



CONFIDENTIAL

**Letter of Intent**

**Affiliation between Asante and Ashland Community Hospital**

February 13, 2013

Ashland Community Hospital  
Ashland Community Hospital Foundation  
City of Ashland  
Asante

Re: Affiliation Agreement

Asante, an Oregon nonprofit public benefit corporation is pleased to present this nonbinding Letter of Intent (“LOI”) to enter into discussions regarding the feasibility of Ashland Community Healthcare Services dba Ashland Community Hospital (“ACH”) integrating into Asante. This LOI must be mutually acceptable to all Parties, based upon the following general terms and conditions and the LOI shall include the entire agreement of the Parties:

PURPOSES, PRINCIPLES, VISION AND VALUES

- A. Purpose and Principles. These principles set forth the mutual understanding and agreement that has been reached regarding the proposed plan for integration of ACH and Asante.
  - 1. Community Benefit. The integration of these organizations is being undertaken to serve the community interest and is being done in the best interests of all relevant constituent groups in the region. The Asante and ACH Board members believe this plan for integration will provide significant benefits to:
    - i. The community by enhancing a community health resource dedicated to having the ability to improve the health status of the population while managing the per capita costs;
    - ii. The patients by providing access to a patient focused continuum of high quality, integrated healthcare services through convenient local primary care access points and specialty services; and
    - iii. The physicians by creating growth opportunities for existing physician practices, increasing access to specialists, and assuring the continued availability of local primary care physicians and expanding practice support services.
- B. Vision and Values. The parties share the common values of the need for the strong involvement of community leaders in the delivery of health care. The parties desire a healthcare system providing the Ashland area community with quality healthcare providers conveniently accessible and capable of meeting the full range of needs of the community. The parties desire to combine their efforts



to further improve health care in the Ashland area as well as the delivery of patient and person-centered health care to the region and the enhancement of service availability and access.

1. Parties:
  - a. Asante, an Oregon nonprofit public benefit corporation, located at 2650 Siskiyou Blvd., Medford, Oregon, 97504
  - b. ACH, an Oregon nonprofit public benefit corporation, with an address at 280 Maple Street, Ashland, OR 97520
  - c. Ashland Community Hospital Foundation (“ACH Foundation”), an Oregon nonprofit public benefit corporation, with an address at 280 Maple Street, Ashland, OR 97520
  - d. City of Ashland, an Oregon municipal corporation (“City”) with an address at 20 East Main Street, Ashland, OR 97520
  - e. Individually referred to as “Party” and collectively as the “Parties”
2. The Parties hereby represent that they have not worked with or consulted any broker or entity that may be entitled to compensation with respect to this affiliation.
3. The term of this LOI shall be ninety (90) days from the date of the signed acceptance by the Parties below. The term may be extended or discontinued by mutual written agreement by the Parties.
4. No Party shall disclose the terms of or negotiations with respect to this LOI until such time as public notice is published for public consideration of the LOI by the Ashland City Council. No Party shall disclose the terms of or negotiations with respect to the Definitive Agreements until such time as public notice is published for public consideration of the Definitive Agreement by the Ashland City Council. See Public Statements Section 20 below.
5. The Parties acknowledge and agree that this LOI was developed in good faith, but does not constitute a binding commitment with respect to the transactions and arrangements described in this LOI. The Parties further acknowledge and agree that a binding commitment with respect to the transactions and arrangements described in this LOI will result only from the execution and delivery, if any, of a binding written Definitive Agreement setting forth the respective rights, obligations and duties of the Parties and which will contain terms normal and customary in a transaction of this type and such other terms as the Parties may agree upon. Notwithstanding anything to the contrary in this LOI, the provisions of Sections 2, 3, 4, 5, 6, 8, 9, 10, 11, 20, 21, and 22 of this LOI are fully binding on the Parties upon the execution of this LOI, unless and until they are superseded by the Definitive Agreement or other written agreements executed by the Parties.
6. This LOI shall be deemed withdrawn and revoked if not executed by ACH, the ACH Foundation, and the City of Ashland by written signed acceptance below and returned to Asante on or before February 20, 2013.



7. All Parties agree that time is of the essence in moving this LOI forward and, contingent upon a transaction being mutually agreed to, finalizing the Definitive Agreement.
8. The Parties acknowledge and agree they are each a party to the Confidentiality and Non-Disclosure Agreement (CNDA) made on or about December 19, 2012, and that the CNDA remains in full force and effect.
9. The Parties shall each pay their respective expenses (including fees and expenses of legal counsel, investment bankers, brokers, and/or other representatives and consultants) in connection with the proposed transactions, whether or not consummated.
10. The material terms of the proposal set forth in this LOI are intended to be the subject of further negotiation and then incorporated into legally binding and definitive agreements (the “Definitive Agreements”). The Definitive Agreements will contain, in addition to the terms and conditions set forth in this LOI, such terms and conditions as mutually agreed upon by the Parties. In addition, the Definitive Agreements shall indicate that the respective obligations of the Parties will be conditioned upon approval by each Party’s Board or other governing body on or before the closing date as to the transactions proposed hereunder, and receipt by the Parties on or before the closing date of any regulatory approvals required in connection therewith.
11. This LOI shall be governed by the laws of the State of Oregon.
12. **Transaction Structure**
  1. The City of Ashland will transfer its sole membership interest in Ashland Community Hospital to Asante at the closing of the transaction specified in the Definitive Agreements.
  2. The ACH Foundation shall retain its legal structure as an independent public benefit corporation until such time as the ACH Foundation and Asante mutually agree to closer affiliate. Asante will maintain a staffed ACH Foundation office on the ACH campus as long as the ACH Foundation exists to provide financial support exclusively to ACH. Asante, ACH, and the Foundation will comply with the terms of any restricted grant or fund.
  3. No other consideration not specified in this LOI shall be provided to ACH, ACH Foundation or the City by Asante.
  4. Asante agrees that during the first three years after closing it will:
    - Operate ACH as a general hospital in accordance with OAR 333-500-0032(2)(a) (hereinafter, “General Hospital”); and
    - Make minimum investments in ACH capital improvements of at least \$10 million consisting of no less than \$2.5 million invested within the first year, no less than a cumulative total of \$5.5 million invested within the first two years and no less than a cumulative total of \$10 million invested within the first three years.



In the event Asante does not operate ACH as a General Hospital during the first three years after closing as described in Section 12.4 first bulletpoint, and in the event none of the grounds exist in Section 12.5 (either or both bulletpoints) for Asante to activate the reversionary clause in Section 12.6, the City will have the right to activate this reversionary clause, at its sole discretion, which will include the following two provisions: (1) Asante will orderly transfer its sole membership and operations in ACH to the City and the City will have the right to deal with ACH in accordance with the City's rights as the sole member of ACH, and (2) Asante will pay to ACH \$8 million in full satisfaction of any liability or claim for damages, injunctive relief or otherwise owing to the City of Ashland and/or ACH Foundation arising out of the Definitive Agreement except for (1) the City's interest as an additional insured under Asante's or ACH's general liability policy from the signing of the Definitive Agreement until the earlier of three years or any reversion of Asante's sole membership interest in ACH to the City under this paragraph, and (2) the agreement to fund capital improvements in Section 12.4 second bulletpoint or to pay to the Foundation the sums required to be paid in Section 12.4 in the second paragraph after the second bulletpoint up to the date of any default, whichever is applicable, prorated for the month or partial month of the year in which Asante defaults in the payment of the sums required to be paid in Section 12.4 in the second paragraph after the second bulletpoint, if at all. The property conveyed by the City into ACH at closing of the Definitive Agreement will remain in ACH upon this reversion.

In the event Asante defaults in payment of no less than \$2.5 million in the first year in Section 12.4 second bulletpoint, Asante will pay the ACH Foundation the difference between \$2.5 million and the amount Asante actually paid during the first year. In the event Asante defaults in payment of not less than a cumulative total of \$5.5 million within the first two years, Asante will pay the ACH Foundation the difference between \$5.5 million and the amount Asante actually paid during the first two years. In the event Asante defaults in payment of not less than a cumulative total of \$10 million within the first three years, Asante will pay the ACH Foundation the difference between \$10 million and the amount Asante actually paid during the first three years. Any payments due to the ACH Foundation under this paragraph shall be made within 90 days of the end of the year in which the default occurred, and the payments shall be subject to written verification and/or audit of the amounts actually paid by Asante for investments in ACH capital improvements. Any payments by Asante in this paragraph with respect to default in payment of the \$10 million or any portion thereof shall be in full satisfaction of any liability or claim for damages, injunctive relief or otherwise owing to the City, ACH, or ACH Foundation arising out of the Definitive Agreement, except for (1) Asante's agreement to operate ACH as a General Hospital during the first three years after closing as provided in Section 12.4 first bulletpoint, or, in the event Section 13.6 is applicable, except for Asante's agreement to operate ACH as a General Hospital in Section 13.6 in years four through 15 after closing, (2) the City's interest as an additional insured under Asante's or ACH's general liability policy from the signing of the Definitive Agreement until the earlier of three years or any reversion of Asante's sole membership interest in ACH to the City under this paragraph, and (3) the



agreement to fund capital improvements in Section 12.4 second bulletpoint or to pay to the Foundation the sums required to be paid in Section 12.4 in the second paragraph after the second bulletpoint up to the date of any default, whichever is applicable, prorated for the month or partial month of the year in which Asante defaults in the payment of the sums required to be paid in Section 12.4 in this paragraph, if at all.

5. If either or both of the following events occurs within the first three years after closing, it will be at Asante's sole discretion to determine to activate the reversionary clause in Section 12.6:

- The unfunded defined benefit pension liability exceeds \$16 million; or
- Any unknown liabilities or known liabilities arising from acts or omissions that occurred prior to closing and are not quantifiable at the time of the closing of the Definitive Agreement (this excludes the defined benefit pension liability described above, and the existing Umpqua Bank loan, and all liabilities in the amount stated on the ACH Balance Sheet, as of the date of closing), that have a negative impact of \$4 million or more, or acts or omissions that occurred prior to closing that cause the ACH federal tax-exempt status to be revoked or Medicare or Medicaid provider status to be terminated or revoked. Any liabilities arising from Asante's negligent acts or omissions after closing will not be counted in determining a negative impact of \$4 million or more.

6. If either or both of the events listed in Section 12.5 occurs and Asante triggers this reversionary clause at its sole discretion, Asante agrees to orderly transfer the sole membership and operation of ACH back to the City. Any such transfer of sole membership by Asante to the City described in this Section 12.6 is in full satisfaction of any liability or claim for damages, injunctive relief or otherwise owing to the City arising out of the Definitive Agreement, except for the agreement to fund capital improvements in Section 12.4, second bulletpoint, up to the date Asante triggers the reversionary clause, prorated for the month or partial month of the year in which Asante triggers the reversionary clause, if at all. In the event of a reversion pursuant to Section 12.6, the defined benefit pension liability and Umpqua Bank liability of ACH will remain with ACH after the reversion and Asante will have no liability with respect to those liabilities.

13. **Real Estate Arrangements with the City of Ashland and ACH Foundation**

1. At the closing, the City of Ashland enters into an agreement to convey to ACH all the City's assets currently leased by ACH, including without limitation the land, buildings, and fixed equipment. The conveyance to ACH of the City's assets currently leased by ACH will be by a statutory warranty deed or bargain and sale deed and bill of sale and will be free and clear of all



liens and encumbrances except for the Umpqua Bank loan currently outstanding on these assets.

2. The ACH Foundation agrees to convey to ACH fee simple title to five specific real property holdings of the ACH Foundation, including without limitation the land, buildings, and fixed equipment which will be critical to the successful operation of ACH. The specific assets are:
  - o 317 Maple Street, Ashland, Oregon (house used for storage)
  - o 530 Catalina Street, Ashland, Oregon (parking lot)
  - o 628 N Main Street, Ashland, Oregon (medical office building)
  - o 49 Talent Avenue, Talent, Oregon (medical office building)
  - o 209 N. Pacific Highway, Talent, Oregon (commercial building to be used for storage and possibly offices)

One additional asset located at 588 North Main Street, Ashland, Oregon will not be conveyed but guaranteed for unrestricted use of 10 parking spaces for visitors to ACH Family Medicine. The conveyance to ACH of the ACH Foundation's five specific assets will be by a statutory warranty deed or bargain and sale deed and bill of sale and will be free and clear of all liens and encumbrances other than the existing lien for approximately \$82,000 encumbering the property at 209 North Pacific Highway in Talent, Oregon which Asante assumes and agrees to pay.

3. This agreement includes a reversionary clause which states that the assets conveyed from ACH Foundation to ACH are conveyed back to ACH Foundation in the event Asante does not operate ACH as a General Hospital as described in Section 12.4 first bulletpoint.
4. Should Asante default on operating ACH as a General Hospital as described in Section 12.4 first bulletpoint, or if Asante activates the reversionary clause with respect to its sole membership in ACH in Section 12.6 at its sole discretion, it will be in ACH Foundation's discretion to determine whether to activate the reversionary clause in Section 13.3.
5. In the event the reversionary clause in Section 13.3 is applicable (i.e., in the event Asante does not operate ACH as a General Hospital for the first three years described in more detail in the first bulletpoint in Section 12.4) or in the event Asante activates the reversionary clause in Section 12.6 in its sole discretion, the reconveyance of the assets by ACH to ACH Foundation is in full satisfaction of any liability or claim for damages, injunctive relief or otherwise owing to ACH Foundation that Asante is obligated to meet or perform the agreement to operate ACH as a General Hospital in Section 13.3 first bulletpoint, except for the agreement to fund capital improvements in Section 12.4 second bulletpoint or to pay to the Foundation the sums required to be paid in Section 12.4 in the second paragraph after the second bulletpoint, whichever is applicable, up to the date Asante triggers the reversionary clause, prorated for the month or partial month of the year in which Asante triggers the reversionary clause, if at all. Any reconveyance of the ACH Foundation assets by ACH to ACH Foundation pursuant to this Section 13.5 will be subject to any liens and encumbrances which existed on such assets as of the date of the closing except for the existing lien described in Section 13.2, but will not be subject to any liens and encumbrances created or suffered by Asante after the closing.



6. After the first 3 years after closing, and in the event (1) Asante has not activated the reversionary clause in Section 12.6 and (2) Asante does not cease operating ACH as a General Hospital during the first three years after closing as provided in Section 12.4 first bulletpoint, Asante further agrees that it will operate ACH as a General Hospital for an additional twelve (12) years. In the event the twelve (12) year period of ACH operating as a General Hospital is not satisfied, Asante will pay to the City of Ashland \$4 million in full satisfaction of any liability or claim for damages, injunctive relief or otherwise arising out of the Definitive Agreement, including without limitation any liability or claim that Asante is obligated to operate ACH as a General Hospital for an additional twelve (12) years except for any required payment from Asante to ACH Foundation under the second bulletpoint of Section 12.4. The parties desire to combine their efforts to further improve health care in the Ashland area as well as the delivery of patient and person-centered health care to the region and the enhancement of service availability and access.

14. **Finances**

1. City of Ashland assumes any ACH liability related to PERS.

15. **Hospital Name**

1. The name/branding of ACH will be Asante Ashland Community Hospital (or similar, as mutually agreed), which shall be operated by and under Asante in a manner substantially consistent with its existing hospital facilities, Asante Rogue Regional Medical Center and Asante Three Rivers Medical Center.

16. **Governance**

1. On closing, Asante will elect a new Board of Directors for ACH. ACH will form an "Advisory Board" of community members which will consist of the current membership of the ACH Board of Directors, to include the current and immediate past chiefs of the ACH Medical Staff and up to two additional medical staff members.
2. The Chair of the ACH Advisory Board shall become an *ex-officio*, voting member of the Asante board.
3. The current Chief of the ACH Medical Staff shall become an *ex-officio*, non-voting member of the Asante Board.
4. The ACH Advisory Board will have specific responsibility for monitoring patient safety and quality of care, and for confirming credentialing and other decisions of the ACH Medical Staff. The ACH Advisory Board actions and minutes will be submitted to the Asante Board of Directors, which will have the final approval authority.
5. It is the intent of all Parties that the ACH Advisory Board will become the Asante Ashland Community Hospital Quality Committee. The agreements in Section 16.1 through 16.4 will be in effect until the date the ACH Advisory Board becomes the Asante Ashland Community Hospital Quality Committee. Thereafter, the level of representation of the Ashland community on the Asante Board of Directors will be in accordance with Asante Board bylaws.



6. It is Asante's desire to merge ACH into Asante. The timing of this desire will be at Asante's sole discretion.

17. **Covenant Not to Compete**

1. The City and the ACH Foundation will not directly or indirectly own or operate or be affiliated with a hospital or other healthcare facility or service in competition with Asante Ashland Community Hospital in Jackson County, Oregon for the lesser of 15 years from the date of closing or the date of a reversion in Sections 12.4, 12.5, and 13.3. ACH Foundation's ownership or indirect operation of a retirement and care facility at 548 N. Main Street shall not be considered to violate the foregoing agreement.

18. **Current ACH Employees**

1. Asante will extend every effort to offer employment for as many ACH employees as possible at Asante or Asante Physician Partners, but cannot guarantee that all ACH employees will be employed once the affiliation is complete.
2. Employees at risk for not being employed in their current roles by Asante or Asante Physician Partners will be eligible to apply for other positions within Asante as though they were internal applicants of Asante.
3. Employees losing their jobs as a result of the affiliation will be offered a severance payment in line with ACH's current severance guidelines.
4. ACH employees that are offered employment at Asante or Asante Physician Partners will maintain their seniority ("years of service"), paid time off/vacation balances, and comparable compensation and benefits.

19. **Medical Staff**

1. The ACH Medical Staff will remain an independent organization with separate medical staff bylaws which will be subject to the approval of the ACH Advisory Board and the Asante Board of Directors.
2. The ACH Medical Staff will be responsible for credentialing and scope of services, subject to overall quality requirements of Asante and requirements of Asante's liability coverage. Their credential and peer review decisions will need to be approved by the ACH Advisory Board and the Asante Board of Directors.

20. **Public Statements.** Subject to Section 2.5 of the CNDA:

1. All Parties will work together to expeditiously develop mutually agreed upon talking points to be shared with the media and general public.
2. No public statements about the proposed affiliation between Asante and ACH will be provided by any spokesperson for any of the Parties without prior approval of the other Parties, provided however, such approval will no longer be required with respect to the LOI after notice of Ashland City Council's public consideration of the LOI has been published and will no longer be required with respect to the Definitive Agreement after notice of Ashland City Council's public consideration of the Definitive Agreement has been published.



3. Notwithstanding Sections 20.1 and 20.2, individual Ashland City Councilors may respond to questions from the news media or their constituents as to their views with respect to proposed affiliation between Asante and ACH.
21. **Due Diligence.** The Parties have been conducting due diligence since prior to the execution of the CNDA. Subject to Section 23.5, the Parties will continue to conduct reasonable due diligence permitting the other Party or Parties and its or their employees, lenders, financial advisors, attorneys, accountants and other authorized representatives reasonable access to the Party's premises, employees, accountants, and books and records, including without limitation corporate compliance, to complete such due diligence investigations customary for transactions of this nature. Each Party shall cause all requested due diligence documents and information to be delivered to the other promptly. All inspections will only occur at times and in a manner as will not unreasonably disrupt the delivery of care to patients or the other transaction of business by a Party.
22. **Definitive Agreement, Conditions, and Closing**
1. All Parties will use best efforts to agree on a Definitive Agreement as described in Sections 5 and 10 within 90 days of a signed and returned LOI.
  2. At the time the LOI is executed, ACH will operate the hospital in the normal and ordinary course of business consistent with past practices and any material (defined as more than \$100,000) unplanned, unbudgeted, extraordinary debt, obligation, contractual relationship, agreement investment or outlay of resources will be disclosed to and approved by Asante in advance of being undertaken.
  3. During the due diligence process, the ACH CEO will be notified of all identified issues that need immediate attention/resolution and will address these issues in a timely fashion.
  4. Asante will seek and file for regulatory approvals required prior to or just after closing and such approvals will be required in order to complete the affiliation.
  5. Asante will use best effort to complete its due diligence activity within 60 days after a signed and returned LOI agreement.
  6. As part of an affirmative obligation agreement, any additional information discovered by any of the Parties during the due diligence process that has the potential to extend the timeline for successful completion of the definitive agreement or cause the integration of ACH into Asante to not happen must disclose this information to the other Parties immediately. All Parties agree to work in good faith to resolve any issue caused by this additional information, if possible, in an expeditious manner.
  7. Interim hurdles include the following: initial draft of the Definitive Agreements by March 29, 2013.
23. **Management Services Agreement**  
Should ACH request Asante will work with ACH to develop a mutually acceptable Management Services Agreement by which Asante would provide executive management to ACH under usual and customary terms and conditions



for such agreement until such time as the Definitive Agreement is executed.

24. **Insurance**

The Definitive Agreement will include a commitment by Asante to maintain or cause ACH to maintain insurance coverage on the ACH property, structures and equipment at replacement value, to pay any insurance deductibles in the event of a covered loss, and to name the City of Ashland as an additional insured party under such insurance for as long as Asante or any successor entity operates ACH as a General Hospital, up to three years from the closing of the Definitive Agreement.

Any and all terms herein are subject to confirmatory due diligence. Access to data, executives and other resources to complete such diligence is required and delays in such efforts could influence the timing when the affiliation is completed. By signing this LOI, each party represents that their respective governing body has approved the terms of this LOI.

Sincerely,

ASANTE

By: \_\_\_\_\_  
William D. Thorndike                      Date  
Board Chair

By: \_\_\_\_\_  
Roy Vinyard                                      Date  
President and Chief Executive Officer

ACCEPTED AND AGREED this \_\_\_\_\_ day of \_\_\_\_\_, 2013  
Ashland Community Hospital

By: \_\_\_\_\_  
Anne Golden                                      Date  
Board Chair

By: \_\_\_\_\_  
Mark Marchetti                                      Date  
Chief Executive Officer

Ashland Community Hospital Foundation

By: \_\_\_\_\_  
Sandra Slattery                                      Date  
Board Chair

By: \_\_\_\_\_  
Tom Grimland                                      Date  
Past Board Chair

