EXHIBIT A

Statement of the Attorney General as to The Deaconess Nashoba Hospital Transaction

December 20, 2002

The Attorney General, in accordance with his statutory duties under G.L. c. 180, § 8A(d), is issuing this statement on the transactions involving Deaconess Nashoba Hospital.

INTRODUCTION

The Nashoba Community Hospital Corporation d/b/a Deaconess Nashoba Hospital ("Nashoba"), a Massachusetts non-profit healthcare organization and its affiliate, Nashoba Management Services, Inc. ("NMS"), also a Massachusetts non-profit healthcare organization, as well as James Brook Properties, Inc. ("JBP," and collectively with Nashoba and NMS, the "Sellers"), a Massachusetts for-profit corporation and wholly-owned subsidiary of Nashoba, entered into an Asset Purchase Agreement (the "Purchase Agreement"), dated as of October 31, 2002, with Essent Healthcare-Ayer, Inc. ("Essent-Ayer"), a Massachusetts for-profit corporation and wholly-owned subsidiary of Essent Healthcare, Inc. ("Essent-Healthcare," and with Essent-Ayer, "Essent"), a Tennessee for-profit corporation. Pursuant to the Purchase Agreement, Essent Healthcare has agreed to purchase substantially all of the assets of the Sellers.

SUMMARY OF THE PROPOSED TRANSACTION

Nashoba is currently a non-profit hospital, which has as its sole corporate member CareGroup, Inc. ("CareGroup"), also a Massachusetts non-profit healthcare organization that includes other affiliated hospitals (Beth Israel Deaconess Medical Center ("BIDMC"), Mt. Auburn Hospital ("Mt. Auburn"), New England Baptist Hospital, and Deaconess Glover Hospital, collectively, the "CareGroup Affiliates"). Nashoba, CareGroup, and Essent have negotiated a transaction that provides for the transfer of Nashoba's assets to Essent-Healthcare through its subsidiary, Essent-Ayer.

Under the terms of the Purchase Agreement, the Nashoba's board of Trustees will amend its articles of organization to remove CareGroup as the sole corporate member of Nashoba.

A. Asset Purchase

The Purchase Agreement provides for a purchase price of $8.6 million in cash, plus the value of the net working capital at the Closing ("Closing"), which is scheduled to occur on or before December 31, 2002. The proceeds will be used to pay off all pre-Closing obligations of Nashoba not assumed by Essent, as well as all Nashoba's debt (approximately $7 million), including Nashoba's CareGroup related obligations of approximately $3.7 million and transaction related expenses of approximately $1.9 million.

Essent will receive: (i) equipment, inventory, and other personal property of the Nashoba and its subsidiaries NMS and JBP; (ii) accounts receivable and certain accounts payable; (iii) certain leases and contracts; (iv) the right to take title to Nashoba's real property subject to medical office building and nursing home leases; and (v) medical office building units owned by Sellers (collectively, the "Sale Assets").

Assets excluded from the sale include the restricted funds of approximately $3.2 million including Nashoba's $0.8 million equity contribution to the Apple Valley Nursing Home.

B. Conditions for Closing

Key conditions to the Closing include: (i) the approval of the Department of Public Health; (ii) the approval by the Office of the Attorney General; (iii) authorization to go forward with the transaction from the Single Justice of the Massachusetts Supreme Judicial Court (the "Single Justice"); (iv) the right to operate a hospital-based MRI; (v) renegotiation of certain managed care contracts; and (vi) no material adverse changes in the Nashoba's operations before the Closing.

C. Post-Closing Obligations

Following the Closing, Essent has committed to retain most of the current employees and provide them with benefits similar to those offered by Essent-Healthcare's other hospitals.

After payment of the $8.6 million in consideration plus net working capital (currently estimated at $2.2 million), post sale assets are estimated to be $1.76 million after Nashoba's debt and other obligations are paid. Of this $1.76 million in post-transaction funds, $950,000 (estimated) is earmarked for post transaction expenses and liabilities of the Nashoba Corporation. Some or all of another $1.25 million will be held in escrow and may eventually become available to a charitable entity (as defined below), pending future settlements and obligations of Nashoba. These funds area offset by an estimated cash deficit of $436,000 expected to be covered by imminent provider service network ("PSN") payments to Nashoba or a loan from CareGroup.[1] If the PSN payments are more than the estimated cash deficit, any remaining cash is earmarked for a charitable entity, but could also be reduced by trailing liabilities so that the actual amount will not be known for certain until after the closing.

D. Essent's Community Commitments

In this transaction, Essent will make a number of commitments regarding healthcare, community benefits, and related initiatives. Essent will commit for a period of at least 10 years following Closing:

(a) To maintain and operate the facility within Nashoba's primary service area 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;

1 *See*, Addendum page iv for more detail of estimated post-closing net cash proceeds.

(iv) Outpatient services; and

(v) Diagnostic services including laboratory and radiology.

(b) That the facility outlined above will be consistent with community needs and Essent's fiscal resources and service priorities;

(c) To use commercially reasonable best efforts to continue to offer, within Nashoba's primary service area, substantially all of the health care services provided by Nashoba at the time of the Closing and not in connection with the neighboring nursing home.

(d) To follow the Attorney General's Community Benefit Guidelines for Hospitals and HMO's.

Prior to a significant reduction in or the cessation of any such health care service, Essent will seek input from the new Advisory Board to be established by Essent, as described below, and obtain appropriate approvals from the Massachusetts Department of Public Health (the "department").

Essent has also agreed to promote health care for residents of Nashoba'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. Essent has agreed to make its facilities reasonably available for the use of community and self-help groups. For a period of six (6) years following the Closing, Essent will provide Nashoba or its successor, a charitable entity, with a copy of each report it is required to file, or voluntarily files with the Massachusetts Attorney General or the Department.

E. Essent's Capital Commitments

Pursuant to the Purchase Agreement, Essent has made capital commitments to the Sellers and the Nashoba Valley communities currently served by Nashoba. During the period ending

December 31, 2008, Essent has committed to make capital expenditures of not less than $16 million for the improvement and maintenance of Nashoba. Of that amount, Essent will be obligated to make capital expenditures of at least $2 million prior to June 30, 2003 and an additional $1.5 million prior to December 31, 2004 (to be spent only if no new hospital is built), resulting in a total of $3.5 million of capital investment during the two years immediately following the Closing.

However, if by December 31, 2008, Essent has not made $16 million in capital investments, the Purchase Agreement requires Essent to pay Nashoba or its successor (e.g., a charitable entity) the difference between the $16 million and the amount expended.

After the Closing, but not later than July 1, 2004, Essent will be obligated to notify Nashoba of its decision as to which of the following options it will pursue: (i) the renovation and limited expansion of the existing hospital facility on the current campus; (ii) the construction of a replacement facility on the current campus; or (iii) the construction of a new facility at a new site within Nashoba's primary service area and the closure of the current hospital facility. If either the replacement or new hospital is not substantially completed by December 31, 2008, Nashoba will be entitled to an amount of money computed according to a formula contained in the Agreement.

Essent-Healthcare will provide a guarantee of Essent-Ayer's financial obligations under the Purchase Agreement. (*See*, Section E, at page 16 of this report for further discussion of Essent-Healthcare.)

Until January 1, 2013, or the construction of a new hospital on the current site or a different site, Nashoba and its permitted assignees (e.g., a charitable entity or foundation) will have the right to re-purchase the Sale Assets, including title to the real property that may be acquired by Essent subsequent to the Closing, if Essent defaults on its continuation of services obligation. The conditions that will lead to a right to re-purchase and the computation of the purchase price are spelled out in the Agreement.

If Essent decides to sell or transfer Nashoba prior to January 1, 2006, Nashoba is entitled to receive a share of any profit earned as a result of the sale. Essent will have to pay Nashoba the difference between the fair market value of all consideration received by Essent for the assets, and the sum of; (a) the purchase price, (b) costs and expenses associated with the operation of the Hospital and the subsequent sale, (c) any capital expenditures made during Essent's ownership and (d) losses incurred by Essent. Under this so-called "anti-flip" provision Nashoba would be entitled to receive 100% of the computed amount should a sale occur in year one, 80% in year two and 60% in year three.

F. Advisory Board

Essent will establish an Advisory Board for Nashoba comprised of at least nine individuals as follows: (i) up to three Advisory Board members will be representatives of Essent, and (ii) at least five members will be individuals residing or working in Nashoba's primary service area (of which at least two will be physicians providing services within such area, and at least two will be lay representatives residing or working within such area).

The Advisory Board will be consulted regarding (i) the scope and findings of the feasibility study Essent will undertake for strategic planning concerning Nashoba facility and specifically, the decision as to renovate, replace or relocate Nashoba, and (ii) significant decisions relating to the operations of Nashoba, such as evaluation of management, clinical quality monitoring and overall strategic direction.

G. Charitable Entity

A charitable entity, e.g., a foundation, will be funded with Nashoba's endowment funds following an inventory of the funds to determine what restrictions apply, if any, for the use of the funds for other than a hospital. In accordance with statutory requirements, the Attorney General will hold a public hearing on matters related to the formation of a charitable entity, which would receive any proceeds remaining after Nashoba's pre-closing, post-closing, and wind-up obligations are satisfied (the "charitable entity"). Plans for the charitable entity will commence after the Supreme Judicial Court has approved the sale of Nashoba's assets and after the Closing. It is anticipated that it will take approximately nine to twelve months to properly plan for the use of the charitable proceeds.[2]

STATUTORY BACKGROUND

Under the recently enacted G.L. c. 180, § 8A(d) ("§ 8A(d)"), the Attorney General reviews transactions involving non-profit hospitals and health maintenance organizations entering into agreements with for-profit entities to transfer or dispose of assets. Section 8A(d) provides, in part:

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

[2] The foundation's assets will consist of approximately $3.2 million in restricted funds that Nashoba already has plus what remains of the estimated $1.76 million in funds after post-transaction adjustments. *See*, Addendum, page iv for summary of estimated post-closing net cash proceeds.

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

Section 8A(d) also directs the Attorney General to make public all documents filed during the course of his review and to hold a public hearing.

The Attorney General has issued publicly available Guidelines as to how he will implement the provisions of 8A(d).

DESCRIPTION OF THE ATTORNEY GENERAL'S REVIEW PROCESS

This transaction pursuant to the Purchase Agreement falls squarely within 8A(d) because Nashoba is selling substantially all of its assets to the for-profit Essent.

The Attorney General, principally through his Public Charities Division, has conducted an investigation of the transaction by, among other things:

(a) Consulting with other state agencies, elected state officials, and officials of the towns within Nashoba's service area;

(b) Reviewing financial records, consultant reports, board minutes, and other documents provided by the Sellers and CareGroup;

(c) Holding discussions with representatives of the interested parties to the transaction;

(d) Gathering comments from certain key individuals who had concerns or information regarding Nashoba;

(e) Obtaining affidavits from certain individuals involved in the transaction;

(f) Holding a public hearing at the Ayer High School on December 3, 2002; and

(g) Engaging consultants to give this Office advice concerning, among other issues:

(i) Consideration offered for Nashoba;

(ii) Fairness of all non-financial deal points; and

(iii) Viability of the transaction, with particular attention to the capital expenditures, given the short track record of Essent Healthcare;

CONCLUSIONS AND FINDINGS OF THE ATTORNEY GENERAL

A. Does the proposed transaction comply with applicable general nonprofit and charities law?

Based upon the facts and circumstances the Attorney General has reviewed, the transaction involving Nashoba complies with charities law. As discussed below in more detail, CareGroup's and Nashoba's board members have complied with standards of due care and have obtained fair market value for their assets. In addition, the individuals making decisions in the transactions did not have conflicts of interest. As a result, the Attorney General sees no violation of any charities laws.

B. Did the CareGroup and Nashoba Trustees and Management follow due care?

The doctrine of due care under charities law holds that fiduciaries of charitable assets must use those charitable assets as an ordinary, prudent person in similar circumstances would to advance the mission of the charitable organization.

(a) To obtain information from the CareGroup and Nashoba trustees and management, the Attorney General issued a Request for Production of Documents to the Trustees as well as interrogatories to be answered under oath to the key decision makers of Nashoba. The interrogatories covered both due care issues and conflict of interest concerns. The Attorney General engaged the services of Health Strategies & Solutions, Inc., ("HSS") a

Philadelphia based hospital-consulting firm. Additionally, HSS engaged the services of Kaufman, Hall & Associates ("Kaufman Hall") to perform a review of the process by which the purchase price of Nashoba assets and on-going business was established.

(b) The documents and the interrogatories reviewed, along with information we obtained through discussions, indicate that the Trustees and Management followed a deliberate, appropriate process in assessing the needs of Nashoba and that the process was not marred by conflicts of interest.

In November of 2000, the board of trustees of Nashoba began a strategic planning process. The board identified four key strategic elements required to improve Nashoba's performance:

(i) Recruitment of primary care and medical specialists;

(ii) Improving image and awareness;

(iii) Facilities upgrade; and

(iv) Turnaround financial plan.

The Nashoba trustees then discussed their strategic plan with CareGroup officials. CareGroup and Nashoba identified the need for a significant capital investment into Nashoba. They also acknowledged that the current Nashoba ongoing operations were unprofitable and in a very competitive environment, Nashoba's performance and ability to attract patients suffered from a lack of leverage in negotiating managed care contracts and from obstacles to successfully recruiting medical staff.

During this planning process, Nashoba and CareGroup came to the realization that CareGroup could not guarantee implementation of the key elements of the Nashoba strategic plan. As a result, CareGroup and Nashoba started to consider alternatives to the existing Nashoba-CareGroup relationship.

In light of the financial risks involved in putting more funds into Nashoba and its own difficult financial situation, CareGroup trustees could justifiably determine that CareGroup could not meet the needs of Nashoba without compromising the needs of its other CareGroup Affiliates. Thus CareGroup's decision to support Nashoba's broader search for a purchaser reflects sound judgment.

Extensive documentation consisting of experts' reports, board and committee minutes, and studies provided by Nashoba in response to the Attorney General's document request showed Nashoba used due diligence in analyzing Nashoba's strategic alternatives looking toward the future. The process included the following steps, goals, and outcomes:

(i) In January 2002, CareGroup and Nashoba engaged Salomon Smith Barney ("SSB") to provide an indicative range of values for individual hospitals. SSB provided an estimated range of values for Nashoba of \$9 to \$12 million based on actual 2001 and budgeted 2002 performance;

(ii) Based on this information, a decision was made by CareGroup and Nashoba to seek a capital partner for Nashoba and in January of 2002, SSB was engaged to seek such a partner.

(iii) In January 2002, the Chairman of the Nashoba Board appointed a Work Group Committee comprised of members of the Nashoba Board and Medical Staff. The Work Group Committee began working with SSB to create a plan identifying the critical elements of a successful affiliation.

(iv) SSB identified and contacted 30 potential buyers in addition to holding discussions with CareGroup affiliates.

(v) SSB mailed bid letters to potential buyers inviting them to management presentations and site tours.

By late spring and early summer 2002 Nashoba received three written indications of interest. Two of the three bidders were CareGroup affiliates. In order to most effectively evaluate the various proposals, an Evaluation Committee appointed by the Chairman of the Nashoba Board and comprised of members of the board and the medical staff began meeting in early June to evaluate all proposals and make a recommendation to the Executive Committee of the board of trustees. Proposals were evaluated based on criteria developed by the Evaluation Committee. Criteria considered included:

(i) Amount of consideration

(ii) Contingencies on commitments

(iii) Enforceability of payments

(iv) Ability to fund capital commitments

Other factors considered by the Evaluation Committee included the impact of the transaction on physician recruitment and clinical development, community perception and acceptance, and continuation of services in the community.

The Trustees' analysis showed an awareness of their options, an appropriate weighing of the risks and benefits of each proposal, and a review of the factors listed above. For example, the decision-makers considered the proposals of the non-profit bidders, Mt. Auburn and BIDMC, to be lacking because the proposals showed that each entity was unable and/or unwilling to fund Nashoba's programs to directly meet the community's healthcare needs.

The trustees also scrutinized Essent. Trustees visited two Essent owned hospitals and reported favorably to the decision-makers on Essent's follow through on its commitments. The Trustees took into consideration Essent's venture capital partner, Thoma Cressey, and through research, determined it to be a well-respected firm. They favored Essent's commitment to recruiting physicians to the community, in contrast to Mt. Auburn and BIDMC's approach of offering physician support on a part-time basis. Further, Essent thus far has focused on small community hospitals.

The trustees also reviewed some of the problems presented by Essent's bid. The trustees considered Essent's short business life (it has been in business only about two years) as a potential negative, but after deliberation and discussion decided that its newness and small size would be offset by its desire to succeed at Nashoba. They also considered the loss of local control should they vote to sell to Essent. They concluded that while it would be preferable to retain control of Nashoba, control under CareGroup had been nominal in recent years.

The decision-makers were equally thoughtful in considering the value and purchase price for Nashua's assets. They understood the valuation concepts used and the range of values offered by their experts. They compared the bids with the aid of a matrix provided by SSB. They concluded that Essent's offer to purchase Nashoba together with its commitment to make capital improvements far exceeded the offers of Mt. Auburn and BIDMC. The decision-makers also concluded that Essent made a clear financial commitment to back Nashoba's mission in the community in the foreseeable future.

We have reviewed these issues as well.

Of the three proposals, Essent's proposal offered the largest purchase price. That price includes $8.6 million plus net working capital, funded by Thoma Cressey Equity Partners ("Thoma Cressey") Essent-Healthcare's venture capital partner. The Essent purchase price is more favorable to Nashoba when compared to total purchase price offers of $6.3 million by BIDMC and $4.8 million by Mt. Auburn.

As Thoma Cressey is the source of the purchase price for Nashoba, the Attorney General has reviewed Thoma Cressey's background and its ability to provide funds for Essent-

Healthcare's acquisitions. Thoma Cressey, a private equity group based in Chicago, has invested over one billion dollars in equity capital over the last twenty years. It has a significant track record in the venture capital industry and has funded a number of health care enterprises. David Mayer, a partner of Thoma Cressey, has confirmed that Thoma Cressey has committed approximately $58 million to fund Essent-Healthcare's acquisitions and that Thoma Cressey will allow Essent-Healthcare to draw down the funds necessary to close the Nashoba transaction. Essent already owns three other hospitals, so that of the approximately $58 million, Essent-Healthcare has used approximately $28 million, leaving $30 million for further acquisitions, including the potential purchase of Nashoba.

Essent-Healthcare's offer also includes a significantly larger capital commitment of $16 million with no contingencies compared to the smaller capital commitments of $3 million by BIDMC and $9.0 million by Mt. Auburn, respectively, which were contingent on a variety of operating factors and approvals. Further, the Essent-Healthcare proposal includes a commitment to renovate or replace the existing hospital and enforceable remedies if capital commitments were not made (i.e., in the event $16 million is not provided by December 31, 2008, the shortfall will be paid directly to the charitable entity). The other proposals offered no physical plant renovations or commitment to replace Nashoba.

Essent-Healthcare, and not Thoma Cressey, has guaranteed the capital commitment. Since Nashoba's ability to recruit physicians, develop clinical programs, and ultimately continue to provide health services in the community depend substantially on the planned capital investment, the board considered at length Essent-Healthcare's ability to fund its commitments.

Our discussions with Essent-Healthcare management and a review of Essent-Healthcare's financial projections for Nashoba and for Essent-Healthcare indicate that Essent-Healthcare expects to fund its commitment through improved operations and cash flow at Nashoba. Essent-Healthcare projects that Nashoba's performance will improve as a result of its management expertise and investments in the facility and equipment that will expand services and increase revenues. Future capital needs may also be funded through the addition of some form of debt. Since Nashoba's current obligated debt will be eliminated by the transaction, Nashoba should be able to borrow more in the future, assuming positive cash flows.

Founded in 1999, Essent-Healthcare's financial track record is short and its ability to continue to grow and fund its commitments is not certain. Nevertheless, given the extensive marketing of the hospital, the screening of bidders, the significantly greater amount of consideration and capital commitment offered by Essent-Healthcare in comparison to the much smaller offers made by the BIDMC and Mt. Auburn, the progress Essent-Healthcare appears to be making at its other hospitals, and the funds provided by Thoma Cressey and Essent-Healthcare, the CareGroup and Nashoba trustees exhibited due care in selecting Essent-Healthcare.

C. Did the individuals involved in the transaction avoid conflict of interest problems at all phases of decision-making?

The interrogatories, answered by key decision-makers, the majority of whom are Trustees, senior management, and physicians who were members the Work Group, the Evaluation Committee, the Negotiation committee and the Executive Committee, addressed conflicts of interest and required written responses to questions involving decision-making. The responses were complete, thorough, and thoughtful. There is no evidence that conflict of interest improperly influenced this transaction. The CEO disclosed early in the Attorney General's investigation that Essent-Healthcare had asked him to stay on as a consultant to aid in the transition. This was also disclosed on the CEO's interrogatory as well. All interrogatories are on file at the Attorney General's office and are part of the public record.

D. Is Nashoba receiving fair value for its assets?

The Attorney General has concluded that Nashoba's negotiations will result in its receiving fair value for its assets. This conclusion is based upon:

(a) The documented bid process that invited multiple solicitors and vigorous alternative contingencies, followed by close scrutiny of the final bids based upon appropriate criteria;

(b) Commitments to capital expenditures by Essent;

(c) Protections for the Nashoba community should Essent prove unable to carry out the capital improvements; and

(d) Kaufman Hall's confirmation of the valuation based upon information provided to it by Essent and the Sellers. *See* Addendum attached hereto.

E. Is the Proposed Transaction in the Public Interest?

The board of Nashoba has determined that the sale terms proposed by Essent were more favorable than the other bidders and that Nashoba would be strongest within a chain of Essent hospitals, as opposed to remaining in the CareGroup system. Given the nature and extent of the needs of Nashoba, CareGroup's financial situation, and the track record of and offer by Essent, the Attorney General agrees that this proposed transaction is in the public interest.

First, it is in the public interest that Nashoba implement its strategic plan and align itself with an entity that will provide it with new capital. In the absence of additional capital, Nashoba will have little chance of turning around its poor financial performance or of competing with other hospitals. Nashoba sits in a growing area of the state where health care needs are expanding, not contracting. The trustees carefully examined the needs of its service area, including Ayer, Groton, Harvard, Lunenberg, Pepperell, Shirley and Townsend. Given Nashoba's operating deficit and its capital needs, the trustees justifiably concluded that Nashoba needs to take action to remain viable in the long term to service the healthcare needs of the community. Neither a gradual decline of Nashoba's ability to meet the needs of the community nor Nashoba's disappearance altogether is in the public interest.

The question then becomes whether this sale to Essent, a for-profit corporation with a short track record and a clear intent to purchase other hospitals, is in the public interest, particularly when non-profit hospitals also submitted bids for Nashoba.

As described above, the Nashoba board and management did consider the non-profit alternatives. Charities laws require that a charity enter into a viable nonprofit affiliation such as a merger with another charity before "converting" to for-profit status,[3] and Nashoba's fiduciaries acted in consonance with this legal standard. Nashoba's board and officials carefully weighed the different aspects of each proposal based upon Nashoba's stated criteria. That comparison led Nashoba's leaders to conclude that an affiliation with either BIDMC or Mt. Auburn would not provide the residents in Nashoba's service area with a competitive and upgraded community hospital.

Little dispute exists that Nashoba's sole corporate member, CareGroup, has had to focus its attention on more needy affiliates. At present, it does not have the resources to meet many of Nashoba's needs, particularly in light of Nashoba's aging facility that will need significant renovation or replacement in the foreseeable future. The offers from BIDMC and Mt. Auburn would certainly have assisted Nashoba in turning its financial performance around in the short-

[3] A nonprofit hospital's sale of a substantial amount of its assets to a for-profit hospital has come to be known as a conversion.

term, but would not have provided capital to undertake substantial improvements, renovations, or replacement over the next few years. The non-profit alternatives would have helped Nashoba, but would not have significantly improved its prospects for long-term success or viability.

The bid from Essent, however, does promise a substantial upgrade of Nashoba in many respects if Essent does undertake and complete many of the commitments it has made to Nashoba. Essent will provide a capital infusion that will allow for new equipment and perhaps a new hospital, as well as ensuring that Nashoba's financial situation improves in the short-term. Nashoba will also have a tertiary care arrangement with BIDMC, so that the opportunity for the community and Nashoba to benefit from a connection to that institution will not be wholly lost in this transaction.

Our information also indicates that where Essent has purchased other hospitals, it has made improvements and turned around their financial performances. While the company's track record is short, it does indicate that the company has generally done what it promised.

Further, the incentives for Essent are to provide considerable support to Nashoba so that its finances, operations, and physical plant all improve. Essent wishes to purchase other community hospitals. It will succeed with the boards of other institutions and with regulators elsewhere only if it has succeeded in turning around the hospitals it has purchased. As a result, Essent will have every reason in the short-term to fulfill its promises and ensure that Nashoba performs well.

The risk for Nashoba in the non-profit proposals lay in their more modest financial terms and non-profits' uncertain ability and willingness to pay enough management attention to Nashoba to turn it around. The sale to Essent, though, has risks as well, most of which the trustees considered. Essent is both young and relatively small. Though it has had investments from Thoma Cressey, if something goes wrong at Essent or at some of the other hospitals in its chain, there is no guarantee that Essent or Nashoba will survive. Indeed, none of the remaining three bidders for Nashoba would or can fully guarantee Nashoba's financial future.

Another risk that a sale to Essent presents, based on the history of other for-profit hospital systems, is that Essent will not continue to own all of its hospitals. Experience elsewhere in the country suggests that for-profit hospital owners do buy and sell their hospitals, generally to other for-profit purchasers. We do not suggest that we know of any plan for Essent to sell Nashoba or any of its hospitals. Nor do we suggest that such sales necessarily result in problems for the community or with respect to healthcare delivery. But rather, the public should be mindful that other for-profit operators have bought and sold community hospitals, sometimes at a quick pace and sometimes to the dismay and disruption of the communities. The anti-flip provision and the re-purchase option negotiated by the Nashoba trustees do, however, provide a measure of protection in the event of an unwelcome sale.[4]

A final, major concern in the case of a for-profit acquisition of a non-profit hospital is the potential impact of the transaction on the hospital's mission and on access to health services in the future. The change of ownership structure from a non-profit community based organization to a for-profit organization ultimately answerable to the shareholders creates a significant

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[4] If Essent decides to sell or transfer the Hospital prior to January 1, 2006, the DNH Entities shall be entitled to receive a share of any profit earned by Buyer as a result of such sale by paying to Nashoba the difference between (x) the fair market value of all consideration whenever received by Essent for the assets, and (y) the sum of (i) $8.6 million, (ii) the costs and expenses incurred by Essent in acquiring the Sale Assets and in connection with their subsequent sale or transfer, (iii) the capital expenditures with respect to the Sale Assets after the closing and prior to the subsequent sale or transfer, and (iv) the amount of losses after the closing and prior the subsequent sale or transfer. This amount shall be reduced by 20% in each of the years' 2004 and 2005 so that the amount paid to Nashoba would be 100% in year 1, 80% in year 2 and 60% in year 3.

alteration in the amount of local control and input the community will have in the hospital's future direction and operations. This change also raises questions about the level of charity care provided by Nashoba and the disposition of restricted funds held by the hospital to be used for the provision of health related services.

Several provisions in the Asset Purchase Agreement address these key areas of public interest including:

- Establishment of an Advisory Board made up of community representatives who will advise Essent on the proposed Feasibility Study and significant decisions relating to the operations of the Hospital, such as evaluation of management, clinical quality monitoring and overall strategic direction.
- Commitment to maintain and operate facility as an acute care hospital for a period of at least ten years following closing. This represents an unusually lengthy period of commitment.
- Commitment to use its commercially reasonable best efforts to continue to offer within the Hospital's primary service area, substantially all of the health care services provided by Nashoba at the time of the closing for a period of at least ten years following closing. If a substantial reduction or elimination of services is under consideration, Essent must seek input from the Advisory Board and obtain appropriate approvals from the Massachusetts Department of Public Health.
- Agreement 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 to conduct health education, screening, immunization and other preventive medicine programs in the community.

- Agreement to make facilities reasonably available for the use of community and self-help groups.
- Agreement to follow the Attorney General's Community Benefit Guidelines consistent with the requirements imposed on hospitals that are operated as public charities.
- Acknowledgement that Nashoba must comply with §8A(d)(5) by engaging the services of an Independent Healthcare Access Analyst to monitor Nashoba's accessibility to vulnerable populations post-closing.

The parties have also agreed with the Attorney General's Office on certain other protective provisions:

(a) The Attorney General will receive notice of any expenditure from the escrow fund.

(b) Nashoba will engage a Certified Public Accountant to audit the period during the escrow to ensure that all funds are properly accounted for and turned over to a foundation.

(c) There is a signed written document addressed to the Attorney General setting forth Essent's commitment to meet its $2 million capital expenditure commitment on or before June 2003 and its $1.5 million commitment on or before December 2004.

Ultimately, Nashoba board members did not have the choice of a risk-free alternative. Thus their determination, as well as our consideration of the question of whether the public interest is best served by this transaction, must take into consideration the ability of any proposed new owner to maintain services in the service area.

The non-profit alternatives would certainly allow Nashoba to continue to operate in the community as it has in the short-term. But the offers from BIDMC and Mt. Auburn, if accepted, would not substantially change or enhance the long-term financial position of Nashoba or provide the level of capital that Nashoba deems critical to its future viability.

The sale to Essent, though certainly not without potential problems, does provide the assurances outlined above plus a purchase price and capital commitment that substantially exceed the offers from either of the non-profit proposals. While Essent's own resources are modest, it has compelling reasons to make Nashoba succeed in the community and it has access to capital to do so. Though the sale to Essent is not without risk, particularly in terms of ownership down the road, the Essent proposal, if fully realized, would also substantially improve the operation and facilities of the hospital in a way that no other option can provide. In this particular case and under the circumstances faced by Nashoba, it appears likely that Nashoba will be able to continue to provide health care services in the community to a greater extent and/or for a longer time as a for-profit entity than it would as a non-profit entity.

It is also worth noting that this transaction has general support within the community. Some in the public do voice anxiety over the change in ownership to a for-profit. Most, though, are very concerned about the hospital's demise and view this as the best option. The trustees are also to be commended for their efforts in reaching out to the public.

It is certainly in the public interest for Nashoba board members to pursue an outside investor or a sale. Given the universe of parties interested in purchasing Nashoba and that none of the final bidders could guarantee the hospital's future, the Attorney General concludes that the sale to Essent is in the public interest.

The Attorney General would like to acknowledge the considerable efforts of the many other individuals in this Office who contributed to this investigation and statement, including: Dean Richlin, Alice Moore, Laura Marlin, David Beck, Jesse Caplan, Linda Tomaselli, Sarah Nathan, Cathy Hoffman, Kevin Nolan, Diane MacDonald, legal intern Jeffrey Trapani, as well as consultants Alan Zuckerman, Robert Hill, Tracy Johnson, Ken Kaufman, and Andy Majka.

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ADDENDUM

KAUFMAN HALL'S SUMMARY REVIEW OF PROPOSALS

A comparative summary of the three proposals (Essent-Healthcare, Mt. Auburn and BIDMC) was prepared by SSB and submitted to the Office of the Attorney General. The following is a recap of the proposals (the Essent section is based on the current Asset Purchase Agreement).

(1) Essent. Proposed an asset acquisition structure with the highest cash payment totaling approximately $10.8 million, consisting of an $8.6 million purchase price plus approximately $2.2 million for net working capital. The proposal also included a future capital commitment of at least $16.0 million to either renovate or replace the existing facility. Certain provisions were negotiated in an attempt to secure the capital commitment by means of Nashoba holding title to the real property until a construction plan is identified and the buyer establish a $3 million construction letter. In the event that the construction plan is not substantially completed by 2008, Nashoba is entitled to certain remedies. In addition, a 10-year right of first refusal for Nashoba to buy back the assets at a cost of buyer's capital expenditures less depreciation was negotiated in the event that buyer either decided to sell, substantially reduce services at or close the facility. In connection with this proposal, a resultant Nashoba foundation or surviving selling entity would keep any unrestricted cash or endowment funds, be required to repay debt and third party obligations with sale proceeds and fund an indemnification escrow in the amount of $1.250 million. The escrow may be used to cover any subsequent specified damages that buyer's may be entitled to due to breach of contract, representations or responsibilities by Nashoba. A final release of the indemnification escrow would occur in 2006 to the extent funds have not been drawn upon to cover any damages pursuant to the agreement. Furthermore, also per the Purchase Agreement, the surviving selling entity must have at least $0.950 million in unrestricted cash at Closing (primarily for the seller's own wind down costs).

(2) BIDMC. Proposed a membership substitution structure with no cash payment but the assumption of approximately $6.3 million of debt. A low capital commitment of approximately $3 million over two years was offered along with a $1 match offer for every $2 of community fundraising. In general, the proposal appeared to focus on minimizing potential disruption to existing operations.

(3) Mt. Auburn. Proposed a partnership structure with a $1.1 million cash payment, assumption of approximately $3.7 million of debt and a $9.0 million capital commitment over six years. Like the BIDMC proposal, Mt. Auburn appeared to focus on minimizing disruption to existing operations with a similarly low annual capital commitment, albeit larger in total amount only by the number of years included.

Kaufman Hall, like all other valuation experts who assist the Division of Public Charities in valuation matters, agrees that the value of any business is a matter of informed judgment based on access to information and evaluation of all relevant factors. The best indication of fair market value is what an independent and motivated third-party buyer is willing to pay for an organization in a properly structured competitive bidding process. In the Nashoba sales process, it appears that all reasonable efforts were made to solicit a broad group of potentially interested parties, and as interest was expressed, such parties were all afforded equal access to information and materials through an organized due diligence process. The outcome of the process resulted in one outside proposal and two related affiliate proposals.

The limited response is a reflection of many factors, financial and otherwise, all of which impact the market value of Nashoba. Essent's proposal was the only one structured as a true asset acquisition and appears to provide the highest total dollar amount of consideration in terms of purchase price and future capital commitments. The other two related affiliate proposals were structured as either a partnership or merger (not a pure change in control), and consequently both related affiliates offered something less in terms of total consideration.

According to Kaufman Hall, the most relevant measure of fair value is the competitive bidding process and outcome described above (i.e., let the free market speak for itself). However, Kaufman Hall reviewed valuation studies prepared by SSB and Health Capital Consultants (engaged by CareGroup). Both valuation analyses were based in part, on commonly used formulaic methodologies to establish a comparative assessment. Kaufman

Hall states that it is important to note that such formulaic methodologies are a function of subjective assumptions that may or may not include all relevant motivations, factors and issues considered and ascribed by actual buyers in a competitive proposal process. As such, there are usually differences in formulaic third-party valuation assessments relative to actual consideration proposed by motivated buyers in a properly structured competitive proposal process. In the end, the market determines real value.

After examining the SSB valuation and the Health Capital Consultants valuation, Kaufman Hall states:

"**Conclusion**. Based on the Materials Reviewed and Limiting Conditions described herein, it is our opinion that the sales process undertaken by [Nashoba] and its advisors followed standard competitive hospital sale practices in: (1) contacting a broad national and regional universe of potential third-party buyers, (2) providing potential buyers access to information through an organized due diligence process, (3) obtaining competitive proposals from interested buyers, (4) selecting a proposal providing the highest amount of total consideration, and (5) negotiating final terms and conditions in the form of an Asset Purchase Agreement. The competitive sales process outlined above is widely used in the industry and is undertaken to obtain the highest possible total consideration under current market conditions. As such, it can be inferred that [Nashoba] has been offered reasonable consideration for the sale of its assets and ongoing business."

Net Cash Proceeds.

In connection with the contemplated Nashoba divestiture to Essent, actual post-Closing net cash proceeds from the transaction have been estimated by SSB using fiscal year end

October 31, 2002 unaudited information. A summary of resulting post-Closing net cash proceeds was estimated as follows:

Restricted Funds	$3.217 million	(a)
Indemnification Escrow	$1.250 million	(b)
Required Cash Balance Post-Closing	$0.950 million	(c)
Other Cash	$(0.436) million	(d)

Notes:

(a) Restricted funds that are currently held as donor-restricted funds.

(b) Indemnification escrow funds are subject to the terms and conditions specified in the Asset Purchase Agreement and could be possibly drawn down by Essent in whole or in part in the event of any post-Closing damages incurred. These funds, to the extent a balance remains, will revert back to a foundation or surviving selling organization according to a pro rata annual schedule through 2006.

(c) Required cash balance post-Closing is the amount required to be maintained by the surviving selling organization at Closing (primarily to be used for post-Closing wind down costs of the seller).

(d) There is an estimated $0.436 million deficit that is expected to be covered by a CareGroup Provider Service Network ("PSN") payment to Nashoba (estimated at $0.566 million). If the CareGroup PSN payment is not received by closing or is not sufficient to cover the deficit, CareGroup will make a loan to Nashoba up to $0.5 million to close the transaction. Repayment of any loan balance remaining after PSN payments will come from net proceeds.

It is important to note that there are known but not yet quantified liabilities (e.g., malpractice tail insurance, continued operating losses though Closing reducing cash, etc.) and potential unknown liabilities (e.g., post Closing damages, if any) that may arise causing a reduction in the estimated balances of cash identified above in (b), (c) and (d). As such, the above estimate of net cash proceeds should be viewed as a preliminary indication, and not a final Closing statement.