reasonably deems necessary to satisfy the conditions precedent to Buyer's obligations hereunder.

**4.3 Actions of Buyer at Closing.** At the Closing and unless otherwise waived in writing by Sellers, Buyer shall deliver to Sellers the following, each fully executed by Buyer or, as applicable, Buyer's Parent (collectively, the "Buyer's Closing Documents").

**4.3.1 Payments.** The Closing Payments to Sellers and the Escrow Agent as provided for in Section 3.1.1.

**4.3.2 Hospital Property Lease.** The Hospital Property Lease and Notice of Lease, substantially in the forms attached hereto as Exhibits B and C.

**4.3.3 Assignment and Assumption Agreement.** An Assignment and Assumption Agreement, substantially in the form attached hereto as Exhibit E, pursuant to which Buyer shall assume the future payment and performance of the Assumed Liabilities.

**4.3.4 Authorizing Resolutions.** Copies of resolutions duly adopted by the board of directors of Buyer authorizing and approving Buyer's performance of the transactions contemplated hereby and the execution and delivery of this Agreement and the Buyer's Closing Documents, certified by the appropriate officer or officers of the Buyer as true and in full force and effect as of the Closing Date. Copies of resolutions duly adopted by the board of directors of Buyer's Parent authorizing and approving Buyer's Parent's execution and delivery, and the performance of the obligations under, the Guarantee Agreement.

**4.3.5 Bring-down Certificates.** Certificates of a duly authorized officer of Buyer certifying as of the Closing Date that all of the representations and warranties by or on behalf of Buyer in this Agreement are true and correct in all material respects as of the Closing Date and that each covenant and agreement of Buyer to be performed prior to or as of Closing pursuant to this Agreement has been performed in all material respects. Certificates of a duly authorized officer of Buyer's Parent certifying as of the Closing Date that all of the representations and warranties by or on behalf of Buyer's Parent in this Agreement are true and correct in all material respects as of the Closing Date.

**4.3.6 Certificates of Incumbency.** Certificates of incumbency, dated as of the Closing Date, for the officers of Buyer executing this Agreement and the Buyer's Closing Documents or making certifications for Closing. Certificates of incumbency, dated as of the Closing Date, for the officers of Buyer's Parent executing the Guarantee Agreement.

**4.3.7 Certificate of Existence.** A certificate of existence of Buyer from the Secretary of State of the State of Tennessee and a certificate of good standing of Buyer as a foreign corporation doing business in Massachusetts from the Commonwealth of Massachusetts, each dated no earlier than four weeks prior to the Closing. A certificate of good standing of Buyer's Parent from the Secretary of State of the State of Delaware dated no earlier than four weeks prior to the Closing.

**4.3.8 Option to Repurchase Agreement.** An option to repurchase agreement by and between Buyer and Nashoba, substantially in the form attached here to as



Exhibit F, providing for the terms and conditions under which Nashoba and its permitted assignees shall have and may exercise an option to repurchase certain of the Acquired Assets.

**4.3.9 Guarantee Agreement.** A guarantee agreement by and between Buyer's Parent and Nashoba, fully executed by Buyer's Parent and in substantially the form attached hereto as Exhibit G, providing for Buyer's Parent guarantee of certain of the financial obligations of Buyer under this Agreement.

**4.3.10 Escrow Agreement.** The Escrow Agreement, substantially in the form attached hereto as Exhibit A.

**4.3.11 Counsel Opinions.** The opinions of Buyer's and Buyer's Parent's counsel as described in and provided by Section 10.2 hereof.

**4.3.12 Regulatory and Governmental Approvals.** Written evidence that Buyer has received all the approvals, licenses, consents and permits required for Buyer to acquire the Acquired Assets and to operate the Hospital as a fully licensed acute care hospital as are listed in Schedule 6.2(b).

**4.3.13 Nashoba Medical Condominium Unit Ground Leases.** A ground lease between Buyer and the applicable Seller for each of the Nashoba Medical Condominium Units.

**4.3.14 Shared Access Property Maintenance Agreement.** An agreement, in a form reasonably satisfactory to the Parties, providing for the maintenance of certain portions of the Real Property access to and use of which is shared between the Hospital, the Nashoba Medical Condominium and the nursing facility owned by The Apple Valley Limited Partnership.

**4.3.15 Buyer's Other Instruments and Documents.** Such other instruments and documents as Sellers reasonably deem necessary to satisfy the conditions precedent to Sellers' obligations hereunder.

**4.4 Additional Acts.** From time to time after Closing, Sellers shall execute and deliver, or shall cause Sellers' Parent to execute and deliver, such other instruments of conveyance and transfer, and take such other actions as Buyer reasonably may request, to convey and transfer more effectively full right, title and interest to, vest in and place Buyer in legal and actual possession of, any and all of the Acquired Assets. Upon Buyer's reasonable request, each of Sellers shall also furnish Buyer with such information and documents in its possession or under its control, or which a Seller can execute or cause to be executed, as will enable Buyer to prosecute any and all petitions, applications, claims and demands relating to or constituting a part of the Acquired Assets. Additionally, Sellers and Buyer shall cooperate with and use their respective best efforts to have their respective former and present members, trustees, directors, officers and employees cooperate with the other Party on and after Closing in furnishing information in connection with matters pertaining to all periods prior to Closing in respect of the

items subject to this Agreement. Each Party shall take whatever action is reasonably necessary after Closing to effectuate the intent and purpose of this Agreement and the Sellers' or Buyer's Closing Documents.

## **5.0 REPRESENTATIONS AND WARRANTIES OF SELLERS**

As of the date hereof, Sellers individually and collectively represent and warrant to Buyer the following:

**5.1 Organization and Authority.** Each Seller is duly organized and validly existing under the Chapter 180 of the General Laws of the Commonwealth of Massachusetts. Except as set forth in Schedule 5.1, each Seller has the requisite power and authority to execute and enter into this Agreement and the Sellers' Closing Documents to which it is a party and to perform its obligations under this Agreement and the Sellers' Closing Documents to which it is a party.

**5.2 Corporate Powers; Consents, Absence of Conflicts; Etc.** The execution, delivery and performance by each Seller of this Agreement and the Sellers' Closing Documents to which it is a party:

- (a) are within such Seller's corporate powers, are in compliance with and not in contravention of such Seller's articles of organization, bylaws, or rules and regulations under which it routinely conducts its activities and operations, and have been approved by all requisite corporate action;
- (b) except as set forth in Schedule 5.2(b), do not require any approval, authorization or consent of, notice to, or declaration, registration or filing with, any Governmental Body bearing on the validity of this Agreement or the Sellers' Closing Documents;
- (c) will neither conflict with nor result in any breach or contravention of, or the creation of any lien under, any contract, indenture, agreement, lease, instrument or understanding to which such Seller is a party or by which such Seller is bound, nor permit the acceleration of the maturity of the Assumed Liabilities, or the creation of any lien, charge or encumbrance affecting any Acquired Assets, which with respect to any of the above would have a Material Adverse Change with respect to the Hospital or the Acquired Assets taken as a whole;
- (d) will not violate any statute, law, rule or regulation of any Governmental Body applicable to such Seller or the Acquired Assets; and
- (e) will not violate any judgment, decree or order of any court or Governmental Body applicable to such Seller.

**5.3 Binding Agreement.** This Agreement and the Sellers' Closing Documents do, and will as of Closing, constitute the valid and legally binding obligations of each Seller who is a party thereto, and are and will as of Closing be, assuming due authorization, execution and delivery by the other parties thereto, enforceable against each such Seller in accordance with

their respective terms subject to: (i) the effect of bankruptcy, insolvency, reorganization, arrangement, moratorium, fraudulent conveyance, fraudulent transfer, and other similar laws relating to or affecting the rights of creditors; and (ii) general principles of equity, regardless of whether considered in a proceeding at law or in equity.

**5.4 Financial Statements.** Sellers have delivered to Buyer and attached as Schedule 5.4 the financial statements of Sellers with respect to the Hospital for the years ending September 30, 2000 and September 30, 2001 and for the nine month period ending June 30, 2002 (the “Financial Statements”). The Financial Statements shall be updated by Sellers prior to the Closing to cover the period ending on the last day of the month first prior to the month in which the Closing occurs, provided, however, if Sellers are unable to update the Financial Statements as of such day due to the timing of the Closing, then Sellers shall in any event provide updated Financial Statements to cover the period ending on the last day of the month second prior to the month in which the Closing occurs. The Financial Statements do and shall fairly present the financial condition and results of operations of the Hospital in all material respects, as at the respective dates thereof and for the periods referred to therein. The Financial Statements have and shall be prepared in accordance with GAAP except, in the case of unaudited Financial Statements, for footnote and year end adjustments, none of which footnotes or year end adjustments would, if included, have resulted in a Material Adverse Change. Since the Balance Sheet Date, no Material Adverse Change has occurred.

**5.5 Extraordinary Liabilities.** To Sellers’ Knowledge there are no liabilities of a Seller (whether known or unknown and whether accrued, absolute, contingent or otherwise), nor is there any fact in existence that might reasonably serve as the basis for any material liability of a Seller (whether accrued, absolute, contingent or otherwise), except liabilities: (i) described on Schedule 5.5, (ii) reflected or accrued in the Financial Statements on Schedule 5.4 or disclosed in the notes thereto; or (iii) incurred in the ordinary course of business consistent with past practice since the respective dates of the Financial Statements.

**5.6 Licensure.**

**5.6.1 Licenses and Reports.** Each Seller has all licenses, permits, determinations of need, non-reviewability determination letters, approvals, authorizations and certifications that are necessary and required for their respective ownership, business and operation of the Hospital. The Hospital is licensed by the Commonwealth of Massachusetts to operate forty-one (41) acute care beds. Schedule 2.1.4 contains an accurate and complete list and summary description of all the Licenses. Each License is valid and in full force and effect. Attached as Schedule 5.6.1 are copies of: (i) all the Licenses; (ii) a copy of all licensure survey reports of the Hospital by any Governmental Body since January 1, 1999; (iii) a copy of each fire marshal report and public safety deficiency list with respect to the Hospital since January 1, 1999; and (iv) a copy of each report submitted to the Department under 105 CMR 130.121 - 130.123 since January 1, 1999.

**5.6.2 Compliance.** Except as set forth on Schedule 5.6.2:

(a) Any violations or deficiencies with respect to or set forth in any of the items attached to Schedule 5.6.1 have been fully corrected by the appropriate Seller;

(b) To each Sellers' Knowledge, each Seller is, and at all times since January 1, 1999 has been, in full compliance with all of the terms and requirements of each License applicable to it except where the failure to be in such compliance has been corrected or does not and would not constitute a Material Adverse Change;

(c) No event has occurred or circumstance exists that may (with or without notice or lapse of time): (i) constitute or result directly or indirectly in a material violation of or a material failure to comply with any term or requirement of any License; or (ii) result directly or indirectly in the revocation, withdrawal, suspension, cancellation or termination of, or any modification to, any License;

(d) No Seller has received, at any time since January 1, 1999, any notice or other communication (whether oral or written) from any Governmental Body or any other person regarding: (i) any actual, alleged, possible or potential material violation of or material failure to comply with any term or requirement of any License; or (ii) any actual, proposed, possible or potential revocation, withdrawal, suspension, cancellation, termination of or modification to any License which in either case has not been cured; and

(e) All applications required to have been filed for the renewal of the Licenses have been duly filed on a timely basis, or with appropriate extensions, each with the appropriate Governmental Body, and all other filings required to have been made with respect to such Licenses have been duly made, each with the appropriate Governmental Body.

## **5.7 Accreditations.**

**5.7.1 JCAHO.** The Hospital is duly accredited, with no contingencies, for each and all of its operations as are subject to such review and accreditation, by the Joint Commission on Accreditation of Healthcare Organizations ("JCAHO"). Listed on Schedule 5.7.1 are each Certificate of Accreditation, the date of the most recent JCAHO accreditation survey report and a list of deficiencies, if any, copies of all of which have been provided to Buyer. Sellers have taken all necessary steps to correct all deficiencies noted therein.

**5.7.2 CLIA.** The Hospital's laboratory operated by Nashoba holds a laboratory registration certificate issued pursuant to CLIA and is duly accredited by JCAHO. Attached to Schedule 5.7.2 are copies of the CLIA certificate and the most recent letter(s) and lists(s) of accredited services from JCAHO.

**5.7.3 ACR.** The mammography facilities operated by Nashoba at the Hospital are duly accredited by ACR. Attached to Schedule 5.7.3 are copies of the most recent letter(s) and list(s) of accredited services from ACR.

**5.7.4 No Notice.** Except as set forth in Schedule 5.7.4, no Seller has received a notice with respect to any threatened, pending or possible revocation, early termination, suspension or limitation of any of the accreditations or certifications on Schedules 5.7.1, 5.7.2, or 5.7.3.

## **5.8 Medicare, Medicaid and Other Third Party Payors.**

**5.8.1 Program Participation.** The Hospital, including each relevant component of the business and operations of the Hospital, is qualified for participation in the Medicare, Medicaid, and CHAMPUS programs (the “Programs”), has a current and valid provider contract with each of the Programs, and to Sellers’ Knowledge, is in compliance with the conditions of participation of the Programs. Copies of all existing Medicare, Medicaid and CHAMPUS contracts of the Hospital have been provided to Buyer. Except as set forth on Schedule 5.8.1: (i) there is not pending or, to Sellers’ Knowledge, threatened, any proceeding or investigation under the Programs involving the Hospital; (ii) all cost reports required of the Hospital were filed when due, or with appropriate extensions, and all payments reflected as due to or from any Seller thereunder were made, and to Sellers’ Knowledge, such reports do not claim, and neither the Hospital nor has any Seller received, any payment or reimbursement in excess of amounts allowed by law or any applicable agreement; and (iii) no Seller has received any notice of any dispute with any Governmental Body, any fiscal intermediary or any other party regarding any cost report which has not been resolved, and any required payment which has not been made.

**5.8.2 Non-Program Third Party Payors.** In addition to the Programs, the Hospital currently has contractual arrangements with the third party payors listed on Schedule 5.8.2, and copies of all such contracts have been provided to Buyer. To Sellers’ Knowledge each Seller is in material compliance with all conditions of such contracts and of such third party payors applicable to it. Except as set forth on Schedule 5.8.2, there is not pending or, to Sellers’ Knowledge, threatened, any proceeding or investigation under such third party payor contracts involving the Hospital or under any other third party payor contract or program in which a Seller has participated.

**5.8.3 Liabilities and Contractual Adjustments Reflected.** All liabilities and contractual adjustments of the Hospital under any Program listed on Schedule 5.8.1 or under any third-party payor contract listed on Schedule 5.8.2 have been properly reflected in the Financial Statements in accordance with GAAP.

**5.8.4 Peer Review Organization.** All obligations to conduct utilization management and quality evaluation peer review under the Programs are fully

satisfied through one or more contracts entered into between MassPRO and each of the Programs for which the obligation is applicable.

## **5.9 Regulatory Compliance.**

**5.9.1 Full Compliance.** Except as set forth in *Schedule 5.9.1*, or as otherwise disclosed in any Schedule to this Agreement, to Sellers' Knowledge it is in full compliance with each Legal Requirement that is or was applicable to it with respect to the Hospital or any of the Acquired Assets.

**5.9.2 No Event or Circumstance.** To Sellers' Knowledge, no event has occurred or circumstance exists that (with or without notice or lapse of time): (i) constitutes or may result in a material violation by a Seller of, or a material failure on the part of a Seller to comply with, any Legal Requirement; or (ii) may give rise to any obligation on the part of a Seller to undertake, or to bear all or any portion of the costs of, any remedial action of any nature.

**5.9.3 No Notice Received.** Except as set forth on *Schedule 5.9.3*, no Seller has received any notice or other communication (whether oral or written) from any Governmental Body or any other person having standing to assert such a claim regarding: (i) any actual, alleged or potential violation of, or failure to comply with, any Legal Requirement; or (ii) any actual, alleged or potential obligation on the part of a Seller to undertake, or to bear all or any portion of the costs of, any remedial action of any nature.

## **5.10 Legal Proceedings; Orders.**

(a) There is no Proceeding pending or, to Sellers' Knowledge, threatened by or against a Seller or that otherwise relates to or may affect the Hospital, or any of the Acquired Assets, or that challenges, or that may have the effect of preventing, delaying, making illegal or otherwise interfering with, any of the Contemplated Transactions. To Sellers' Knowledge, no event has occurred or circumstance exists that may give rise to or serve as a basis for the commencement of any such Proceedings. Each Seller has delivered to Buyer copies of all pleadings, correspondence and other documents relating to each Proceeding applicable to it, together with a status report regarding each Proceeding, and each such Proceeding is listed on *Schedule 5.10*.

(b) There is no Order to which the Hospital or any of the Acquired Assets is subject which could constitute a Material Adverse Change, and no, officer, trustee, director, agent or employee of a Seller is subject to any Order that prohibits such, officer, director, trustees, agent or employee from engaging in or continuing any conduct, activity or practice relating to the Hospital or any of the Acquired Assets.

(c) Each Seller is, and at all times has been, in full compliance with all of the terms and requirements of each Order to which it, the Hospital, or any of the Acquired Assets is or has been subject; no event has occurred and no circumstance exists that may constitute

or result in (with or without notice or lapse of time) a violation of or failure to comply with any term or requirement of any Order to which a Seller, the Hospital, or any of the Acquired Assets is subject, which violation or failure which could constitute a Material Adverse Change; and no Seller has received any notice or other communication (whether oral or written) from any Governmental Body or any other person regarding any actual, alleged or potential violation of, or failure to comply with, any term or requirement of any Order to which a Seller, the Hospital, or any of the Acquired Assets is or has been subject, which violation or failure would constitute a Material Adverse Change.

**5.11 Medical Staff Matters.** Nashoba has provided to Buyer true, correct and complete copies of the bylaws and rules and regulations of the Medical Staff. Except as set forth on Schedule 5.11, there are no pending or, to Sellers' Knowledge, threatened disputes between the Hospital and Medical Staff applicants, Medical Staff members or allied health professionals, and all appeal periods in respect of any Medical Staff member or applicant against whom an adverse action has been taken by the Hospital have expired. There have been no adverse actions taken by the Hospital against Medical Staff members or applicants which could result in claims or actions against a Seller and which are not disclosed in the minutes of the meetings of the Medical Executive Committee of the Medical Staff since January 1, 1999.

**5.12 Agreements Disclosed.** Sellers have delivered to Buyer an accurate and complete list (Schedules 2.1.5, 2.1.6, 5.8.1, 5.8.2 and 5.29) of all Contracts and Leases, which are all of the material contracts (oral or written), leases and agreements which do or may affect the Hospital or the Acquired Assets, to which a Seller is a party or by which a Seller or any of the Acquired Assets is bound. Sellers have delivered true and correct copies of such Contracts and Leases to Buyer. Without limiting the generality of what is or may be a material contract, lease or agreement, for purposes of this Agreement, all of the following, whether oral or written, shall be considered to be material if and to the extent they directly or indirectly relate to, affect or are utilized in connection with the Hospital or any of the Acquired Assets:

- (a) any contracts which cannot be performed or terminated upon thirty (30) days notice without payment of penalty or equivalent thereof;
- (b) any contracts affecting ownership of, title to, use of, or any interest in real estate;
- (c) any contract or license relating to data processing programs, software or source codes;
- (d) any collective bargaining agreements or other contracts with any labor unions or other employee representatives or groups of employees;
- (e) any employment contracts, severance agreements, or any other contracts or agreements with individual employees or agents;
- (f) any contracts providing for payments based in any manner on revenues, purchases or profits;

(g) any contracts (oral or written), agreements or arrangements with any physician or other referral source; and

(h) any contract, whether entered into in the ordinary course of business or not, which involves future payments, performance or services or delivery of goods or materials, of any amount or value in excess of Ten Thousand Dollars (\$10,000) in the aggregate.

**5.13 Contracts and Leases; Exceptions.** Except as expressly set forth on Schedule 5.13:

(a) to Sellers' Knowledge, the Contracts and Leases each constitute valid and legally binding obligations of the parties thereto and are enforceable in accordance with their terms;

(b) to Sellers' Knowledge, each Contract and Lease constitutes the entire agreement by and between the respective parties thereto with respect to the subject matter thereof;

(c) to Sellers' Knowledge, each Seller has been and is in full compliance with all material terms and requirements of each Contract and Lease applicable to it;

(d) to Sellers' Knowledge, no event has occurred or circumstance affecting a Seller exists that (with or without notice or lapse of time) may contravene, conflict with, or result in a violation or breach of, or give the other party the right to declare a default or exercise any remedy under, or to accelerate the maturity or performance of, or to cancel, terminate, or modify, any Contract or Lease which could constitute a Material Adverse Change;

(e) no Seller has given or received any notice or other communication (whether oral or written) regarding any actual, alleged or potential violation or breach of, or default under, any Contract or Lease which could constitute a Material Adverse Change on the Hospital or any of the Acquired Assets;

(f) none of the Assumed Contracts or Assumed Leases requires a consent to the assignment to and assumption by Buyer which has not been fully obtained;

(g) the assignment of the Assumed Contracts and Assumed Leases to, and assumption of such Assumed Contracts and Assumed Leases by, Buyer will not result in any penalty, premium or variation of the rights, remedies, benefits or obligations of any party thereunder; and

(h) no Contract or Lease contains any non-compete agreement or any provision requiring a Seller or the Hospital to deal exclusively with a particular party with respect to certain goods or services.

**5.14 Hospital Operating Inventory.** All the inventory and supplies constituting any part of the Acquired Assets are of a quality and quantity usable and salable in the ordinary course



of business. Inventory and supplies are carried at the lower of cost or market, on a first-in, first-out basis and are properly stated in the Financial Statements. The Hospital Operating Inventory level is consistent with each Seller's past practices. Schedule 5.14 lists all locations where items constituting Hospital Operating Inventory are stored or housed.

**5.15 Equipment.** Sellers have delivered to Buyer a depreciation schedule, attached as Schedule 5.15, as of the Balance Sheet Date which takes into consideration all of the equipment constituting any part of the Acquired Assets. Since the Balance Sheet Date, no Seller has sold or otherwise disposed of any item of equipment having a net book value in excess of Ten Thousand Dollars (\$10,000) constituting any part of the Acquired Assets. As of the Closing, all of such equipment (except for lessors' valid interests in equipment that is leased by a Seller pursuant to a Lease) will be free and clear of any lien or security interest or other encumbrance. No person other than a Seller owns any equipment or other tangible assets situated on the Hospital Real Property, except for: (i) items or improvements to items that are leased by a Seller pursuant to a Lease; (ii) furniture and equipment owned or leased by individuals leasing space in the Hospital pursuant to Leases as described on Schedule 2.1.5; (iii) personal property of individuals providing services at the Hospital; and (iv) other items with an aggregate value of less than Ten Thousand Dollars (\$10,000).

**5.16 Hospital Property Lease.** Nashoba now owns a fee interest, and will convey to Buyer at Closing a valid leasehold interest in the Hospital Real Property, together with all buildings, improvements and fixtures thereon and all appurtenances and rights thereto, free of all encumbrances except as described in Schedule 5.16 ("Permitted Encumbrances") and in compliance with the terms of the Hospital Property Lease. If any encumbrances other than the Permitted Encumbrances, including mortgage liens, mechanics' and materialmen's liens and judgment liens, are asserted against the Hospital Real Property or the Real Property prior to the execution of the Hospital Property Lease and recording of the Notice of Lease related thereto, Nashoba shall promptly (and in any event prior to Closing) obtain the release of such liens(s) by bonding or otherwise in a form reasonably satisfactory to Buyer and the Title Company. Except as set forth in Schedule 5.10, Sellers have not received notice of a violation of any applicable Legal Requirement, and have not received notice of condemnation, lien, assessment or the like, relating to any part of the Real Property or the operation thereof. Sellers represent and warrant that:

- (a) except as set forth in Schedule 5.16(a), all of the Real Property is in compliance in all material respects with the applicable provisions of the Accessibility Laws, and there is no pending, noticed, or to Sellers' Knowledge, threatened litigation, administrative action or complaint (whether from any Governmental Body or from any other Person, group or entity having standing to assert such a claim) relating to compliance of any of the Real Property with the Accessibility Laws;
- (b) there are no tenants or other persons or entities occupying any space in the Real Property, other than pursuant to the Leases, and no tenants have paid rent in advance for more than one (1) month and no improvement credit or other tenant allowance of any nature is owed to any tenant, nor to Sellers' Knowledge, is there any unfinished or incomplete tenant improvement work required of a Seller;

(c) all of the Real Property shall be separately assessed for real estate tax purposes and shall not be combined with any land or real estate which is not a part of the Real Property for real estate tax assessment purposes;

(d) to Sellers' Knowledge, other than as set forth on Schedule 5.16(d), there are no existing, proposed or contemplated plans to modify or realign any street or highway or any existing, proposed or contemplated eminent domain proceeding that would result in the taking of all or any part of any part of the Real Property or that would adversely affect the current use of any part of the Real Property; and

(e) to Sellers' Knowledge, or except as set forth in Schedule 13.1, all of the buildings, improvements and fixtures thereon are structurally sound with no latent material defects and are in good operating condition and repair (ordinary wear and tear excepted) and are adequate for the uses to which they are intended.

**5.17 Title.** The Hospital Personal Property constitutes all of the assets, other than assets constituting the Real Property, used in the operation of the Hospital. Except as set forth on Schedule 5.17, Sellers collectively own and hold, and at Closing will convey to Buyer, good and marketable title (or, as applicable, leasehold title) to all tangible assets and personal property and valid title to all intangible assets employed in the operation of the Hospital, all of which, unless otherwise constituting an Excluded Asset, shall be a part of the Acquired Assets, subject to no mortgage, lien, pledge, security interest, conditional sales agreement, right of first refusal, option, restriction, liability, encumbrance or charge that does not constitute an Assumed Liability.

**5.18 Quality and Condition of Certain Assets.** All Acquired Assets consisting of fixtures and equipment are in good operating condition and repair, except for ordinary wear and tear, are suitable for their intended purpose in the operation of the Hospital, and are not in or of a condition that would impair compliance with any condition of any License, accreditation or certification held by any Seller with respect to the Hospital. Schedule 5.18 describes all life safety code deficiencies known by any Seller related to the Hospital or any of the Acquired Assets.

**5.19 Brokers.** Except with respect to the firm of Salomon Smith Barney, which firm has been retained by Sellers or by Sellers' Parent to act on behalf of Sellers or Sellers' Parent and whose fees, costs and expenses with respect to such engagement shall be paid by Sellers or Sellers' Parents, no Seller nor any Affiliate of a Seller nor any officer, trustee, or director thereof has engaged any broker or agent in connection with the Contemplated Transactions.

**5.20 Insurance.** Schedule 5.20 sets forth the insurance policies or self-insurance plans covering the ownership and operations of the Acquired Assets and the Hospital, which Schedule reflects the policies' numbers, terms, identity of insurers, amounts and coverage. All of such policies and plans are now and will be until Closing in full force and effect with no premium arrearages. True and correct copies of all such policies and plans and any endorsements thereto have been delivered to Buyer. Except as set forth on Schedule 5.20, no Seller currently

provides or is obligated to provide professional liability coverage for any physician or other health care providers.

## **5.21 Taxes and Assessments.**

**5.21.1 Property Taxes and Assessments.** Except as provided in *Schedule 5.21*, the Hospital Real Property and the Hospital are, and shall be through the Closing Date, exempt from all real and personal property taxes and there are no municipal assessments, for betterments or otherwise, on, related to or, to Sellers' Knowledge under consideration for, the Real Property.

**5.21.2 Tax Liabilities.** Each Seller is a not-for-profit, tax-exempt organization as defined under Section 501(c)(3) of the Code. To Sellers' Knowledge, except as provided in *Schedule 5.21*: (i) each Seller is in full compliance with all applicable federal and state laws, regulations, rulings and orders pertaining to the operation of a tax-exempt entity, including, without limitation, requirements as to private benefit, inurement, self-dealing, conflicts of interest and other applicable requirements; (ii) each Seller has duly filed all federal, state and local tax returns required to be filed by it (all of which are true, correct and complete in all material respects) or has obtained extensions from the appropriate authorities for such returns and has duly paid or made provision for the payment of all taxes (including any interest or penalties and amounts due state unemployment authorities) that are due and payable to the appropriate tax authorities; (iii) each Seller has withheld proper and accurate amounts from its employees' compensation in full compliance with all withholding and similar provisions of the Code, including employee withholding and social security taxes, and any and all other applicable laws; (iv) no claim has ever been made by an authority in a jurisdiction where a Seller does not file tax returns that a Seller is or may be subject to taxation by that jurisdiction; (v) no deficiencies for any of such taxes have been asserted or threatened, and no audit on any such returns is currently underway or threatened; (vi) there are no tax liens on any of the Acquired Assets; (vii) there are no outstanding agreements by any Seller for the extension of time for the assessment of any such taxes nor has any Seller waived any statute of limitation in respect of such taxes; (viii) no Seller has taken, and no Seller will take, any action in respect of any federal, state, local taxes (including without limitation any withholdings required to be made in respect of employees) which may have an adverse impact upon the Hospital or the Acquired Assets as of or subsequent to Closing; (ix) each Seller has disclosed on its federal income tax returns all positions taken therein that could give rise to a substantial understatement of federal income tax within the meaning of Code §6662; and (x) no Seller is a party to any tax allocation or sharing agreement.

**5.22 Post-Balance Sheet Results.** Except as disclosed on *Schedule 5.22*, since the Balance Sheet Date there has not been:

(a) any adverse change in excess of \$50,000 in the financial position, assets, liabilities (contingent or otherwise), working capital reserves, income or business of the Hospital;

(b) any damage, destruction or loss (whether or not covered by insurance) that will have an adverse effect on the Hospital or any of the Acquired Assets in an amount in excess of \$50,000;

(c) any increase in the compensation payable or to become payable by a Seller to any Hospital employees or agents, or any bonus payment or arrangement made to or with any Hospital employees or agents, except in ordinary and regular course of business in accordance with existing personnel policies or existing contractual obligations, and no Seller has employed any additional management personnel;

(d) any sale, assignment, transfer or disposition of any of the Acquired Assets having a value in excess of Ten Thousand Dollars (\$10,000) (other than supplies), except in the ordinary and regular course of business with comparable replacement thereof if such replacement is required for the prudent operation of the Hospital;

(e) the incurrence of any material liability or obligation of any nature (whether absolute, accrued, contingent or otherwise) except in the ordinary and regular course of business;

(f) the payment, discharge or satisfaction of any liability or obligation (whether absolute, accrued, contingent or otherwise) other than by payment, discharge or satisfaction in the ordinary and regular course of business;

(g) the imposition on any of the Acquired Assets of any mortgage, pledge, lien, security interest, encumbrance or restriction;

(h) any change by a Seller in any method of accounting or accounting practice;

(i) other than compensation or other expense reimbursements paid in the ordinary course of employment, the payment of any amount to, or the payment of any amount on behalf of, or the sale of any assets to, or the entering into of any agreement or arrangement with, any of Hospital's directors or any member of such director's immediate family; or

(j) the initiation or prosecution of any transaction by a Seller outside the ordinary and regular course of business of its business which may cause a liability or obligation of the Hospital in excess of Ten Thousand Dollars (\$10,000).

**5.23 Payments.** No Seller nor any trustee, director, officer or employee of a Seller nor any member of such individual's immediate family, nor any agent acting on behalf of or for the benefit of any of the foregoing, has directly or indirectly in connection with the Hospital established or maintained any unrecorded fund or asset for any purpose or made any misleading, false or artificial entries on any of its books or records for any reason. In addition, no Seller nor any trustee, director, officer or employee of a Seller nor any such individual's immediate family, nor any agent acting on behalf of or for the benefit of any of the foregoing, has directly or

indirectly in connection with the Hospital: (i) offered or paid, in cash or in kind, any remuneration to or made any financial arrangements with, any past, present or potential customers, past or present suppliers, patients, medical staff members, contractors or third-party payors of a Seller in order to obtain business or payments from such persons; (ii) given or agreed to give, or is aware that there has been made or that there is any agreement to make, any gift or gratuitous payment of any kind, nature or description (whether in money, property or services) to any customer or potential customer, supplier or potential supplier, contractor, third-party payor or any other person other than in connection with promotional or entertainment activities in the ordinary course of business; (iii) made or agreed to make, or is aware that there has been made or that there is any agreement to make, any contribution, payment or gift of funds or property to, or for the private use of, any governmental official, employee or agent where either the contribution, payment or gift or the purpose of such contribution, payment or gift is or was illegal under the laws of the United States or under the laws of any state or any other Governmental Body having jurisdiction over such payment, contribution or gift; or (iv) made or agreed to make, or is aware that there has been made or that there is any agreement to make, any payment to any person with the intention or understanding that any part of such payment would be used for any purpose other than that described in the documents supporting such payment.

**5.24 Environmental Matters.** Except as set forth on *Schedule 5.24*:

- (a) To Sellers' Knowledge, there are no conditions at, in, on or under the Real Property or any of the Acquired Assets, which pose a hazard to human health or the environment;
- (b) To Sellers' Knowledge, each Seller is in material compliance with all currently applicable Environmental Laws, and there is no production, use, treatment, storage, transportation, handling, discharge, disposal, arrangement for disposal or release or threatened release of any Hazardous Substance or Solid Waste in violation of applicable Environmental Laws (i) at, in, on, from or under the Real Property or Acquired Assets, or (ii) into or upon or over soil, surface water or groundwater at, on, from or under the Real Property or any of the Acquired Assets, that would result in a Material Adverse Change to the operation of the Hospital, the Real Property or the Acquired Assets;
- (c) During Sellers' ownership and/or operation of any portion of the Real Property, and to Sellers' Knowledge prior to Sellers' ownership and/or operation of the Real Property, there have been no underground tanks, collection sumps or pits, land disposal facilities or surface impoundments at, on or under any portion of the Real Property;
- (d) To Sellers' Knowledge there are and have been no (i) asbestos containing material, lead-based paint, PCB-containing electrical transformers, or other equipment or machinery which contains or has contained PCBs, or (ii) any unhealthy or harmful concentration of radon, at, on or under any portion of the Real Property;
- (e) To Sellers' Knowledge at no time has there been any spill, release, disposal, discharge or injection of any Hazardous Substances at, on or under any portion of the Real Property or any of the Acquired Assets;

(f) To Sellers' Knowledge, the physical plant or improvements constituting part of the Real Property or any of the Acquired Assets do not contain any asbestos or lead-based paint in any form;

(g) To Sellers' Knowledge each Seller has all environmental permits, licenses, registrations, identification numbers, certificates and other approvals required for its ownership and operation of the Hospital by any Environmental Law ("Environmental Permits"), all such Environmental Permits are in full force and effect, and, to Sellers' Knowledge, each Seller is in material compliance with the terms and conditions of such Environmental Permits, a complete and accurate list of which is included on Schedule 5.24(g);

(h) No Seller has received, and to Sellers' Knowledge there is not threatened or alleged, any request for information, notice of claim, demand or other written notification from a Governmental Body or Person alleging that, or investigating whether, a Seller is in violation of any Environmental Law or may be potentially responsible for any costs, expenses, liabilities, judgments and/or losses relating to any investigation, clean-up, removal action, remedial action or corrective action pursuant to any Environmental Law or relating to any Hazardous Substances or Solid Waste; and

(i) No actions, suits, claims or other proceedings are pending, or, to Sellers' Knowledge, threatened or alleged, against a Seller relating in any way to any Environmental Laws, Hazardous Substances or Solid Waste.

**5.25 No Subsidiaries or Joint Ventures.** Except as set forth on Schedule 5.25, no Seller has any subsidiaries. No Seller is a party to any joint venture with physicians on the Medical Staff or any close family member of any such physician.

**5.26 Trademarks, Computer Software, Etc.** Each Seller has the right to use, free and clear of any royalty or other payment obligations, claims of infringement or other liens: (i) all material marks, names, trademarks, service marks, patents, patent rights, assumed names, logos, trade secrets, copyrights, trade names and service marks set forth on Schedule 5.26, which are owned or used by such Seller in the conduct of the Hospital, and (ii) all computer software, programs and similar systems owned by or licensed to such Seller or used in the conduct of the Hospital, including those intellectual properties and computer software, programs and similar systems set forth on Schedule 5.26. With respect to the foregoing, no Seller is in material conflict or in material violation or infringement of, nor has any Seller received any notice of any other person with respect to any of such intellectual property or any computer software, programs or similar systems. To Sellers' Knowledge, no other person is in conflict with or in violation or infringement of any such items of intellectual property or computer software, programs or similar systems. Except as set forth on Schedule 5.26, Buyer will, subsequent to the Closing, without further action or the payment of additional fees, royalties or other compensation to any person (other than the Assumed Liabilities), be entitled to unrestricted use of all computer software programs and similar systems currently used in the Hospital, including without limitation those listed in Schedule 5.26.

**5.27 Hospital Accounts Receivable.** Except as set forth on *Schedule 5.27*, to Sellers' Knowledge, the Hospital Accounts Receivable were, to the extent uncollected at the Balance Sheet Date, and are, on the date hereof, and the Hospital Accounts Receivable to be reflected on the books of Sellers on the Closing Date will be: (i) valid and existing; (ii) for monies due for goods sold and delivered and services performed; (iii) collectable in accordance with their respective terms subject to such discounts, write-offs and allowances for bad debt as are consistent with past practices. On the Closing Date there will not be any discounts or setoffs payable or assessable against Sellers with respect to any of the Hospital Accounts Receivable that are not reflected in the discounts, write-offs or reserves or allowances for bad debt established on the books of Sellers at such date.

**5.28 Solvency.** No Seller is, and at the Closing or as a result of the Contemplated Transactions no Seller will be, insolvent or otherwise unable to pay its debts as they become due. No Seller has any intention of filing in any court pursuant to any statute either of the United States or of any state a petition in bankruptcy or insolvency or for reorganization or for the appointment of a receiver or trustee of all or any portion of such Seller's property and, to Sellers' Knowledge, no other person has filed or threatened to file such a petition against a Seller.

**5.29 Employee Benefit Plans.**

(a) *Schedule 5.29* lists each employment, bonus, deferred compensation, pension, stock option, stock appreciation right, profit-sharing or retirement plan, arrangement or practice, each medical, vacation, retiree medical, severance pay plan and each other agreement or fringe benefit plan, arrangement or practice, of any Seller or any ERISA Affiliate (as hereinafter defined in Section 5.29(e)), whether legally binding or not, which affects one or more of Sellers' Employees, including all of Sellers' Benefit Plans, which constitute an Assumed Liability or an Excluded Liability. All of the Sellers' Benefits Plans which are employee pension benefit plans that are subject to Title IV of ERISA or the minimum funding standards of Section 412 of the Code shall be referred to as the "Pension Plans."

(b) No Seller has any commitment, whether formal or informal and whether legally binding or not, (i) to create any additional employee benefit plan as defined in ERISA Section 3(3) or any other pension, profit sharing, retirement, stock purchase, stock option, other equity-based incentive, bonus, performance, vacation, termination, retention, severance, disability, hospitalization, medical, life insurance or other employee benefit plan, program, policy or arrangement, whether written or oral; (ii) to modify or change any of the Sellers' Benefit Plans; or (iii) to maintain for any period of time any the Sellers' Benefit Plans.

(c) Except as disclosed in *Schedule 5.29*: (i) no Seller has any unfunded past service liability in respect of any of its Plans; (ii) the actuarially computed value of vested benefits under any Pension Plan of each Seller (determined in accordance with methods and assumptions utilized by the Pension Benefit Guaranty Corporation ("PBGC")) applicable to a plan terminating on the date of determination) does not exceed the fair

market value of the fund assets relating to such Pension Plan; (iii) no Seller nor any Plan nor any trustee, administrator, fiduciary or sponsor of any Plan has engaged in any prohibited transactions as defined in Section 406 of ERISA or Section 4975 of the Code for which there is no statutory exemption in Section 408 of ERISA or Section 4975 of the Code; (iv) all filings, reports and descriptions as to such Plans required to have been made or distributed to participants and have been made in a timely manner or will be made on or prior to the Closing Date; (v) there is no material litigation, disputed claim, governmental proceeding or investigation pending or threatened with respect to any of such Plans, the related trusts, or any fiduciary, trustee, administrator or sponsor of such Plans; (vi) such Plans have been established, maintained and administered in all material respects in accordance with their governing documents and applicable provisions of ERISA and the Code and Treasury Regulations promulgated thereunder; and (vii) there has been no “reportable event” as defined in Section 4043 of ERISA with respect to any Pension Plan that has not been waived by the PBGC.

**(d)** Except as disclosed in Schedule 5.29, none of the Plans which are “welfare benefit plans,” within the meaning of Section 3(1) of ERISA, provide for continuing benefits or coverage after termination or retirement from employment, except for rights created under the Consolidated Omnibus Budget Reconciliation Act of 1985, as amended (“COBRA”) under a “group health plan” as defined in Section 4980B(g) of the Code and Section 607 of ERISA. With respect to any Plan which is a “group health plan,” as so defined, Sellers warrant that in all “qualifying events” (including those resulting from the Contemplated Transactions) occurring prior to or on the Closing Date, each Seller has or will offer to eligible employees and their “qualified beneficiaries” the opportunity to elect continuation coverage under COBRA to the extent required by COBRA, and will provide that coverage, if elected, at no expense to Buyer. At the Closing Sellers will provide to Buyer a list of individuals eligible for and a list of individuals then receiving COBRA coverage on the date of the Closing, including their names, social security numbers, addresses, the type of coverage elected and the date COBRA commenced or is to commence.

**(e)** No Seller nor any entity required to be aggregated with any Seller under Sections 414(b), (c), (m) or (o) of the Code (an “ERISA Affiliate”) has ever sponsored, participated in, contributed to or withdrawn from a multi-employer plan as defined in Section 4001(a)(3) of Title IV of ERISA, and no Seller nor any ERISA Affiliate has ever incurred any liability as a result of any partial or complete withdrawal by any employer from such a multi-employer plan as described under Sections 4201, 4203, or 4205 of ERISA.

**(f)** Except as disclosed in Schedule 5.29, no Pension Plan has been completely or partially terminated, nor has any proceeding been instituted by the PBGC to terminate any such Pension Plan; no Seller nor any ERISA Affiliate has incurred or presently owes any liability to the PBGC or otherwise under Title IV of ERISA, or in connection with an “accumulated funding deficiency” within the meaning of Section 302 of ERISA and Section 412 of the Code, whether or not waived.



**5.30 Employee Relations.** There is no pending or, to Sellers' Knowledge, threatened employee strike, work stoppage or labor dispute. No union representation question exists respecting any employee of any Seller; no collective bargaining agreement exists or is currently being negotiated by any Seller; no demand has been made for recognition by a labor organization by or with respect to any employees of any Seller; and to Sellers' Knowledge, except as set forth on Schedule 5.30, no union organizing activities by or with respect to any employees of any Seller are taking place or have taken place within the last three (3) years. None of the employees of any Seller is represented by any labor union or organization. There is no unfair practice claim against any Seller before the National Labor Relations Board, or any strike, dispute, slowdown or stoppage pending or, to Sellers' Knowledge, threatened against or involving the Hospital and none has occurred. Each Seller is in material compliance with all Legal Requirements respecting employment and employment practices, terms and conditions of employment, and wages and hours. No Seller is engaged in any unfair labor practices. Except as set forth on Schedule 5.30, there are no pending or, to Sellers' Knowledge, threatened Equal Employment Opportunity Commission claims, wage and hour claims, unemployment compensation claims, workers' compensation claims or similar claim.

**5.31 Full Disclosure.** The documents and information furnished to Buyer and Buyer's representatives by Sellers pursuant hereto, and each Sellers' representations and warranties contained herein and the Schedules attached hereto, do not and will not include any untrue statement of a material fact or omit to state any material fact necessary to make the statements contained herein and therein not misleading.

## **6.0 REPRESENTATIONS AND WARRANTIES OF BUYER AND BUYER'S PARENT**

As of the date hereof, Buyer and Buyer's Parent represent and warrant to Sellers the following:

**6.1 Organization and Good Standing.** Buyer is a corporation duly organized and in good standing under the laws of the State of Tennessee and is in good standing as a foreign corporation doing business in the Commonwealth of Massachusetts. Buyer's Parent is a corporation duly organized and in good standing under the laws of the State of Delaware. Buyer and Buyer's Parent each has the requisite power and authority to execute and enter into this Agreement and the Buyer's Closing Documents applicable to it and to perform its respective obligations under this Agreement and the Buyer's Closing Documents applicable to it and to conduct its respective businesses as now being conducted.

**6.2 Corporate Powers; Consents; Absence of Conflicts, Etc.** The execution, delivery and performance of this Agreement and the Buyer's Closing Documents by Buyer and, as applicable, Buyer's Parent:

- (a) are within Buyer's and Buyer's Parent's corporate powers and are not in contravention of the terms of their respective articles of incorporation and bylaws and have been approved by all requisite corporate actions;

(b) except as set forth on Schedule 6.2(b), do not require any approval or consent of, notice to, or declaration, registration or filing with, any Governmental Body or authority bearing on the validity of this Agreement or the Buyer's Closing Documents;

(c) will neither conflict with nor result in any breach or contravention of, or the creation of any lien under, any contract, indenture, agreement, lease, instrument or understanding to which Buyer or Buyer's Parent is a party or by which Buyer or Buyer's Parent is bound;

(d) will not violate any statute, law, rule or regulation of any Governmental Body applicable to Buyer or Buyer's Parent; and

(e) will not violate any judgment, decree or order of any court or Governmental Body applicable to Buyer or Buyer's Parent.

**6.3 Binding Effect.** This Agreement and the Buyer's Closing Documents are and will as of the Closing constitute the valid and legally binding obligations of Buyer and, as applicable, Buyer's Parent and are and will be as of the Closing enforceable against Buyer and, as applicable, Buyer's Parent, in accordance with their respective terms, assuming due authorization, execution and delivery by the other parties thereto subject to: (i) the effect of bankruptcy, insolvency, reorganization, arrangement, moratorium, fraudulent conveyance, fraudulent transfer, and other similar laws relating to or affecting the rights of creditors; and (ii) general principles of equity, regardless of whether considered in a proceeding at law or in equity.

**6.4 Brokers and Finders.** Neither Buyer, Buyer's Parent nor any Affiliate of either, nor any officer or director thereof has engaged any finder or broker in connection with the Contemplated Transactions.

**6.5 Solvency; Material Adverse Change.** Neither Buyer nor Buyer's Parent is, and at the Closing or as a result of the Contemplated Transactions will not be, insolvent or otherwise unable to pay its debts as they become due. Neither Buyer nor Buyer's Parent has any intention of filing in any court pursuant to any statute either of the United States or of any state a petition in bankruptcy or insolvency or for reorganization or for the appointment of a receiver or trustee of all or any portion of Buyer's or Buyer's Parent's property and, to Buyer's and Buyer's Parent's Knowledge, no other person has filed or threatened to file such a petition against Buyer or Buyer's Parent. Buyer's Parent has experienced no Material Adverse Change in its business since September 30, 2001.

**6.6 Full Disclosure.** All documents and information furnished to Sellers and Sellers' representatives by Buyer or Buyer's Parent pursuant hereto, and Buyer's and Buyer's Parent's representations and warranties contained herein, do not and will not include any untrue statement of a material fact or omit to state any material fact necessary to make the statements contained herein and therein not misleading.

## 7.0 PRE-CLOSING COVENANTS OF SELLERS

**7.1 Information.** Between the date of this Agreement and the Closing Date, Sellers shall afford to the officers and authorized representatives and agents of Buyer full and complete access to and the right to inspect during reasonable business hours the plant, properties, books and records of each Seller relating to the Acquired Assets, and will furnish Buyer with such additional financial and operating data and other information as to the business and properties of each Seller relating to the Acquired Assets as Buyer may from time to time reasonably request without regard to where such information may be located. Buyer's right of access and inspection shall be made in such a manner as not to interfere unreasonably with the operation of the Acquired Assets, and shall comply with applicable patient confidentiality requirements.

**7.2 Operations.** From the date hereof until the Closing Date, each Seller shall, as applicable to it:

- (a) (i) operate the Hospital in substantially the same manner as conducted heretofore, (ii) not make any material change in such Seller's personnel, operations, finance, accounting policies, or real or personal property without Buyer's prior consent and (iii) confer with Buyer concerning operational matters of a material nature;
- (b) maintain the Acquired Assets and all parts thereof in as good working order and condition as at present, ordinary wear and tear and obsolescence excepted;
- (c) perform all of such Seller's obligations under and in compliance with the terms of the Contracts and Leases;
- (d) take all actions necessary and appropriate to (i) vest good and marketable title to all tangible assets and valid title to all intangible assets associated with or employed in the operations of the Hospital or any of the Acquired Assets, (ii) render title to the Acquired Assets (including any equipment that is the subject of capitalized leases) free and clear of all liens, security agreements, claims, charges and encumbrances (except for the Permitted Encumbrances with respect to the Real Property), and (iii) obtain appropriate releases, consents, estoppels and other instruments as Buyer may reasonably request;
- (e) keep in full force and effect present insurance policies or other comparable insurance; and
- (f) use best efforts to maintain and preserve the business and administrative organization of the Hospital intact and maintain Sellers' relationship with physicians, suppliers, customers and others having business relations with Sellers and take such actions as are necessary to cause the smooth, efficient and successful transition of such business operations to Buyer as of Closing.

**7.3 Negative Covenants.** From the date hereof to the Closing Date, Sellers will not, in respect of the Hospital or the Acquired Assets, without the prior written consent of Buyer:

- (a) amend or terminate any of the Leases or Contracts, enter into any contract or purchase commitment, or incur or agree to incur any liability, except in the ordinary and regular course of business and in no event greater than Ten Thousand Dollars (\$10,000) per item or which is not terminable without cause and without penalty within thirty (30) days following Closing;
- (b) increase compensation payable or to become payable or make a bonus payment to or otherwise enter into one or more bonus agreements with any employee or agent, except in accordance with personnel policies and contractual obligations in effect as of March 1, 2002;
- (c) create, assume, enter into or permit to exist any new mortgage, pledge or other lien or encumbrance upon any of the Acquired Assets, whether now owned or hereafter acquired;
- (d) sell, assign or otherwise transfer or dispose of any property, plant or equipment (other than supplies), except in the ordinary and regular course of business with comparable replacement thereof if such replacement is required for the prudent operation of the Hospital and any of the Acquired Assets, and which in any event must be approved in advance by Buyer;
- (e) make any material change in or to the Hospital; or
- (f) take any action outside the ordinary and regular course of business, except for actions reasonably necessary to consummate the Contemplated Transactions.

**7.4 Regulatory and Governmental Approvals.** Between the date of this Agreement and the Closing Date, Sellers (i) will use their collective best efforts to obtain as promptly as practicable, all approvals, authorizations and clearances of Governmental Bodies required of them to consummate the Contemplated Transactions, including all filings under the Hart Scott Act, if necessary, and the Attorney General, and the transfer to Buyer of any license transferable under applicable law, (ii) will provide such other information and communications to Governmental Bodies as such authorities may reasonably request, and (iii) will cooperate with Buyer in obtaining, as soon as practicable, all approvals, authorizations and clearances of Governmental Bodies required of Buyer to consummate the Contemplated Transactions.

**7.5 Certain Agreements.**

**7.5.1 Hospital Managed Care Contracts.** Between the date of this Agreement and the Closing Date, Sellers will cooperate with Buyer in Buyer's efforts to obtain amended or new managed care contracts for the benefit of the Deaconess-Nashoba Hospital between the Buyer and Blue Cross and Blue Shield of Massachusetts, Harvard Pilgrim Health Plan and Tufts New England Health Plan (the "Hospital Managed Care Contracts"), each of which shall be in all respects satisfactory to Buyer in its sole and complete discretion.

**7.5.2 Medical Staff Payor Contracts.** Between the date of this Agreement and the Closing Date, Sellers will cooperate with Buyer in Buyer's efforts to obtain amended or new payor contracts for the benefit of the members of the Medical Staff, including, without limitation, physicians employed by NMS (the "Physician Payor Contracts"), each of which shall be in all respects satisfactory to Buyer in its sole and complete discretion.

**7.5.3 SNF Ground Lease and Nashoba Medical Condominium Ground Lease.** Prior to the Closing and at the request of Buyer, Nashoba shall use commercially reasonable efforts to cause the SNF Ground Lease and, if applicable, the Nashoba Medical Condominium Ground Lease (and unit ground leases related thereto) to be amended or clarified to the satisfaction of Buyer in its reasonable discretion, provided, however, that within the thirty (30) day review period provided for in Section 9.8.4, Buyer shall provide Sellers with a written description of the amendments or clarifications that Buyer deems necessary or appropriate and which, if adopted, will be reasonably satisfactory to Buyer.

**7.6 Interim Transitional Operating Relationship, Reporting.**

**7.6.1 Interim Transitional Relationship.** During the period from the date of this Agreement to the Closing Date, and in addition to covenants made elsewhere in this Agreement, including, without limitation Section 7.1 and 7.2, Sellers shall: (i) cause their officers and consultants to confer on a frequent and regular basis with one or more representatives of Buyer with respect to operational matters of the Hospital; (ii) provide adequate space and support staff to Buyer's representatives when onsite, which onsite presence may be frequent; (iii) inform Buyer's representatives of all significant decisions regarding the Hospital and the Medical Staff; (iv) have the chairman of Nashoba's board of trustees receive and respond to recommendations of Buyer with respect to Hospital operations; and (v) through the president and chief executive officer of Nashoba, at reasonable times and in a manner that will not interfere with the provision of patient care, make employees, officers or directors of any Seller available to speak with Buyer's representatives with respect to the Contemplated Transactions and the operation of the Hospital, provided, however, that none of the foregoing shall extend to: (a) information related to the Sellers' or Sellers' Parent's internal deliberations concerning the Contemplated Transaction or (b) information with respect to any Affiliate of Sellers that is not directly related to the Contemplated Transactions.

**7.6.2 Reporting.** Sellers shall notify Buyer in writing of any Material Adverse Change in the financial position or earnings of the Hospital after the date hereof and prior to the Closing and any unexpected emergency or other unanticipated adverse change in the Hospital and of any Governmental Body complaints, investigations or adjudicatory proceedings (or communications indicating that the same may be contemplated) or of any other such matter and shall keep Buyer fully informed of such events, shall permit its representatives to participate in all discussions relating thereto.

**7.7 Employees.** Sellers have provided Buyer a list containing the name, position, rate of compensation and any incentive compensation arrangements, bonuses or commissions of each

employee employed by any Seller exclusively or primarily in the operation of the Hospital and the Acquired Assets (collectively, "Sellers' Employees"). If between the date of the submission of such list and the Closing Date, the employment of any of Sellers' Employees is terminated or any Seller hires any employees who are employed by Seller exclusively or primarily in the operation of the Hospital and the Acquired Assets, then Seller shall promptly provide Buyer written notice of such development. Sellers agree that between the date of the submission of the aforementioned list and the Closing Date, Sellers have not and will not hire any employees who would upon such hiring become a Seller's Employee at an any compensation level in excess of fifty thousand dollars (\$50,000) per year except upon the prior written approval of Buyer. Recognizing that there is shortage of qualified registered nurses in the State of Massachusetts and that it is to the benefit of Sellers and Buyer for Sellers to hire and retain qualified registered nurses to provide clinical services at the Deaconess-Nashoba Hospital, Sellers are authorized to hire qualified registered nurses to provide such services without the approval of Buyer provided that each such hire is consistent with Sellers' need to fill such positions as such need has been reviewed and approved by Buyer as of the date hereof.

## **7.8 Completion and Updating of Schedules.**

**7.8.1 Schedule Completion.** The Parties acknowledge that the Schedules attached to this Agreement are preliminary in nature. Within thirty (30) days subsequent to the date of this Agreement, Sellers shall: (i) complete or confirm each Schedule (which includes, as applicable, each portion of a Schedule) related to Sellers or for which Sellers are responsible; and (ii) provide Buyer with written notice of the Schedule as complete or confirmed. Within seven (7) days of Buyer's receipt of all complete and confirmed Schedules as provided above, Buyer shall, by written notice to Sellers: (a) accept the complete and confirmed Schedules as submitted by Buyer; or (b) elect to terminate this Agreement in accordance with the provisions of Article 11 in the event that any new or information or disclosure or change in information or disclosure on such Schedule constitutes, in Buyer's sole and completed discretion, a Material Adverse Change. Upon Buyer's written acceptance, the complete and confirmed Schedules shall become for all purposes the Schedules attached to and incorporated in this Agreement.

**7.8.2 Updating Schedules.** Between the date the Buyer accepts the complete and confirmed Schedules, as provided in Section 7.8.1 above, and the Closing Date, Sellers will provide Buyer with notice of the occurrence of any event that would constitute a supplement, change or amendment, including, without limitation, an addition or deletion, to any Schedule attached to this Agreement related to Sellers or for which Sellers are responsible. Within seven (7) days of Buyer's receipt of such notice, Buyer shall, by written notice to Sellers: (a) accept the supplement, change or amendment as submitted by Sellers; or (b) elect to terminate this Agreement in accordance with the provisions of Article 11 in the event that the supplement, change or amendment, in Buyer's sole and completed discretion, constitutes a Material Adverse Change. Upon Buyer's written acceptance, the supplemented, changed or amended Schedule shall become for all purposes the Schedule attached to and incorporated in this Agreement.

**7.9 Closing Conditions.** Between the date of this Agreement and the Closing Date, Sellers will use their collective best efforts to cause the conditions specified in Articles 9 and 10 hereof, over which either Sellers or any Affiliate of Sellers has control, to be satisfied as soon as reasonably practicable, but in all events before the Closing Date.

**7.10 Exclusive Dealing.** During the term of this Agreement (the "Exclusive Period"), Sellers, Sellers' Parent and their respective members, trustees, directors, officers, employees and agents shall deal exclusively with Buyer with respect to the lease or sale of the Acquired Assets. Further, neither Sellers, Sellers' Parent, nor their respective members, trustees, directors, officers, employees or agents shall solicit, enter into or continue any discussion, negotiations, or agreement with or provide information to any other person other than Buyer relating to any management of or lease or sale of all or any portion of the Acquired Assets or any joint venture relating thereto or any other similar transaction (a "Competing Transaction"). In addition, Sellers shall not enter into any agreement or understanding, whether oral or written, that would prevent the consummation of the Contemplated Transactions. If, notwithstanding the foregoing, Sellers shall receive any proposal or inquiry regarding any such Competing Transaction, Sellers shall promptly notify Buyer thereof and disclose to Buyer the terms thereof.

## **8.0 PRE-CLOSING COVENANTS OF BUYER**

**8.1 Regulatory and Governmental Approvals.** Between the date of this Agreement and the Closing Date, Buyer: (i) will use its best efforts to obtain as promptly as practicable, all approvals, authorizations and clearances of Governmental Bodies required of it to consummate the Contemplated Transactions, including all filings under the Hart Scott Act, if necessary, the Department and the Attorney General; (ii) will provide such other information and communications to Governmental Bodies, including the Department and the Attorney General, as such authorities may reasonably request, and (iii) will cooperate with Sellers in obtaining, as soon as practicable, all approvals, authorizations and clearances of Governmental Bodies required of Sellers to consummate the Contemplated Transactions; provided, however, in no event shall Buyer, Buyer's Parent or any Affiliate of either be required to dispose of or make any change in any portion of its respective business or to incur any other burden.

**8.2 Closing Conditions.** Between the date of this Agreement and the Closing Date, Buyer will use its reasonable efforts to cause the conditions specified in Articles 9 and 10 hereof, over which Buyer has control, to be satisfied as soon as reasonably practicable, but in all events before the Closing Date.

### **8.3 Employees.**

**8.3.1 WARN Act.** As of the Closing Date, Buyer will offer to employ substantially all of Sellers' Employees employed in support of the Hospital, but in any event not less than such number of Sellers' Employees employed in support of the Hospital as shall be necessary to avoid any potential liability by Sellers for a violation of the WARN Act attendant to a failure to notice such employees of a so-called "mass layoff" or "plant closing" as defined in the WARN Act. For the purposes of determining Buyer's compliance with the foregoing provision, Sellers' Employees terminated, if any, by any

Seller during the sixty (60) day period prior to the Closing Date (and with respect to which Sellers have provided Buyer with written notice as of the Closing) and Buyer's termination, if any, of any Transferred Employee (as defined in Section 8.3.2 hereinafter) within ninety (90) days subsequent to the Closing, shall be taken into consideration and Buyer's obligations hereunder shall extend to any WARN Act violations resulting from the aggregation of such terminations. Nothing contained herein shall be deemed either to affect or to limit in any way the management prerogatives of Buyer with respect to Transferred Employees, or to create or to grant to such employees any third-party beneficiary rights or claims or causes of action of any kind or nature.

**8.3.2 Continuity.** The employment opportunities offered pursuant to Section 8.3.1 above will be on substantially the same terms and conditions (including compensation, job duties and responsibilities) as similarly situated employees of Buyer. Those of Sellers' Employees who accept such offer of employment are referred to herein as "Transferred Employees." Buyer shall recognize the entire length of the prior service with a Seller for the purposes of determining the eligibility of any Transferred Employee to participate in and receive benefits under Buyer's vacation, severance and health and medical benefits plans and programs, and for purposes of determining such Transferred Employee's eligibility to participate in and receive vesting under Buyer's pension or profit sharing plans. In that regard, no additional waiting periods, deductibles, exclusions or benefit limitations for pre-existing conditions shall be imposed or assessed against such Transferred Employees (or their dependents) under Buyer's plans which are "employee welfare benefit plans" as that term is defined in Section 3(1) of ERISA (other than as would have been applicable to such Transferred Employees or their dependents under Sellers' employee welfare benefit plans as in effect on the date hereof). In addition, Buyer's medical, dental, pharmaceutical and vision benefit plans shall recognize any expenses paid by Transferred Employees (or their dependents) which were applied to meet deductibles and out-of-pocket limits under Sellers' medical, dental, pharmaceutical and vision benefit plans for the calendar year of the Closing as if such expenses had been paid under Buyer's medical, dental, pharmaceutical and vision benefit plans for purposes of applying Buyer's medical, dental, pharmaceutical and vision benefit plans' deductibles and out-of-pocket limits for such calendar year.

#### **8.4 Completion and Updating of Schedules.**

**8.4.1 Schedule Completion.** The Parties acknowledge that the Schedules attached to this Agreement are preliminary in nature. Within thirty (30) days subsequent to the date of this Agreement, Buyer shall: (i) complete or confirm each Schedule (which includes, as applicable, each portion of a Schedule) related to Buyer or for which Buyer is responsible; and (ii) provide Sellers with written notice of the Schedule as completed or confirmed. Within seven (7) days of Sellers' receipt of all completed and confirmed Schedules as provided above, Sellers shall, by written notice to Buyer: (a) accept the completed and confirmed Schedules as submitted by Buyer; or (b) elect to terminate this Agreement in accordance with the provisions of Article 11 in the event that any new or information or disclosure or change in information or disclosure on such Schedule constitutes, in Sellers' sole and completed discretion, a Material Adverse Change. Upon



Sellers' written acceptance, the completed and confirmed Schedules shall become for all purposes the Schedules attached to and incorporated in this Agreement.

**8.4.2 Updating Schedules.** Between the date the Sellers accept the completed and confirmed Schedules, as provided in Section 8.4.1 above, and the Closing Date, Buyer will provide Sellers with notice of the occurrence of any event that would constitute a supplement, change or amendment, including, without limitation, an addition or deletion, to any Schedule attached to this Agreement related to Buyer or for which Buyer is responsible. Within seven (7) days of Sellers' receipt of such notice, Sellers shall, by written notice to Buyer: (a) accept the supplement, change or amendment as submitted by Buyer; or (b) elect to terminate this Agreement in accordance with the provisions of Article 11 in the event that the supplement, change or amendment, in Sellers' sole and completed discretion, constitutes a Material Adverse Change. Upon Sellers' written acceptance, the supplemented, changed or amended Schedule shall become for all purposes the Schedule attached to and incorporated in this Agreement.

## **9.0 CONDITIONS PRECEDENT TO OBLIGATIONS OF BUYER**

The obligations of Buyer hereunder are subject to the satisfaction, on or prior to the Closing Date, of the following conditions unless waived in writing by Buyer:

**9.1 Representations and Warranties.** The representations and warranties of Sellers contained in this Agreement shall be true and correct when made and on and as of the Closing Date as though such representations and warranties had been made on and as of such Closing Date; without giving effect to any amendment or supplement to the Schedules made after the date of this Agreement unless approved by Buyer in accordance with Section 7.8, and each and all of the terms, covenants and conditions of this Agreement to be complied with or performed by Seller on or before the Closing Date pursuant to the terms hereof shall have been duly complied with and performed in all material respects.

**9.2 Opinion of Sellers' Counsel** Buyer shall have received an opinion from counsel to Sellers, dated as of the Closing Date and addressed to Buyer and Buyer's Parent, in a form and substance satisfactory to Buyer and Buyer's counsel in the exercise of their reasonable discretion. Such opinion shall include any other matters incident to the matters herein contemplated as Buyer or Buyer's counsel may reasonably request. In rendering such opinion, counsel to Sellers may reasonably rely upon certificates of governmental officials and may place reasonable reliance upon certificates of officers of a Seller and Seller's Parent.

**9.3 Certain Contracts.** Buyer shall have: (i) obtained new or amended Hospital Managed Care Contracts and Physician Payor Contracts which shall in all respects be satisfactory to Buyer in its sole and complete discretion; or (ii) for such contracts not covered under clause (i) above, determined, in its sole and complete discretion, that the terms of each such existing contract is satisfactory to Buyer. Nashoba shall have obtained amendments or clarifications to the SNF Ground Lease and the Nashoba Medical Condominium Ground Lease (including related unit ground leases) such that the terms and conditions thereof are in conformance with the terms and conditions set forth in the notice provided for in Section 9.8.4.

**9.4 Pre-Closing Confirmations.** Buyer shall have obtained documentation or other evidence reasonably satisfactory to Buyer that:

- (a) Sellers have obtained the approvals, authorizations, consents and otherwise complied with the notice and filing requirements as are set forth in Schedule 5.2(b) and such approvals, authorizations and consents are satisfactory in all respects to Buyer in its sole and complete discretion; and
- (b) Buyer has received all approvals, licenses, consents and permits required for Buyer to acquire the Acquired Assets and to operate the Hospital as a fully licensed acute care hospital as are listed in Schedule 6.2(b) and such approvals, licenses, consents and permits are satisfactory in all respects to Buyer in its sole and complete discretion; and
- (c) Sellers and Buyer shall have complied with the waiting period requirements of the Hart Scott Act, if necessary.

**9.5 Material Adverse Change.** No Material Adverse Change shall have occurred with respect to the business, operations or prospects of the Hospital or the Acquired Assets.

**9.6 Extraordinary Liabilities/Obligations.** No Seller shall have incurred any liability or obligation outside the ordinary course of business since the date hereof which would constitute a Material Adverse Change. No Seller shall: (i) be in receivership or dissolution; (ii) have made any assignment for the benefit of creditors; (iii) have admitted in writing its inability to pay its debts as they mature; (iv) have been adjudicated a bankrupt; or (v) have filed a petition in voluntary bankruptcy, a petition or answer seeking reorganization, or an arrangement with creditors under the federal bankruptcy law or any other similar law or statute of the United States or any state, nor shall any such petition have been filed against any Seller.

**9.7 Vesting/Recordation.** Sellers shall have furnished to Buyer, in form reasonably acceptable to Buyer and reasonably approved by Buyer's counsel, deeds, leases, notices of leases, bills of sale, assignments or other instruments of transfer and consents and waivers by others, necessary or appropriate to transfer to and effectively vest in Buyer all of Sellers' right, title and interest in and to the Acquired Assets, in proper statutory form for recording if such recording is necessary or appropriate. Seller shall pay at Closing all documentary, stamp, transfer, recording, sales, use and other similar taxes or costs relating to, or occasioned by, the Contemplated Transactions.

**9.8 Title Policy, Survey and Zoning.**

**9.8.1 Title Commitment.** Within forty-five (45) days after the date of this Agreement, Buyer shall obtain a current title commitment(s) (the "Title Commitment") issued by a title company reasonably satisfactory to Buyer (the "Title Company"), which Title Company may obtain reinsurance through such title reinsurers and in such amounts as is reasonably acceptable to Buyer, together with legible copies of all exceptions to title referenced therein. The Title Commitment shall set forth the state of title, including without limitation all

easements, restrictions, rights-of-way, covenants, reservations, and all other encumbrances affecting the Real Property which would appear in an owner's title policy, if issued. The Title Commitment shall contain the express commitment of the Title Company to issue one (1) or more owners' and lenders' title policies (collectively, the "Title Policy") to Buyer and/or Buyer's lender(s), as the case may be, on an ALTA Policy Form reasonably satisfactory to Buyer and Buyer's lender(s) in an amount up to the maximum amount for which the Title Company will permit the Buyer to insure the Real Property.

Within seventy-five (75) days after the date of this Agreement, Buyer shall provide notice to Sellers of which exceptions shown on the Title Commitment are Objectionable Title Matters (as defined below), and any exceptions shown on the Title Commitment which are not Objectionable Title Matters together with the Approved Survey (as defined below) shall become the "Permitted Encumbrances". The Permitted Encumbrances shall then be attached to this Agreement as Schedule 5.16. Objectionable Title Matters are exceptions that constitute monetary encumbrances (voluntary or involuntary) affecting the Real Property and any other exception which materially interferes, or Buyer reasonably anticipates will materially interfere, with Buyer's proposed use of the Real Property as set forth herein. As to the Objectionable Title Matters, Sellers shall use commercially reasonable efforts to remove or amend such exception so that it will not materially interfere with Buyer's proposed uses. If despite Sellers' efforts to remove or amend such exception in accordance with the terms hereof, such exception has not been so removed or amended within sixty (60) days from the date Sellers have received notice of Buyer's objection to such exception, then Buyer shall have the right to terminate this Agreement in accordance with the provisions of Article 11 of this Agreement.

The Title Policy for the Hospital Real Property shall insure fee simple or leasehold (as applicable) title thereto and Buyer shall be able to obtain a commitment from the Title Company to insure fee simple title in the Real Property, subject only to Permitted Encumbrances and such other exceptions as Buyer shall approve in writing; and to include such reinsurance as the Title Company may require pursuant to reinsurance agreement with direct access to the reinsurers as Buyer may reasonably require. The Title Policy or commitment to provide same, shall provide full coverage against parties in possession, survey and mechanics' or materialmen's liens arising out of any work, labor, materials or services furnished or claimed to have been furnished to the Real Property or any part thereof prior to the Closing, and shall contain endorsements insuring over all standard general exceptions, including, without limitation, a 3.1 zoning endorsement, contiguity endorsements (if the Real Property consists of more than one adjacent separately described parcel), affirmative coverage for specific existing access, a comprehensive endorsement and such other endorsements as specified herein or as Buyer may reasonably require. The cost and expense of the Title Commitment and the Title Policy to be furnished to Buyer shall be borne by Buyer.

**9.8.2 Survey.** Within forty-five days (45) after the date of this Agreement, Buyer shall cause a complete ALTA Survey and Surveyor's Report (collectively the "Survey") to be completed.

The Survey shall, at a minimum, conform to ALTA/ACSM 1999 Land Title Survey Standards, and may include such options as reasonably requested by the Buyer, and shall: (i) be currently dated (which may include a current re-certification of a previously prepared survey plat); (ii) show the location on the Real Property of all improvements, fences, evidences of abandoned fences, lakes, ponds, creeks, streams, rivers, easements, roads and right-of-way; (iii) identify all easements and rights-of-way by reference to the recording information applicable to the documents creating such easements or rights-of-way; (iv) show any encroachments onto the Real Property from adjacent property, any encroachments from the Real Property onto adjacent property, and any encroachments into any easement or restricted area within the property, and any encroachments into any easement or restricted area within the Real Property; (v) locate all existing improvements (such as buildings, power lines, fences and the like); (vi) locate all dedicated public streets or other roadways providing access to the Real Property, including all curb cuts and all alleys; (vii) locate all set-back lines and similar restrictions covering the Real Property or any part thereof and any violations of such restrictions; and (viii) show thereon a legal description of the boundaries of the Real Property by metes and bounds or other appropriate legal description, and otherwise be in form and substance reasonably satisfactory to Buyer in all respects. The Survey shall further be in accordance with minimum technical standards for surveys of comparable property as set forth in all applicable laws, regulations or statements of professional surveying standards. The Survey shall contain the surveyor's certification to Nashoba, Buyer and the Title Company that: (a) the Survey was made on the ground; (b) there are no visible or recorded easements, discrepancies, conflicts, encroachments or overlapping of improvements except as shown on the Survey; (c) the Survey correctly shows all visible or recorded easements or rights-of-way of which the surveyor has been advised, including those matters affecting title reflected in the Title Commitment; (d) the Survey correctly shows the location of all building, structures and other improvements situated on the Real Property; (e) the Survey conforms to all applicable minimum guidelines for surveys of comparable property set forth in applicable laws, regulations or professional ALTA standards; (f) all streets abutting the Real Property and all means of ingress to and egress from the Real Property have been completed, dedicated and accepted for public maintenance by city, town or other appropriate political subdivision in which the Real Property is located; (g) except as shown thereon, the Real Property is not located within the 100-year flood plan or other flood hazard area; (h) the Survey is a true, correct, and accurate representation of the Real Property; and (i) such other matters as may be required by the Title Company to allow it to issue to the Title Policy. The cost of each Survey shall be borne by Buyer.

Within seventy-five (75) days of the date of this Agreement, Buyer shall provide notice to Nashoba of which matters shown on the Survey are Objectionable Survey Matters. An Objectionable Survey Matter is any Survey exception that interferes with, or which Buyer reasonably anticipates will interfere with, Buyer's proposed use of the Real Property. Except for such matters as are Objectionable Survey Matters, the Survey shall become the "Approved Survey", which together with the permitted exceptions of the Title Commitment, as set forth above, shall become the "Permitted Encumbrances". The Permitted Encumbrances shall then be attached to this Agreement as Schedule 5.16.

In the event that Buyer provides the aforesaid notice, Sellers shall use commercially reasonable efforts to remove or amend such exception so that it will not so interfere with Buyer's proposed uses. If despite Sellers' efforts to remove or amend such exception in accordance with the terms hereof, such exception has not been so removed or amended within sixty (60) days from the date Sellers received notice of Buyer's objection to such exception, then Buyer shall have the right to terminate this Agreement in accordance with the provisions of Article 11 of this Agreement.

Nashoba may cause the Survey to be updated at any time prior to the Closing to confirm that there are no encumbrances on the Real Property other than the Permitted Encumbrances.

**9.8.3 Zoning.** Within sixty (60) days after the date of this Agreement, Buyer shall analyze the federal, state and local zoning and permitting laws, rules and regulations applicable to the Real Property (the "Zoning and Permitting Due Diligence"). In the event Buyer determines, in Buyer's reasonable discretion, that, based on the Zoning and Permitting Due Diligence, any of said federal, state or local zoning and permitting laws, rules and regulations materially interfere, or may materially interfere with Buyer's proposed uses of the Real Property (including, without limitation, the construction of a Replacement Hospital), then Buyer shall provide written notice thereof to Sellers delivered not less than five (5) days subsequent to the end of the sixty day review period set forth above and such notice shall set forth, with reasonable specificity, the basis of Buyer's determination. Thereafter, Buyer, with the full and complete cooperation of Sellers, shall use commercially reasonable efforts to cure or obtain relief from each and every condition that Buyer determined would or might interfere with Buyer's proposed use of the Real Property. If despite such efforts Buyer has not been able to obtain such cure or relief within ninety (90) days of the delivery of the aforementioned notice, then Buyer may terminate this Agreement.

**9.8.4 Expedited Diligence Review of SNF Ground Lease and Nashoba Medical Condominium Ground Lease.** Within thirty (30) days after the date of this Agreement, Buyer shall complete its review of the SNF Ground Lease and Nashoba Medical Condominium Ground Lease (and any unit ground leases related thereto) and shall provide Sellers with written notice of Buyer's objections

to all or any portion of either. Such notice shall contain a written description of the changes, amendments or clarifications that, if obtained by Sellers, would render the terms and conditions of the SNF Ground Lease and, if applicable, Nashoba Medical Condominium Ground Lease (and related unit ground leases) reasonably acceptable to Buyer. Upon Sellers obtaining and recording such changes, amendments or clarifications, the SNF Ground Lease and the Nashoba Medical Condominium Ground Lease (and related unit ground leases) shall thereupon become part of the Permitted Encumbrances.

**9.9 Employees: Relationship, Transfer, Wages and Salaries, Notifications, and Compliance.** As of the Closing Date, Sellers shall, with all required notices, have ended its employment relationship with, all of Sellers' Employees in compliance with the provisions of applicable collective bargaining agreements, if any, and all Legal Requirements. Sellers shall have made arrangements according to the provisions of any applicable pension and retirement plans and in accordance with ERISA for the payment of any amounts distributable to all Sellers' Employees that as of the Closing are providing or had provided services at or in support of the Hospital in respect of pension and retirement plans. Sellers shall be responsible for preparing and providing to such employees wage information reports (Form W-2 and 1099 Reports) for wages and other compensation paid by a Seller. Sellers shall timely perform and discharge all requirements under applicable state and local laws and regulations for the notification of Sellers' Employees arising from the sale or lease of the Acquired Assets to the Buyer up to and including the Closing Date for those of Sellers' Employees who will become Transferred Employees effective as of the Effective Time.

**9.10 Closing Documents.** Each Seller and Sellers' Parent shall have executed and delivered to Buyer all of the Seller's Closing Documents to which it is a signatory.

**9.11 Real Property and Hospital Personal Property.** With respect to the Real Property and the Hospital Personal Property, Buyer shall have obtained, at its expense, such UCC lien searches, judgment lien searches and tax lien searches, updated at any time prior to the Closing, as it deems necessary. Such searches shall show no liens thereon except for Permitted Encumbrances, evidence of operating leases which are being assumed by Buyer, and liens which shall be released at or prior to Closing.

**9.12 Insurance.** Each Seller shall maintain existing coverages, in form and substance reasonably acceptable to Buyer, to insure against liabilities (including liabilities for deductibles) of such Seller related to the Hospital and relating to all periods prior to the Closing including, without limitation, Directors' and Officers' Liability, Employment Practices Liability, Pollution Liability, General Liability, and, for all physicians employed by Sellers, Professional Liability and, where applicable, to convert such prior liability insurance into occurrence coverage, the cost thereof to be paid for by Sellers, and in all events with Buyer and Buyer's Parent as additional named insureds where possible. Sellers shall have delivered to Buyer, prior to the Closing Date, certificates evidencing the same, which shall be reasonably acceptable to Buyer in all respects.

**9.13 MRI Capacity.** Buyer shall have received such approvals or shall have entered into such contractual or other arrangements, which, in the sole and complete discretion of Buyer,

shall assure access to fixed, hospital based, magnetic resonance imaging services for patients of the Hospital on the Hospital Real Property.

**9.14 Nashoba Medical Condominium Units.** In addition to the other terms and conditions set forth herein, the appropriate and applicable Seller shall convey to Buyer the Nashoba Medical Condominium Units at the Closing in accordance with the following requirements.

(a) Each of said units shall be conveyed together with (i) an undivided percentage interest in both the common areas and facilities of the Nashoba Medical Condominium and the organization of unit owners through which the Nashoba Medical Condominium is managed and regulated, (ii) the exclusive right to use the parking space and storage area, if any, assigned to each of the Nashoba Medical Condominium Units, and (iii) such other rights and easements appurtenant to the Nashoba Medical Condominium Units as may be set forth in any document governing the operation of the Nashoba Medical Condominium, including, without limitation, the Master Deed, the bylaws of the organization of unit owners, and any administrative rules and regulations adopted pursuant thereto (all of which are hereinafter referred to as the “Condominium Documents”).

(b) Each of the Nashoba Medical Condominium Units shall be conveyed by good and sufficient quitclaim deeds (in accordance with the provisions of Section 4.2.14 hereof) which deeds shall convey a good and clear record and marketable title thereto, free from all encumbrances other than the Permitted Encumbrances.

(c) Full possession of each of the Nashoba Medical Condominium Units shall be delivered free of all tenants and occupants, except for tenants and occupants whose tenancy and occupancy is then occurring pursuant to the leases for the Nashoba Medical Condominium Units set forth on Schedule 2.1.5, and in the same condition as they are as of the date hereof, reasonable use and wear thereof excepted.

(d) Collected rents and common expenses for the then current month shall be apportioned, adjusted and inserted on Schedule 3.3.1 as of the day of the Closing, and the conveyance of each of the Nashoba Medical Condominium Units shall be deemed to include the appropriate and applicable Seller’s allocable share of any working capital or other reserve funds held by the organization of unit owners, without adjustment or payment of any additional consideration by Buyer.

**9.15 Information System Support Agreement.** Buyer shall have entered into, with terms and conditions satisfactory to Buyer in its sole and complete discretion, an agreement between Sellers’ Parent and Buyer pursuant to which Sellers’ Parent will support the Meditech information system at the Hospital for a period of not less than six (6) months subsequent to Closing.

**9.16 Minimum Net Proceeds.** Buyer shall be satisfied, in Buyer’s reasonable discretion, that at the Effective Time and after (i) making such payments as are required to fully

satisfy and liquidate the CareGroup Related Obligations, and (ii) making such payments as are required to liquidate all other debt or other obligations of Sellers' arising prior to the Effective Time and not constituting an Assumed Liability or a portion of Net Working Capital, the amount of funds available to Sellers that are defined as Net Proceeds in Section 12.3.4 shall be equal to or greater than the amount set forth in Schedule 9.16.

## **10.0 CONDITIONS PRECEDENT TO CLOSING OBLIGATIONS OF SELLERS**

The obligations of Sellers hereunder are subject to the satisfaction, on or prior to the Closing Date, of the following conditions unless waived in writing by Sellers:

**10.1 Representations and Warranties.** The representations and warranties of Buyer and Buyer's Parent contained in this Agreement shall be true and correct when made and as of the Closing Date as though such representations and warranties had been made on and as of such Closing Date; and each and all of the terms, covenants and conditions of this Agreement to be complied with or performed by Buyer or Buyer's Parent on or before the Closing Date pursuant to the terms hereof shall have been duly complied with and performed in all material respects.

**10.2 Opinion of Buyer's Counsel.** Sellers shall have received from counsel to Buyer an opinion dated as of the Closing Date, in a form and substance satisfactory to Sellers and to Sellers' counsel in the exercise of their reasonable discretion. Such opinion shall include any other matters incident to the matters herein contemplated as Sellers or Sellers' counsel may reasonably request. In rendering such opinion, such counsel may rely upon certificates of governmental officials and may place reasonable reliance upon certificates of officers of Buyer.

**10.3 Pre-Closing Confirmations.** Sellers shall have obtained documentation or other evidence reasonably satisfactory to Sellers that:

- (a) Sellers have obtained the approvals, authorizations, consents and otherwise complied with the notice and filing requirements as are set forth in Schedule 5.2(b); and
- (b) Buyer has received all approvals, licenses, consents and permits required for Buyer to acquire the Acquired Assets and to operate the Hospital as a fully licensed acute care hospital as are listed on Schedule 6.2(b); and
- (c) Buyer and Sellers have complied with the waiting periods requirements of the Hart Scott Act, if necessary.

**10.4 No Material Adverse Change.** Since September 30, 2001 neither Buyer nor Buyer's Parent shall have experienced a Material Adverse Change.

**10.5 Extraordinary Liabilities/Obligations.** Neither Buyer or Buyer's Parent shall:  
(i) be in receivership or dissolution; (ii) have made any assignment for the benefit of creditors; (iii) have admitted in writing its inability to pay its debts as they mature; (iv) have been adjudicated a bankrupt; or (v) have filed a petition in voluntary bankruptcy, a petition or answer seeking reorganization, or an arrangement with creditors under the federal bankruptcy law or any



other similar law or statute of the United States or any state, nor shall any such petition have been filed against Buyer or Buyer's Parent.

**10.6 Closing Documents.** Buyer and Buyer's Parent shall each have executed and delivered to Sellers all of the Buyer's Closing Documents to which it is a signatory.

## **11.0 TERMINATION**

Notwithstanding anything herein to the contrary, this Agreement may be terminated at any time: (i) on or prior to the Closing Date by mutual consent of Buyer and Sellers; (ii) on or prior to the Closing Date by Buyer, if there has been a Material Adverse Change in the operations of the Hospital or any of the Acquired Assets since the date hereof; (iii) on or prior to the Closing Date by Sellers, if Buyer or Buyer's Parent has experienced a Material Adverse Change; (iv) by Buyer if on the Closing Date any of the conditions specified in Article 9 of this Agreement have not been satisfied and shall not have been waived by Buyer; (v) by Buyer or Sellers if a Governmental Body shall have refused to approve the Contemplated Transactions, and such decision is not subject to an appeal; (vi) by Sellers in accordance with the provisions of Section 8.4 or if on the Closing Date any of the conditions specified in Article 10 of this Agreement have not been satisfied and shall not have been waived by Sellers; (vii) by Buyer if Seller has not cured title or survey exceptions, if any, in accordance with the provisions of Sections 9.8.1 and 9.8.2; (viii) by Buyer in accordance with the provisions of Sections 7.8 or 9.8.3; or (ix) at the option of either Buyer or Sellers if the Closing shall not have taken place on or before 11:59 p.m. on January 31, 2003 (which date may be extended by mutual agreement of Buyer and Nashoba). Termination of this Agreement by a Party shall not preclude the terminating Party from seeking all remedies otherwise available to it for breach of a representation, warranty or covenant hereunder by the other Party.

## **12.0 POST-CLOSING OBLIGATIONS OF PARTIES**

### **12.1 Post-Closing Obligations of Both Parties.**

**12.1.1 Post-Closing Access to Information.** Sellers and Buyer acknowledge that subsequent to Closing a Party may need reasonable access to information or documents (including personnel records) in the control or possession of one or more of the other Parties for the purposes of concluding the Contemplated Transactions, audits, compliance with Legal Requirements, and the prosecution or defense of third party claims. Accordingly, Sellers and Buyer agree that, for a period ending on the later of: (i) the date that is five (5) years after Closing or (ii) the date upon which any open matters have been finally resolved, each will make reasonably available to the other's agents, independent auditors and/or Governmental Bodies upon written request and at the expense of the requesting Party such documents and information as may be available relating to the Acquired Assets for periods prior and subsequent to Closing to the extent necessary to facilitate concluding the Contemplated Transactions, audits, compliance with Legal Requirements and the prosecution or defense of claims.

**12.1.2 Cooperation on Tax Matters.** Following the Closing, the Parties shall cooperate fully with each other and shall make available to the other, as reasonably requested and at the expense of the requesting Party, and to any taxing authority, all information, records or documents relating to tax liabilities or potential tax liabilities of Sellers for all periods on or prior to the Closing and any information which may be relevant to determining the amount payable under this Agreement, and shall preserve all such information, records and documents (to the extent a part of the Acquired Assets delivered to Buyer at Closing) at least until the expiration of any applicable statute of limitations or extensions thereof. Sellers shall make available to Buyer the records of individual wages of all Transferred Employees, as well as copies of state unemployment tax returns, to the extent necessary for Buyer to verify future unemployment tax rates and to calculate the correct taxable payroll for the remainder of the calendar year in which the Closing occurs.

**12.1.3 Misdirected Payments, Etc.**

(a) Sellers and Buyer covenant and agree to remit, with reasonable promptness, to the other any payments received, which payments are on or in respect of accounts or notes receivable owned by (or are otherwise payable to) the other.

(b) In addition, and without limitation, in the event of a determination by any Program or other third-party payor that payments to a Seller or the Hospital resulted in an overpayment or other determination that funds previously paid by any Program or third-party payor to a Seller or the Hospital must be repaid, Sellers shall be responsible for repayment of said monies (or defense of such actions) if such overpayment or other repayment determination was for services rendered prior to the Closing Date, and Buyer shall be responsible for repayment of said monies (or defense of such actions) if such overpayment determined was for services rendered after the Closing Date.

(c) In the event that, following Closing, Buyer suffers any offsets against reimbursement due to Buyer under any Program or other third party payor or reimbursement programs as a result of amounts owing under any such programs by a Seller or any Affiliate of a Seller, any Seller shall, upon written demand from Buyer, pay to Buyer the amounts so offset within thirty (30) days of such demand.

**12.1.4 Uncompensated Care Pool.**

(a) **Settlements for Periods Prior to October 1, 2002.** Sellers shall remain fully responsible for all Uncompensated Care Pool Settlements for and with respect to the period ending September 30, 2002.

(b) **Settlements for Periods Subsequent to September 30, 2002.** With respect to any Uncompensated Care Pool Settlement for the fiscal year commencing October 1, 2002, Nashoba and Buyer shall allocate between them the responsibility for, or the right to, the amount finally determined to be due to or

due from the Uncompensated Care Pool for such fiscal year. Such allocation shall be done on the basis of the percentage of such year each such respective Party owned and operated the Hospital.

**12.1.5 Assumed Liabilities.** In the event any required approval of, or consent to the transfer and assignment of, any of the Assumed Leases or Assumed Contracts has not been validly obtained, the following provisions shall apply. Buyer shall assume and shall pay, satisfy, perform and discharge a Seller's liabilities and obligations arising thereunder on or after the Effective Date, and such Seller will deliver to Buyer all benefits received thereunder, unless Buyer's enjoyment of the rights and benefits under any such Agreement is expressly terminated or denied by the other party thereto by affirmative action in whole or in part because of such failure to obtain approval or consent or because of any act or omission prior to the Effective Time, and not because of any other act or omission by Buyer that separately would be cause for termination under the terms of such Agreement pursuant to the terms of such Agreement or as a matter of law or equity. The liabilities and obligations assumed pursuant to the immediately preceding sentence shall also constitute "Assumed Liabilities" for the purposes of this Agreement, including, without limitation, Section 2.3 hereof.

**12.1.6 Accounts Receivable.**

**(a) Right to Perform Valuation.** The Parties acknowledge that such of Hospital Accounts Receivable as may remain uncollected as of the date set forth in Section 3.2.4., will, in accordance with industry standards, likely be of no or minimal value. Notwithstanding the foregoing, Nashoba may, in its sole and complete discretion but otherwise subject to the provisions of this Section 12.1.6, elect to have an independent third party valuation of such uncollected Hospital Accounts Receivable performed (the "Valuation").

**(b) Valuation Process.** Not less than twenty (20) and not more than forty (40) days prior to the date that is one year subsequent to the Closing, representatives of Essent and Nashoba shall meet to discuss the status of Essent's efforts to collect Hospital Accounts Receivable. Nashoba may elect to have the Valuation performed by written notice to Buyer delivered not later than fifteen (15) days subsequent to the date Buyer's calculation is delivered to Sellers pursuant to Section 3.2.4. In such event and only in such event, Nashoba shall have the right to retain, at its sole cost and expense, a nationally known accounting firm with recognized expertise in the valuation of health care accounts receivable, to value the Hospital Accounts Receivable and Buyer shall provide such accounting firm with all information reasonably required in order to perform the Valuation. The Valuation shall: (i) be completed and submitted to Buyer within thirty (30) days of the delivery of Sellers' written notice to Buyer of its election to have the Valuation performed; (ii) consider and take into account, as a net against collections, all costs and expenses, both internal and external, likely to be expended by the owner of such Hospital Accounts Receivable to seek

collection of the same; and (iii) value such Hospital Accounts Receivable in accordance with industry standards for valuing health care accounts receivable for the purpose of providing loan collateral. In the event the amount determined by the Valuation is a positive number, within thirty (30) days of the submission of the Valuation to Buyer, Buyer shall pay Nashoba such amount and Buyer shall retain title to all Hospital Accounts Receivable. In the event the amount determined by the Valuation is zero or a negative number, no further action shall be required by Buyer or Sellers and title to all Hospital Accounts Receivable shall remain vested in Buyer without further consideration or action.

**12.1.7 Sellers' Continued Use of Space.** Buyer shall permit Sellers to have access to and utilize space, without charge for the space but with appropriate charges, if any, for any support services provided, on the Real Property for a period of not more than three years subsequent to the Closing for the purposes of better enabling Sellers to wind up their businesses and meet their post closing obligations under this Agreement. The Parties acknowledge that the location and square footage of such space may change over time consistent with Sellers' needs and Buyer's operation of (and renovations to) the Hospital.

**12.2 Post-Closing Obligations of Buyer.** In addition to those post-closing obligations as are expressly or by clear implication provided for elsewhere in this Agreement, Buyer shall have the post-closing obligations provided for in this Section 12.2. Notwithstanding any provision of this Agreement to the contrary, any rights of a Seller arising under this Section 12.2 shall be exercisable only by Nashoba.

**12.2.1 Capital Commitment.** During the period ending December 31, 2008, Buyer shall make or cause to be made by arrangement with a third party, an aggregate capital investment in the Hospital or the Hospital Real Property in an amount of not less than sixteen million dollars (\$16,000,000) (the "Capital Commitment"); provided, however, that: (i) as part of the Capital Commitment and not in addition thereto, Buyer shall make or cause to be made by arrangement with a third party, a capital investment of not less than two million dollars (\$2,000,000) by June 30, 2003, which expenditures shall be materially consistent with a list of intended expenditures developed by Buyer and delivered to Sellers prior to the Closing (said list to thereupon be attached to this Agreement as Schedule 12.2.1(i)); (ii) in the event Buyer elects not to build a Replacement Hospital or a New Hospital, as part of the Capital Commitment and not in addition thereto, Buyer shall make or cause to be made by arrangement with a third party, an additional capital investment of not less than one million five hundred thousand dollars (\$1,500,000) prior to December 31, 2004 (such that the aggregate amount so invested shall be at least \$3,500,000); and (iii) in the event the Buyer elects to build a New Hospital pursuant to the provisions of Section 12.2.2, the Capital Commitment may be made and invested at the site selected for the New Hospital. The decision as to the types of capital investments to be made pursuant to clauses (i) and (ii) above shall be made in consultation with the Advisory Board, if then constituted and sitting, and the Medical Staff. In the

event that Buyer has not made or caused to be made any portion of the Capital Commitment which it is obligated to make during the periods set forth above, Buyer shall, within one hundred and twenty (120) days subsequent to the end of the period in which such investments were to be made and providing such amount has not been invested during such 120 day period, pay to Nashoba the difference between the amount that was required by this Agreement to be made during such period and the amount made during such period. In the event that Nashoba disputes the characterization of any investment to be made hereunder as a capital investment or the amount of any payment made or to be made by Buyer to Nashoba hereunder, Buyer and Nashoba shall resolve such dispute solely in accordance with the provisions of Section 3.2.3.

#### **12.2.2 Capital and Strategic Plan.**

(a) Feasibility Study. Subsequent to the Closing, Buyer shall conduct a feasibility study (the “Feasibility Study”) for the purpose of evaluating the following strategic options: (i) the renovation and limited expansion of the existing facility on the Real Property (the “Renovated Hospital Option” and the “Renovated Hospital”); (ii) the construction of a replacement facility on the Real Property (the “Replacement Hospital Option” and the “Replacement Hospital”); and (iii) the construction of a new facility on a location other than the Real Property but otherwise within the Hospital Primary Service Area and the closure of the current Hospital facility (the “New Hospital Option” and the “New Hospital”). The Feasibility Study shall, without limitation, consider such factors as: (i) the current condition of the physical plant; (ii) the location of the Hospital within the Hospital Primary Service Area with respect to access; (iii) the ability of the current physical plant to accommodate current, new and expanded programs and technologies; (iv) the number of beds and range of services to be offered by the Hospital over the next ten years; (v) the current and projected change in the demographics of the Hospital Primary Service Area; (vi) the cost and financial feasibility of each option; (vii) projected changes in the health care delivery and financing system; (viii) the status of Hospital operations and performance subsequent to the Closing; and (ix) the ability of the Hospital to qualify for and receive all requisite licenses, permits, consents and other approvals required for any of the options from Governmental Bodies with jurisdiction over the projects contemplated by the respective options. In determining the scope of, conducting, and reviewing the Feasibility Study, Buyer shall seek the active input of members of the Medical Staff and the Advisory Board.

(b) Decision Deadline; Notice. Buyer shall provide written notice to Nashoba of its decision as to which option it has selected not later than July 1, 2004.

(c) Renovated Hospital Option. In the event that Buyer elects to proceed with the Renovated Hospital Option, within sixty (60) days of Nashoba’s receipt of the written notice set forth in clause (b) above, Nashoba shall convey the Real Property to Buyer in accordance with the terms of the Hospital Property Lease.

(d) Replacement Hospital Option. In the event that Buyer elects the Replacement Hospital Option, within sixty (60) days of Nashoba's receipt of the written notice set forth in clause (b) above: (i) Buyer shall post an irrevocable letter of credit in favor of Nashoba in the amount of three million dollars (\$3,000,000) (the "Letter of Credit") to guarantee the commencement of construction of the Replacement Hospital; and (ii) Seller shall convey the Real Property to Buyer in accordance with the terms of the Hospital Property Lease. Upon the commencement of construction of the Replacement Hospital, Buyer shall be entitled to reduce the Letter of Credit on a dollar for dollar basis for each dollar expended for such construction and the Letter of Credit shall terminate upon the expenditure by Buyer of an amount equal to three million dollars (\$3,000,000) for such construction.

(e) New Hospital Option. In the event that Buyer elects the New Hospital Option, within sixty (60) days of Nashoba's receipt of the written notice set forth in clause (b) above, Buyer shall post the Letter of Credit to guarantee the construction of the New Hospital. Upon the commencement of construction of the New Hospital, Buyer shall be entitled to reduce the Letter of Credit on a dollar for dollar basis for each dollar expended for such construction and the Letter of Credit shall terminate upon the expenditure by Buyer of an amount equal to three million dollars (\$3,000,000) for such construction. Upon the substantial completion of the construction of the New Hospital and the transfer of all patients and services to the New Hospital, the Hospital Property Lease shall terminate.

(f) Non Performance Under Replacement Hospital Option and New Hospital Option. In the event that the construction of the Replacement Hospital or the New Hospital is not substantially completed by December 31, 2008, Nashoba will be entitled to: (i) the amount of the Letter of Credit still outstanding, if any, which shall for all purposes reduce the Capital Commitment by the amount of the Letter of Credit so outstanding; plus (ii) its remedies under Section 12.2.1 for failure, if any, to make the Capital Commitment.

(g) Failure to Receive Requisite Approvals. In the event that, on or prior to December 31, 2005, Buyer, despite commercially reasonable best efforts, fails to obtain any license, permit, consent or approval of any Governmental Body which is required in order for Buyer to undertake and complete the New Hospital Option or the Replacement Hospital Option in accordance with all Legal Requirements, Buyer may, upon written notice to Nashoba, elect to not proceed with either the New Hospital Option or the Replacement Hospital Option, and, instead, to proceed with the Renovated Hospital Option. Upon the issuance of such notice, the Letter of Credit will terminate.

**12.2.3 Preservation and Access to Records After the Closing.** After the Closing, Buyer shall, in the ordinary course of business and as required by law, keep and preserve all medical records and other records of the Hospital existing as

of the Closing and which constitute a part of the Acquired Assets delivered to Buyer at Closing. Buyer acknowledges that as a result of entering into this Agreement and operating the Hospital it will gain access to patient and other information which is subject to rules and regulations concerning confidentiality. Buyer agrees to abide by any such rules and regulations relating to the confidential information it acquires. Buyer agrees to maintain the patient records delivered to Buyer at Closing at the Hospital after Closing in accordance with all Legal Requirements, and requirements of relevant insurance carriers, all in a manner consistent with the maintenance of patient records generated at the Hospital after Closing. Upon reasonable notice, during normal business hours, at the sole cost and expense of Sellers and upon Buyer's receipt of appropriate patient consents and authorizations (to the extent obtainable), Buyer will afford to the representatives of Sellers, including their counsel and accountants, full and complete access to, and copies of, the records transferred to Buyer at the Closing (including access to patient records in respect of patients treated by any Seller at the Hospital). Upon reasonable notice, during normal business hours and at the sole cost and expense of the applicable Seller, Buyer shall also make its officers and employees available to such Seller at reasonable times and places after the Closing. In addition, such Seller shall be entitled to have certified copies of any such patient records, but only for purposes of pending litigation involving a patient to whom such records refer, as certified in writing by counsel retained by such Seller in connection with such litigation and only upon Buyer's receipt of appropriate patient consents and authorizations. Any patient records so removed from the Hospital shall be promptly returned to Buyer following its use by such Seller. Any access to the Hospital, its records or Buyer's personnel granted to a Seller in this Agreement shall be upon the condition that any such access is reasonably exercised so as to not interfere with the business operations of Buyer or the Hospital.

**12.2.4 Intended Uses.** Buyer agrees to maintain and operate within the Hospital Primary Service Area for a period ten (10) years subsequent to the Closing Date, as an acute care hospital with: (i) a twenty-four hour, seven day a week emergency room; (ii) intensive care services; (iii) medical and surgical inpatient services; (iv) outpatient services; and (v) diagnostic services including laboratory and radiology. The option to repurchase agreement, to be delivered at Closing pursuant to Sections 4.2.7 and 4.3.8, provides certain remedies to Nashoba in the event of a default by Buyer under this Section 12.2.4.

**12.2.5 Continuation of Services.** For a period of ten (10) years subsequent to the Closing and consistent with community need and Buyer's fiscal resources and service priorities, Buyer will use its commercially reasonable best efforts to continue to offer, within the Hospital Primary Service Area, substantially all of the health care services provided on the Hospital Real Property by Sellers at the Closing Date. Such efforts shall not apply to, and Buyer shall have no obligations under this Agreement with respect to, health care services now or hereafter provided by The Apple Valley Limited Partnership. Prior to a significant

reduction in or the cessation of any such health care service Buyer will: (i) seek input from the Advisory Board with respect to the impact of such significant reduction or cessation on the community and the orderly development of health care in the region served by the Hospital; and (ii) comply with all rules or regulations of any Governmental Body with respect to such reduction in or cessation of such health care service.

**12.2.6 Promotion of Health Care.** Buyer agrees to promote health care for residents of the Hospital's service area, particularly the delivery of health care services to individuals unable to pay for such services and the conduct of health education, screening, immunization and other preventive medicine programs in the community. Buyer agrees to make its facilities reasonably available for the use of community and self-help groups. For a period of six (6) years subsequent to the Closing, Buyer shall provide Nashoba with a copy of each report it is required to file, or voluntarily files, with: (i) the Attorney General; or (ii) the Department in compliance with any condition of the Department's approval of Buyer's Determination of Need for the issuance to the Buyer of an original license to own and operate the Hospital

**12.2.7 Advisory Board.** The Parties agree that the Hospital will have an advisory board, which may be known as the board of trustees, comprised of not less than nine (9) individuals, up to three of which will be representatives of Buyer (the "Advisory Board"). With respect to the remaining representatives not less than five will be individuals residing or working in the Hospital's Primary Service Area of which (i) not less than two will be physicians providing services within the Hospital's Primary Service Area and (ii) not less than two will be lay representatives residing or working within the Hospital's Primary Service Area. The Advisory Board will be consulted regarding the scope and finding of the Feasibility Study, the selection of the Renovated Hospital Option, the Replacement Hospital Option and the new Hospital Option, and significant decisions relating to the operations of the Hospital, such as evaluation of management, clinical quality monitoring and overall strategic direction. The composition and authority of the Advisory Board shall be consistent with requirements contained in the Department's approval of Buyer's Determination of Need for the issuance to the Buyer of an original license to own and operate the Hospital.

**12.2.8 Subsequent Sale or Transfer of Acquired Assets Prior to January 1, 2006.**

**(a) Definitions.**

A "Qualifying Transaction" means any sale, transfer, conveyance, lease or other disposition of all or any part of the Acquired Assets that results in the rights and obligations of Buyer or any Affiliate of Buyer, as the holder of a license issued by the Department to own and operate the Hospital, being conveyed or transferred to and assumed by a Qualifying Transferee. A transaction shall not be deemed or



considered a “Qualifying Transaction” solely on the basis that such transaction constitutes a change in ownership under federal or state law, or rules or regulations of a Program or other third party payor, or requires the issuance of a new license to operate a hospital under state law.

A “Qualifying Transferee” means any Person, other than Buyer or an Affiliate of Buyer, which assumes, accepts and is issued a license from the Department to own and operate the Hospital pursuant to a Qualifying Transaction.

“Acquired Assets” for the purposes of this Section 12.2.8 only, shall mean the Acquired Assets as defined in Section 2.1 plus all improvements, replacements, expansions, substitution and relocations of the facilities, activities and operations of the Hospital.

**(b) Buyer Payments in Event of a Qualifying Transaction.** In the event that prior to January 1, 2006 a Qualifying Transaction occurs, then Buyer or Buyer’s Affiliate shall pay to Nashoba an amount, if any, determined by:

(i) Adding the fair market value of all consideration, however denominated and whenever received and in all events calculated at present value, including, without limitation, cash, notes, tangible and intangible property (whether real or personal), credits, waivers, forgiveness, or other assets of direct or indirect value to Buyer or any Buyer’s Affiliate, fairly allocated to the transfer of the Acquired Assets in the event the transaction giving rise to a Qualifying Transaction involves assets in addition to the Acquired Assets; and

(ii) Subtracting from the amount determined pursuant to clause (i) above, the sum of the following:

(aa) eight million six hundred thousand dollars (\$8,600,000); plus

(bb) all costs and expenses paid or incurred by Buyer or any Buyer’s Affiliate in connection with the initial acquisition of the Acquired Assets not otherwise included in (aa) above, or the calculation of capitalized expenses under clause (dd) or the calculation of operating losses under clause (ee); plus

(cc) all costs and expenses paid or incurred by Buyer or any Buyer’s Affiliate in connection with the Qualifying Transaction, not otherwise included in the calculation of capitalized expenses under clause (dd) below or operating losses under clause (ee) below, fairly allocated to the transfer of the Acquired Assets in the event the transaction giving rise to a Qualifying Transaction involves assets in addition to the Acquired Assets; plus

(dd) all costs and expenses incurred by Buyer or any Buyer's Affiliate, subsequent to the Closing and through the date upon which the Qualifying Transaction occurs, with respect to the Acquired Assets that are properly characterized as capital expenses in accordance with GAAP and not otherwise included in clauses (aa), (bb) or (cc) above; plus

(ee) the costs and expenses incurred by Buyer or any of Buyer's Affiliates subsequent to the Closing and through the date upon which the Qualifying Transaction occurs, with respect to the Acquired Assets that are property characterized as net losses determined in accordance with GAAP and not otherwise included in clauses (bb) or (cc) above.

(iii) In the event the amount determined under clauses (i) and (ii) above is a positive number, Buyer or Buyer's Affiliate shall pay Nashoba an amount calculated by multiplying such number by the following:

(aa) if the Qualifying Transaction occurs during calendar year 2003, one hundred percent (100%);

(bb) if the Qualifying Transaction occurs during calendar year 2004, eighty percent (80%); and

(cc) if the Qualifying Transaction occurs during calendar year 2005, sixty percent (60%).

(iv) In the event the amount determined under clauses (i) and (ii) above is zero or a negative number, or an otherwise Qualifying Transaction occurs on or subsequent to January 1, 2006, no amount shall be due Nashoba, or any other Seller, on account of the Qualifying Transaction.

(v) The amount due under this Section 12.2.8, if any, shall be payable within ten (10) days of its determination but in any event within ninety (90) days of the closing of the Qualifying Transaction.

(c) Dispute/Intent. Any dispute between Buyer and Nashoba with respect to the amount determined under (b)(i) and b(ii) above may be submitted by either Party to the Accountants for resolution in accordance with Section 3.2.3. The Parties acknowledge and agree that the intent of this Section 12.2.8 is to provide a formula whereby Nashoba will be paid and receive the above stated proportionate share of any aggregate and cumulative net profit gained or earned by Buyer or Buyer's Affiliate arising out of a Qualifying Transaction occurring on or prior to December 31, 2005.

**12.3 Post-Closing Obligations of Sellers.** In addition to those post-closing obligations as are expressly or by clear implication provided for elsewhere in this Agreement, Sellers shall have the post-closing obligations provided for in this Section 12.3.

**12.3.1 Nashoba Cost Reports** Nashoba, at its sole expense, will prepare and timely file all cost reports relating to its operations for periods ending on or prior to the Closing Date or required as a result of the consummation of the Contemplated Transactions, including without limitation those relating to the Programs (the “Nashoba Cost Reports”). Nashoba shall provide Buyer with copies of Nashoba Cost Reports at least thirty (30) days prior to filing. Buyer will use Buyer's reasonable best efforts to forward to Nashoba any and all material correspondence relating to Nashoba Cost Reports within five (5) business days after receipt by Buyer. Buyer will remit any receipts relating to the Nashoba Cost Reports promptly after receipt by Buyer and will use Buyer's reasonable best efforts to forward any demand for payments within five (5) business days after receipt by Buyer. Nashoba shall remain obligated for all amounts due the Programs and such other third-party payors with respect to Nashoba Cost Reports. Nashoba shall retain all rights to the Nashoba Cost Reports including any receivables or payables resulting from Nashoba Cost Reports or reserves relating to Nashoba Cost Reports. Such rights shall include the right to appeal any determinations relating to the Nashoba Cost Reports. Nashoba shall retain the originals of the Nashoba Cost Reports, correspondence, work papers and other documents relating to the Nashoba Cost Reports. Nashoba will furnish copies of such documents to Buyer upon Buyer's reasonable request and allow Buyer reasonable access to such documents.

**12.3.2 Sellers' Benefit Plans.** Buyer shall assume no responsibility or liability with respect to any Sellers' Benefit Plans (as defined above in Section 2.4(q)) or any employee benefit plans of any ERISA Affiliate of a Seller (for the purposes of this Section 12.3.2 an “employee benefit plan” shall be as defined in Section 3(3) of ERISA). Sellers shall remain strictly liable for all liabilities with respect to any and all Sellers' Benefit Plans and any employee benefit plans of any ERISA Affiliate of a Seller, including, but not limited to, the following: (i) any excise tax, penalty tax, monetary sanction or fine related to any Sellers' Benefit Plans or any employee benefit plans of an ERISA Affiliate of a Seller that may be imposed by the DOL, the IRS or any other Governmental Body; (ii) COBRA liability related to any Sellers' Benefit Plans or any employee benefit plans of an ERISA Affiliate of a Seller; (iii) any required contributions or underfunding liabilities which may exist for any of Sellers' Benefit Plans or any employee benefit plans of an ERISA Affiliate of a Seller; (iv) any prohibited transactions as defined in Section 406 of ERISA or Section 4975 of the Code which may have occurred with respect to any of Sellers' Benefit Plans or any employee benefit plans of an ERISA Affiliate of a Seller; (v) any action, suit, grievance or other manner of litigation, or claim with respect to the assets thereof or any of the employee benefit plans or administration or payment of benefits thereunder, which is pending, threatened or imminent against or with respect to any of the employee benefit plans, a Seller, any ERISA Affiliate or fiduciary, as such term is defined in Section 3(21) of ERISA

including, but not limited to, any action, suit, grievance or other manner of litigation, or claim regarding conduct that allegedly interferes with the attainment of rights under any of Sellers' Benefit Plans or any employee benefit plans of an ERISA Affiliate of a Seller; (vi) any liability for failure to comply with ERISA or the Code or any action or failure to act in connection with the administration, operation or investment of such Sellers' Benefit Plans or any employee benefit plans of an ERISA Affiliate; and (vii) any action, suit, grievance or other manner of litigation, or claim with respect to any of the Sellers' Benefit Plans or any employee benefit plans of an ERISA Affiliate of a Seller by the DOL, IRS or any other Governmental Body.

**12.3.3 Cooperation with Buyer.** Sellers shall cooperate with Buyer to facilitate the Hospital's ability to maintain and expand its delivery of services to the community served by the Hospital.

**12.3.4 Allocation, Use and Retention of Consideration.**

(a) Allocation of Consideration. The Parties acknowledge that a portion of the Closing Payments will, upon the Closing, be paid to Sellers' Parent or other Persons designated by Nashoba. The balance of the Consideration paid pursuant to Section 3.1, any subsequent releases to Sellers from the Escrow Account, and any amounts otherwise paid to the Sellers by Buyer pursuant to any post closing adjustments or obligations will be delivered to Nashoba. Sellers shall have any and all responsibility for allocating such amounts among them (and such amounts, whenever received, wherever located, and however reduced by expenditures permitted under Section 12.3.4(b) hereafter, hereinafter the "Net Proceeds").

(b) Prioritization of Funds Applications, Restrictions on Use and Retention of Net Proceeds. Except as provided hereinafter in clause (c) or upon the written consent of Buyer given in Buyer's sole and complete discretion, for the period commencing upon the Closing Date and ending on February 1, 2008, Sellers shall first utilize such funds available to Sellers that do not constitute Net Proceeds and thereafter, and only thereafter, use funds constituting the Net Proceeds solely and exclusively for any of the following purposes: (i) liquidating any obligation of any Seller arising out of activities of any such Seller through the Closing Date; (ii) meeting any obligation of any Seller under this Agreement or under any of Sellers' Closing Documents; and (iii) winding up the activities, businesses and affairs of any Seller.

(c) Merger and Dissolution. Notwithstanding the provisions of Section 12.3.4(b) above, Buyer, subject to the conditions hereinafter set forth, hereby consents to the following actions by Sellers post Closing.

(i) At any time subsequent to the Closing, NMS may merge into JBP, JBP may merge into NMS, or JBP and NMS may each merge into Nashoba, provided, however, that a condition of any such merger shall be that in each such event the

surviving entity shall assume, by operation of law and by the agreement of merger, all of the obligations and responsibilities of the non-surviving entity.

(ii) At any time subsequent to the Closing, NMS and JBP may dissolve, provided, however, that the conditions of such dissolutions shall include a commitment, enforceable by Buyer that: (x) all Net Proceeds then in the possession of NMS or JBP, and all other assets of NMS or JBP, if any shall exist, shall be transferred to Nashoba; and (y) all obligations and liabilities of NMS or JBP, under this Agreement or otherwise, shall be assumed by Nashoba.

(iii) At any time subsequent to February 1, 2006, Nashoba may dissolve, provided, however, that the conditions of such dissolution shall include a commitment, enforceable by Buyer, that: (x) all Net Proceeds then existing shall be transferred to a foundation that is established, with the approval of the Attorney General, as a successor in interest to Nashoba's rights under this Agreement (the "Foundation"); and (y) the Foundation shall assume and accept as a condition of such transfer, all obligations and liabilities of Sellers to Buyer under this Agreement including, without limitation, the restrictions on the use of Net Proceeds set forth in Section 12.3.4(b), provided, however, that the obligations so assumed by the Foundation (other than obligations with respect to limitations on the use of Net Proceeds) shall be satisfied only from the Net Proceeds and the Foundation shall not be obligated to utilize any funds of the Foundation that are not Net Proceeds to satisfy any obligation to Buyer so assumed (other than obligations with respect to limitations on the use of Net Proceeds) .

**12.3.5 Compliance with Terms of Hospital Property Lease.** Nashoba shall comply in all respect with the terms and conditions of the Hospital Property Lease and the option to purchase that is contained therein.

## **13.0 INDEMNIFICATION**

**13.1 Indemnification by Sellers.** Subject to the provisions of this Article 13, and except for matters arising out of conditions, if any, set forth in Schedule 13.1, Sellers shall defend and indemnify Buyer and hold Buyer wholly harmless from and against, any and all Losses that Buyer incurs as a result of, or with respect to, the following (all of the following hereinafter "Buyer's Damages"):

(i) the operation of the Hospital or any of the Acquired Assets prior to the Effective Time (other than Assumed Liabilities) including, without limitation, losses, liabilities, damages, costs and expenses arising out of conditions of or pertaining to the Acquired Assets that at the Effective Time (a) were known to Buyer, or (b) had been disclosed to Buyer by a Seller either orally or on a Schedule attached hereto, or (c) the existence of which did not constitute a breach of a representation or warranty; and

(ii) any and all debts, obligations or liabilities of a Seller that (a) are retained by a Seller as an Excluded Liability or (b) were not specifically assumed by Buyer pursuant to the terms of this Agreement as an Assumed Liability under Section 2.3 hereof; and

(iii) any claims or other actions of any kind or nature arising out of or in connection with any Seller, any Sellers' Employees, or any of Sellers' Benefit Plans or employee benefits plans, as defined in Section 3(3) of ERISA, of an ERISA Affiliate, working conditions, or termination of employment; and

(iv) any breach of a representation, warranty or covenant made by a Seller hereunder (including Sellers' covenants of this Section 13.1) without regard to whether or not Buyer had any knowledge of any prior defect in same.

Sellers acknowledge and understand that Buyer, in entering into this Agreement and the Contemplated Transactions, is relying upon Sellers' covenant to retain responsibility for, and indemnify Buyer against, any of Buyer's Damages caused by or arising out of any and all of the foregoing.

**13.2 Indemnification by Buyer.** Subject to the provisions of this Article 13, Buyer shall defend and indemnify each Seller and hold each Seller wholly harmless from and against any and all Losses that such Seller incurs as a result of, or with respect to, the following (all of the following hereinafter "Sellers' Damages"):

(i) the operation of the Hospital or any of the Acquired Assets on or after the Effective Time; and

(ii) any and all debts, obligations or liabilities of Sellers that are Assumed Liabilities under Section 2.3 hereof; and

(iii) any breach of a representation, warranty or covenant made by Buyer hereunder (including Buyer's covenants under Section 8.3.1 and this Section 13.2) without regard to whether or not Sellers had any knowledge of any prior defect in same.

Buyer acknowledges and understands that Sellers, in entering into this Agreement and the Contemplated Transactions, are relying upon Buyer's covenant to assume responsibility for, and indemnify Sellers against, any of Sellers' Damages caused by or arising out of any of the foregoing.

**13.3 Thresholds.** Notwithstanding the provisions of Section 13.1(i) or 13.2(i) to the contrary, a Party shall not be liable under Section 13.1(i) or 13.2(i) until the total of all indemnification claims against Buyer on the one hand, and Sellers on a cumulative basis on the other hand, made under Section 13.1 or 13.2 as the case may be, exceed \$25,000 in the aggregate, and then only to the extent such indemnification claims exceed \$25,000.

**13.4 Notice and Control of Litigation.** If any claim or liability is asserted in writing against a Party entitled to indemnification under this Article 13 (the "Indemnified Party") which

would give rise to a claim under this Article 13, the Indemnified Party shall notify the person giving the indemnity (the “Indemnifying Party”) in writing of the same within fifteen (15) days of receipt of such written assertion of a claim or liability. The Indemnifying Party shall have the right to defend a claim and control the defense, settlement and prosecution of any litigation. If the Indemnifying Party, within fifteen (15) days after notice of such claim, fails to defend such claim, the Indemnified Party will (upon further notice to the Indemnifying Party) have the right to undertake the defense, compromise or settlement of such claim on behalf of and for the account and risk of the Indemnifying Party. Anything in this Section 13.4 notwithstanding, (i) if there is a reasonable probability that a claim may materially and adversely affect the Indemnified Party other than as a result of money damages or other money payments for which it would be entitled to indemnification hereunder, the Indemnified Party shall have the right, at its own cost and expense, to defend, compromise and settle such claim, and (ii) the Indemnifying Party shall not, without the written consent of the Indemnified Party, settle or compromise any claim or consent to the entry of any judgment which does not include as an unconditional term thereof the giving by the claimant to the Indemnified Party a release from all liability in respect to such claim. All Parties agree to cooperate fully as necessary in the defense of such matters. Should the Indemnified Party fail to notify the Indemnifying Party in the time required above, the Indemnifying Party shall be relieved of its obligations pursuant to this Article 13 only to the extent such failure to notify in the time required above materially adversely affects the Indemnifying Party's ability to defend such matter.

**13.5 Reliance and Survival.** Notwithstanding any right of any Party (whether or not exercised) to investigate the accuracy of the representations and warranties of the other Party set forth in this Agreement, Buyer and Sellers each have the right to rely fully upon the representations, warranties, covenants and agreements of the other Party set forth in this Agreement or in any certificate or instrument delivered in connection with this Agreement. Except as expressly set forth on Schedule 13.5, the representations, warranties, covenants and other agreements respectively made by each Party in this Agreement or in any certificate or instrument delivered pursuant to this Agreement shall survive the Closing. Such representations, warranties, covenants and other agreements as survive the Closing shall survive for such periods as set forth on Schedule 13.5.

## **14.0 MISCELLANEOUS**

**14.1 Schedules and Other Documents.** The Schedules and all Exhibits and documents referred to in or attached to this Agreement are integral parts of this Agreement as if fully set forth herein, and all statements appearing therein shall be deemed to be part of, or limitations on, the Agreement, representations and warranties. If there is a conflict between this Agreement and a Schedule, the Schedule shall control. If there is a conflict between this Agreement and an Exhibit, this Agreement shall control.

**14.2 Consented Assignment.** Anything contained herein to the contrary notwithstanding, this Agreement shall not constitute an agreement to assign any claim, right, contract, license, lease, commitment, sales order or purchase order if an attempted assignment thereof without the consent of another party thereto would constitute a breach thereof or in any material way affect the rights of a Seller thereunder, unless such consent is obtained. If such

consent is not obtained, or if an attempted assignment would be ineffective or would materially affect a Seller's rights thereunder so that Buyer would not in fact receive all such rights, the applicable Seller shall upon the request of Buyer cooperate in any reasonable arrangement designed to provide for Buyer the benefits under any such claim, right, contract, license, lease, commitment, sales order or purchase order, including without limitation enforcement of any and all rights of such Seller against the other party or parties thereto arising out of the breach or cancellation by such other party or otherwise.

**14.3 Expenses; Legal Fees and Costs.** Except as otherwise expressly set forth on *Schedule 14.3*, all expenses of the preparation of this Agreement and of the purchase of the Acquired Assets set forth herein, including without limitation counsel fees, consulting fees, accounting fees, investment advisor's fees, fees levied by the Attorney General and disbursements, shall be borne by the respective Party incurring such expense, whether or not the Contemplated Transactions are consummated. To the extent allowed by applicable law, in the event any Party elects to incur legal expenses to obtain a third-party enforcement or interpretation of any provision of this Agreement, the prevailing Party will be entitled to recover such legal expenses, including without limitation attorneys' fees, costs and necessary disbursements, in addition to any other relief to which such Party shall be entitled.

**14.4 No Third Party Beneficiary.** The terms and provisions of this Agreement are intended solely for the benefit of the Parties hereto and their respective successors or assigns, and it is not the intention of the Parties to confer third-party beneficiary rights upon any other person or entity.

**14.5 Notices.** All notices, certificates, demands or other communications hereunder shall be in writing and signed by the Party giving the same, and shall be deemed to have been delivered when the same are sent by certified or registered mail, postage prepaid, return receipt requested, deposited in the United States mail, delivered by hand or delivered by a nationally recognized overnight delivery service with documentation of receipt, addressed as follows:

(a) If to Buyer:

Essent Healthcare - Ayer, Inc.  
c/o Essent Healthcare, Inc.  
3100 West End Avenue, Suite 900  
Nashville, TN 37203  
Attn: President

with copies to:

Greenberg Traurig, LLP  
One International Place  
Boston, MA 02110  
Attn: David G. Spackman

and

Kennedy Covington Lobdell & Hickman  
2801 Slater Road, Suite 120



Research Triangle Park  
Morrisville, NC 27650  
Attn: Patricia T. Meador

(b) If to any of Sellers:

The Nashoba Community Hospital Corporation  
200 Groton Road  
Ayer, MA 01432  
Attn: President

with copies to :

William C. Picott, III  
Chairman of the Board  
The Nashoba Community Hospital Corporation  
23 Myrick Lane  
Harvard, MA 01451

Krokidas & Bluestein LLP  
141 Tremont Street  
Boston, MA 02111  
Attn: Robert J. Griffin

Each Party may, by notice given hereunder, designate any further or different addresses to which subsequent notices, certificates, demands or communications shall be sent.

**14.6 Arbitration.** Any controversy or claim arising subsequent to the Closing, other than a dispute to be submitted to and resolved by the Accountants pursuant to Section 3.2.3 (unless an Accountant cannot be determined in which case the provisions of this Section 14.6 shall be utilized to resolve such dispute) and arising out of this Agreement, Buyer's Closing Documents, Sellers' Closing Documents or any other agreement entered into between Buyer or Buyer's Parent on the one hand and a Seller on the other hand with respect to the Contemplated Transactions, shall be solely and exclusively settled by binding arbitration in accordance with the provisions of this Section 14.6.

**14.6.1 Forum; Governing Law.** The forum for arbitration shall be Boston, Massachusetts, and the governing law shall be the law of the Commonwealth of Massachusetts without reference to its conflicts of laws provisions.

**14.6.2 Selection of Single Arbitrator.** There shall be a single arbitrator who shall be selected by mutual agreement of Buyer and Nashoba or, in the event Buyer and Nashoba are unable to agree, by appointment of the American Arbitration Association. The decision in writing of the single arbitrator shall be final and binding on the Parties.

**14.6.3 Rules.** The rules of arbitration shall be the Commercial Arbitration Rules of the American Arbitration Association, as modified by any other instructions that the Buyer and Nashoba may agree upon at the time. The arbitration and outcome (other than the award itself) shall remain confidential. The arbitrator shall have the power to determine the procedure to be followed, whether discovery is to be allowed and to what extent, and to establish a schedule for resolving the controversy, but the arbitrator shall have no power to alter, change, amend, modify, or subtract from, any of the provisions of this Agreement or other agreement involving the Parties submitted to arbitration pursuant to the terms of this Agreement and shall, as nearly as feasible, follow Massachusetts law with respect to interpretation of this Agreement or other agreement involving the Parties submitted to arbitration pursuant to the terms of this Agreement

**14.6.4 Substantive Law.** The arbitrator shall be bound by and shall strictly enforce the terms of this Agreement, and any other agreement involving the Parties submitted to arbitration pursuant to the terms of this Agreement, and may not limit, expand or otherwise modify any terms thereof. The arbitrator shall make a good faith effort to apply applicable substantive law, but an arbitration decision shall not be subject to review as a result of alleged errors of law. The arbitrator shall be bound to honor claims of privilege or work product doctrine recognized at law, but the arbitrator shall have the discretion to determine whether any such claim of privilege or work product doctrine applies.

**14.6.5 Decision.** The arbitrator's decision shall provide a reasoned basis for the resolution of each dispute and for any award. The arbitrator shall not have the power to award damages in connection with any dispute in excess of actual compensatory damages and shall not multiply actual damages or award consequential or punitive damages or award any other damages.

**14.6.6 Expenses.** Each Party shall bear its own fees (including attorneys fees), costs and expenses with respect to arbitration and any proceeding related thereto. Nashoba and Buyer shall share equally the fees, costs and expenses of the American Arbitration Association and the arbitrator.

**14.6.7 Remedies; Award.** Except as specifically provided in this Section 14.6 to the contrary, the arbitrator shall have the power and authority to award any remedy that could be awarded by a court of law. The award rendered by arbitration shall be final and binding upon the Parties, and judgment upon the award may be entered in the Superior Court sitting in Boston. The Parties submit to the exclusive jurisdiction of such court for the purpose of confirmation of the arbitration award and service of process in any action shall be accomplished by compliance with the notice provisions of this Agreement.

**14.7 Severability.** If any provision of this Agreement is held to be illegal, invalid or unenforceable under any present or future law, and if the rights or obligations of Buyer or Sellers under this Agreement will not be materially and adversely affected thereby: (i) such provision will be fully severable; (ii) this Agreement will be construed and enforced as if such illegal, invalid or unenforceable provision had never comprised a part hereof; (iii) the remaining provisions of this Agreement will remain in full force and effect and will not be affected by the

legal, invalid or unenforceable provision or by its severance herefrom; and (iv) in lieu of such illegal, invalid or unenforceable provision, there will be added automatically as a part of this Agreement a legal, valid and enforceable provision as similar in terms to such illegal, invalid or unenforceable provision as may be possible.

#### **14.8 Drafting, Schedules.**

**14.8.1 Drafting.** No provision of this Agreement shall be interpreted for or against either Party hereto on the basis that such Party was the drafter of such provision, both Parties having participated equally in the drafting hereof, and no presumption or burden of proof shall arise favoring or disfavoring any Party by virtue of the authorship of any of the provisions of this Agreement.

**14.8.2 Sellers Fully Responsible for Schedules.** Sellers acknowledge the Buyer has assisted Sellers in the development and organization of the Schedules attached to this Agreement and may from time to time in accordance with Section 8.4 or otherwise, provide Sellers with further information which may become part of any Schedule. Notwithstanding any such assistance or provision of information: (i) Sellers have each reviewed and are fully responsible for the information contain in each Schedule to which Sellers are making representations or warranties; and (ii) no representation or warranty of any Seller contained in this Agreement shall be diminished or limited by reason of Buyer's assistance.

#### **14.9 Public Announcements; Public Relations.**

**14.9.1 Public Announcements.** Each of the Parties mutually agrees that no Party shall release, publish or otherwise make available to the public in any manner whatsoever any information or announcement regarding the Contemplated Transactions without the prior written consent of the other Party except for parties to Assumed Contracts or Assumed Leases for purposes of obtaining such parties' consent to assignment of such Assumed Contracts or Assumed Leases to Buyer, information and filings reasonably necessary to be directed to Governmental Bodies to fully and lawfully effect the Contemplated Transactions or required in connection with securities and other laws. Nothing herein shall prohibit either Party from responding to questions presented by the press or media without first obtaining prior consent of the other Party.

**14.9.2 Public Relations.** The Parties shall cooperate, each with the other, to effectively communicate to the public and to Governmental Bodies with jurisdiction over the Contemplated Transaction, the nature of the Contemplated Transactions and the benefits that will accrue to the community by reason of the Contemplated Transactions. Nashoba and Buyer shall each provide the other with the name, address and phone number of those individuals who will be responsible for communicating with the media and the public and for developing public relations plans.

**14.10 Choice of Law.** The Parties agree that this Agreement shall be governed by and construed in accordance with the laws of the Commonwealth of Massachusetts without regard to conflict of law principles.

**14.11 Benefit/Assignment.** Subject to provisions herein to the contrary, this Agreement shall inure to the benefit of and be binding upon the Parties hereto and their respective legal representatives, successors and assigns; provided, however, that no Party may assign this Agreement without the prior written consent of the other Party.

**14.12 Accounting Date.** The Contemplated Transactions shall be effective for accounting purposes as of the commencement of the day first subsequent to the Closing Date, unless otherwise agreed in writing by Nashoba and Buyer.

**14.13 Waiver of Breach.** The waiver by either Party of a breach or violation of any provision of this Agreement shall not operate as, or be construed to constitute, a waiver of any subsequent breach of the same or other provision hereof.

**14.14 Interpretation.** In this Agreement, unless the context otherwise requires: (i) subject to the provisions of Section 14.11, references to any Party shall include references to its respective successors and permitted assigns; (ii) references to any document (including this Agreement) are references to that document as amended, consolidated, supplemented, novated or replaced by the Parties from time to time in accordance with the applicable provisions of this Agreement; (iii) each representation, warranty and covenant contained herein shall have independent significance and, if any Party has breached any representation, warranty or covenant contained herein in any respect, the fact that there exists another representation, warranty or covenant relating to the same subject matter (regardless of the relative levels of specificity) which such Party has not breached shall not detract from or mitigate the fact that the Party is in breach of the first representation, warranty or covenant; (iv) references to time are references to eastern standard time; and (v) the gender of all words herein shall include the masculine, feminine and neuter, and the number of all words herein shall include the singular and plural.

**14.15 Divisions and Headings.** The divisions of this Agreement into sections and subsections and the use of captions and headings in connection therewith are solely for convenience and shall have no legal effect in construing the provisions of this Agreement.

**14.16 Entire Agreement; Amendment.** This Agreement, including the Schedules and Exhibits attached hereto, supersedes all previous agreements, oral or written between the Parties and constitutes the entire agreement of whatsoever kind or nature existing between or among the Parties representing the within subject matter and no Party shall be entitled to benefits other than those specified herein. As between or among the Parties, no oral statement or prior written material not specifically incorporated herein shall be of any force and effect. This Agreement, including the Schedules and Exhibits attached hereto, may not be amended or modified except by a written instrument executed by the Parties. The Parties specifically acknowledge that in entering into and executing this Agreement, the Parties rely solely upon the representations and agreements contained in this Agreement and no others. All prior representations or agreements, whether written or verbal, not expressly incorporated herein are superseded unless and until

made in writing and signed by all Parties.

**14.17 Counterparts.** This Agreement may be executed in several counterparts by one or more of the undersigned and all such counterparts so executed shall together be deemed and constitute one final agreement, as if one document had been signed by both Parties hereto; and each such counterpart shall be deemed an original, binding the Parties subscribed hereto and multiple signature pages affixed to a single copy of this Agreement shall be deemed to be a fully executed original Agreement.

**[balance of page left intentionally blank]**

**[signature page to follow]**

**IN WITNESS WHEREOF**, the Parties have caused this Agreement to be executed in multiple originals by their authorized officers, all as of the date and year first above written.

**Buyer:**  
**Essent Healthcare - Ayer, Inc.**

By: \_\_\_\_\_  
W. Hudson Connery, Jr.  
President

**Seller:**  
**The Nashoba Community Hospital Corporation**

By: \_\_\_\_\_  
Jeffrey R. Kelly  
President and Chief Executive Officer

By: \_\_\_\_\_  
William C. Picott, III  
Chairman, Board of Trustees

**Seller:**  
**Nashoba Management Services, Inc.**

By: \_\_\_\_\_  
Jeffrey R. Kelly  
President and Chief Executive Officer

**Seller:**  
**James Brook Properties, Inc.**

By: \_\_\_\_\_  
Jeffrey R. Kelly  
President and Chief Executive Officer

**For the purposes of Article 6 only:**  
**Buyer's Parent**  
**Essent Healthcare, Inc.**

By: \_\_\_\_\_  
W. Hudson Connery, Jr.  
President and Chief Executive Officer

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