



**RESPONDENTS' MEMORANDUM IN SUPPORT  
OF THEIR MOTION FOR SUMMARY JUDGMENT**

**I. INTRODUCTION**

On May 21, 2012, Service Employees International Union, Healthcare Minnesota (Local 113) (the "Union") filed a charges against Excelsior and Lake Ridge alleging that they had "unilaterally changed a term and condition of employment and discontinued voluntary dues checkoff without the Union's consent or a bona fide impasse" in violation of sections 8(a)(1) and 8(a)(5) of the National Labor Relations Act ("NLRA"). See Paragraph 2 of the Charges, attached hereto as **Exhibits "A" and "B,"** respectively. The Region issued an Order Consolidating Cases, Consolidated Complaint and Notice of Hearing on June 13, 2012. The Order is attached hereto as **Exhibit "C."** Subsequently on July 5, 2012 the Regional director for Region 18 issued an Order Postponing Hearing Indefinitely. Finally, on July 13, 2012, Counsel for the Acting General Counsel submitted a summary judgment motion admitting that there are no issues of fact in dispute.<sup>1</sup> [G.C. Brief, p. 2.] Further, the Brief states: "**The Acting General Counsel concedes that, under existing case law, discontinuation of dues checkoff after the expiration of the relevant collective-bargaining agreement is not a mandatory subject of bargaining.**" [*Id.*, p. 5 (Emphasis added).] Therefore, regardless of what the Acting General Counsel or the current members of the NLRB think the law "should be," there is no dispute that Respondents acted here in accordance with existing law and are entitled to summary judgment.

**II. STATEMENT OF FACTS**

As admitted by Counsel for the Acting General Counsel, the facts in this case are not in dispute. The following statement of facts is based on the documents filed by the Acting General Counsel and the Board:

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<sup>1</sup> Should the Board issue a show cause order, the Respondents will promptly respond.

Respondent Excelsior is a corporation with an office and place of business in Excelsior, Minnesota, and is engaged in the operation of a nursing home and commerce within the meaning of the NLRA. [Complaint, ¶2.] Respondent Lake Ridge is a corporation with an office and place of business in Roseville, Minnesota, and is engaged in the operation of a nursing home and commerce within the meaning of the NLRA. [*Id.*, ¶3.] At all material times, the Union has been a labor organization within the meaning of Section 2(5) of the NLRA. [*Id.*, ¶4.] Scott Norton, Vice President of Labor & Employment, is an agent of Respondents within the meaning of Section 2(13) of the NLRA. [*Id.*, ¶5.]

The following employees of Respondent Excelsior (the “Excelsior Nurses Unit”) constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the NLRA:

All full-time and regular part-time registered nurses and licensed practical nurses employed by Respondent Excelsior at its Excelsior, Minnesota facility; excluding managerial employees, office clerical employees, all other employees, temporary and casual employees, guards and supervisors as defined in the Act, and specifically excluding the resident care coordinator.

[*Id.*, ¶6(a).] The following employees of Respondent Excelsior (the “Excelsior Non-Professional Unit”) constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the NLRA:

All non-professional employees employed by Respondent Excelsior at its Excelsior, Minnesota facility; excluding registered nurses, licensed practical nurses, managerial employees, office/clerical employees, temporary employees, guards and supervisors as defined in the NLRA.

[*Id.*, ¶6(b).]

At all material times, Respondent Excelsior has recognized the Union as the exclusive collective-bargaining representative of both the Excelsior Nurses Unit and the Excelsior Non-

Professional Unit. [*Id.*, ¶6(d, e).] This recognition has been embodied in successive collective-bargaining agreements (“CBA”), the most recent of which was effective from December 1, 2009 through November 30, 2011. A copy of the most recent CBA between the Union and Respondent Excelsior is attached hereto as **Exhibit “D.”** Thereafter, the parties mutually agreed to extend the terms of the CBA, including deduction of union dues, through January 31, 2012. *See* Letter of Understanding between the Union and Respondent Excelsior, attached hereto as **Exhibit “E.”**

The following employees of Respondent Lake Ridge (the Lake Ridge Unit) constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the NLRA:

All full time and regular part-time and casual non-professional employees employed by Respondent Lake Ridge at its Roseville, Minnesota facility, including certified nursing assistants, trained medication aides, housekeeping aides, kitchen aides, maintenance, cooks, activity assistants, activity aides, laundry aides, adult day program aides, transport aides, therapeutic recreation specialists, music therapists, and store clerks; excluding, managerial employees, office clerical employees, all other employees, guards and supervisors as defined in the National Labor Relations Act.

[*Id.*, ¶6(c).] At all material times, Respondent Lake Ridge has recognized the Union as the exclusive collective-bargaining representative of the Lake Ridge Unit. [*Id.*, ¶6(f).] This recognition has been embodied in successive CBAs, the most recent of which was effective from effective from September 1, 2010 through October 1, 2011. A copy of the most recent CBA between the Union and Respondent Lake Ridge is attached hereto as **Exhibit “F.”** Thereafter, the parties mutually agreed to extend the terms of the CBA, including deduction of union dues, through January 31, 2012. *See* Letter of Understanding between the Union and Respondent Lake Ridge, attached hereto as **Exhibit “G.”**

Each of the CBAs described above includes identical Union Security provisions containing language regarding Respondents' agreement to deduct union dues from the wages of employees in the Units described above. [See CBA, Exhibits D & F, ¶2 (“UNION SECURITY”)]. The Union Security provision states in pertinent part:

The Employer agrees to deduct Union dues and initiation fees, or comparable enrollment and service fees for employees electing not to become Union members, from the wages of employees who voluntarily provide the Employer with a written authorization to make such deductions. The written authorization shall not be irrevocable for a period of more than one (1) year or beyond the termination date of this Agreement, whichever occurs sooner. Deductions shall be made from the wages of employees in the first (1s) pay period of the month in which the payment is due. Withheld amounts will be forwarded to the Union by the tenth (10th) day of the month following the actual withholding, together with a record for the amount, social security number, and name of those for who such deductions have been made.

[*Id.*]

After expiration of the CBAs and extensions thereto, the parties agreed to no further extensions, and the CBA terminated on January 31, 2012. [See Exhibits E & G.] By letter dated March 14, 2012, Respondents notified the Union that the CBAs and extensions had expired and that union security and dues check-off could not continue and would cease after March 2012 for the three Units described above. [Complaint, ¶8(a).] A copy of the Letter from S. Norton to the Union is attached hereto as **Exhibit “H.”** Effective about April 2012, Respondents ceased deducting Union dues from the pay of the employees in the three Units described above. [*Id.*, ¶8(b).]

### **III. ARGUMENT**

Respondents are entitled to summary judgment because there is no evidence to demonstrate that Respondents violated sections 8(a)(1) and 8(a)(5) of the NLRA. In *Bethlehem*

*Steel*, 136 NLRB 1500, 1502 (1962), a Board majority recognized that dues checkoff provisions are creatures of the contract that expire with the contract, explaining,

The acquisition and maintenance of union membership cannot be made a condition of employment except under a contract which conforms to the proviso to Section 8(a)(3). . . . However, upon the termination of a union-security contract, the union-security provisions become inoperative and no justification remains for either party to the contract thereafter to impose union-security requirements. . . . Similar considerations prevail with respect to Respondent's refusal to continue to check off dues after the end of the contracts. The check-off provisions in Respondent's contracts with the Union implemented the union-security provisions. The Union's right to such checkoffs in its favor, like its right to imposition of union-security, was created by the contracts and became a contractual right which continued to exist so long as the contracts remained in force. The very language of the contracts links Respondent's checkoff obligation to the Union with the duration of the contracts. Thus, they read: ". . . the Company will, beginning the month in which this Agreement is signed and so long as this Agreement shall remain in effect, deduct from the pay of such Employee each month . . . his periodic Union dues for that month." **Consequently, when the contracts terminated, the Respondent was free of its checkoff obligations to the Union.**

(Emphasis added).

For the past 50 years, the Board had decided cases implementing this rule. It is, in fact, logical, that since the NLRB provides that a union security provision expires upon contract expiration, the dues checkoff provision that implements that provision concurrently expires. Even the Ninth Circuit, after 15 years of litigation in which it thrice considered the interconnectedness of these two provisions agrees. Further, the court found the distinction between right-to-work states and non-right-to-work states to be "crucial" in this regard. *Local Joint Executive Bd. of Las Vegas v. NLRB*, 657 F.3d 865, 875 (9th Cir. 2011). It explained that, "unlike in *Bethlehem Steel*, where the unilateral cessation of dues-checkoff merely terminated a contractual arrangement that individual employees and employers alike were compelled to

accept, the unilateral cessation of check-off by the Employers in this case stripped employees of a contractual right that they had expressly exercised by requesting dues-checkoff.” *Id.* The court acknowledged that it understood "why the Board would treat dues-checkoff in the same manner as union security where both are present." Thus, "if union security provisions are limited by statute to the duration of an existing CBA, dues checkoff provisions that 'implemen[] the union-security provisions' are limited in the same manner." *Id.* (citing *Bethlehem Steel*, 136 NLRB at 1502).

The Ninth Circuit's conclusion in this regard applies to our facts, where the Respondents, located in Minnesota, a non-right-to-work state, ceased union dues deductions following expiration of a contract containing a Union Security clause providing for deduction of union dues. [See CBA, Exhibits D & F, ¶2 (“UNION SECURITY”)]. In her summary judgment motion, Counsel for the Acting General Counsel admits that there are no issues of fact in this case. [G.C. Brief, p. 2.] She further states, “**The Acting General Counsel concedes that, under existing case law, discontinuation of dues checkoff after the expiration of the relevant collective-bargaining agreement is not a mandatory subject of bargaining.**” [G.C. Brief, p. 5 (Emphasis added).] Her brief goes on to expound upon what she thinks the law “should be” and policy considerations for and against existing case law.<sup>2</sup> This is an inappropriate basis for a complaint or summary judgment. Regardless of what the Acting General Counsel or the current members of the NLRB think the law “should be,” there is no dispute that Respondents acted here in accordance with existing law. Therefore, there is no basis whatsoever for finding cessation of

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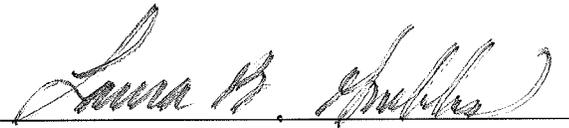
<sup>2</sup> Counsel for the Acting General Counsel fails to address the use of cessation of dues deduction as an economic weapon upon contract expiration. In fact, it is a lawful economic weapon when, as in this case, it is used in conjunction with lawful bargaining (or, to put it differently, in the absence of any evidence of unlawful bargaining). See Member Schaumber and Member Hayes's *Hacienda III* concurrence, in which they state, “[A]n employer's ability to cease dues checkoff upon contract expiration has become a recognized economic weapon in the context of bargaining for a successor agreement,” and, “To strip employers of that [weapon] would significantly alter the playing field that labor and management have come to know and expect.” *Hacienda III*, 355 NLRB No. 154, slip op. at 5, citing *NLRB v. Insurance Agents*, 361 U.S. 477, 489 (1960).

union dues checkoff upon contract expiration to be an unfair labor practice in violation of sections 8(a)(1) and 8(a)(5) of the NLRA. Even if the NLRB should decide to change the law applicable to dues checkoff, any new standard could not be applied retroactively against Respondents.

#### **IV. CONCLUSION**

For the foregoing reasons, the ALJ should grant Respondents' motion for summary judgment and dismiss Case Nos. 18-CA-081449 and 18-CA-081459.

Respectfully submitted,



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*Counsel for Respondents*

**CERTIFICATE OF SERVICE**

I hereby certify that the original of the foregoing Answer of Respondents was served and filed using the NLRB's website on the 23<sup>rd</sup> day of July, 2012, on:

Marlin O. Osthus, Regional Director  
Region 18  
National Labor Relations Board  
330 South Second Avenue, Suite 790  
Minneapolis, Minnesota 55401

and a copy was also served, via electronic mail on the 23<sup>rd</sup> day of July, 2012, on:

Service Employees International Union  
Healthcare Local Minnesota, Local 113  
345 Randolph Ave., Ste 100  
Saint Paul, MN 55102-3610

Adam D. Case, Attorney  
Miller O'Brien Cummins PLLP  
One Financial Plaza, Ste 2400  
120 South 6<sup>th</sup> Street  
Minneapolis, MN 55402-1809

  
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*Counsel for Respondents*

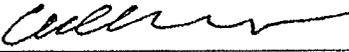
# EXHIBIT A

UNITED STATES OF AMERICA  
NATIONAL LABOR RELATIONS BOARD  
CHARGE AGAINST EMPLOYER

DO NOT WRITE IN THIS SPACE	
Case 18-CA-081459	Date Filed May 21, 2012

**INSTRUCTIONS:**

File an original with NLRB Regional Director for the region in which the alleged unfair labor practice occurred or is occurring.

<b>1. EMPLOYER AGAINST WHOM CHARGE IS BROUGHT</b>	
a. Name of Employer Lake Ridge Golden Living Center Nursing Home	b. Tel. No. 330-980-5388 c. Cell No. 479-201-0642 f. Fax No. g. e-Mail scott.norton@goldenliving.co h. Number of workers employed Around 130
d. Address (Street, city, state, and ZIP code) 2727 North Victoria St. Roseville, MN 55113	e. Employer Representative Scott Norton VPHR
i. Type of Establishment (factory, mine, wholesaler, etc.) Nursing Home	j. Identify principal product or service Health Care
k. The above-named employer has engaged in and is engaging in unfair labor practices within the meaning of section 8(a), subsections (1) and (list subsections) 5 of the National Labor Relations Act, and these unfair labor practices are practices affecting commerce within the meaning of the Act, or these unfair labor practices are unfair practices affecting commerce within the meaning of the Act and the Postal Reorganization Act.	
2. Basis of the Charge (set forth a clear and concise statement of the facts constituting the alleged unfair labor practices) Since approximately April, 2012 the Employer has unilaterally changed a term and condition of employment without the union's consent or a bona fide impasse by discontinuing voluntary dues check off.	
3. Full name of party filing charge (if labor organization, give full name, including local name and number) Service Employees International Union Healthcare Minnesota (Local 113)	
4a. Address (Street and number, city, state, and ZIP code) 345 Randolph Ave. Suite 100 St. Paul, MN 55102	4b. Tel. No. 651-294-8122 4c. Cell No. 4d. Fax No. 651-284-8200 4e. e-Mail jgulley@seiu113.com
5. Full name of national or international labor organization of which it is an affiliate or constituent unit (to be filled in when charge is filed by a labor organization) Service Employees International Union	
<b>6. DECLARATION</b> I declare that I have read the above charge and that the statements are true to the best of my knowledge and belief.	
By  (signature of representative or person making charge)	Adam D. Case (Print type name and title or office, if any)
120 South Sixth St. Suite 2400 Minneapolis, MN 55402 Address	
05/21/12 (date)	
Tel. No. 612-333-5831 Office, if any, Cell No. Fax No. 612-342-2613 e-Mail acase@m-o-c-law.com	

WILLFUL FALSE STATEMENTS ON THIS CHARGE CAN BE PUNISHED BY FINE AND IMPRISONMENT (U.S. CODE, TITLE 18, SECTION 1001)

PRIVACY ACT STATEMENT

Solicitation of the information on this form is authorized by the National Labor Relations Act (NLRA), 29 U.S.C. § 151 et seq. The principal use of the information is to assist the National Labor Relations Board (NLRB) in processing unfair labor practice and related proceedings or litigation. The routine uses for the information are fully set forth in the Federal Register, 71 Fed. Reg. 74942-43 (Dec. 13, 2006). The NLRB will further explain these uses upon request. Disclosure of this information to the NLRB is voluntary; however, failure to supply the information will cause the NLRB to decline to invoke its processes.

# **EXHIBIT B**

FORM EXEMPT UNDER 44 U.S.C. 6512

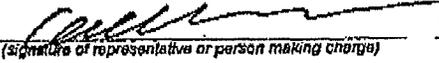
INTERNET  
FORM NLRB-601  
(2-08)

UNITED STATES OF AMERICA  
NATIONAL LABOR RELATIONS BOARD  
CHARGE AGAINST EMPLOYER

<b>DO NOT WRITE IN THIS SPACE</b>	
Case 18-CA-081449	Date Filed May 21, 2012

**INSTRUCTIONS:**

File an original with NLRB Regional Director for the region in which the alleged unfair labor practice occurred or is occurring.

<b>1. EMPLOYER AGAINST WHOM CHARGE IS BROUGHT</b>	
a. Name of Employer Excelsior Golden Living Center	b. Tel. No. 330-980-5388
	c. Cell No. 479-201-0642
	f. Fax No.
d. Address (Street, city, state, and ZIP code) 515 Division Street Excelsior, MN 55331	e. Employer Representative Scott Norton VPHR
	g. e-Mail scott.norton@goldenliving.co
	h. Number of workers employed
i. Type of Establishment (factory, mine, wholesaler, etc.) Nursing Home	j. Identify principal product or service Health Care
k. The above-named employer has engaged in and is engaging in unfair labor practices within the meaning of section 8(a), subsections (1) and (list subsections) 5 of the National Labor Relations Act, and these unfair labor practices are practices affecting commerce within the meaning of the Act, or these unfair labor practices are unfair practices affecting commerce within the meaning of the Act and the Postal Reorganization Act.	
2. Basis of the Charge (set forth a clear and concise statement of the facts constituting the alleged unfair labor practices) Since approximately April, 2012 the Employer has unilaterally changed a term and condition of employment without the union's consent or a bona fide impasse by discontinuing voluntary dues check off.	
3. Full name of party filing charge (if labor organization, give full name, including local name and number) Service Employees International Union Healthcare Minnesota (Local 113)	
4a. Address (Street and number, city, state, and ZIP code) 345 Randolph Ave. Suite 100 St. Paul, MN 55102	4b. Tel. No. 651-294-8122
	4c. Cell No.
	4d. Fax No. 651-284-8200
	4e. e-Mail jgulley@seiu113.com
5. Full name of national or international labor organization of which it is an affiliate or constituent unit (to be filled in when charge is filed by a labor organization) Service Employees International Union	
<b>6. DECLARATION</b>	
I declare that I have read the above charge and that the statements are true to the best of my knowledge and belief.	
By  (signature of representative or person making charge)	Adam D. Case (Print/type name and title or office, if any)
Address 120 South Sixth St. Suite 2400 Minneapolis, MN 55402	
05/21/12 (date)	
Tel. No. 612-333-5831	
Office, if any, Cell No.	
Fax No. 612-342-2613	
e-Mail acase@m-o-c-law.com	

**WILLFUL FALSE STATEMENTS ON THIS CHARGE CAN BE PUNISHED BY FINE AND IMPRISONMENT (U.S. CODE, TITLE 18, SECTION 1001)**

**PRIVACY ACT STATEMENT**

Solicitation of the information on this form is authorized by the National Labor Relations Act (NLRA), 29 U.S.C. § 151 et seq. The principal use of the information is to assist the National Labor Relations Board (NLRB) in processing unfair labor practice and related proceedings or litigation. The routine uses for the information are fully set forth in the Federal Register, 71 Fed. Reg. 74942-43 (Dec. 13, 2006). The NLRB will further explain these uses upon request. Disclosure of this information to the NLRB is voluntary; however, failure to supply the information will cause the NLRB to decline to invoke its processes.

# EXHIBIT C

UNITED STATES OF AMERICA  
BEFORE THE NATIONAL LABOR RELATIONS BOARD  
REGION EIGHTEEN

EXCELSIOR GOLDEN LIVING CENTER

and

Case 18-CA-081449

SERVICE EMPLOYEES INTERNATIONAL UNION  
HEALTHCARE MINNESOTA (LOCAL 113)

GGNSC ST. PAUL RIDGE LLC, d/b/a GOLDEN LIVING  
CENTER – LAKE RIDGE HEALTH CARE CENTER

and

Case 18-CA-081459

SERVICE EMPLOYEES INTERNATIONAL UNION  
HEALTHCARE MINNESOTA (LOCAL 113)

**ORDER CONSOLIDATING CASES,  
CONSOLIDATED COMPLAINT AND NOTICE OF HEARING**

Pursuant to Section 102.33 of the Rules and Regulations of the National Labor Relations Board (the Board), and to avoid unnecessary costs or delay, IT IS ORDERED THAT Case 18-CA-081449, which is based on a charge filed by Service Employees International Union Healthcare Minnesota (Local 113) a/k/a SEIU Healthcare Minnesota, herein called the Union, against Excelsior Golden Living Center (Respondent Excelsior), and Case 18-CA-081459, which is based on a charge filed by the Union against Lake Ridge Golden Living Center Nursing Home, herein described by

its correct name GGNSC St. Paul Ridge LLC, d/b/a Golden Living Center – Lake Ridge Health Care Center and hereinafter called Respondent Lake Ridge, (collectively, Respondents), are consolidated.

This Order Consolidating Cases, Consolidated Complaint and Notice of Hearing, which is based on these charges, is issued pursuant to Section 10(b) of the National Labor Relations Act, 29 U.S.C. § 151 et seq. (the Act) and Section 102.15 of the Board's Rules and Regulations and alleges Respondents have violated the Act by engaging in the following unfair labor practices:

1.(a) The charge in Case 18-CA-081449 was filed by the Union on May 21, 2012, and a copy was served by regular mail on Respondent Excelsior on about that same date.

(b) The charge in Case 18-CA-081459 was filed by the Union on May 21, 2012, and a copy was served by regular mail on Respondent Lake Ridge on about that same date.

2.(a) At all material times, Respondent Excelsior has been a corporation with an office and place of business in Excelsior, Minnesota, and has been engaged in the operation of a nursing home.

(b) In conducting its operations described above in subparagraph (a), during the calendar year ending December 31, 2011, Respondent Excelsior derived gross revenues in excess of \$100,000.

(c) In conducting its operations described above in subparagraph (a), during the calendar year ending December 31, 2011, Respondent Excelsior purchased and

received at its Excelsior, Minnesota facility products, goods and materials valued in excess of \$5,000 directly from suppliers located outside the State of Minnesota.

(d) At all material times, Respondent Excelsior has been an employer engaged in commerce within the meaning of Section 2(2), (6) and (7) of the Act.

3.(a) At all material times, Respondent Lake Ridge has been a corporation with an office and place of business in Roseville, Minnesota, and has been engaged in the operation of a nursing home.

(b) In conducting its operations described above in subparagraph (a), during the calendar year ending December 31, 2011, Respondent Lake Ridge derived gross revenues in excess of \$100,000.

(c) In conducting its operations described above in subparagraph (a), during the calendar year ending December 31, 2011, Respondent Lake Ridge purchased and received at its Roseville, Minnesota facility products, goods and materials valued in excess of \$5,000 directly from suppliers located outside the State of Minnesota.

(d) At all material times, Respondent Lake Ridge has been an employer engaged in commerce within the meaning of Section 2(2), (6) and (7) of the Act.

4. At all material times the Union has been a labor organization within the meaning of Section 2(5) of the Act.

5. At all material times, Scott Norton, Vice President of Labor & Employment has been an agent of Respondents within the meaning of Section 2(13) of the Act.

6.(a) The following employees of Respondent Excelsior (the Excelsior Nurses Unit) constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act:

All full-time and regular part-time registered nurses and licensed practical nurses employed by Respondent Excelsior at its Excelsior, Minnesota facility; excluding managerial employees, office clerical employees, all other employees, temporary and casual employees, guards and supervisors as defined in the Act, and specifically excluding the resident care coordinator.

(b) The following employees of Respondent Excelsior (the Excelsior Non-Professional Unit) constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act:

All non-professional employees employed by Respondent Excelsior at its Excelsior, Minnesota facility; excluding registered nurses, licensed practical nurses, managerial employees, office/clerical employees, temporary employees, guards and supervisors as defined in the NLRA.

(c) The following employees of Respondent Lake Ridge (the Lake Ridge Unit) constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act:

All full time and regular part-time and casual non-professional employees employed by Respondent Lake Ridge at its Roseville, Minnesota facility, including certified nursing assistants, trained medication aides, housekeeping aides, kitchen aides, maintenance, cooks, activity assistants, activity aides, laundry aides, adult day program aides, transport aides, therapeutic recreation specialists, music therapists, and store clerks; excluding, managerial employees, office clerical employees, all other employees, guards and supervisors as defined in the National Labor Relations Act.

(d) At all material times, Respondent Excelsior has recognized the Union as the exclusive collective-bargaining representative of the Excelsior Nurses Unit. This recognition has been embodied in successive collective-bargaining agreements, the most recent of which was effective from December 1, 2009 through November 30, 2011, thereafter extended through January 31, 2012 by a Letter of Understanding between the Union and Respondent Excelsior.

(e) At all material times, Respondent Excelsior has recognized the Union as the exclusive collective-bargaining representative of the Excelsior Non-Professional Unit. This recognition has been embodied in successive collective-bargaining agreements, the most recent of which was effective from December 1, 2009 through November 30, 2011, thereafter extended through January 31, 2012 by a Letter of Understanding between the Union and Respondent Excelsior.

(f) At all material times, Respondent Lake Ridge has recognized the Union as the exclusive collective-bargaining representative of the Lake Ridge Unit. This recognition has been embodied in successive collective-bargaining agreements, the most recent of which was effective from September 1, 2010 through October 1, 2011, thereafter extended through January 31, 2012 by a Letter of Understanding between the Union and Respondent Lake Ridge.

(g) At all times, based on Section 9(a) of the Act, the Union has been the exclusive collective-bargaining representative of the three Units described above in subparagraphs (a) through (c).

7. Each of the collective bargaining agreements described above in subparagraphs (d) through (f) of paragraph 6 includes identical language regarding Respondents' obligations to deduct Union dues from the wages of employees in the Units described above in subparagraphs (a) through (c). The relevant language is as follows:

The Employer agrees to deduct Union dues and initiation fees, or comparable enrollment and service fees for employees electing not to become Union members, from the wages of employees who voluntarily provide the Employer with a written authorization to make such deductions. The written authorization shall not be irrevocable for a period of more than one (1) year or beyond the termination date of this

Agreement, whichever occurs sooner. Deductions shall be made from the wages of employees in the first (1<sup>st</sup>) pay period of the month in which the payment is due. Withheld amounts will be forwarded to the Union by the tenth (10<sup>th</sup>) day of the month following the actual withholding, together with a record for the amount, social security number, and name of those for who such deductions have been made.

8.(a) By letter dated March 14, 2012, Respondents notified the Union that they would cease deducting Union dues after March 2012 for the three Units described above in subparagraphs (a) through (c) of paragraph 6.

(b) Effective about April, 2012, Respondents ceased deducting Union dues from the pay of the employees in the three Units described above in subparagraphs (a) through (c) of paragraph 6.

(c) The subject set forth above in subparagraphs (a) and (b) relates to wages, hours, and other terms and conditions of employment of the employees in the three Units described above in subparagraphs (a) through (c) of paragraph 6 and is a mandatory subject for the purposes of collective bargaining.

(d) Respondents engaged in the conduct described above in subparagraphs (a) and (b) without affording the Union an opportunity to bargain with Respondents with respect to this conduct.

9. By the conduct described above in paragraph 8, Respondents have been failing and refusing to bargain collectively with the exclusive collective-bargaining representative of its employees in the Units described above in subparagraphs (a) through (c) of paragraph 6, in violation of Section 8(a)(1) and (5) of the Act.

10. The unfair labor practices of Respondent described above affect commerce within the meaning of Section 2(6) and (7) of the Act.

As part of the remedy for the unfair labor practices alleged above in paragraphs 8 and 9, the Acting General Counsel seeks an Order requiring that Respondents retroactively give effect to the dues check-off provision quoted above in paragraph 7 and contained in the collective bargaining agreements described above in subparagraphs (d) through (f) of paragraph 6, and to reimburse the Union for any and all monies lost by the Union because of Respondents' conduct described above in paragraph 8. In addition, the Acting General Counsel seeks all other relief as may be just and proper to remedy the unfair labor practices alleged.

Respondent is notified that, pursuant to Sections 102.20 and 102.21 of the Board's Rules and Regulations, it must file an answer to the consolidated complaint. The answer must be **received by this office on or before June 27, 2012, or postmarked on or before June 26, 2012.** Respondent should file an original and four copies of the answer with this office and serve a copy of the answer on each of the other parties.

An answer may also be filed electronically through the Agency's website. To file electronically, go to [www.nlr.gov](http://www.nlr.gov), click on **File Case Documents**, enter the NLRB Case Number, and follow the detailed instructions. The responsibility for the receipt and usability of the answer rests exclusively upon the sender. Unless notification on the Agency's website informs users that the Agency's E-Filing system is officially determined to be in technical failure because it is unable to receive documents for a continuous period of more than 2 hours after 12:00 noon (Eastern Time) on the due date for filing, a failure to timely file the answer will not be excused on the basis that the transmission could not be accomplished because the Agency's website was off-line or

unavailable for some other reason. The Board's Rules and Regulations require that an answer be signed by counsel or non-attorney representative for represented parties or by the party if not represented. See Section 102.21. If the answer being filed electronically is a pdf document containing the required signature, no paper copies of the answer need to be transmitted to the Regional Office. However, if the electronic version of an answer to a complaint is not a pdf file containing the required signature, then the E-filing rules require that such answer containing the required signature continue to be submitted to the Regional Office by traditional means within three (3) business days after the date of electronic filing. Service of the answer on each of the other parties must still be accomplished by means allowed under the Board's Rules and Regulations. The answer may not be filed by facsimile transmission. If no answer is filed, or if an answer is filed untimely, the Board may find, pursuant to a Motion for Default Judgment, that the allegations in the consolidated complaint are true.

#### **NOTICE OF HEARING**

PLEASE TAKE NOTICE THAT on **August 2, 2012, at 1:00 p.m., in the NLRB Hearing Room, 330 South 2<sup>nd</sup> Avenue, Suite 790, Minneapolis, Minnesota,** and on consecutive days thereafter until concluded, a hearing will be conducted before an administrative law judge of the National Labor Relations Board. At the hearing, Respondent and any other party to this proceeding have the right to appear and present testimony regarding the allegations in this consolidated complaint. The procedures to be followed at the hearing are described in the attached Form NLRB-4668. The procedure to request a postponement of the hearing is described in the attached Form NLRB-4338.

Dated at Minneapolis, Minnesota, this 13th day of June, 2012.

---

/s/ Marlin O. Osthus

Marlin O. Osthus, Regional Director  
Region 18  
National Labor Relations Board  
330 South Second Avenue, Suite 790  
Minneapolis, Minnesota 55401

Attachments

# EXHIBIT D

# Collective Bargaining Agreement

between

Excelsior Golden Living Center

and

SEIU Healthcare Minnesota  
Service & Maintenance



Effective  
December 1, 2009  
through  
November 30, 2011

## PREAMBLE

This Agreement, made and entered by and **Excelsior Golden Living Center**, , 515 Division Street, Excelsior, Minnesota (hereinafter referred to as the "Employer") and its successors and Minnesota's Health Care Union, **SEIU Healthcare Minnesota** (hereinafter referred to as the "Union").

### 1. RECOGNITION

The Union shall be the sole representative of all the non-professional employees of said Employer in the classifications set forth in the appendix hereof and within the bargaining unit certified by the National Labor Relations Board (18-RC-8352), or previously agreed upon by the parties excluding RNs, LPNs, managerial employees, office/clerical employees, temporary employees, guards and supervisors as defined in the NLRA.

#### 1.1 Classification or Title Change

In the event that any new or different non-professional classification or title not specified in the appendix hereof is established and such classification or title is not specifically excluded by the certification in Article 1, then the Union shall nevertheless, be the sole representative of said employee, the employee shall be included within the terms and conditions of this Agreement, the wage rate of such classification or title shall be negotiated by the Employer and the Union and the rate agreed upon become part of this Agreement as of the date such classification or title was established, if (1) the new or different classification or title as of the date of its establishment involves functions and duties identical to those pertaining to an existing classification or title, or (2) the new or different classification or title as of the date of its establishment involves functions substantially similar in their nature, character and scope to those performed in whole or in part in an existing classification or title as that existing classification or title existed prior to the creation of the new or different classification or title.

#### 1.2 No Change to Defeat Contract

No classification or title shall be changed or new classification or title created to defeat the spirit of this Agreement. No classification or title shall be changed or created and no employee transferred or promoted, either to positions covered by this Agreement or outside it except upon at least ten (10) days written notice to the Union prior to the effective date of the same, which notice shall specify in detail the proposed change, establishment, transfer or promotion. In case of emergency staffing situations the ten day notice requirement will be waived.

#### 1.3 Nondiscrimination

No employee covered by this Agreement shall be discriminated against because of membership in the Union or activities on behalf of the Union. Neither the Employer nor the

Union shall discriminate against any employee covered by this Agreement on account of race, color, religious creed, national origin, age, sex, sexual orientation or handicap.

#### 1.4 No Contradictory Rule

The Employer agrees not to enter into any agreement or contract with its employees including TMA's (who are in the classifications herein noted), either individually or collectively, which conflicts with any of the provisions of this contract. No statement or rule shall be made or established by the Employer or the Union which conflicts with or contradicts any of the provisions of this contract. The Employer shall have the right to make and enforce reasonable rules.

#### 1.5 Stewards

The Employer recognizes the right of the Union to elect or select from employees who are members of the Union, a job steward to handle such routine Union business as may from time to time be delegated to him/her by the Union in connection with this collective bargaining relationship. The name of such job stewards shall be furnished in writing to the Employer, and any changes in stewards shall be reported to the Employer in writing. In addition to the above stewards, the Employer also agrees to recognize the Business Agents of the Union as the proper authority to adjust with the Employer any controversy between the parties to the Contract as to the meaning and application of the provisions of this Agreement. Business shall be conducted on non-work time and in non-work areas.

The Employer shall make time available during the orientation process for a steward to provide information to new employees. The Employer and Union agree to cooperate when scheduling this activity.

It is the philosophy of labor and management that a cooperative relationship is in the best interest of the parties. To this extent, stewards shall be allowed adequate time on the clock to investigate issues that could lead to or are grievances or to attend labor/management or grievance meetings with prior approval of the supervisor in an effort to resolve problems expediently.

## 2. UNION SECURITY

2.1 There is a Collective Bargaining Agreement between the Employer and SEIU Healthcare, Minnesota's Union covering wages, hours of work, and other terms and conditions of employment. The Collective Bargaining Agreement provides that the Union is the sole representative for the classification of work for which the Employee is hired. After completion of ninety (90) calendar days of employment, the Collective Bargaining Agreement provides the Employee with the following two choices:

1. Employees may elect to become a Union member and participate fully in the affairs of the Union by paying an initiation fee and monthly dues.
2. Employees may choose not to become a Union member and pay a service fee and monthly fees. These employees shall not be able to attend membership meetings or participate in contract negotiations.

At the time of employment, a new employee who shall be subject to this Agreement shall be informed of this by the Employer and the Union.

It is the Employee's responsibility and a condition of employment to ensure that payments to the Union are made on a timely basis. The Collective Bargaining Agreement provides that Employees may voluntarily elect to have Union dues and fees deducted from their checks and sent to the Union.

2.2 All employees covered by this Agreement who are now or may hereafter become members of the Union shall during the life of this Agreement, remain members of the Union in good standing as a condition of employment. "In good standing", for the purposes of this Agreement, is defined to mean the payment of a standard initiation fee and standard regular monthly dues, uniformly required as a condition of acquiring or retaining membership in the Union.

Employees covered by this Agreement who elect not to become Union members shall pay to the Union an enrollment fee in an amount equal to the standard initiation fee paid by Employees who become Union members and a monthly service fee equal to the standard monthly dues paid by Union members. This payment in no event shall exceed the regular monthly Union dues paid by Union members working an equivalent number of hours.

Payments required by this section shall be made only after an Employee has completed ninety (90) days of employment. The fee required by paragraph one shall be due and payable upon the ninety-first (91<sup>st</sup>) day of employment and must be paid within ten (10) days thereafter. Monthly payments required by paragraph two are due and payable the first (1<sup>st</sup>) day of the month following the completion of ninety (90) days of employment and shall be paid by the tenth (10<sup>th</sup>) day of each month.

Any employee who is delinquent in making payments of the Collective Bargaining Fee required herein, for more than thirty (30) days, shall be subject to termination by the Employer. The Union shall provide written notice to such employee of the delinquency and provide the employee with sufficient opportunity to correct the delinquency. The Union shall provide copies to the Employer of any warning notice sent to such employee, a reasonable time prior to any demand for discharge for non-payment and the employer shall have a reasonable time within which to discuss the obligations with the employee before discharge actually occurs. The Union shall save the Employer harmless from any claims of an employee so terminated under this Article.

2.3 The Employer agrees to deduct Union dues and initiation fees, or comparable enrollment and service fees, for employees electing not to become Union members, from the wages of employees who voluntarily provide the Employer with a written authorization to make such deductions. The written authorization shall not be irrevocable for a period of more than one (1) year or beyond the termination date of this Agreement, whichever occurs sooner. Deductions shall be made from the wages of employees in the first (1<sup>st</sup>) pay period of the month in which the payment is due. Withheld amounts will be forwarded to the Union by the tenth (10<sup>th</sup>) day of the month following the actual withholding, together with a record for the amount, social security number, and name of those for who such deductions have been made.

In the event no wages are due the employee or that they are insufficient to cover the required deduction, the deduction for such month will nevertheless be made from the first wages of adequate amount next due the employee and will thereupon be transmitted to the Union.

The Union agrees to promptly refund any dues found to have been improperly deducted and transmitted to the Union.

#### 2.4 Employee Lists

Each month, the Employer will send the Union a list with the following information:

- New Hires: name, hire date, address, phone number, classification, rate of pay, social security number and number of hours worked per pay period.
- Non-Contract: name, social security number, date of job transfer, position the employee is transferring from and into, new hire information if the employee is transferring into the bargaining unit.
- Terminated Employees: name, termination date, classification and social security number.
- Employees on Leave of Absence: name, date leave begins, date of return and social security number.
- Changes: name changes, address changes, phone number changes, change in hours per pay period, change in classification, any other changes affecting Union membership or dues, and social security number.
- Hourly Reports: monthly lists of all employees in the bargaining unit with actual hours worked by pay period/month, along with name, social security number and period the hours cover.
- Seniority List: one list of all employees in the bargaining unit by seniority with compensated hours and one list alphabetically to be sent two times per year – January and July.

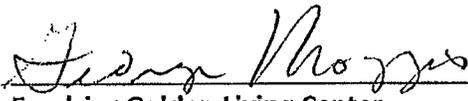
2.5 The Employer shall work with the Union to process dues and reporting of hours via media.

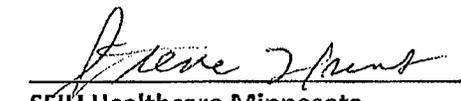
**29. CONTRACT DURATION**

This Agreement shall become effective on December 1, 2009, and shall continue in full force and effect through November 30, 2011. It shall be automatically renewed from year to year thereafter unless either party gives written notice of a desire to modify, amend or terminate it at least ninety (90) days, but no more than one hundred twenty (120) days prior to November 30, 2011 or any November 30 thereafter if it is automatically renewed.

This Agreement shall be reopened effective December 1, 2010 for wages and the No - Strike - No Lockout Article.

IN WITNESS THEREOF, the parties have caused this Agreement to be executed by their duly authorized representatives indicated below, on the dates so indicated.

  
\_\_\_\_\_  
Excelsior Golden Living Center

  
\_\_\_\_\_  
SEIU Healthcare Minnesota

\_\_\_\_\_  
Excelsior Golden Living Center

3-19-10  
Date

3/8/10  
Date

# Collective Bargaining Agreement

between

Golden Living Center, Excelsior

and

SEIU Healthcare Minnesota  
Nurses



Effective  
December 1, 2009  
through  
November 30, 2011

## **1. AGREEMENT**

This Agreement is made and entered into by and between Beverly Enterprises, Inc. Minnesota, doing business as **Excelsior Golden Living Center**, 515 Division Street, Excelsior, Minnesota (hereinafter referred to as the "Employer") and Minnesota's Health Care Union, **SEIU Healthcare Minnesota** (hereinafter referred to as the "Union").

## **2. RECOGNITION**

The Employer recognizes the Union as the sole representative of its regularly scheduled professional employees in the bargaining unit certified by the National Labor Relations Board in Case Numbers 18 RC 136 72 and 18 RC 136 73; said bargaining unit includes all full-time and regular part-time registered nurses and licensed practical nurses employed by the Employer at its Excelsior, Minnesota facility; excluding managerial employees, office clerical employees, all other employees, temporary and casual employees, guards and supervisors as defined in the Act, and specifically excluding the resident care coordinator. Such recognition is mutually made for the express purpose of collective bargaining with respect to the hours of labor, rates of pay and working conditions herein specified.

### **2.1 NO CHANGE TO DEFEAT CONTRACT**

No classification or title shall be changed or new classification or title created to defeat the spirit of this Agreement. The Employer agrees to notify the Union promptly of all changes or additions in classifications or titles whenever possible, notice shall be in writing and given no later than five (5) days prior to implementation.

### **2.2 NONDISCRIMINATION**

No employee covered by this Agreement shall be discriminated against because of membership in the Union or activities on behalf of the Union. Neither the Employer nor the Union shall discriminate against any employee covered by this Agreement on account of race, color, religious creed, national origin, age, sex, sexual orientation or handicap.

### **2.3 NO CONTRADICTORY RULE**

The Employer agrees not to enter into any agreement or contract with its employees (who are in the classifications herein noted), either individually or collectively, which conflicts with any of the provisions of this contract. No statement or rule shall be made or established by the Employer or the Union which conflicts with or contradicts any of the provisions of this contract. The Employer shall have the right to make and enforce reasonable rules in accordance with Article IV.

### 3. UNION SECURITY

3.1 There is a Collective Bargaining Agreement Between the Employer and SEIU Healthcare Minnesota, Minnesota's Health Care Union, covering wages, hours of work, and other terms and conditions of employment. The Collective Bargaining Agreement provides that the Union is the sole representative for the classification of work for which the Employee is hired. After completion of ninety (90) calendar days of employment, the Collective Bargaining Agreement provides the Employee with the following two choices:

1. Employees may elect to become a Union member and participate fully in the affairs of the Union by paying an initiation fee and monthly dues.
2. Employees may choose not to become a Union member and pay a service fee and monthly fees. These employees shall not be able to attend membership meetings or participate in contract negotiations.

At the time of employment, a new employee who shall be subject to this Agreement shall be informed of this by the Employer and the Union.

It is the Employee's responsibility and a condition of employment to ensure that payments to the Union are made on a timely basis. The Collective Bargaining Agreement provides that Employees may voluntarily elect to have Union dues and fees deducted from their checks and sent to the Union.

3.2 All employees covered by this Agreement who are now or may hereafter become members of the Union shall during the life of this Agreement, remain members of the Union in good standing as a condition of employment. "In good standing", for the purposes of this Agreement, is defined to mean the payment of a standard initiation fee and standard regular monthly dues, uniformly required as a condition of acquiring or retaining membership in the Union.

Employees covered by this Agreement who elect not to become Union members shall pay to the Union an enrollment fee in an amount equal to the standard initiation fee paid by Employees who become Union members and a monthly service fee equal to the standard monthly dues paid by Union members. This payment in no event shall exceed the regular monthly Union dues paid by Union members working an equivalent number of hours.

Payments required by this section shall be made only after an Employee has completed ninety (90) days of employment. The fee required by paragraph one shall be due and payable upon the ninety-first (91) day of employment and must be paid within ten (10) days thereafter. Monthly payments required by paragraph two are due and payable the first (1<sup>st</sup>) day of the month following the completion of ninety (90) days of employment and shall be paid by the tenth (10<sup>th</sup>) day of each month.

Any employee who is delinquent in making payments of the Collective Bargaining Fee, required herein, for more than thirty (30) days shall be subject to termination by the Employer. The Union shall provide written notice to such employee of the delinquency and provide the employee with sufficient opportunity to correct the delinquency. The Union shall provide copies to the Employer of any warning notice sent to such employee, a reasonable time prior to any demand for discharge for non-payment and the employer shall have a reasonable time within which to discuss the obligations with the employee before discharge actually occurs. The Union shall save the Employer harmless from any claims of an employee so terminated under this Article.

### 3.3 Dues Deductions

The Employer agrees to deduct Union dues and initiation fees, or comparable enrollment and service fees for employees electing not to become Union members, from the wages of employees who voluntarily provide the Employer with a written authorization to make such deductions. The written authorization shall not be irrevocable for a period of more than one (1) year or beyond the termination date of this Agreement, whichever occurs sooner. Deductions shall be made from the wages of employees in the first (1<sup>st</sup>) pay period of the month in which the payment is due. Withheld amounts will be forwarded to the Union by the tenth (10<sup>th</sup>) day of the month following the actual withholding, together with a record for the amount, social security number, and name of those for who such deductions have been made.

In the event no wages are due the employee or that they are insufficient to cover the required deduction, the deduction for such month will nevertheless be made from the first wages of adequate amount next due the employee and will thereupon be transmitted to the Union.

The Union agrees to promptly refund any dues found to have been improperly deducted and transmitted to the Union.

### 3.4 Employee Lists

Each month, the Employer will send the Union a list with the following information:

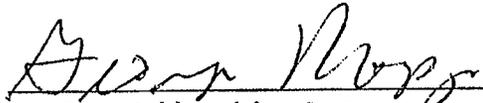
- New Hires: name, hire date, address, phone number, classification, rate of pay, social security number and number of hours worked per pay period.
- Non-Contract: name, social security number, date of job transfer, position the employee is transferring from and into, new hire information if the employee is transferring into the bargaining unit.
- Terminated Employees: name, termination date, classification and social security number.
- Employees on Leave of Absence: name, date leave begins, date of return and social security number.

**36. DURATION OF AGREEMENT**

This Agreement shall become effective on December 1, 2009, and shall continue in full force and effect through November 30, 2011. It shall be automatically renewed from year to year thereafter unless either party gives written notice of a desire to modify, amend or terminate it at least ninety (90) days, but no more than one hundred twenty (120) days prior to November 30, 2011 or any November 30 thereafter if it is automatically renewed.

This Agreement shall be reopened December 1, 2010 for wages and the No Strike-No Lock-out Article.

IN WITNESS WHEREOF, the parties have caused their duly authorized representatives to execute this Agreement on the date indicated below.

  
\_\_\_\_\_  
Excelsior Golden Living Center

  
\_\_\_\_\_  
SEIU Healthcare Minnesota

\_\_\_\_\_  
Excelsior Golden Living Center

3-19-10  
Date

3/8/10  
Date

# EXHIBIT E

JAN-11-2012 WED 11:08 AM SEIU HealthCare MN

FAX NO. 6512948200

P. 03

**Letter of Understanding**

**Between**

**Excelsior Golden Living Center**

**and**

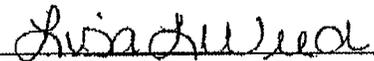
**SEIU Healthcare Minnesota  
Service & Maintenance**

The parties have agreed to extend all LOU's and the current bargaining agreement, dated December 1, 2009 through November 30, 2011 in full force and effect through January 31<sup>st</sup>, 2012.

Both parties agree that negotiations may continue during this extension and that this Letter of Understanding may be extended by mutual agreement between the parties. In all other aspects the collective bargaining agreement remains unchanged.

  
\_\_\_\_\_  
**Excelsior Golden Living Center**

1-12-12  
**Dated**

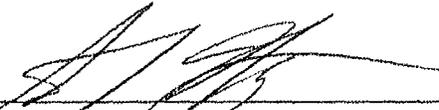
  
\_\_\_\_\_  
**SEIU Healthcare Minnesota**

1/11/12  
**Dated**

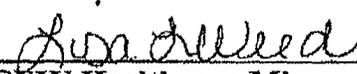
**Letter of Understanding**  
**Between**  
**Excelsior Golden Living Center**  
**and**  
**SEIU Healthcare Minnesota**  
**Nurses**

The parties have agreed to extend all LOU's and the current bargaining agreement, dated December 1, 2009 through November 30, 2011 in full force and effect through January 31<sup>st</sup>, 2012.

Both parties agree that negotiations may continue during this extension and that this Letter of Understanding may be extended by mutual agreement between the parties. In all other aspects the collective bargaining agreement remains unchanged.

  
 \_\_\_\_\_  
**Excelsior Golden Living Center**

1-12-12  
**Dated**

  
 \_\_\_\_\_  
**SEIU Healthcare Minnesota**

1/11/12  
**Dated**

# EXHIBIT F

fac 2325

# Collective Bargaining Agreement

between

Golden LivingCenter – Lake Ridge

and

SEIU Healthcare Minnesota



Effective  
September 1, 2010  
through  
October 1, 2011

**1. INTRODUCTION**

This Agreement, is made and entered into by and between GGNSC St. Paul Lake Ridge LLC, d/b/a Golden LivingCenter - Lake Ridge Health Care Center, 2727 North Victoria Street, St. Paul, MN 55113 (hereinafter referred to as the "Employer") and Local Healthcare Minnesota (hereinafter referred to as the "Union").

**2. SUCCESSORSHIP**

In the event of a transfer, sale or assignment of the Employer's facility, the Union shall be notified expediently, and in advance, of such action. The Employer will advise a prospective buyer of the existence of the collective bargaining agreement and request the buyer retain all current employees and maintain the wages, benefits and conditions constituting the Agreement.

**3. RECOGNITION**

The Employer recognizes the Union as the sole representative of its regularly scheduled nonprofessional employees in the bargaining unit certified by the National Labor Relations Board in Case Number 18-RC9336, said bargaining unit including all regular full-time, regular part-time, and casual certified nursing assistants, trained medication aides, housekeeping aides, kitchen aides, maintenance, cooks, activity assistants, activity aides, laundry aides, adult day program aides, transport aides, therapeutic recreation specialists, music therapists, and store clerks employed by the Employer at its Lake Ridge, Minnesota facility; excluding managerial employees, office clerical employees, all other employees, guards, and supervisors as defined in the National Labor Relations Act. Such recognition is mutually made for the express purpose of collective bargaining with respect to the hours of labor, rates of pay and working conditions herein specified.

**3.1 No Change to Defeat Agreement**

No classification or title shall be changed or new classification or title created to defeat the spirit of this Agreement. No classification or title shall be changed or created, and no employee transferred or promoted, either to positions covered by this Agreement or outside it except upon at least ten (10) days written notice to the Union prior to the effective date of the same, which notice shall specify in detail the proposed change, establishment, transfer or promotion. Temporary transfers may be made in emergency situations, in which case written notice will be given to the Union as soon as is possible.

### 3.2 No Contradictory Rule

The Employer agrees not to enter into any agreement or contract with its employees (who are in the classifications herein noted), either individually or collectively, which conflicts with any of the provisions of this contract. No statement or rule shall be made or established by the Employer or the Union which conflicts with or contradicts any of the provisions of this contract. The Employer shall have the right to make and enforce reasonable rules in accordance with Article 9.

## 4. UNION SECURITY

### 4.1 Union Security

There is a Collective Bargaining Agreement between the Employer and SEIU Healthcare Minnesota covering wages, hours of work, and other terms and conditions of employment. The Collective Bargaining Agreement provides that the Union is the sole representative for the classification of work for which the Employee is hired. After completion of ninety (90) calendar days of employment, the Collective Bargaining Agreement provides the Employee with the following two choices:

1. Employees may elect to become a Union member and participate fully in the affairs of the Union by paying an initiation fee and monthly dues.
2. Employees may choose not to become a Union member and pay a service fee and monthly fees. These Employees shall not be able to attend membership meetings or participate in contract negotiations.

At the time of employment, a new employee who shall be subject to this Agreement shall be informed of this by the Employer and the Union.

It is the Employee's responsibility and a condition of employment to ensure that payments to the Union are made on a timely basis. The Collective Bargaining Agreement provides that Employees may voluntarily elect to have Union dues and fees deducted from their checks and sent to the Union.

### 4.2 Good Standing

All Employees covered by this Agreement who are now or may hereafter become members of the Union shall during the life of this Agreement, remain members of the Union in good standing as a condition of employment. "In good standing," for the purpose of this Agreement, is defined to mean the payment of a standard initiation fee and standard regular monthly dues, uniformly required as a condition of acquiring or retaining membership in the Union.

Employees covered by this Agreement who elect not to become Union members shall pay to the Union an enrollment fee in an amount equal to the standard initiation fee paid by Employees who become Union members and a monthly service fee equal to the standard monthly dues paid by Union members. This payment in no event shall exceed the regular monthly Union dues paid by Union members working an equivalent number of hours.

Payments required by this section shall be made only after an Employee has completed ninety (90) days of employment. The fee required by paragraph one shall be due and payable upon the ninety-first (91<sup>st</sup>) day of employment and must be paid within ten (10) days thereafter. Monthly payments required by paragraph two are due and payable the first (1<sup>st</sup>) day of the month following the completion of ninety (90) days of employment and shall be paid by the tenth (10<sup>th</sup>) day of each month.

Any Union member or Employee electing to pay the enrollment and service fee who is delinquent in making the payments required herein for more than thirty (30) days shall be terminated by the Employer without any notice to the delinquent Employee. Termination shall occur within three (3) days after receipt of written notice from the Union to the Employer of such delinquency. The Union shall save the Employer harmless from any claims of an Employee so terminated.

#### 4.3 Dues Deductions

The Employer agrees to deduct Union dues and initiation fees, or comparable enrollment and service fees for employees electing not to become Union members, from the wages of employees who voluntarily provide the Employer with a written authorization to make such deductions. The written authorization shall not be irrevocable for a period of more than one (1) year or beyond the termination date of this Agreement, whichever occurs sooner. Deductions shall be made from the wages of employees in the first (1<sup>st</sup>) pay period of the month in which the payment is due. Withheld amounts will be forwarded to the Union by the tenth (10<sup>th</sup>) day of the month following the actual withholding, together with a record of the amount, social security number, and name of those for whom such deductions have been made. The Union will hold the Employer harmless from any dispute with an Employee concerning deductions made.

In the event that no wages are due the employee or that they are insufficient to cover the required deduction, the deduction for such month will nevertheless be made from the first wages of adequate amount next due the employee and will thereupon be transmitted to the Union.

The Union agrees to refund promptly any dues found to have been improperly deducted and transmitted to the Union.

The Union will also send copies to the Employer of the various warning notices sent to the member pursuant to its present practice so that the Employer may take steps designed to keep the employee in good standing.

If the employee does not remain in good standing, as defined above, the Employer shall terminate the employee within three (3) days of written notice to do so from the Union.

#### 4.4 Employee Lists

Each month, the Employer will send the Union a list with the following information:

- ❖ New Hires: name, hire date, address, phone number, classification, rate of pay, social security number and number of hours worked per pay period.
- ❖ Transferred Employees: (This applies to employees transferring within the bargaining unit or transferring into or out of a bargaining unit position.) name, social security number, date of job transfer, position the employee is transferring from and into, new hire information for those employees new to the bargaining unit.
- ❖ Terminated Employees: (from the bargaining unit) name, termination date, classification and social security number.
- ❖ Employees on Leave of Absence: name, date leave begins, date of return and social security number.
- ❖ Changes: name changes, address changes, phone number changes, changes in hours per pay period, change in classification, any other changes affecting union membership or dues, and social security number
- ❖ Hourly Reports: monthly lists of all employees in the bargaining unit with actual hours worked by pay period, along with name, social security number and period the hours cover.
- ❖ Seniority List: one list of all employees in the bargaining unit by seniority with compensated hours and one list alphabetically to be sent two times per year – January and July

In January of 2007 SEIU Healthcare Minnesota will be moving to a percentage dues system which is based on each member's gross pay per pay period under the Collective Bargaining Agreement. There will continue to be minimum and maximum dues. In an effort to make the transition as smooth as possible, Local 113 is requesting the following data in addition to the member information provided above:

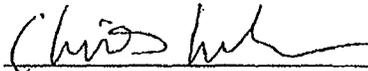
**28. DURATION**

Except as otherwise provided, this Agreement shall be effective from September 1, 2010, through and including October 1, 2011. This Agreement shall remain in full force and effect from year to year thereafter unless either party notifies the other party in writing at least ninety (90) days but not more than one-hundred twenty (120) days prior to October 1, 2011, or October 1<sup>st</sup> of any year thereafter of its intention to change, modify or terminate this Agreement.

In Witness Whereof, the parties have caused their duly authorized representatives to execute this Agreement on the dates so indicated below:

For the Employer:

For the Union:

  
\_\_\_\_\_  
George Moyzis  
Golden LivingCenter

  
\_\_\_\_\_  
Lisa Weed  
SEIU Healthcare Minnesota

10-8-10  
\_\_\_\_\_  
Date

10/8/10  
\_\_\_\_\_  
Date

# EXHIBIT G

JAN-11-2012 WED 11:08 AM SEIU HealthCare MN

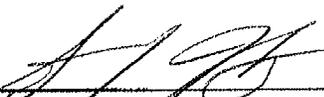
FAX NO. 6512948200

P. 04

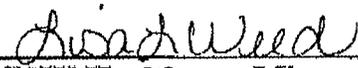
**Letter of Understanding**  
**Between**  
**Golden Living Center- Lake Ridge**  
**and**  
**SEIU Healthcare Minnesota**

The parties have agreed to extend all LOU's and the current bargaining agreement, dated September 1, 2010 through October 1, 2011 in full force and effect through January 31<sup>st</sup>, 2012.

Both parties agree that negotiations may continue during this extension and that this Letter of Understanding may be extended by mutual agreement between the parties. In all other aspects the collective bargaining agreement remains unchanged.

  
 \_\_\_\_\_  
**Golden Living Center- Lake Ridge**

1-12-12  
 \_\_\_\_\_  
**Dated**

  
 \_\_\_\_\_  
**SEIU Healthcare Minnesota**

1/11/12  
 \_\_\_\_\_  
**Dated**

# EXHIBIT H



Tuesday, March 14, 2012

Lisa Weed  
Internal Organizer  
SEIU Healthcare  
345 Randolph Avenue, Suite 100  
St. Paul, MN 55102

Re: Golden Living Center-Lake Ridge  
Re: Golden Living Center-Excelsior

Dear Ms. Weed:

The collective bargaining agreement and extensions at the above-referenced facility have expired. Union security and dues check-off cannot be continued. Dues check-off will cease after March 2012.

Scott Norton  
Vice President of Labor  
Golden Living

A handwritten signature in black ink, appearing to be "S. Norton", written over the typed name.

Scott D. Norton  
Vice President of Labor & Employment  
5225 Tippecanoe Road  
Canfield, Ohio 44406  
Cellular: (330) 980-5388  
Right-Fax: (479) 201-0642  
E-mail: scott.norton@goldenliving.com