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## MEMORANDUM OF UNDERSTANDING

### *Mercer County Hospital*

This MEMORANDUM OF UNDERSTANDING (this "Memorandum") is entered into by and among GENESIS HEALTH SYSTEM, an Iowa nonprofit corporation ("Genesis"), MERCER COUNTY, ILLINOIS, an Illinois municipality (the "County"), and Mercer County Hospital, a component unit of the County acting under the authority of its governing board (the "MCH Board") (each a "Party" and together the "Parties") to be effective the date the last Party adopts the document as set forth below.

### RECITALS

- A. Genesis is a tax-exempt organization whose charitable health care mission is to improve the quality, extend the scope and enhance the accessibility of affordable health care and related services for the residents of Eastern Iowa and Western Illinois (collectively, the "Regional Community"). In furtherance thereof, Genesis operates Genesis Health System (the "System"), a three-hospital integrated health system located in the Regional Community, and administers numerous programs and services throughout the Regional Community.
- B. Mercer County owns Mercer County Hospital, a critical access hospital in Aledo, Illinois (the "Hospital"). The County, acting under the direction and authority of its elected Board of Supervisors (the "County Board") has appointed the MCH Board to oversee the operation of the Hospital and has delegated authority and policy-making responsibility for the operation of the Hospital to the MCH Board pursuant to the Bylaws of the Mercer County Hospital Governing Board (the "Bylaws").
- C. The Hospital is a 22 bed critical access hospital with affiliated physician clinic, health care facilities and programs that provides quality health care and promotes wellness.
- D. The Hospital, acting under the authority of the MCH Board, and Genesis entered into a Management Services Agreement dated as of March 18, 2009 (the "Management Services Agreement"), pursuant to which Genesis agreed to provide certain management and related services to the Hospital. This agreement was amended as of March 12, pursuant to which Genesis and the Hospital agreed to, among other things, continue good faith discussions regarding a more formal affiliation relationship.
- E. The Parties have been working together to negotiate the terms and conditions of their continued affiliation and have concluded that they would like to enter into a long-term affiliation agreement as more specifically described herein and to grant Genesis the option to assume certain assets and liabilities of the Hospital, as more specifically described herein. The Parties desire to memorialize their understanding of such terms and conditions in order to facilitate the completion of corporate documents and actions necessary to implement the affiliation.

**ARTICLE I**  
***Declaration of Understanding***

This Memorandum constitutes the culmination of exploratory discussions between the Parties and is intended to confirm their understanding in principle of the terms and conditions under which the Parties will continue their affiliation (the "**Affiliation**"). These terms and conditions are subject to, and are to be contained in substantially similar form in definitive, legally binding agreements (the "**Definitive Agreements**"), to be negotiated in good faith and containing such representations, warranties, covenants and conditions as are customary in transactions of this kind and are as agreed to by the Parties. The Parties agree to continue good faith negotiations with a view towards executing all Definitive Agreements by October 31, 2010, or such other date as may be agreed upon by the Parties.

While the Parties agree to use their best efforts to negotiate and execute the Definitive Agreements, they recognize that this Memorandum does not constitute a legally binding agreement for the consummation of the transactions contemplated herein and is subject to review of the financial implications of the transaction, the negotiation and execution of Definitive Agreements, and satisfaction of conditions precedent to be contained in the Definitive Agreements. Neither Party shall have a legal obligation to the other as a result of this Memorandum other than those obligations specified and imposed by Article IV.

**ARTICLE II**  
***Affiliation Agreement***

The Parties contemplate that the Hospital will be formally affiliated with Genesis pursuant to an agreement (the "**Affiliation Agreement**") which contains the following terms and conditions:

- 2.1 **Term.** The term of the Affiliation Agreement shall commence December 1, 2010, and shall extend through November 30, 2014, unless extended as set forth therein (the "**Affiliation Term**").
- 2.2 **Services.** Genesis shall continue its management of the Hospital by providing services defined in the Management Services Agreement as amended and supplemented from time to time. The Affiliation Agreement will provide for the terms for the extension of the relationship including further definition or modification of the terms and conditions for the delivery of these services during the Affiliation Term.
- 2.3 **Affiliation Relationship.** The Hospital shall note its affiliation relationship with Genesis on all signage and in all marketing materials in such manner as may be agreed upon by Genesis and the MCH Board.
- 2.4 **Group Purchasing Access.** Genesis shall exercise its best efforts to permit access to its group purchasing organization discounts, product availability and pricing structure for the benefit of the Hospital to the extent permitted by the applicable documents or relationships.

- 2.5 **Other Relationships.** Genesis shall exercise its best efforts to permit the Hospital access to products and services it obtains from certain relationships it maintains with third parties, including association memberships, service agreements, Health Enterprises of Iowa, and the Health Care Advisory Board, to the extent permitted by the applicable documents or relationships.
- 2.6 **Amendment to Bylaws.** As a condition of the Affiliation, the County Board and the MCH Board agree to amend the Bylaws in the manner set forth in Exhibit A attached hereto and made a part hereof.
- 2.7 **Non-Solicitation Covenant.** During the term of the Affiliation Agreement and for one (1) year thereafter, the Hospital and the MCH Board shall not, directly or indirectly, solicit for employment or any other business relationship any employee of Genesis who performed services at or on behalf of the Hospital pursuant to the Affiliation Agreement.
- 2.8 **Option.** The Affiliation Agreement shall provide for the option of Genesis as outlined in Article III of this Memorandum.

### **ARTICLE III** ***Option of Genesis***

The Parties propose to enter into a second agreement (the “**Option Agreement**”) which shall provide that at any time during the Affiliation Term, Genesis may provide the County Board and the MCH Board written notice of its election to assume title and ownership of the assets of the Hospital subject to its assumption of certain debt and other liabilities of the County which are attributable to the Hospital, pursuant to the terms of a transfer and assumption agreement to be attached to the Option Agreement, which shall contain the following terms:

- 3.1 **Assets.** Following the exercise of the Option, Genesis shall assume ownership of the assets of the Hospital used or useful in the operation of the Hospital as follows:
- 3.1.1 ***Assets Transferred to Genesis.*** The County shall cause to be transferred to Genesis on the closing date defined in Section 3.7 below (the “**Closing Date**”), substantially all of the assets of the County used or useful in the operation of the Hospital which are not excluded assets described in Section 3.1.2 below including, but not limited to the following:
- (a) The Hospital facility and the land on which it is located (collectively, the “**Premises**”);
  - (b) Fixed and moveable furniture, fixtures and equipment, including any medical equipment (collectively, the “**Furniture, Fixtures and Equipment**”);
  - (c) All inventory and supplies on hand or ordered by the Hospital (the “**Inventory and Supplies**”);

- (d) All accounts receivable or other amounts due to the County or Hospital from patients or third party payors for services rendered by the Hospital or other receivables from any third party resulting from the operation of the Hospital;
- (e) Funds designated or restricted for Hospital improvements or operations and use including Board designated funds for capital improvements and donor restricted assets, provided that such funds shall be utilized by Genesis in accordance with their restricted purposes;
- (f) Cash, marketable securities and other readily available funds in accounts or otherwise designated to support operation or capital support of the Hospital;
- (g) All rights of the Hospital or the County in any contracts assigned to and assumed by Genesis pursuant to Section 3.3 below (the "Assigned Contracts"); and
- (h) All rights in any prepaid expenses, intellectual property and other material assets of MCH used or useful in the operation of MCH.

3.1.2 **Excluded Assets.** The assets transferred to Genesis shall not include the following:

- (a) Certain rural property owned by the County or the Hospital which was donated for the benefit of the Hospital provided, however, that such property shall be titled and held in the name of the Mercer Foundation for Health (the "Foundation") and any revenues from such property shall continue to support the operations of the Hospital consistent with the intent of the donors of the property;
- (b) Rights under any contracts of the County and the Hospital which are not Assigned Contracts; and
- (c) Any assets held by the Foundation provided that the Foundation shall continue to exist to support to operations of the Hospital and the health and well-being of people in the Mercer County area.

3.2 **Liabilities.** In consideration for the County's transfer of the Hospital assets to Genesis, Genesis agrees to assume the following obligations related to the operation of the Hospital:

3.2.1 **Current Debt.** All debt attributable to the Hospital which is set forth on Exhibit B attached hereto incurred before the effective date of the Affiliation Agreement or the restructuring or refinancing of such debt (the "Current Debt"), provided however, in no event shall Genesis be obligated to assume Current Debt which is in excess of the fair market value of the Premises, Furniture, Fixtures and Equipment or Inventory and Supplies of the Hospital established as of June 30, 2009.

3.2.2 **New Debt.** Any new debt incurred by or on behalf of the Hospital after the Effective Date of the Affiliation which has been approved by Genesis. Genesis

specifically acknowledges it has approved the incurrence of certain debt (the "Renovation Debt") related to the renovation project defined in Project Management Services Addendum to the Management Services Agreement dated as of July 1, 2010.

3.2.3 *Trade Payables.* All accounts payable of the Hospital as of the Closing Date attributable to the operations of the Hospital.

3.2.4 *Assigned Contracts.* All obligations of the County or the Hospital under the terms of any Assigned Contracts.

3.3 Assignment and Assumption of Contracts. Upon the exercise of the Option by Genesis, the Hospital and the County agree to assign, and Genesis agrees to assume, obligations under contracts that Genesis deems material to the operations of the Hospital, including but not limited to the leased medical office building from the Foundation and hospital-based physician contracts. Closing shall be subject to assignment of said contracts, with consent provided by the other relevant parties, to the extent such consent is required. Genesis will be permitted to waive assignment of any contracts at its sole discretion if consent cannot be obtained.

3.4 Lease Alternative. Upon the exercise of the Option by Genesis, it may further elect, that in lieu of acquiring ownership of the Premises, it may lease the Premises pursuant to a long term lease between Genesis and the County. In such event, Genesis shall not assume any obligations for the Renovation Debt or any Current Debt or additional debt related to additions or improvements to the Premises (the "Premises Debt"). The rental payment of the lease shall be the greater of \$1 or the amount necessary for the County to pay the debt service on the Premises Debt. Further, Genesis shall retain the option to acquire the Premises for payment or assumption of the Premises Debt.

3.5 Covenants. As further consideration for the transfer of assets and assumption of liabilities, the Parties covenant and agree as follows:

3.5.1 *Services Covenant.* If Genesis exercises its Option, Genesis agrees that it will continue to operate the Hospital as an acute care hospital for a minimum of five (5) years from the Closing Date.

3.5.2 *Employees.* Employees of the Hospital currently participate in the Illinois Municipal Retirement Fund ("IMRF"), and the County makes contributions to the IMRF for the benefit of these employees. As of the Closing Date, the employees of the Hospital shall become employees of Genesis and said employees will no longer be able to participate in IMRF but will receive other benefits available to other similarly situated Genesis employees for which they are eligible under current plan participation documents, policies or guidelines, except as modified by the Definitive Agreements. So long as any Hospital employee is continuously employed by Genesis after the Closing Date, the employee will, for purposes of seniority and benefit participation, be given credit for the continuous years of service such employee had with the Hospital subject, however, to any limitation that may be imposed by a benefit participation plan.

3.5.3 *The Foundation.* The Parties agree to further evaluate and define what the relationship between the Foundation and Genesis will be if Genesis exercises the Option, especially with regard to the ownership of the medical office building.

- 3.6 **Representations and Warranties; Other Terms.** The obligations of Genesis, the County, and the MCH Board to complete the transactions following the exercise of the Option by Genesis will be subject to satisfactory representations, warranties and conditions of closing and indemnification provisions addressed in the Definitive Agreements.
- 3.7 **Closing.** The closing shall occur within ninety (90) days after Genesis exercises the Option (the "Closing Date"). If Genesis exercises the Option within the last ninety (90) days of the Affiliation Term (as hereinafter defined), the Parties agree that the Affiliation Term shall be extended through the Closing Date.

#### ARTICLE IV

##### *Interim Conduct of Parties: Miscellaneous*

- 4.1 **Costs and Expenses.** Except as otherwise provided herein, each Party will pay its own costs and expenses, including, but not limited to, costs and expenses for the applicable Party's employees and other staff and legal, consulting, and accounting services with respect to the contemplated transactions.
- 4.2 **Agreement to Use Best Efforts.** The Parties agree that upon execution of this Memorandum, each shall proceed in good faith and use its best efforts to effectuate the actions contemplated herein. In the event that the Parties have not executed the Definitive Agreements contemplated herein on or before October 31, 2010 and have reached an impasse such that any Party wishes to cease negotiations regarding the transactions contemplated herein based upon a belief that the Definitive Agreements as contemplated in this Memorandum will not be executed, any Party may provide written notice to the other of its desire to cease negotiations regarding the transactions contemplated herein. Such notice may be provided by facsimile, hand delivery or such other means that is reasonably anticipated to reach the recipient. The Parties may, by written agreement executed prior to the deadline, extend the October 31, 2010 deadline set forth above.
- 4.3 **Notification.** During the pendency of this Memorandum, and so long thereafter as the Parties are negotiating in good faith concerning the transactions contemplated in this Memorandum, the County, the MCH Board and Genesis agree to give written notification to the other of any material adverse change in the nature or operation of its business.
- 4.4 **Exclusivity.** The County, the MCH Board and Genesis agree that until December 31, 2010 or the cessation of the negotiations, whichever is later, neither Party shall

participate in discussions or negotiations with any third party for any transaction that is inconsistent with the transactions contemplated in this Memorandum.

- 4.5 **Governing Law.** This Memorandum shall be governed by the laws of the State of Illinois, without giving effect to conflicts of law principles.
- 4.6 **Binding Commitment.** Except for the provisions of this Article IV, which are to be considered legally binding agreements which shall survive expiration or termination of this Memorandum, this Memorandum sets forth only a non-binding summary of the understanding between the Parties with respect to the Affiliation, and this Memorandum does not constitute and shall not be construed as a legally binding agreement to enter into the transaction described herein. A legal obligation with respect to the transactions contemplated herein shall only arise upon satisfaction of the conditions, in a form and substance acceptable to both Parties, described in the Definitive Agreements. Notwithstanding the foregoing, nothing contained herein shall be deemed to waive any obligations set forth in the Management Agreement, until such time as the Definitive Agreements are executed.

IN WITNESS WHEREOF, the Parties have caused this Memorandum to be executed on the day and year set forth below.

**MERCER COUNTY, ILLINOIS**

Date: 9-7-10

By: Maxine Henry

Its: Mercer County Board, Chair

**MERCER COUNTY HOSPITAL  
(by action of its Governing Board)**

Date: ~~10~~ 9-22-2010

By: Donald R. Johnson

Its: Chair Hospital Gov Board

**GENESIS HEALTH SYSTEM**

Date: 10-7-10

By: Michael Ryzalski

Its: Chairperson

## EXHIBIT "A"

### Bylaws

Article II of the Bylaws shall be deleted and replaced with the following:

### ARTICLE II

#### Responsibility and Authority

The Mercer County Board of Supervisors (the "County Board") extends to the Governing Board all its authority and responsibility for the operation of the Hospital and specifically authorizes the Governing Board to manage the property, business and affairs of the Hospital (including, but not limited to the authority to enter into contracts and agreements and authorize expenditures) provided, however, that the following actions shall not be authorized or implemented until approved by the County Board:

- (a) the interpretation of or any change in a statement of mission, philosophy, role, or purpose of the Hospital;
- (b) the adoption of amendments to these Bylaws;
- (c) the acquisition, sale, lease, transfer, encumbrance, or other alienation of property of the Hospital, other than in the usual and regular course of business, when such acquisition, sale lease, transfer, encumbrance, or other alienation is above \$500,000;
- (d) the adoption or authorization of annual capital and operating budgets of the Hospital or the making of non-budgeted expenditures in excess of \$500,000;
- (e) the incurrence of debt or the guarantee of the debt of another by the Hospital which is in excess of \$1,000,000;
- (h) the adoption of a plan of distribution or disposition of the assets of the Hospital;
- (i) the appointment of members of the Governing Board as nominated or recommended by the Governing Board; and
- (j) The authorization of any new physician hiring which would materially increase the contribution required of the County to the Illinois Municipal Retirement Fund.

Members of the Governing Board shall be paid a per-diem payment in an amount determined by the Governing Board within parameters established by the County Board for attending scheduled and called meetings as well as committee meetings deemed necessary by the Chairperson. Mileage reimbursement at the published IRS rates will be paid to members of the Governing Board for travel to and from all meetings.

**EXHIBIT "B"**

Assumed Debt

As of December 31, 2009

USDA Loan	805,000.00
CT Note Payable	53,243.00
IT Note Payable	437,774.00
Equipment Note Payable	2,600.00
Various Revolving Notes Payable	<u>1,339,466.00</u>
<b>Total Debt Obligations</b>	<b><u>2,638,083.00</u></b>

## AFFILIATION AGREEMENT

THIS AFFILIATION AGREEMENT (this "Agreement") is made and entered into this \_\_\_\_ day of November, 2010, by and among GENESIS HEALTH SYSTEM, an Iowa nonprofit corporation ("Genesis"), MERCER COUNTY, ILLINOIS, an Illinois municipality (the "County"), MERCER COUNTY HOSPITAL, an unincorporated business unit of the County ("MCH") acting under the authority of its Governing Board (the "MCH Board"; the MCH Board, MCH and the County are collectively referred to herein as the "MCH Parties"); (Genesis and the MCH Parties are referred to herein individually as a "Party" and collectively as the "Parties").

### RECITALS

- A. Genesis is a tax-exempt organization whose charitable health care mission is to improve the quality, extend the scope and enhance the accessibility of affordable health care and related services for the residents of Eastern Iowa and Western Illinois (collectively, the "Regional Community"). In furtherance thereof, Genesis operates Genesis Health System (the "System"), an integrated health system located in the Regional Community.
- B. MCH, under the authority of the MCH Board, operates and governs Mercer County Hospital (the "Hospital"), a 22-bed critical access hospital located in Aledo, Illinois, with an affiliated physician clinic, health care facilities and programs that provide quality health care and promote wellness.
- C. MCH, under the authority of the MCH Board, entered into a Management Services Agreement dated as of March 18, 2009 (as subsequently amended and supplemented, the "Management Agreement"), pursuant to which Genesis agreed to provide certain management and related services to MCH.
- D. The Parties entered into a Memorandum of Understanding on October 7, 2010 (the "MOU"), pursuant to which the Parties agreed to pursue the development of a formal, contractual affiliation relationship and to grant Genesis the option to assume certain assets and liabilities of the MCH Parties (the "Option").
- E. Concurrently herewith, the Parties are entering into an Option Agreement more particularly described in Section 3.5 herein, which sets forth the terms of the Option.
- F. Genesis has determined that its affiliation with the MCH Parties will support community health in furtherance of its charitable mission, and the MCH Parties have determined that its affiliation with Genesis also furthers its health care goals.
- G. The Parties wish to set forth the terms of the formal affiliation as contemplated in the MOU by the execution of this Agreement.

## AGREEMENT

NOW, THEREFORE, the Parties, intending to be legally bound, and in consideration of the premises and the mutual covenants, representations and warranties set forth in this Agreement, as well as other good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, do hereby agree as follows:

### ARTICLE I TERM

1.1 **Term.** The term of this Agreement shall commence on December 1, 2010, at 12:01 a.m. (the "Effective Date") and shall terminate at 11:59 p.m. on November 30, 2014, unless extended or terminated as set forth herein (the "Affiliation Term").

1.2 **Extension.**

(a) At least twelve (12) months prior to the expiration of the Affiliation Term, the Parties will meet to determine whether to commence efforts to continue the affiliation relationship and extend the Affiliation Term, which negotiations will proceed in good faith.

(b) If Genesis exercises its Option under the terms of Option Agreement, as defined in Section 3.5 herein, within the last ninety (90) days of the Affiliation Term, then the Affiliation Term shall be extended through the date of the transfer of certain assets of the MCH Parties and the assumption of certain liabilities of the MCH Parties, as set forth in the Option Agreement.

1.3 **Termination.** This Agreement may be terminated at any time during the Affiliation Term in the event that any Party is in material breach of any provision of this Agreement, and the breaching Party has not cured the breach within sixty (60) days after receipt of notice from a non-breaching Party (or such longer period as may reasonably be required to correct such default with the exercise of due diligence, so long as the corrective action begins within the sixty (60) day period). The termination of this Agreement shall not affect the obligations of the parties under the Option Agreement, provided, however, that if the this Agreement is terminated as a result of a material breach of this Agreement by Genesis which has not been cured, the MCH Parties shall have the right to terminate the Option Agreement in accordance with the provisions of the Option Agreement.

1.4 **Obligations upon Termination.** Upon termination of this Agreement, no Party hereto shall have any further rights or obligations hereunder except for rights and obligations: (i) accruing prior to the effective date of such termination; (ii) arising as a result of any breach of or default under this Agreement; (iii) that are to survive as indicated by the text or context thereof; or (iv) related to patient care that a Party is required by law or any participating provider agreement to continue performing for a requisite period of time.

**ARTICLE II  
OPERATION OF MCH**

**2.1 Services.** Genesis agrees to manage the operations of MCH subject to the authority of the MCH Board and the Mercer County Board (the "County Board") under the following terms:

**(a) Management Services.**

**(i) Administrator.** Genesis shall retain a full-time administrator to manage the day-to-day operations of MCH (the "Administrator").

**A.** The Administrator shall be an employee of Genesis and shall report to a designee of the Chief Executive Officer of Genesis (the "Genesis CEO"). The Genesis CEO shall have the authority to terminate and replace the Administrator with prior notification to, and consultation with, the MCH Board.

**B.** The Administrator will have full authority to manage and operate the day-to-day affairs of MCH, including the ability to contractually bind the organization, expend funds within budgets approved by the MCH Board and County Board, subject to any limitations on the Administrator's authority contained within the bylaws of the MCH Board (the "Bylaws") or specific policies or resolutions adopted by the MCH Board or County Board which have been communicated to the Administrator.

**C.** The Administrator shall have the authority to retain and terminate other managers and employees of MCH, including employed officers and managers of MCH.

**D.** The Administrator will devote his or her full-time employment to the administration of MCH. The Administrator or his designee will attend (i) regularly-scheduled and special meetings of the MCH Board and the County Board, (ii) meetings of the MCH medical staff (the "Medical Staff"), and (iii) other material policy or strategy sessions of MCH. Notwithstanding anything to the contrary contained herein, the Parties acknowledge and agree that the Administrator will, as an employee of Genesis, participate in Genesis meetings and functions as may be directed by the Genesis CEO.

**(ii) Management Support.** The Administrator shall have access to, and may consult from time to time at his or her discretion with, other officers, directors and managers of Genesis within areas of expertise as it relates to the operation of MCH including, but not limited to, human resources, finance, legal, strategic planning, marketing, facility management, information technology,

construction project management, biomedical engineering, laundry services and leadership.

(iii) **Management Fee.**

(A) **Base Management Fee.** In consideration of the services of the Administrator and management support under this Section 2.1(a), for the period beginning on the Effective Date and ending at 11:59 p.m. on December 1, 2011 (the "First Year"), MCH shall pay Genesis a fee in the annual amount of Two Hundred Forty Thousand Dollars (\$240,000) (the "Management Fee").

(B) **Management Fee Increase.** The Management Fee shall be increased annually in accordance with the CPI-U, U.S. City Average, All Items, 1982-84=100 (the "CPI"), as described herein. On December 1 of each year of the Affiliation Term after the First Year (each such year, a "Subsequent Year"), the Management Fee shall increase or decrease to an amount equal to the product of: (a) the Management Fee for the First Year, and (b) a fraction in which the index from the last published CPI prior to December 1 of the applicable Subsequent Year is the numerator, and the index from the last published CPI prior to the Effective Date is the denominator, which such published CPI figures are currently available at the website of the Bureau of Labor Statistics, <http://www.bls.gov/cpi/>.

(b) **Information Technology Management.**

(i) **IT Support Services.** Genesis shall provide information technology ("IT") management, operations, training and support for MCH on a scheduled and as-needed basis. These services shall consist of the following:

Application Management	Network Management
IT Strategic Planning	IT Project Management
Telecom Management	System Administration
Application Support	Network Support
IT Training Program	IT Minor Equipment
Help Desk Support	On-Call Support
Data Center Operations	HIPAA Security

(ii) **IT Management Fee.**

(A) **Base IT Management Fee.** In consideration of the services provided by Genesis, MCH shall pay Genesis an annual base IT management fee of One Hundred Thousand Dollars (\$100,000), based on the direct cost of Genesis to provide these services plus an agreed upon amount to address allocation of overhead for the utilization of these services (the "IT Management Fee").

**(B) IT Management Fee Increase.** Each Subsequent Year, the IT Management Fee shall increase by an amount agreed upon by the Parties, as set forth herein (each such annual increase, an "IT Management Fee Increase"). At any time between August 1 and October 31 of each Subsequent Year, the Parties shall meet to discuss in good faith the applicable IT Management Fee Increase to go into effect on December 1 of that Subsequent Year. If the Parties cannot agree on the IT Management Fee Increase by November 1 of any Subsequent Year, then this Section 2.1(b) shall terminate and be of no further force and effect (except with respect to Section 2.1(b)(iv) below), and Genesis shall not be obligated to perform the IT services described in Section 2.1(b)(i) after November 30 of the year in which this Section 2.1(b) is terminated. If this Section 2.1(b) is terminated during the Affiliation Term as provided herein, the remaining provisions of this Agreement shall remain in full force and effect and shall not be affected by the severance of Section 2.1(b) from this Agreement.

**(iii) Obligations of MCH.** MCH shall be responsible for the following, at its sole cost and expense: (a) provision of on-site IT staffing as from time to time recommended by Genesis, and (b) provision of all licenses, equipment, hardware, software and supplies related to information technology at MCH. The MCH Board shall directly pay for any new or additional items and shall reimburse Genesis for its incremental cost to extend licenses or other forms of technology to MCH.

**(iv) Obligations Upon Termination.** Upon termination of the Affiliation Term (except termination by Genesis for cause) or earlier termination of this Section 2.1(b), as provided in Section 2.1(b)(ii)(B) above, Genesis will assist in transitioning IT services back to MCH. Any software licenses acquired by or used by MCH through Genesis shall be terminated and MCH shall be responsible for obtaining new licenses as required by any continuing vendor or as it deems necessary to meet its needs. Notwithstanding anything to the contrary contained in the foregoing sentence, if MCH has purchased any software and has rights to use such software, MCH shall retain its rights in such software after termination of the Affiliation Term; provided, however, that MCH shall inform Genesis of any such rights prior to termination of the Affiliation Term.

**(c) Physician Practice Management.** Genesis agrees to provide physician office management to MCH's medical associates (the "Practice") under the following terms:

**(i) General Management Services.** Genesis, through its Genesis Health Group division, will provide general administrative oversight services to the Practice and will provide recommendations to MCH to enhance the efficiency of the Practice. As appropriate, Genesis will provide recommendations regarding:

1. Staffing Needs
2. Process Improvement
3. Specialized Certified Coders
4. Coding Guidelines
5. Ongoing Training and Education for Staff
6. Recruitment

Genesis will also assist MCH in implementing the following recommendations:

1. Reimbursement Maximization Plan
2. Marketing Plan
3. Reimbursement Verification Project
4. Patient Flow Assessment and LEAN Concepts
5. Physician Schedule Assessment
6. Strengthen Specialists Relationship
7. Perform Coding Audit

(ii) **Billing and Collection Services.** Genesis will bill patients and third-party payors for the services rendered at the Practice and will remit to MCH amounts collected.

(iii) **Practice Management Fee.**

(A) **Base Practice Management Fee.** In consideration of the services provided by Genesis, MCH shall pay Genesis an annual management fee of One Hundred Sixty Thousand Dollars (\$160,000) based on the direct cost of Genesis to provide these services plus an agreed upon amount to address allocation of overhead for the utilization of these services (the "Practice Management Fee").

(B) **Practice Management Fee Increase.** Each Subsequent Year, the Practice Management Fee shall increase by an amount agreed upon by the Parties, as set forth herein (each such annual increase, a "Practice Management Fee Increase"). At any time between August 1 and October 31 of each Subsequent Year, the Parties shall meet to discuss in good faith the applicable Practice Management Fee Increase to go into effect on December 1 of that Subsequent Year. If the Parties cannot agree on the Practice Management Fee Increase by November 1 of any Subsequent Year, then this Section 2.1(c) shall terminate and be of no further force and effect, and Genesis shall not be obligated to perform the Practice management services described in Section 2.1(c)(i) after November 30 of the year in which this Section 2.1(c) is terminated. If this Section 2.1(c) is terminated during the Affiliation Term as provided herein, the remaining provisions of this Agreement shall remain in full force and effect and shall not be affected by the severance of Section 2.1(c) from this Agreement.

(iv) **Obligations of MCH.** MCH shall be responsible for the following, at its sole cost and expense: (a) provision of on-site clinic staffing as from time-to-time recommended by Genesis, (b) provision of all space, equipment, hardware, software and

supplies related to the operation of the Practice, including interfaces to Genesis systems to allow Genesis to bill for services rendered at the Practice, and (c) provision, on a timely basis, of information necessary for Genesis to bill for services rendered at the Practice.

(d) **Other Services.** Genesis may provide additional support on an as-needed basis. Any significant commitment of time by any Genesis employee or department other than as set forth in subsections (a)-(c) above shall be for additional consideration as may be budgeted or otherwise approved by the MCH Board. The value of the services shall be based on the direct cost of Genesis to provide such services, plus an agreed upon amount to address allocation overhead for the utilization of such services. Genesis and the MCH Board shall document the terms and conditions for the delivery of the additional services in a form acceptable to Genesis and the MCH Board.

**2.2 Reliance on MCH Board.** Genesis shall be entitled to rely upon the authority of the MCH Board or anyone designated by the MCH Board to act on its behalf. The MCH Board shall provide Genesis with copies of any and all policies, rules or other governing materials to the extent that the MCH Board expects those policies to limit the authority of Genesis hereunder. Whenever any action by Genesis shall be subject to the approval of the MCH Board, Genesis shall be entitled to receive a decision of the MCH Board within thirty (30) days after notification of the proposed action has been delivered in writing to the MCH Board.

**2.3 Medical and Professional Matters.** The MCH Board represents and warrants that the Medical Staff is and shall remain organized and function in accordance with its Bylaws and the laws and regulations of the State of Illinois. Genesis shall be permitted to consult with members of the Medical Staff as Genesis from time to time deems appropriate in the performance of the services contemplated hereunder. All matters requiring professional medical judgments shall remain the responsibility of the Medical Staff and, as appropriate, the MCH Board.

**2.4 Facilities, Support Staff and Supplies.** The MCH Parties shall provide all facilities, support staff, supplies and other items necessary or desirable to allow Genesis to effectively perform the services contemplated by this Agreement.

**2.5 Management Agreement.** The Parties agree that this Agreement shall supersede and replace the Management Agreement as of the Effective Date and that, accordingly, the Management Agreement shall be terminated and of no further effect as of the Effective Date.

### ARTICLE III COVENANTS AND CONDITIONS

During the Affiliation Term, the Parties shall recognize and comply with the following covenants and conditions:

**3.1 Amendment of Bylaws.** The MCH Parties agree to amend the Bylaws in the manner set forth in Exhibit A attached hereto and made a part hereof.

**3.2 Affiliation Relationship.** MCH shall note the contractual affiliation relationship with Genesis, subject to Section 3.11 below, on all signage and in all marketing materials in such a manner as mutually agreed upon by Genesis and the MCH Board.

**3.3 Group Purchasing Access.** Genesis shall exercise its best efforts to permit access to its group purchasing organization discounts, product availability and pricing structure for the benefit of MCH to the extent permitted by applicable documents, relationships and law.

**3.4 Other Relationships.** Genesis shall exercise its best efforts to permit the MCH Parties access to products and services it obtains from certain relationships it maintains with third parties, including association memberships, service agreements, Health Enterprises of Iowa, and the Health Care Advisory Board, to the extent permitted by applicable documents, relationships or law.

**3.5 Option.** The MCH Parties agree to grant Genesis the option to assume title to certain assets of the MCH Parties subject to assumption by Genesis of certain debt and other liabilities of the MCH Parties pursuant to the terms and subject to the conditions and covenants of an option agreement substantially in the form set forth on Exhibit B attached hereto and made a part hereof (the "Option Agreement"). Genesis may provide the MCH Parties written notice of its election exercise its option under the Option Agreement at any time during the Affiliation Term.

**3.6 Non-Solicitation Covenant.** During the term of this Agreement and for one (1) year thereafter, the MCH Parties shall not, directly or indirectly, solicit for employment or any other business relationship any employee of Genesis who performed services at or on behalf of the Hospital pursuant to this Agreement. The MCH Parties agree that a breach of the provisions of this Section 3.6 will cause Genesis irreparable injury and harm not reasonably or adequately compensable by money damages. The MCH Parties therefore expressly agree that Genesis shall, in addition to any other right or remedy that may be available, be entitled to injunctive and other equitable relief to prevent breach or threatened breach of this provision of the Agreement.

**3.7 Insurance.**

(a) **General and Professional Liability.** The MCH Parties shall acquire and maintain, at their expense, comprehensive general and professional liability insurance coverage for the services delivered at MCH with limits of not less than Five Million (\$5,000,000) Dollars per claim, and Five Million (\$5,000,000) Dollars aggregate coverage per year. Such insurance shall list Genesis Health System and all employees of Genesis as additional insureds thereunder. Such coverage shall be provided on an occurrence basis. The MCH Parties shall provide a copy of the policy and certificate of insurance within ten (10) days after the Effective Date. Said insurance policy shall provide for at least fifteen (15) days' notice to Genesis in the event of cancellation, modification or non-renewal. It is the intention of the Parties that the insurance coverage provided by the MCH Parties hereunder shall protect the MCH Parties, Genesis and Genesis's officers, directors, employees and agents performing services hereunder, and will be primary insurance for all Parties for any and all losses covered thereby.

(b) The MCH Parties shall continue to maintain in full force and effect all other automobile, property and casualty, workers' compensation and other policies generally maintained by a health care facility, with limits at least equal to the limits in effect as of the Effective Date. The MCH Parties shall not cancel, reduce coverage limits, or otherwise limit coverage in any way in any policies of insurance now maintained by the MCH Parties with respect to MCH without the consent of Genesis.

**3.8 Independent Contractor.** None of the provisions of this Agreement or the Option Agreement are intended to create any relationship among the Parties other than that of independent entities contracting with each other solely for the purpose of effecting the provisions of this Agreement. No Party, nor any of their respective officers, directors, employees or agents, shall have the authority to bind the other or shall be deemed or construed to be the agent, employee or representative of the other except as may be specifically provided herein. No Party, nor any of their employees or agents, shall have any claim under this Agreement or otherwise against the other Party for Social Security benefits, workers' compensation, disability benefits, unemployment insurance, vacation, sick pay or any other employee benefits of any kind.

**3.9 Confidential Information.** No Party shall disclose Confidential Information (as defined herein) of another Party. For purposes of this Agreement, "Confidential Information" shall mean any information identified by any Party as "confidential" or "proprietary" or which, under all of the circumstances, ought reasonably to be treated as confidential and/or proprietary, including the terms of this Agreement. The receiving Party shall use the same degree of care as it uses to protect its own confidential information of like nature, but no less than a reasonable degree of care, to maintain in confidence the Confidential Information of the disclosing Party. The foregoing obligations shall not apply to any information that (i) is at the time of disclosure or thereafter becomes, part of the public domain through a source other than the receiving Party, (ii) is subsequently learned from a third party that does not impose an obligation of confidentiality on the receiving Party, (iii) was known to the receiving Party at the time of disclosure, (iv) is generated independently by the receiving Party, or (v) is required to be disclosed by law, subpoena or other process. Notwithstanding the foregoing, the Parties shall use due care to ensure that the sharing of information among the Parties is done in a manner that does not violate Antitrust laws. The obligations of this Section shall survive the termination of this Agreement and are in all cases, subject to any or all of the MCH Parties' obligation to comply with the Illinois Freedom of Information Act, 5 ILCS 140.

**3.10 Compliance with HIPAA.** Each Party is required to comply with the Standards for Privacy of Individually Identifiable Information under the Health Insurance Portability and Accountability Act of 1996 contained in 45 CFR Parts 160 and 164 (the "HIPAA Privacy Standards") as of the effective date of the HIPAA Privacy Standards on April 14, 2003 or as later determined. If this Agreement must be amended to secure such compliance, the Parties will meet in good faith to agree upon such amendments.

### **3.11 Trademarks**

(a) **License of Genesis Trademarks.** Genesis grants and MCH accepts a non-exclusive, non-transferable, perpetual and royalty-free license, to use the trademarks listed on Exhibit C (collectively, the "Genesis Trademarks") and the goodwill

associated with such Genesis Trademarks, subject to and on the terms and conditions set forth in this Section 3.11. Trademarks may be (i) added or removed from Exhibit C upon agreement of the Parties, or (ii) removed by from Exhibit C by Genesis, and Genesis shall promptly notify MCH of any such removal. Any change to Exhibit C shall become part of this Agreement. The use of the Genesis Trademarks by MCH shall inure solely to the benefit of Genesis. MCH will not do anything inconsistent with the interest of Genesis in the Genesis Trademarks, including but not limited to using the Genesis Trademarks in a manner likely to confuse, mislead or deceive the public, and MCH agrees not to adopt, use, register or attempt to register anywhere in the world any trademark, or trade dress the same or confusingly similar to the Genesis Trademarks.

(b) **Use of Genesis Trademarks.** The Genesis Trademarks may only be used by MCH (i) in connection with the operation of the Hospital under this Agreement and (ii) in strict accordance with the Trademark Usage Guidelines set forth in Exhibit C attached hereto and made a part hereof. MCH will immediately discontinue use of the Genesis Trademarks, and return all advertising, promotional and sales materials supplied by Genesis, upon termination of this Agreement or when requested by Genesis.

**3.12 Hazardous Waste.** The MCH Parties shall be responsible for the removal of all Hazardous Materials during the term of this Agreement from the Premises. "Hazardous Materials" means (a) any chemical, material, substance or pollutant which poses a hazard or would cause a violation of or is regulated by any Hazardous Materials Laws, and (b) any chemical, material or substance defined as or included in the definitions of "hazardous substances," "hazardous wastes," "hazardous materials," "extremely hazardous waste," "restricted hazardous waste," "toxic substances," "regulated substances," or words of similar import under any applicable federal, state or local law or under the regulations adopted or publications promulgated pursuant thereto, including, but not limited to, the Comprehensive Environmental Response Compensation and Liability Act of 1980, as amended (42 U.S.C. Section 9601, et seq.); the Hazardous Materials Transportation Act, as amended (49 U.S.C. Sec. 1801, et seq.); the Resource Conservation and Recovery Act, as amended (42 U.S.C. Sec. 6901, et seq.); the Solid Waste Disposal Act, as amended (42 U.S.C. Sec. 6991, et seq.); and the Federal Water Pollution Control Act, as amended (33 U.S.C. Sec. 1251, et seq.).

### **3.13 Indemnification**

(a) **Indemnification by MCH Parties.** Each of the MCH Parties shall indemnify and hold Genesis and all entities related to Genesis, and each of their respective employees, representatives, officers, directors and agents (individually a "Genesis Indemnitee" and collectively the "Genesis Indemnitees") harmless, from and against any and all Damages (as hereinafter defined) suffered by any Genesis Indemnitee, with respect to claims made after the Effective Date, whether or not involving a third-party claim, arising, directly or indirectly, from or in connection with:

(i) the breach of any representation or warranty made by the MCH Parties in or pursuant to this Agreement or in any certificate or other document required to be executed and delivered by either of the MCH Parties pursuant to this Agreement;

(ii) the failure of any of the MCH Parties to perform any covenant or obligation of the MCH Parties contained in this Agreement, the Option Agreement or any other agreement required to be executed and delivered by any of the MCH Parties pursuant to this Agreement or the Option Agreement; and

(iii) the operation of the Hospital, including any transaction or series of transactions, any facts or series of facts existing, or any events or series of events, except to the extent caused by the negligence of Genesis.

(b) **Indemnification by Genesis.** Genesis shall indemnify and hold each of the MCH Parties and all entities related to any of the MCH Parties, and each of their respective employees, representatives, officers, directors and agents (individually an "MCH Indemnitee" and collectively the "MCH Indemnitees") harmless, from and against any and all Damages (as hereinafter defined) suffered by any MCH Indemnitee, with respect to claims made after the Effective Date, whether or not involving a third-party claim, arising, directly or indirectly, from or in connection with:

(i) the breach of any representation or warranty made by Genesis in or pursuant to this Agreement or in any certificate or other document required to be executed and delivered by Genesis pursuant to this Agreement; and

(ii) the failure of any of Genesis to perform any covenant or obligation of Genesis contained in this Agreement, the Option Agreement or any other agreement required to be executed and delivered by Genesis pursuant to this Agreement or the Option Agreement.

For the purposes of this Section 3.13(a) and (b), "Damages" shall mean all losses, claims, damages, costs, fines, penalties, obligations, avoidable transfers, payments and liabilities (including those arising out of any action, suit, arbitration, inquiry, proceeding or investigation by or for any governmental authority or arbitrator), together with all reasonable costs and expenses (including reasonable attorneys' fees and reasonable out-of-pocket expense) incurred in connection with any of the foregoing.

#### ARTICLE IV MISCELLANEOUS

**4.1 Notices.** All notices or other communications shall be in writing shall be deemed given to them personally, facsimile (which is confirmed) or mailed by registered or certified mail (return receipt requested) to the parties at the following addresses (or such other address for a party as shall be specifically specified by like notice);

If to Genesis: Genesis Health System  
1227 E. Rusholme Street  
Davenport, IA 52803  
Attn: President and Chief Executive Officer

With a copy to: Genesis Health System  
1227 E. Rusholme Street  
Davenport, Iowa 52803  
Fax: (563) 421-6500  
Attn: Vice President, Legal Affairs/General  
Counsel

If to the MCH: Mercer County Hospital  
409 NW Ninth Avenue  
Aledo, IL 61231  
Telephone: (309) 582-3701  
Fax: (309) 582-3737  
Attn: Chairman, Governing Board

With a copy to: Mercer County Courthouse  
County Clerk  
P.O. Box 66  
Aledo, IL 61231  
Telephone: (309) 582-7021  
Attn: Chairman, Governing Board

With a copy to: Mercer County State's Attorney  
100 SE 3rd St  
Aledo, IL 61231-1953  
Attn: State's Attorney

**4.2 No Individual Liability.** Notwithstanding references to the MCH Board and the County Board herein, nothing herein or in the Option Agreement shall be construed such that any individual member or members of the MCH Board or the County Board shall be individually liable or responsible for any representations, warranties, covenants or conditions contained in this Agreement or the Option Agreement.

**4.3 Expenses.** The Parties shall each pay their own expenses including, without limitation, fees and expenses of their agents, employees, representatives, counsel, accountants, and other costs incident to the preparation of this Agreement and the consummation of the transaction provided herein.

**4.4 No Third Party Rights or Remedies.** Except as otherwise provided herein, nothing herein expressed or implied is intended or shall be construed to confer upon or to give any person, firm or corporation any rights or remedies under or by reason of this Agreement.

**4.5 Headings.** Descriptive headings are for convenience only and shall not control or

affect the meaning or construction of any provision of this Agreement.

**4.6 Exhibits and Documents.** All exhibits, schedules and other documents referred to in or attached to this Agreement and all other writings between the parties, are integral parts of this Agreement as if fully set forth herein, and all statements appearing therein shall be deemed disclosed and relied upon for all purposes and not just in connection with the specific representation to which they are explicitly referenced.

**4.7 Notification.** During the pendency of this Agreement, and so long thereafter as the Parties are negotiating in good faith concerning the transactions contemplated in this Agreement, each Party agrees to give written notification to the other of any material adverse change in the nature or operation of its business.

**4.8 Record Retention.** Section 952 of the Omnibus Reconciliation Act of 1980 (P.L.96-499) provides for access to the books and records of sub-contractors of Medicare providers by the Secretary of Health and Human Services and the Comptroller General. Section 952 prohibits payments under Medicare for services furnished for Provider by any of its sub-contractors, where the cost or value of the contract over twelve (12) months is \$10,000 or more, unless such contract contains a provision for allowing the Secretary and Comptroller General access to the contracts, books, documents and records of the sub-contractors that are necessary to verify the cost of the services under the contract for the period of four (4) years after the provision of such services. Genesis and the MCH Parties agree to provide such access when appropriate.

**4.9 Supervening Laws.** The Parties recognize that this Agreement at all times is to be subject to applicable state, local and federal law. The Parties further recognize that this Agreement shall be subject to amendment in such laws and regulations and to new legislation. Any provisions of the law that invalidate, or otherwise are inconsistent with, the terms of this Agreement or the intentions of the Parties as stated herein, or that would cause one or more of the Parties to be in violation of law, shall be deemed to have superseded the terms of this Agreement; provided, however, that the Parties shall exercise their best efforts to accommodate the terms and intent of this Agreement to the greatest extent possible consistent with the requirements of law.

The Parties hereby expressly agree that it is not the intention of any Party to violate any public policy, statutory or common laws, that if any sentence, paragraph, clause or combination of the same is in violation of any state or federal law, such sentence, paragraph, clause or combination of the same shall be inoperative and the remainder of this Agreement shall be binding upon the Parties hereto. It is the intention of the Parties to make this Agreement binding only to the extent that it may be lawfully done under existing state and federal laws.

**4.10 Severability.** If any provision of this Agreement is held to be illegal, invalid or unenforceable under present or future laws effective during the term of this Agreement, such provision shall be fully severable; this Agreement shall be construed and enforced as if such illegal, invalid or unenforceable provision had never comprised a part of this Agreement; and the remaining provisions of this Agreement shall remain in full force and effect and shall not be affected by the illegal, invalid or unenforceable provision or by its severance from this

Agreement. Furthermore, in lieu of each such illegal, invalid or unenforceable provision, there shall be added automatically as part of this Agreement a provision as similar in terms to such illegal, invalid or unenforceable provision as may be possible and be legal, valid and enforceable.

**4.11 Governing Law.** This Agreement shall be governed by and construed in accordance with the laws of the State of Illinois.

**4.12 Counterparts.** This Agreement may be signed in any number of counterparts with the same effect as if the signature of each such counterpart were upon the same instrument.

**4.13 Further Assurances.** From time to time after execution of this Agreement, each Party, at the request of the other and without further consideration, agrees to execute and deliver or to cause to be executed and delivered at its expense, such other instruments or documents as may reasonably be requested by the other to more effectively carry out the intent and purposes hereof.

**4.14 Assignment and Parties in Interest.** This Agreement shall be binding upon and inure to the benefit of the Parties, their successors and assigns; provided, however, no Party shall assign its rights or obligations under this Agreement without the prior written consent of the other Parties.

**4.15 Waiver.** No breach of any of the terms or provisions of this Agreement shall be deemed as consented to or excused, nor shall the validity or performance of any representation, promise or undertaking herein be deemed waived, nor any delay in or deviation from the time or manner of any performance be deemed consented to unless such consent, excuse or waiver, shall be in writing and signed by the Party claimed to have consented, excused or waived. Any such consent, excuse or waiver shall not constitute consent to, waiver of, or excuse for any other similar or dissimilar, breach, delay or deviation.

**4.16 Entire Agreement.** This Agreement including all exhibits and schedules hereto constitutes the entire agreement between the Parties with respect to the subject matter referenced in this Agreement and supersedes any and all prior negotiations, correspondence, understandings and agreements among the Parties. This Agreement may be amended only by written instrument signed by each Party, which incorporates this Agreement by reference.

[SIGNATURE PAGE FOLLOWS]

IN WITNESS WHEREOF, the Parties have adopted this Affiliation Agreement as of the date first set forth above.

**MERCER COUNTY, ILLINOIS**

By: Maxine Henry  
Mercer County Board, Chair  
Its: \_\_\_\_\_

**MERCER COUNTY HOSPITAL**  
(by action of its Governing Board)

By: [Signature]  
Mercer County Hospital Governing Board  
Its: Chairman

**GENESIS HEALTH SYSTEM**

By: [Signature]  
Its: CEO

**EXHIBIT A**

**Amendment to Bylaws**

- I. Article II of the Bylaws shall be deleted and replaced with the following:

**ARTICLE II**

**Responsibility and Authority**

The Mercer County Board of Supervisors (the "County Board") extends to the Governing Board all its authority and responsibility for the operation of the Hospital and specifically authorizes the Governing Board to manage the property, business and affairs of the Hospital (including, but not limited to the authority to enter into contracts and agreements and authorize expenditures) provided, however, that the following actions shall not be authorized or implemented until approved by the County Board:

- (a) the interpretation of or any change in a statement of mission, philosophy, role, or purpose of the Hospital;
- (b) the adoption of amendments to these Bylaws;
- (c) the acquisition, sale, lease, transfer, encumbrance, or other alienation of property of the Hospital, other than in the usual and regular course of business, when such acquisition, sale, lease, transfer, encumbrance, or other alienation is above \$500,000;
- (d) the adoption or authorization of annual capital and operating budgets of the Hospital or the making of non-budgeted expenditures in excess of \$500,000;
- (e) the incurrence of debt or the guarantee of the debt of another by the Hospital which is in excess of \$1,000,000;
- (f) the adoption of a plan of distribution or disposition of the assets of the Hospital;
- (g) the appointment of members of the Governing Board as nominated or recommended by the Governing Board; and
- (h) The authorization of any new physician hiring which would materially increase the contribution required of the County to the Illinois Municipal Retirement Fund.

Members of the Governing Board shall be paid a per-diem payment in an amount determined by the Governing Board within parameters established by the County Board for attending scheduled and called meetings as well as committee meetings deemed necessary by the Chairperson. Mileage reimbursement at the published IRS rates will be paid to members of the Governing Board for travel to and from all meetings.

II. Article III, Section 2 of the Bylaws shall be deleted and replaced with the following:

**Section 2. Appointment of Members**

The Board shall consist of twelve (12) members to be selected as follows:

- a) The Mercer County Hospital Governing Board shall nominate persons for each vacancy that needs to be filled for nine (9) Board positions. The Mercer County Board of Supervisors will approve all positions that are filled.

At least one (1) Board member shall be from each of the five (5) political districts as defined on June 2000.

Each member selected by the Mercer County Governing Board shall be for a period of three (3) years. (On occasion circumstances may present a vacancy on the Board prior to a members' term ending. New members fulfilling such positions shall complete the previous members term for the period of the appointment.) The terms of these board members shall be staggered so that the terms of one third of the members shall expire each year.

- b) The Chief of the Medical Staff (or the Vice-Chief of Staff as the designated representative) of the Mercer County Hospital shall serve as a member of the Governing Board and shall have full voting rights. The length of this term shall coincide with the term of office of Chief or Vice-Chief of Medical Staff.
- c) Two (2) members from the County Board shall also serve as members of the Governing Board. These members will be appointed and replaced by the Chairperson of the County Board. These board members shall have full voting rights except to the extent that the County Board designees are not authorized to vote by applicable law.

**EXHIBIT B**

**Option Agreement**

**SEE ATTACHED**

## SLEEP DISORDERS CENTER AGREEMENT

**THIS AGREEMENT** is made the 4<sup>th</sup> day of August, 2010 by and between **MERCER COUNTY HOSPITAL**, an Illinois governmental entity ("MCH") and **GENESIS HEALTH SYSTEM d/b/a GENESIS MEDICAL CENTER, DAVENPORT** ("GENESIS") an Iowa nonprofit corporation. MCH and Genesis individually referred to as "party" and collectively as "parties."

### WITNESSETH

**WHEREAS**, MCH owns and operates an acute care facility in the City of Aledo, Illinois, which wishes to develop a satellite sleep center (**the "Center"**) as an outpatient department of its facility; and

**WHEREAS**, MCH wishes to provide for the administration and management of the Center by an organization qualified and capable of managing the activities and coordinating the delivery of services in the Center in a manner which is cost effective and responsive to the needs of the patients of MCH and which is willing to participate in educational and quality assurance activities designed to enhance the delivery of services offered by the Center; and

**WHEREAS**, Genesis is in the business of providing sleep disorder diagnostic testing services (**the "Services"**) and is qualified, capable and willing to manage the Center and meet the needs of MCH set forth above; and

**WHEREAS**, MCH wishes to engage Genesis to operate and manage the Center pursuant to the terms and conditions set forth herein.

**NOW, THEREFORE**, it is agreed as follows:

1. **Scope of Agreement.** MCH agrees to maintain a Center at its present location in Aledo, Illinois and Genesis agrees to provide or arrange for the delivery of professional services and to manage and coordinate the activities of the Center in the manner set forth in this Agreement. Notwithstanding the foregoing or any authorization granted by MCH to Genesis under this Agreement, MCH shall at all times exercise ultimate control of the operations of the Center and shall retain ultimate authority and responsibility regarding powers and duties vested in MCH by law and regulations.

2. **Term of Agreement.** This Agreement shall be for an initial term of one (1) year beginning August 4, 2010 and shall terminate August 3, 2011. This Agreement shall thereafter renew for successive one (1) year periods unless either party provides notice of its intention to terminate this Agreement at least one-hundred twenty (120) days prior to the expiration of the then current term. Notwithstanding the foregoing, either party may terminate the Agreement prior to the expiration of any term or any renewal term:

- (a.) With or without cause upon providing one-hundred twenty (120) days prior written notice to the other;

- (b.) Upon the failure of the other party to cure any material breach of the Agreement within thirty (30) days of receipt of written notice of the alleged breach provided, however, that if the breach is of a nature that cannot be cured within a thirty (30) day period, the Agreement shall not be terminated so long as the breaching party is making reasonable efforts to cure the breach within a reasonable period of time. A material breach shall include, but not be limited to any action or inaction of either party which jeopardizes the licensure of MCH, the ability of MCH to participate in Medicare or Medicaid or the current accreditation of MCH or the Center by any applicable accrediting body.

3. **Obligations of Genesis.** Genesis agrees to provide the delivery of the Services to MCH, and operate and administer the Center throughout the term of this Agreement for the use and benefit of MCH. Genesis' responsibilities shall include the following:

- 3.1 **Appointment of Manager.** Genesis shall designate, subject to the approval of MCH, one of its employees to be administratively responsible for all activities within the Center (the "**Manager**"). Genesis grants the Manager all necessary authority to manage the affairs of the Center and to take action under this Agreement and MCH may rely upon the authority of such Manager. The Manager shall participate in activities and meetings of other department managers at MCH and shall report to the Chief Executive Officer of MCH to ensure that the Center is operated in accordance with this Agreement and the bylaws, rules and regulations, and policies of MCH. MCH shall have the right to direct Genesis to replace the Manager.
- 3.2 **Professional Services/Personnel.** Genesis shall be responsible for providing all professional and administrative functions necessary to provide a safe and effective patient care experience incident to the provision of the Services and shall provide such professional, paraprofessional and support to staff as may be necessary to carry out its commitment under this Agreement. With respect to the personnel provided, Genesis specifically agrees as follows:
- (a.) All Genesis personnel providing services pursuant to this Agreement shall comply with all provisions of Illinois law relating to the delivery of the Services and shall be fully registered or licensed as may be required under state or federal law;
- (b.) All Genesis personnel shall be paid, disciplined and dismissed by Genesis although MCH shall have the right to direct Genesis to replace any employee that is not in compliance with this agreement;

- (c.) All personnel employed by Genesis and working in the Center shall be subject to rules and regulations of MCH applicable to MCH personnel but shall perform the services under the supervision of the Manager;
- (d.) All Genesis personnel shall comply with the obligations of Genesis under this Agreement, shall provide the Services in accordance with accepted ethical and professional standards of practice and shall participate in the quality assurance programs of MCH;
- (e.) All personnel designated by Genesis to provide services hereunder shall not use the premises of MCH for purposes other than the performance and rendition of sleep disorder diagnostic testing services for the patients of MCH and its medical staff.
- (f.) Genesis agrees to provide: 1) supplies; 2) scoring; 3) follow-up; 4) transcription; 5) and technical staff.

3.3 **Hours of Operation/Availability.** Genesis shall ensure the availability of adequate personnel, equipment and other services as may be reasonably necessary to meet the demands and needs of patients of MCH and members of the MCH medical staff.

3.4 **Education and Training.** Genesis will develop and implement such educational and training for its Center employees, MCH staff and other personnel as may be mutually agreed upon by both parties. Such education and training programs shall be provided at such times and in such manner so as not to interfere with the proper operation of the Center.

3.5 **Reports.** Genesis agrees to maintain such reports and records as MCH may reasonably require in order to assure compliance with various federal, state, and local statutes and regulations or requirements of accrediting organizations. Access to this data shall be provided to MCH or its authorized agents upon request.

3.6 **Equipment.** Genesis shall provide, maintain, and repair all scientific and non-scientific equipment, which is necessary, desirable and utilized in the performance of sleep disorders testing services pursuant to this Agreement. Said equipment shall include, but not be limited to, the equipment designated on **Schedule "A"** to this Agreement. Genesis shall ensure that all equipment will be calibrated according to the manufacturer's directions and shall be periodically serviced as part of the regular preventative maintenance program.

4. **Obligations of MCH.** MCH agrees to provide the following throughout the term of this Agreement:

4.1 **Maintenance of the Center.** MCH agrees to maintain the Center during the term of the Agreement. Unless otherwise mutually agreed by the parties, MCH agrees as follows:

(a.) MCH shall grant Genesis access to those portions of its facilities that MCH shall deem necessary for the operation of the Center.

(b.) MCH shall furnish all necessary utilities, fixtures, janitorial services, and other services necessary for the proper upkeep and maintenance of the Center.

(c.) MCH shall provide all linen and necessary forms.

(d.) MCH or its designee shall, upon consultation with the Manager, negotiate and contract with the managed care organizations and other third party payors for the delivery of services by the Center.

4.2 **Compensation.** MCH agrees to pay Genesis compensation provided in Paragraph 5 below.

4.3 **Licensure, Accreditation and Applicable Law.** MCH shall assure that all activities conducted in the hospital facility, including the Center, will comply with the guidelines, rules and recommendations issued from time to time by any applicable hospital accrediting agency and the rules and regulations of any federal, or state regulatory agencies with jurisdiction over the hospital facility or Center including the Illinois hospital licensure laws and regulations, rules adopted by the Illinois Department of Public Health for Critical Access Hospitals if the facility is so designated, and the Medicare Conditions of Participation for Hospitals.

4.4 **Quality Assurance.** MCH shall maintain a quality assurance program for services provided throughout the hospital facility which shall include the services provided at the Sleep Center.

4.5 **Medical Records.** MCH shall own medical records on all patients seen in the Sleep Center and shall maintain those records in accordance with the policies and practices of MCH. MCH shall grant Genesis personnel reasonable access to said records.

5. **Compensation and Billing.** Charges for services rendered by the Center shall be billed and collected by MCH. In consideration of services provided by Genesis under this Agreement, MCH shall pay Genesis the sum Four Hundred Seventy Five and no/100 (\$475.00)

Dollars, per each baseline sleep study performed and Five Hundred Twenty Five and no 100 (\$525.00) Dollars for each PAP study performed. Genesis and MCH agree that the billing and compensation process shall reflect the following procedures:

- (a.) On a daily basis, Genesis shall provide MCH written documentation for the patients treated and professional services rendered during that day which documentation shall include sufficient information to invoice the patient or other payor and to maintain appropriate hospital records;
- (b.) On or before the fifteenth (15<sup>th</sup>) day of each month, Genesis shall submit to MCH an invoice detailing the number of units of service provided by each professional discipline during the prior month and the total amount due in accordance with the agreed upon per unit fee;
- (c.) MCH shall remit to Genesis the amount due pursuant to the invoice within fourteen (14) days after receipt of the billing.

Either party may request that the other to renegotiate the amount due to Genesis hereunder. In the event of such request, the parties shall enter into good faith negotiations to evaluate the services that have been performed and the market value for services rendered. A request for renegotiation pursuant to this paragraph shall not be made more than an annual basis.

6. **Insurance.** Genesis shall acquire and maintain one (1) or more policies of professional liability insurance (or provide for adequate self insurance reserves) with the minimum of One Million (\$1,000,000) and no/100 Dollars professional liability coverage per claim and Three Million (\$3,000,000) and no/100 Dollars aggregate coverage per year. Such insurance shall be on an occurrence basis or, if claims made coverage is provided, Genesis agrees to acquire at its expense reasonably acceptable "tail" coverage upon termination of this Agreement. Said insurance policy shall provide for at least fifteen (15) days notice to MCH in the event of cancellation, modification or non-renewal. Genesis shall provide certificates of such insurance policy and a copy of the actual policy to MCH upon request.

MCH shall acquire and maintain one (1) or more policies of professional liability insurance (or provide for adequate self insurance reserves) with the minimum of One Million (\$1,000,000) and no/100 Dollars professional liability coverage per claim and Three Million (\$3,000,000) and no/100 Dollars aggregate coverage per year. Such insurance shall be on an occurrence basis or, if claims made coverage is provided, MCH agrees to acquire at its expense reasonably acceptable "tail" coverage upon termination of this Agreement. Said insurance policy shall provide for at least fifteen (15) days notice to Genesis in the event of cancellation, modification or non-renewal. MCH shall provide certificates of such insurance policy and a copy of the actual policy to Genesis upon request.

Genesis and MCH each further agree to purchase and maintain at all times during the term of this Agreement comprehensive general liability policy (or adequate self- insurance

reserves) providing limits of coverage of not less than Five Hundred Thousand and no/100 (\$500,000) Dollars insuring against premises, equipment, and non-professional liability as their interests may appear.

7. **Confidentiality.** Neither Genesis nor MCH shall violate, with respect to patients receiving services through or at the Center, any physician patient privileges specified by statute or by common law. Genesis shall not, at any time during the term of this Agreement or thereafter, without the consent of MCH, make use of or divulge, furnish, or cause to be divulged or furnished, or make accessible to third parties any confidential knowledge or information, including but not limited to patient lists, financial statements or information supplier information, contracts or information relating to the business and affairs of MCH or Center, which Genesis or any of its employees or agents may have obtained in connection with Genesis' duties hereunder, except in furtherance of the purposes and obligations of this Agreement in a manner consistent with the manner in which it protects its own confidential information or if required by law.

8. **Exclusivity.** MCH hereby grants to Genesis the exclusive right during the term of this Agreement to direct and perform all sleep disorder services at MCH as contemplated by this Agreement.

9. **Miscellaneous.**

9.1 **Relationship.** The parties understand and agree that Genesis is engaged by this Agreement strictly as an independent contractor and that nothing in this Agreement is intended or shall be construed to create an employer-employee relationship between MCH and the Genesis employees or agents provided hereunder or between Genesis and any MCH employees or agents. Further, nothing shall be construed to allow MCH to exercise control or direction over the manner and method in which Genesis or its agents or employees provide the services required by this Agreement. Genesis shall not take any action or refrain from taking action, which would mislead the public to the true nature of the relationship between Genesis and MCH.

9.2 **Government Examination.** Genesis agrees to retain and make available upon request for a period of four (4) years after the furnishing of services pursuant to this Agreement, books, documents and records which are necessary to certify the nature and extent of costs thereupon requested by the Secretary of Health and Human Services to the Comptroller General and any other duly authorized representatives, for services furnished under this Agreement for which payment is made under Medicare, Medicaid or other reimbursement Program. This provision relating to retention or production of documents is included because of possible application to this Agreement of Section 1861 (b)(1)(I) of the Social Security Act; if this

Section should be found to be inapplicable then this provision shall be deemed to be inoperative and without force and effect.

- 9.3 **Records.** Each party shall, upon reasonable notice, have reasonable access to the financial books and records of the other party to the extent such records have a direct bearing on the operation of the Center, to verify the information upon adjustments to fees and charges which may be contemplated, or as may otherwise be necessary to carry out the terms of this Agreement.
- 9.4 **Supervening Laws.** The parties recognize that this Agreement at all times is to be subject to applicable state, local, and federal law. The parties further recognize that this Agreement shall be subject to amendment in such laws and regulations and to new legislation. Any provisions of the law that invalidate, or otherwise are inconsistent with the terms of this Agreement or the intention of the parties as stated herein, or that would cause one or both of the parties to be in violation of the law, shall be deemed to have superseded the terms of this Agreement, provided, however, that the parties shall exercise their best efforts to accommodate the terms and intent of this Agreement to the greatest extent possible consistent with the requirements of law.
- 9.5 **Notices.** Any notice or demand required to be given hereunder shall be in writing and shall be deemed to be given when sent by United States Certified or Registered Mail, return receipt requested, postage prepaid, addressed as follows:

**To Mercer County Hospital:**

Mercer County Hospital  
409 N.W. 9<sup>th</sup> Ave.  
Aledo, IL 61231  
Attention: Administrator

**To Genesis Medical Center:**

Genesis Medical Center  
1227 E. Rusholme Street  
Davenport, Iowa 52803  
Attention: Judy Mondello

- 9.6 **Entire Agreement.** This Agreement constitutes the entire agreement between the parties and supersedes any and all previous agreements between the parties, either oral or written. This Agreement may only be

amended by writing executed by the party against whom enforcement of the amendment is sought.

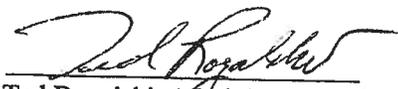
9.7 **Assignability.** This Agreement is not assignable by either party without the written consent of all parties to this Agreement.

9.8 **Severability.** If any of the covenants or conditions of this Agreement are found invalid or unenforceable by a court of competent jurisdiction, the remaining covenants and conditions of this Agreement remain fully enforceable in accordance with their terms.

9.9 **Governing Law.** This Agreement shall be governed and controlled by the State of Illinois.

IN WITNESS WHEREOF, the parties have set their hands below as of the date first written above.

**MERCER COUNTY HOSPITAL**

By   
Ted Rogalski, Administrator

**GENESIS HEALTH SYSTEM d/b/a  
Genesis Medical Center, Davenport**

By   
Douglas P. Cropper, President and CEO

**SCHEDULE "A"**

**SCIENTIFIC AND NON-SCIENTIFIC EQUIPMENT PROVIDED BY GENESIS**

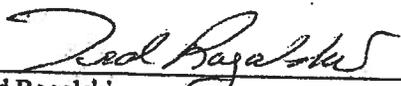
- Nellcor595 two (2) units

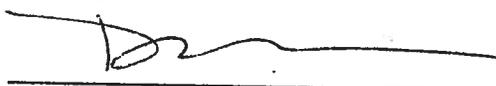
This Schedule shall be effective as of August 4, 2010 and throughout the term of the Agreement, unless otherwise amended to in writing by the parties. Any changes to equipment provided by Genesis shall require the parties to timely execute a revised **Schedule "A"**.

**Agreed to:**

**MERCER COUNTY HOSPITAL**

**GENESIS HEALTH SYSTEM  
d/b/a GENESIS MEDICAL CENTER,  
DAVENPORT**

  
\_\_\_\_\_  
Ted Rogalski  
Administrator  
Date: 2/8/11

  
\_\_\_\_\_  
Douglas P. Cropper  
President & CEO  
Date: 2/10/11

**Mark Rogers - Re: Sleep Disorders Agreement**

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**From:** Judith Mondello  
**To:** Cooper, Jeff; Manas, Julie; Rogalski, Ted; Rogers, Mark; Wlserema, Kent  
**Date:** 08/05/2010 01:50 PM  
**Subject:** Re: Sleep Disorders Agreement  
**Attachments:** Judith Mondello.vcf

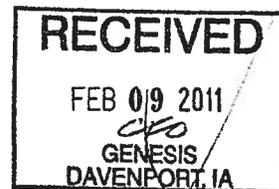
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All:

1. Fee: It is my understanding that the "per test" dollar amount includes the actual fee being charged for the services, plus a markup arrived at by the Finance Department. So long as the fee being submitted to Medicare does not include the markup, then I am fine with the per test amount to be charged MCH.
2. Medical Director/Physician Supervision: So long as a Medical Director is not a JCAH or CMS requirement for a Sleep Study program, and there is no requirement that any of the Sleep Study services must be conducted in the presence or under the supervision of a physician, I am ok with removing the reference to Medical Director in the agreement. I will defer to Julie and Ted to address this issue.

Judy

Judith A. Mondello  
Vice President of Legal Affairs/General Counsel  
& Corporate Compliance Officer  
Genesis Health System  
1227 East Rusholme Street  
Davenport, IA 52803-2459  
Office: 563/421.6514  
Facsimile: 563/421.6500  
Mobile: 563/343.1818  
[mondelloj@genesishhealth.com](mailto:mondelloj@genesishhealth.com)



*A J.D. Power and Associates  
Distinguished Hospital for providing  
"An Outstanding Patient Experience"*

>>> Julie Manas 8/4/2010 6:19 PM >>>

Judy,  
Ted, Jeff, Mark, Kent and I met this afternoon after All Exec and have agreement on the Mercer sleep contract. The per test dollar amount changed and we deleted reference to the Medical Director and reference to sleep lab accreditation.  
In Doug's absence, Mark plans to sign.  
Thanks!  
julie



*A J.D. Power and Associates  
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>>> Judith Mondello 8/3/2010 6:00 PM >>>  
Julie:

Attached is a clean copy and redline from my review of the Sleep Disorder Agreement. It is my belief that you should sign the Agreement, but it is my understanding we will be discussing this issue in more detail at tomorrow's All Exec Meeting.

Let me know if you have any other changes. Ted has patients scheduled for tomorrow evening.

Judy

Judith A. Mondello  
Vice President of Legal Affairs/General Counsel  
& Corporate Compliance Officer  
Genesis Health System  
1227 East Rusholme Street  
Davenport, IA 52803-2459  
Office: 563/421.6514  
Facsimile: 563/421.6500  
Mobile: 563/343.1818  
[mondelloj@genesishealth.com](mailto:mondelloj@genesishealth.com)



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"An Outstanding Patient Experience"*

DK  
*ckh*

**GENESIS HEALTH SYSTEM  
DOCUMENT REVIEW & APPROVAL FORM**

Signature of Primary Responsible Party *Ed Kopaluk* Date 1/28/11

- New Contract  
 Amendment to Contract # \_\_\_\_\_  
 Attachment to Contract # \_\_\_\_\_  
 Replacement Contract # \_\_\_\_\_
- Form Contract      Yes  No

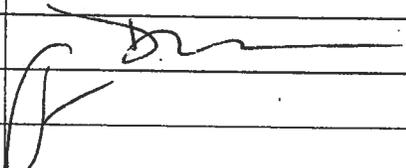
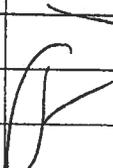
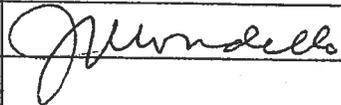
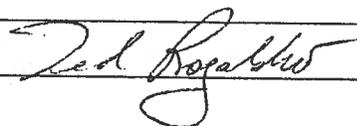
**I. CONTRACTING PARTY:**

Vendor Name (including d/b/a)	Mercer County Hospital
Address, City, State, Zip	409 N.W. 9th Ave. Aledo, IL 61231
Phone	309-582-3701

**II. CONTRACT COMPLIANCE CHECKLIST:**

Is a Business Associate Agreement (BAA) required? If a BAA is required, is the BAA attached to the Contract?	Yes <input checked="" type="checkbox"/> No <input type="checkbox"/> (go to next question) NA <input type="checkbox"/> Yes <input type="checkbox"/> NA <input checked="" type="checkbox"/>
Has the Conflict of Interest Database* been checked to determine whether a conflict exists with the other contracting party? (*Contact Assistant Compliance Officer to request search)	Yes <input checked="" type="checkbox"/> (go to next question) No <input type="checkbox"/> (skip next question)
Was a Conflict of Interest discovered?	Yes <input type="checkbox"/> (go to next question) No <input checked="" type="checkbox"/> (skip next question)
Has the Conflict of Interest been resolved?	Yes <input type="checkbox"/> (go to next question) No <input type="checkbox"/> (skip next question)
Have the insurance provisions in the Contract been approved by the Genesis Risk Manager?	Yes <input checked="" type="checkbox"/> No <input type="checkbox"/> NA <input type="checkbox"/>
Has the HHS-OIG and GSA database been checked?	Yes <input checked="" type="checkbox"/> No <input type="checkbox"/> NA <input type="checkbox"/>
If the contract is with an independent physician (a physician not employed by Genesis) or independent physician group, has a W-9 Form been completed?	Yes <input type="checkbox"/> No <input type="checkbox"/> NA <input checked="" type="checkbox"/>
Has Fair Market Value been determined and is the FMV calculation attached to the Contract?	Yes <input checked="" type="checkbox"/> No <input type="checkbox"/> NA <input type="checkbox"/>
Is the other Contracting Party a unit of federal, state, county or local government? For example, the Scott County Department of Public Health.	Yes <input checked="" type="checkbox"/> No <input type="checkbox"/> NA <input type="checkbox"/>

**FINAL APPROVAL FORM**

Required	Approvals	Signature/Comments	Date
✓	GHS CEO		2/12/11
✓	President GMC -Davenport		2/8/11
	President GMC -DeWitt		
	President GMC - Illini		
	VP, Clinical Services		
✓	VP, Finance/CFO	Mark Regue	2/9/11
	VP, Human Resources		
	VP, Information Services		
	VP, Medical Staff Affairs		
	VP, Patient Services, CNE		
	VP, Quality		
	VP, Strategic Development		
	VP, Support Services		
	VP, Corporate Communications		
	VP, Outpatient Services		
✓	VP, Legal Services		2/8/11
	Executive Director		
	Risk Manager		
✓	Other <i>Mercer - Admin.</i>		1/26/11
	Other		
	Other		

*This Agreement was finalized back in August, however, the signed document has not been found. Circulation & sign off will correct this problem.*

*Thanks - Ted*