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EVE I. KLEIN
DIRECT DIAL: +1 212 692 1065
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AND SRI LANKA

June 21, 2017

VIA EMAIL AND E-FILING

Mr. Gary Shinnars
Executive Secretary
National Labor Relations Board
1015 Half Street
SE Washington, DC 20570

**Re: Wingate of Dutchess, Inc. and 1199SEIU United Healthcare Workers East –
Joint Motion for Board Approval to Vacate ALJ Decision**

Dear Mr. Shinnars:

Our firm represents Wingate of Dutchess, Inc. (“Dutchess”).

In furtherance of our recent discussion, I am writing to address the specific reasons as to why it would effectuate the purposes of the National Labor Relations Act (the “Act”) for the Board to approve the Joint Motion of Dutchess and 1199SEIU United Healthcare Workers East (the “Union”) to vacate the November 16, 2015 decision of the Administrative Law Judge (“ALJ Decision”), an essential term of the parties’ non-board settlement agreements resolving the unfair labor practice charges docketed at 03-CA-140567 and 03-CA-145659 (collectively the “Dutchess Charges”) and impacting issues pertaining to alleged discriminatee Sandra Stewart (the non-board settlements are annexed hereto as Exhibits 1 and 2). The Board’s vacatur of the ALJ Decision is also an essential term for the implementation of other agreements reached between the Union and Dutchess and the Union and Wingate of Ulster, Inc. (“Ulster”), all of which together (“Global Agreement”) would fully and finally resolve all open issues between the parties and establish the foundation for the parties’ collective bargaining relationship for the next five-year period.

First, the Global Agreement results in the parties entering into fully negotiated collective bargaining agreements for the Dutchess and Ulster nursing home facilities which provide substantial benefits to the represented employees, as well as to the Union (the collective

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bargaining agreements are annexed hereto as Exhibits 3 and 4). The employee favorable provisions include, but are not limited to, wage increases, healthcare benefits, paid leave benefits, seniority rights, post-probationary just cause discharge protection and a grievance and arbitration procedure. The labor agreements also afford the Union a host of representational provisions including, amongst others, bulletin board and reasonable visitation rights, union security rights and checkoff procedures. At your request, copies of the draft collective bargaining agreements for the Dutchess and Ulster facilities, the execution of which are contingent on the Board's approval of the joint motion, are respectively attached hereto as Exhibits 3 and 4.

Second, the non-board settlement agreement related to alleged discriminatee Sandra Stewart provides Ms. Stewart with more than 80 percent of the amount of back pay she could receive in a best case scenario. Specifically, if this issue is not resolved, and assuming the ALJ Decision is ultimately upheld by the Board and the federal appellate court, it is likely the parties would litigate whether Ms. Stewart initially made reasonable efforts to mitigate her losses after her discharge from Dutchess; however, there is no dispute amongst the parties that Ms. Stewart was offered a CNA position (the same position she held at Dutchess) at Elant Healthcare's nearby Fishkill Nursing Home facility on February 3, 2015. There is no dispute that this was a Union position that afforded Ms. Stewart an overall higher compensation package than she was receiving while employed at Dutchess. Ms. Stewart delayed her start date at Elant for a period of seven weeks and, thereafter, abandoned the position after two days on the job. As such, the parties agree that any back pay liability was appropriately cut off as of February 3, 2015. The Union calculated Ms. Stewart's backpay using the Board's methodology and arrived at the amount of \$7,878.99 (which calculation Dutchess accepted as accurate for purposes of this negotiated resolution). The Stewart settlement agreement provides for Dutchess to pay Ms. Stewart the sum of \$6,400.00, which constitutes over 80 percent of the full back pay amount, despite a potential dispute amongst the parties as to Ms. Stewart's mitigation efforts for the time period covered (*i.e.*, October 4, 2014 through February 2, 2015). Ms. Stewart was also prepared to accept the settlement sum of \$5,000, but Dutchess increased the amount to \$6,400 at the behest of the Regional Director.

With regard to the reinstatement order contained in the ALJ Decision, Dutchess did reinstate Ms. Stewart on May 10, 2016 following the District Court's Order pursuant to Section 10(j) of the Act on April 22, 2016 ("District Court Order"). Ms. Stewart remained employed at Dutchess until November 3, 2016, at which time Ms. Stewart's employment ended pursuant to a settlement agreement, including severance pay, which was agreed to and signed by Ms. Stewart, the Union, and Dutchess to resolve disciplinary charges brought by Dutchess against Ms. Stewart for time and attendance violations. For this reason, reinstatement of Ms. Stewart is no longer at issue.

Given all of the above, the parties' non-board settlement agreement pertaining to Ms. Stewart more than adequately remedies the alleged improper discharge of Ms. Stewart.

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Third, to the extent the ALJ Decision ordered a notice be posted to advise employees of the decision and Dutchess' observance of the mandates of the Act, said notice was posted immediately after the District Court Order and remains posted as of this writing. In addition, the Dutchess Facility Administrator, Clayton Harbby, read a copy of the District Court Order to the Dutchess employees on May 6, 2016, at both 7 a.m. and 3 p.m., in the presence of NLRB attorney, Alicia Pender. The employees were also aware that Ms. Stewart was reinstated to work following the District Court Order. Further, as noted above, the negotiated collective bargaining agreement provides the Union with reasonable access to employees and to a bulletin board. As such, it is clear that the District Court Order was known to and communicated to the employees and that the Union will have a method to communicate with employees about their rights moving forward.

Fourth, the Board's approval of the joint motion will then set into motion all terms of the Global Agreement. The non-board settlement agreements will finally resolve the Dutchess Charges. Currently, the parties have filed cross-exceptions to the ALJ Decision. Given the time delays, expenses and uncertainty of litigation, both before the Board and potentially a circuit court, the Global Agreement assures all parties that litigation will cease, while laying a strong foundation for labor relations moving forward. Specifically, the collective bargaining agreements will then be executed and put into effect immediately and Dutchess shall also immediately provide Ms. Stewart with the settlement payment provided for in the non-board settlement agreement.

Lastly, the Board should take note of the fact that Wingate Healthcare, Inc. has no prior record of unfair labor practices over at least the past decade. There have been no further complaints issued for alleged violations of the Act at either Dutchess or Ulster. As such, there should be no cause for concern that there would be a repeat of the issues that arose during the Dutchess organizing campaign.

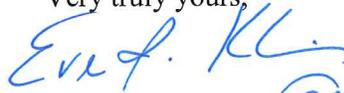
On a final note, as the Union's counsel, Amelia Tuminaro, has brought to your attention on several occasions since the Region filed the motion to remand on May 24, 2017, the parties would appreciate the Board's consideration of the motion at its earliest convenience. Because the parties' non-Board settlement agreements and collective bargaining agreements are conditioned upon vacatur of the ALJ's decision, the Union feels strongly that each week that passes delays the benefits which the Dutchess and Ulster employees will be afforded under the negotiated bargaining agreements, such as Employer payments for health insurance coverage, grievance and arbitration rights, and union access. The Union, and especially the workers at Dutchess and Ulster, are very eager to schedule ratification dates for the agreements since these workers have been seeking the benefits of the Union's representation since 2014.

The Union's counsel, Amelia Tuminaro, has reviewed, added her input to and fully agrees with the representations made herein and acknowledges the same with her below execution of this letter.

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Feel free to call me or Ms. Tuminaro should you have any further questions or concerns regarding the parties' joint motion to vacate the ALJ decision and for Board approval of the settlement agreements finally resolving the Dutchess Charges.

Very truly yours,


Eve I. Klein 

EIK
Enclosures

ACKNOWLEDGED AND AGREED TO:



Amelia Tuminaro
Gladstein, Reif & Meginniss, LLP
Counsel to 1199SEIU Healthcare Worker's East

EXHIBIT 1

NON-BOARD SETTLEMENT AGREEMENT AND RELEASE

This Settlement Agreement and Release (hereafter this "Agreement") is entered into by and among 1199SEIU United Healthcare Workers East (the "Union") and, on the other hand, Wingate of Ulster, Inc. and Wingate of Dutchess, Inc. (the "Employer" or "Wingate") (collectively the "Parties").

WHEREAS, this Agreement is intended to settle and resolve all issues and claims between the Parties, including, but not limited to, those set forth in the Second Amended Unfair Labor Practice Charge filed by the Union with the National Labor Relations Board ("NLRB"), on January 14, 2015, docketed at 03-CA-140567, and in the Unfair Labor Practice Charge filed by the Union with the NLRB on February 4, 2015, docketed at 03-CA-145659 (collectively the "Dutchess Charges"); and

WHEREAS, on March 31, 2015, the General Counsel issued an order consolidating the Dutchess Charges, issued a consolidated complaint and a notice of hearing, and on April 17, 2015, issued an amended consolidated complaint and a notice of hearing ("Dutchess Consolidated Amended Complaint"); and

WHEREAS, on April 17, 2015, the Acting Regional Director for Region 3 issued an order further consolidating the objections filed in the matter docketed at 03-RC-137858 ("Dutchess Objections") with the Dutchess Consolidated Amended Complaint, and ordered they be tried together; and

WHEREAS, a hearing was held before ALJ Mark Carissimi in Albany, New York, on the Dutchess Consolidated Amended Complaint and the Dutchess Objections on June 10-12, 2015, June 15-19, 2015, and June 22- 25, 2015; and

WHEREAS, on November 16, 2015, ALJ Mark Carissimi issued a Decision and Order ("ALJ Decision"); and

WHEREAS, the Employer filed exceptions to the ALJ's Decision with the NLRB on January 11, 2016 and the Union filed cross-exceptions to the ALJ's Decision with the NLRB on February 5, 2016, which filings remain pending before the NLRB; and

WHEREAS, the Union filed Unfair Labor Practice Charges in connection with the Employer's Ulster facility, including matters docketed at Case Nos. 03-CA-179167, 03-CA-186525, 03-CA-186349, 03-CA-184153, and 03-CA-175812 ("Ulster Charges"), and

WHEREAS, the Parties now desire to resolve all issues raised in Dutchess Charges, the Dutchess Objections, the Dutchess Consolidated Amended Complaint, the Exceptions, the Ulster Charges, any other unfair labor practice charges filed by the Union against the Employer at any time, and any appeals, requests for review, requests for reconsideration, and all manner of proceedings before the NLRB, Region 3 of the NLRB, the Office of Appeals and/or General Counsel of the NLRB, and the United States District Court for the Southern District of New York (inclusive of 15-CV-3982 (Briccetti)).

NOW THEREFORE, for good and valuable consideration, the Parties hereto acknowledge and agree as follows:

1. **Vacating of ALJ Decision.** The ALJ Decision shall be vacated, inclusive of the findings of fact and conclusions of law. There shall no longer be a court-enforceable order in the case and the ALJ Decision shall have no preclusive effect on the Parties. The ALJ Decision may not be used to establish a proclivity by the Employer to violate the Act. Likewise, the Union agrees that it shall not rely on, cite to or in any way rely on the ALJ Decision or the Court's Opinion and Order in Ley v. Wingate of Dutchess, Inc., 182 F. Supp. 3d 93 (S.D.N.Y 2016) as against the Employer for any purpose. The Court's Opinion and Order shall be of no further force and effect given the vacatur of the ALJ Decision.

2. **Submission of Joint Letter.** The parties shall submit the attached joint letter to the Regional Director of NLRB Region 3, on or before May 22, 2017 (the "Letter").

3. **Mutual Cooperation.** The Parties agree to take any and all other steps that Region 3, the General Counsel, the Office of Appeals or the NLRB requires to accomplish the agreements and commitments set forth in this Agreement and as embodied in the Letter. The Parties also agree to work cooperatively with each other, Region 3, the General Counsel, the Office of Appeals or the NLRB as necessary to consummate the terms of this Agreement.

4. **Stewart Agreement.** Within the time period set forth in the separate Non-Board Settlement Agreement and Release relating to Sandra Stewart, Wingate of Dutchess, Inc. shall pay to Sandra Stewart the amount set forth therein in settlement of any and all claims she and/or the Union may have against Wingate arising out of her employment and/or the termination of her employment.

5. **Ulster Payment.** Within five (5) business days of the "Effective Date" of this Agreement (as defined in paragraph 11 below), Wingate of Ulster, Inc. shall pay to the Union the amount of Three Thousand Six Hundred Dollars and No Cents (\$3,600.00) in compromise, settlement and release of claims, complaints, or disputes as more fully described herein.

6. **Mutual Releases.** The Parties hereto release and discharge the other and each of their respective present, former and future parents, shareholders, subsidiaries, affiliates, divisions, directors, trustees, officers, employees, attorneys, heirs, assigns, successors and agents (collectively, the "Releasees"), from any and all claims, causes of action, suits, debts, controversies, judgments, decrees, damages, liabilities, covenants, contracts and agreements, whether known or unknown, in law or equity, whether statutory or common law, whether federal, state, local or otherwise, which they may have had up until the date they each execute this Agreement to the maximum extent permissible by law ("Released Claims"). The Parties hereto likewise covenant not to sue each other on the basis of any Released Claims. To the extent any Released Claims are not releasable as a matter of law, the Parties hereto agree to waive their right, if any, to personal relief, including, but not limited to, for damages.

7. **Consideration.** The Parties agree that all commitments made in this Agreement are supported by full, adequate and valuable consideration, including, but not limited to, their execution of memoranda of understanding and collective bargaining agreements, for the

Employer's Ulster, New York and Dutchess, New York facilities, within five business days of the Effective Date of this Agreement.

8. Authority to Sign. The signatories of this Agreement on behalf of the Union and the Employer represent that each has the authority to execute this Agreement on behalf of their respective entities.

9. Entire Contract/Modification. The terms of this Agreement represent the entire understanding and agreement reached between the Parties on the subject matter of this Agreement and supersede any prior understandings or agreements, either oral or written, between the Parties on the subject matter of this Agreement. This Agreement cannot be modified except by a writing signed by both Parties.

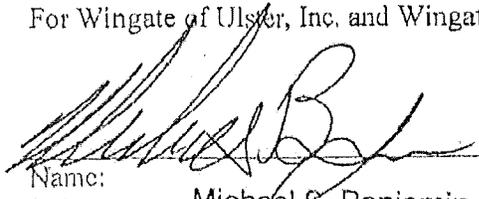
10. Assignment. The parties consent to the assignment of this Agreement to the Employer's and the Union's respective successors and assigns and thereafter the Agreement shall be binding on such successors and assigns.

11. Effective Date. This Agreement shall become effective upon each of the following events having occurred: (a) the execution of this Agreement by the Union and Wingate, (b) the Board's vacating of the ALJ Decision and (c) Region 3's approval (and/or the approval of any other office or branch of the NLRB if necessary) of the Union's withdrawal of all pending unfair labor practice charges against Wingate of Dutchess, Inc. and Wingate of Ulster, Inc., with prejudice. Should any of the events stated in this paragraph not occur, this Agreement shall be void and of no further force or effect.

12. Counterparts. This Agreement may be executed in counterparts, each of which shall be treated as an original, and both of which together will be deemed to be one and the same document. Signed counterparts of this Agreement may be transmitted to the other party via either pdf or facsimile. In either event, the documents shall be treated as originals for all purposes.

This Agreement is dated as of this ____ day of May, 2017 and is executed by the Parties intending to be legally bound thereto.

For Wingate of Ulster, Inc. and Wingate of Dutchess, Inc.:



Date: 5-23-17

Name:
Title: Michael S. Benjamin
Executive Vice President
& General Counsel

For 1199SEIU United Healthcare Workers East:


Name: Greg Speller Date: 5/23/17
Title: EVP

DM207676361.6

EXHIBIT 2

NON-BOARD SETTLEMENT AGREEMENT AND RELEASE

This Settlement Agreement and Release (hereafter this "Agreement") is entered into by and among 1199SEJU United Healthcare Workers East (the "Union"), Sandra Stewart ("Ms. Stewart") and Wingate of Dutchess, Inc. ("Wingate") (collectively the "Parties").

WHEREAS, this Agreement is intended to settle and resolve all issues and claims involving Ms. Stewart, including, but not limited to, those set forth in the Second Amended Unfair Labor Practice Charge filed by the Union with the National Labor Relations Board ("NLRB") on January 14, 2015, docketed at 03-CA-140567, contesting, *inter alia*, Ms. Stewart's discharge and other actions related to Ms. Stewart ("Stewart Charges"); and

WHEREAS, on April 17, 2015, the General Counsel issued an amended consolidated complaint that, *inter alia*, included the Stewart Charges ("Dutchess Consolidated Amended Complaint") and a notice of hearing; and

WHEREAS, a hearing was held before ALJ Mark Carissimi in Albany, New York, on the Dutchess Consolidated Amended Complaint on June 10-12, 2015, June 15-19, 2015, and June 22- 25, 2015; and

WHEREAS, on November 16, 2015, ALJ Mark Carissimi issued a Decision and Order ("ALJ Decision"), which included an order that Ms. Stewart be reinstated to work at Wingate's Dutchess facility; and

WHEREAS, the Employer filed exceptions to the ALJ's Decision with the NLRB on January 11, 2016 and the Union filed cross-exceptions to the ALJ's Decision with the NLRB on February 5, 2016, which filings remain pending before the NLRB; and

WHEREAS, pursuant to a preliminary injunction issued by Judge Briccetti on April 22, 2016, Wingate reinstated Ms. Stewart to work on May 10, 2016; and

WHEREAS, thereafter, Ms. Stewart and Wingate entered into a Separation Agreement and General Release, dated November 14, 2016, whereby Ms. Stewart's employment with Wingate ended, effective November 3, 2016, and Ms. Stewart released any and all claims against Wingate, other than her disputed claim for back pay pursuant to the Stewart Charges and ALJ Decision, and waived her right to reinstatement or employment at Wingate or any other facility owned or managed by Wingate Healthcare; and

WHEREAS, the Parties now desire to resolve all issues and/or disputes related to Ms. Stewart's employment or termination of employment with Wingate, raised in the Stewart Charges, the Dutchess Consolidated Complaint, and the ALJ Decision, and any appeals, requests for review, requests for reconsideration, and all manner of proceedings before the NLRB, Region 3 of the NLRB, the Office of Appeals and/or General Counsel of the NLRB, and the United States District Court for the Southern District of New York (inclusive of 15-CV-3982 (Briccetti).

NOW THEREFORE, for good and valuable consideration, the Parties intending to be legally bound, hereto acknowledge and agree as follows:

1. **Settlement Payment.** Within five (5) business days from the "Effective Date" of this Agreement (as defined in paragraph 7 below), Wingate shall pay the sum of Six Thousand Four Hundred Dollars and No Cents (\$6,400.00), less applicable tax deductions and withholdings, to Sandra Stewart in settlement of any and all claims she and/or the Union may have against Wingate arising out of the Stewart Charge, the ALJ Decision or any manner of her employment and/or the termination of her employment with Wingate.

2. **Benefits Not Otherwise Entitled To.** Ms. Stewart acknowledges that the Settlement Payment specified in paragraph 1 above is provided in addition to and otherwise exceeds any payment, benefit or other thing of value to which Ms. Stewart might otherwise be legally entitled to receive from Wingate and is full and valuable consideration for her release and covenant not to sue in paragraph 3 below.

3. **Release and Covenant Not to Sue / No Reinstatement or Re-Employment.**

In consideration of the settlement payment set forth herein, the receipt and adequacy of which is hereby acknowledged, Ms. Stewart hereby releases and discharges Wingate and each of its respective present, former and future parents, shareholders, subsidiaries, affiliates, divisions, directors, trustees, officers, employees, attorneys, heirs, assigns, successors and agents (collectively, the "Company Releasees"), from any and all claims, causes of action, suits, debts, controversies, judgments, decrees, damages, liabilities, covenants, contracts and agreements, whether known or unknown, in law or equity, whether statutory or common law, whether federal, state, local or otherwise, which Ms. Stewart may have had up until the Effective Date of this Agreement, including, but not limited to, any claims relating to, or arising out of any aspect of Ms. Stewart's employment with Wingate, or the cessation of such employment, expressly including any further challenges regarding or back pay relating to the Stewart Charges or the ALJ Decision. Ms. Stewart represents and warrants that she, either directly or through the Union, will withdraw, with prejudice, any and all actions, charges and/or lawsuits she has pending against Wingate and further represents and warrants that she has not commenced or filed and agrees not to commence, file, voluntarily aid or in any way prosecute or cause to be commenced or prosecuted against the Company Releasees any action, charge, complaint or other proceeding pertaining to the Stewart Charges or ALJ Decision. Ms. Stewart further confirms that she relinquished any right she may have had to reinstatement or reemployment at Wingate or at Wingate Healthcare or any property Wingate Healthcare owns or manages in her Separation Agreement and General Release that she executed on November 14, 2016, and covenants not to sue Wingate or Wingate Healthcare for reinstatement or for failure to be hired on any basis by these entities.

4. **Non-Admission of Wrongdoing.** This Agreement shall not in any way be construed as an admission by Wingate of any liability, or of any unlawful, discriminatory, or otherwise wrongful acts whatsoever against Ms. Stewart or any other person or entity.

5. Full and Fair Representation by the Union. Ms. Stewart agrees that she has been fully and fairly represented by the Union, and its representatives in negotiations regarding this Agreement.

6. Entire Contract/Modification. This Agreement sets forth the entire agreement by and between Ms. Stewart and Wingate and supersedes in its entirety any and all prior agreements, understandings or representations with any Company Releasees relating to Ms. Stewart's employment or the subject matter hereof and may not be modified orally. The parties represent that in executing this Agreement, the parties do not rely on any statement or fact not set forth herein. This Agreement may not be modified except by a writing signed by all parties hereto.

7. Effective Date. This Agreement shall become effective upon each of the following events having occurred: (a) the execution of this Agreement by Ms. Stewart, the Union and Wingate, (b) the Board's vacating of the ALJ Decision and (c) Region 3's approval (and/or the approval of any other office or branch of the NLRB if necessary) of the Union's withdrawal of all pending unfair labor practice charges against Wingate of Dutchess, Inc. and Wingate of Ulster, Inc., with prejudice. Should any of the events stated in this paragraph not occur, this Agreement shall be void and of no further force or effect.

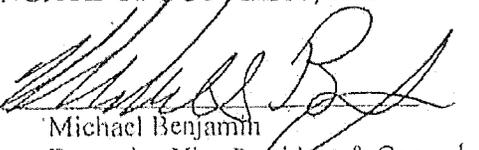
8. Authority to Sign. The signatories of this Agreement on behalf of the Union and the Employer represent that each has the authority to execute this Agreement on behalf of their respective entities.

9. Counterparts. This Agreement may be executed in counterparts, each of which shall be treated as an original, and both of which together will be deemed to be one and the same document. Signed counterparts of this Agreement may be transmitted to the other party via either pdf or facsimile. In either event, the documents shall be treated as originals for all purposes.

WHEREFORE THE PARTIES AGREE TO BE BOUND TO THE TERMS HEREOF:

WINGATE OF DUTCHESS, INC.

By:


Michael Benjamin
Executive Vice President & General
Counsel of Wingate of Dutchess, Inc.

Date:

5-23-17

Sandra Stewart
Sandra Stewart

Date: *5/23/2017*

1199 SEIU UNITED HEALTHCARE WORKERS EAST

By: *Greg Speller*
Name: *Greg Speller*
Title: *EVP*

Date: *5/23/2017*

EXHIBIT 3

2017 – 2021

COLLECTIVE BARGAINING AGREEMENT

BETWEEN

WINGATE OF DUTCHESS, INC.

AND

1199 SEIU UNITED HEALTHCARE WORKERS EAST

(May 17, 2017)

ARTICLE I - RECOGNITION

Section 1: Wingate of Dutchess, Inc. (hereinafter referred to as the “Employer” or the “Company”) recognizes 1199 SEIU United Healthcare Workers East (hereinafter referred to as the “Union”) as the exclusive representative for the purpose of collective bargaining with respect to wages, hours of work, and other terms and conditions of employment of those employees of the Employer (hereinafter referred to as either “employees” or “employee”) for whom the Union was certified as the collective bargaining representative effective December 30, 2014 (NLRB Case No. 03-RC-140402 involving Health Care Services Group, Inc.), or whom the Union otherwise represents, as follows:

A. All full-time, regular part-time and per diem certified nursing aides, licensed practical nurses, unit aides and unit secretaries employed by the Employer at its Fishkill, New York facility; excluding guards, confidential employees, professional employees and supervisors as defined in the Act, and all other employees.

B. All full-time, regular part-time, and per-diem dietary aides and cooks employed by the Employer at its Fishkill, New York facility; excluding guards, professional employees and supervisors as defined in the Act, and all other employees.

ARTICLE II - UNION SECURITY

Section 1: All employees who are members of the Union shall maintain their membership in the Union in good standing as a condition of continued employment.

Section 2: All employees hired after ratification shall become members of the Union no later than the thirtieth (30th) day following the beginning of such employment and shall thereafter maintain their membership in the Union in good standing as a condition of continued employment.

Section 3: For the purposes of this Article, an employee shall be considered a member of the Union in good standing if he/she tenders his/her periodic dues and initiation fee uniformly required as a condition of membership.

Section 4: Subject to Article XIII (Grievance and Arbitration Procedures), an employee who has failed to maintain membership in good standing as required by this Article shall, within twenty (20) calendar days following receipt of a written demand from the Union requesting his/her discharge, be discharged if, during such period, the required dues and initiation fee have not been tendered.

Section 5: The Union shall indemnify and hold the Employer, its directors, officers, employees and representatives harmless against any and all claims, demands, actions or other forms of liability that shall relate to, arise out of or result from any action taken or not taken by the Employer with the purpose of carrying out or complying with any of the foregoing provisions

in this Article. The Union shall defend, with competent legal counsel, the Employer, its directors, officers, employees and representatives against any and all such claims, demands, actions or other forms of liability. In the event that there is a conflict of interest with the counsel selected by the Union pursuant to the duty to defend noted above, then the Employer, its directors, officers, employees and/or representatives may select their own counsel to defend any action relating to actions or omissions taken pursuant to this Article and reasonable attorneys fees and costs incurred through such defense shall be reimbursed by the Union.

ARTICLE III - DUES CHECK OFF

Section 1: Upon written authorization, the Employer shall deduct biweekly from the wages paid employees in each month all dues, assessments and initiation fees which the Union shall notify the Employer to be due to the Union from the employee. The monies so deducted shall be held by the Employer in trust and they shall remit them to the Union promptly, together with a list of employees paying said dues, including categories and wages paid. It is the agreement of the Employer and the Union, to implement, wherever possible, electronic transmission of dues remittances and to streamline reporting requirements. The Employer and the Union will meet to discuss the most practicable implementation program to achieve this objective. In the event the Employer without justification fails to promptly remit such monies, the arbitrator may upon application assess interest at the legal rate against the Employer.

Section 2: The Union shall have the right to audit payroll records of bargaining unit employees to insure that Union dues are properly deducted and remitted.

Section 3: Upon written authorization, the Employer shall deduct from the wages of employees voluntary contributions to the 1199 Political Action Fund established by the Union for political education purposes.

Section 4: The Employer shall be relieved from making the above deductions upon an employee's termination of employment, layoff from work, leave of absence, transfer to a position outside the bargaining unit covered by this Agreement, and/or revocation of the authorization to make such deductions. The Employer shall immediately resume the deductions upon an employee's return to work from the above enumerated absences, provided that the applicable authorization has not been revoked by the employee. This provision, however, shall not relieve any employee of the obligation to make the required dues and initiation fee payment pursuant to the Union constitution in order to remain a member in good standing of the Union.

Section 5: The Employer shall not be obliged to make deductions of any kind from any employee who, during any biweekly wage payment involved, shall have failed to receive sufficient wages to equal the dues deductions.

Section 6: It is specifically agreed that the Employer assumes no obligation, financial or otherwise, arising out of compliance with the provisions of this Article. The Union shall indemnify and hold the Employer, its directors, officers, employees and representatives harmless against any and all claims, demands, actions or other forms of liability that shall relate to, arise

out of or result from any action taken or not taken by the Employer with the purpose of carrying out or complying with any of the foregoing provisions in this Article. Once funds are remitted to the Union, their disposition thereafter shall be the sole and exclusive obligation and responsibility of the Union. The Union shall defend, with competent legal counsel, the Employer, its directors, officers, employees and representatives against any and all such claims, demands, actions or other forms of liability. In the event that there is a conflict of interest with the counsel selected by the Union pursuant to the duty to defend noted above, then the Employer, its directors, officers, employees and/or representatives may select their own counsel to defend any action relating to actions or omissions taken pursuant to this Article and reasonable attorneys fees and costs incurred through such defense shall be reimbursed by the Union.

Section 7: The Employer shall furnish each month the names of newly hired bargaining unit employees, their address, social security number, classification of work, their date of hire, and the names of terminated employees together with their dates of termination, and names of employees on leave of absence.

Section 8: The 1199SEIU Federal Credit Union. Upon receipt of a written authorization from an employee, the Employer shall, pursuant to such authorization, deduct from the wages due said employee each pay period, starting not earlier than the first period following the completion of the employee's first thirty (30) days of employment, the sum specified in said authorization and remit same to the 1199SEIU Federal Credit Union, or successor credit union, bank or other financial institution ("the Credit Union") to the credit or account of said employee. If the Employer's payroll system permits, such deductions shall be remitted to the Credit Union on each pay date via ACH or similar electronic funds transfer system, directly to the account of the Credit Union as designated by the Credit Union as to account number and place, for the benefit of each participant, with funds available in "US Funds" on the scheduled payroll date. Such transmittal shall contain for each participant, the name, social security number prefixed with a "0" (making a 10-digit number), description, Institution name, and Institution's Credit Union ID.

If an ACH transfer is not possible under the employer's payroll system, the employer shall wire the funds to the Credit Union on each pay date to the account of the Credit Union as designated by the Credit Union as to account number and place, and shall at the same time email to the Credit Union a file containing the same information as listed above, written in a common spreadsheet program or ASCII, together with the total of the funds that have been transmitted.

ARTICLE IV - MANAGEMENT RIGHTS

Section 1: Except to the extent abridged by a specific provision of this Agreement, the Employer reserves and retains, solely and exclusively, all of its rights to manage the business, as such rights existed prior to the execution of this or any other previous agreement with the Union. The sole and exclusive rights of management which are not abridged by this Agreement shall include, but are not limited to, its right to establish, continue, discontinue, or change policies, practices and procedures for the conduct and/or operation of the business subject to the

policies, practices, and procedures referenced in this Agreement; the right to determine and from time to time redetermine the number, location and types of its facilities or operations, as well as the methods, processes, equipment and materials to be utilized; to reasonably regulate the quality and quantity of work of its employees; to discontinue temporarily or permanently and either in whole or in part, the conduct of its business, its processes or operations; to continue to subcontract the kind of work which the Employer has historically contracted out; to determine and from time to time redetermine the number of hours per day or per week that operations shall be carried on; to select and to determine the number and types of employees required for the positions at a facility, to staff shifts and to perform tasks; to assign and reassign work to employees and the location at which such work will be performed in accordance with the reasonable requirements determined by management; to determine and from time to time redetermine qualifications for positions and whether an employee assigned or to be assigned to a position meets the qualifications of the position; to establish and modify work schedules, work assignments, location assignments, and reasonable productivity standards; to establish and modify the starting and quitting times and the breaks and meal times for employees; to determine and from time to time redetermine training programs to be offered or required for employees; to establish and modify job classifications; to determine the equipment to be utilized in its operations; to transfer or promote employees; to lay off or otherwise relieve employees from duty for lack of work or other business reasons; to enact, modify and enforce reasonable work rules; to enact, modify and enforce reasonable safety rules including, but not limited to, drug and alcohol or substance abuse policies and procedures; to demote, suspend, discharge, or otherwise discipline employees for just cause; and otherwise to take or refrain from taking such actions or measures as management may determine to be necessary or appropriate for the orderly, efficient and/or productive operations of the business. The Employer agrees it will not exercise the foregoing rights in an arbitrary or capricious manner.

Section 2: All rights heretofore exercised by the Employer or inherent in the Employer's rights and not contracted away by the specific provisions of this Agreement are retained solely by the Employer. The failure of the Employer to exercise any function, power, or right reserved or retained by it, or the exercise of any power, function or right in a particular manner, shall not be deemed a waiver of the right of the Employer to exercise such power, function, authority, or right, or preclude the Employer from exercising the same in some manner so long as it does not directly conflict with a specific provision of this Agreement.

Section 3: It is further agreed that the rights of the Employer specified herein or elsewhere in this Agreement may not be impaired, in whole or in part, by an arbitrator or in arbitration even though the parties may agree to arbitrate the issue involved in the manner provided in the Grievance and Arbitration procedures of this Agreement.

Section 4: The Union recognizes that the Company may introduce a revision in the method or methods of operation which will produce a revision in job duties or functions and a reduction in personnel. The Union agrees that nothing in this Agreement shall prevent the implementation of any program the Company may implement whether or not the implementation of such program results in a reduction of the work force, subject to the layoff notice provision in Article XII, Section 3 of this Agreement.

Section 5: The Union, on behalf of the employees, agrees to cooperate with the Company to attain and maintain full efficiency in its operations and to comply with all federal and state regulations.

Section 6: All operational and human resources policies and procedures maintained by the Company and/or as set forth in the Company's Employee Handbook as of the date of this Agreement shall apply to the employees covered by this Agreement unless such policy or procedure is inconsistent with a term of this Agreement.

ARTICLE V - NON-DISCRIMINATION

Section 1: The Employer and the Union agree to not discriminate against any employee covered by this Agreement with respect to terms and conditions of employment due to such employee's race, color, religion, gender, national origin, age, disability, sexual orientation, marital status, or any other legally protected characteristic, consistent with applicable federal, state, and local law.

Section 2: Whenever any words are used in this Agreement in the masculine gender, they are to be construed as though they were also used in the feminine gender as the context may require, and vice versa.

ARTICLE VI - PROBATIONARY PERIOD

Section 1: The initial ninety (90) calendar days of a new employee's employment shall be considered to be a probationary period, excluding any calendar days missed for illness or other reasons. All such missed calendar days shall be added to and extend the employee's probationary period. The Employer may, in its discretion and with notice to the Union, extend the probationary period up to another thirty (30) calendar days to more fully evaluate an employee's performance.

Section 2: During and/or at the end of an employee's probationary period, as extended, the employee may be disciplined or terminated from employment with or without cause at the sole discretion of the Employer. Any discipline or termination from employment occurring within or at the end of such probationary period shall not be subject to or reviewable under the Grievance and Arbitration provisions of this Agreement.

Section 3: Probationary employees who are retained by the Employer after the end of their probationary period shall be credited with their most recent date of hire by the Employer for the purpose of determining their seniority and eligibility for those contractual benefits that are based upon length of service with the Employer. An employee or the Union, on behalf of an employee, may only utilize the Grievance and Arbitration provisions of this Agreement after an employee has successfully completed the probationary period (inclusive of any extensions).

Section 4: If an employee is promoted to another bargaining unit position, the Employer shall have one hundred eighty (180) calendar days from the date of the promotion or the completion of any job training program, to judge the competency of the employee. During or at the end of this probationary period, the Employer may, in its sole discretion, return the employee to the position previously held by the employee at the employee's previous rate of pay. The return to the previous position/rate of pay shall not be subject to or reviewable under the Grievance and Arbitration provisions of this Agreement.

ARTICLE VII - DISCIPLINE AND DISCHARGE

Section 1: Upon conclusion of the probationary period, the Employer shall have the right to discharge, suspend or discipline any employee only for just cause. The Employer will notify the Union in writing of any discharge or suspension within two (2) business days (excluding Saturdays, Sundays and holidays) from the time of the discharge or suspension.

Section 2: An employee or a witness is required to sign a discipline note as evidence of receipt.

Section 3: All protests of disciplinary action taken by the Union must be processed through the Grievance and Arbitration provisions as outlined in this Agreement.

Section 4: One progressive discipline procedure will exist for all discipline including, but not limited to, unsatisfactory performance, violations of work rules, and/or violations of other Company policies. The progressive discipline procedure is set forth in the Wingate Corrective Action Policy which is incorporated herein by reference. The arbitrator has the authority to determine and impose the appropriate penalty for discipline except in the following circumstances: (a) the penalty or consequences for an alleged infraction is specified in the Employer's policies in which case the penalty or consequences set forth in such policy shall govern (i.e., Attendance Policy, Absence Guidelines Matrix, Medication Errors Policy, Corrective Action Policy); or (b) the employee's conduct violates one or more of the standards of conduct that are listed in Appendix "A" in which case the penalty for such violation is discharge on a first offense and the arbitrator may not review the penalty assessed but the arbitrator's jurisdiction is limited only to determining whether the offense occurred.

Section 5: In the event that disciplinary action is submitted to outside arbitration under the grievance and arbitration provisions, the arbitrator shall not consider the failure of a visitor, resident, patient, or third party witness to appear at a hearing as prejudicial to the Employer's case.

ARTICLE VIII - HOURS OF WORK

Section 1: The typical regular work week for full time employees is: (i) thirty-seven and one half (37.5) hours for CNA's (eight hours per work day and five work days per work week), and (ii) forty (40) hours for LPN's (eight and one half hours per work day and five work

days per work week), except where necessary to provide for rotating weekends off, subject to instances in which an employee may volunteer or be required to work additional hours or days. Each employee shall receive one (1) thirty (30) minute unpaid meal period and one (1) fifteen (15) minute break per shift.

Section 2: Any continuous number of hours in excess of forty (40) hours per work week shall be considered as overtime hours. Overtime at the rate of one and one half (1 ½) times the regular rate of pay shall be paid to employees for all hours worked in excess of forty (40) hours in a work week.

Section 3: An employee's actual hours worked shall be counted in calculating the forty (40) hours in a work week beyond which the overtime rate of pay is paid, unless otherwise specified in this Agreement.

Section 4: Each employee must timely report to work by his/her scheduled start time and be prepared to commence work at the start of the employee's shift. No employee may punch in at the time clock earlier than seven (7) minutes prior to the start of the employee's scheduled work time. No employee may punch out at the time clock prior to the end of the employee's scheduled work time unless the employee has been authorized to leave work early. No employee may work prior to the scheduled starting time of his/her shift nor continue to work after the scheduled ending time of his/her shift unless the employee has been directed by management to do so. No time prior to the start of an employee's scheduled shift or after the end of an employee's scheduled shift shall constitute hours worked or overtime unless at the direction or with the approval of the Employer.

Section 5: The Employer will use reasonable efforts to maximize the use of full time employees as compared to part time employees consistent with its business needs; provided however, the Employer retains the sole discretion to require an employee to either not work, arrive later than the employee's regular start time, and/or leave prior to the end of the employee's regular end time on any work day on account of census, resident acuity, resident needs or in the event of an emergency, and provided that, before the Employer implements one of these options, it will follow the order of procedures as set forth below to avoid sending employees home:

- 1) Evaluate needs on other floors and float staff
- 2) Cancel agency coverage (if within the notice period)
- 3) Ask for qualified volunteers to be sent home due to lack of work (and allow employees, if they choose, to use available PTO time if the employee elects to do so)
- 4) Cancel extra shifts (the shift pick-ups beyond standard hours)
- 5) Cancel per diem coverage
- 6) Adjust staff (based on unit assignment and seniority with requisite skills)

If, after having followed the foregoing procedure in all cases where staff reductions are required, employees are required not to work or are sent home before the end of their scheduled shift (in which case they will be paid only for hours actually worked), then: (i) if the census is

less than 90%, the Employer will try to make up the lost hours for any employee who is sent home, but the Employer cannot guarantee replacement hours, or (ii) if the census is 90% or more, the Employer will be obligated to offer replacement hours on a similar shift (which could include being recalled on short notice). If the employee declines, the Employer will have fulfilled its obligation. If the Employer cannot offer replacement hours within two (2) weeks, the Employer will be obligated to pay for the lost hours.

Section 6: There shall be no pyramiding of overtime.

Section 7: The Employer shall use reasonable efforts to provide employees with two (2) hours advance notification of the need to work overtime, unless business circumstances prevent such advance notice.

Section 8: The Employer may, in its discretion, require an entire shift, department or job classification to work overtime. In the event that an entire shift, department or job classification is not required to work overtime, then the Employer shall assign overtime as set forth herein. The Employer shall first ask the most senior employee in the job classification and on the shift where the overtime is required if he/she is willing to accept the overtime assignment. If the employee accepts or rejects the overtime assignment, his/her name goes to the bottom of the overtime roster and, if the overtime need has not been satisfied, then the Employer shall offer the overtime assignment to the next senior employee. The Employer shall continue this same process until the overtime needs are filled. In the event that an employee is inadvertently overlooked for an overtime assignment, that employee will be offered the next available overtime and no other remedy. The Employer will use reasonable efforts to attempt to equalize actual overtime hours worked by employees. In the event that an insufficient number of employees have volunteered to satisfy the need for overtime, then the Employer may, in its discretion, assign employees to work overtime on a mandatory basis in reverse order of seniority within the job classification starting with the employees working the then current shift (i.e. requiring such employees to remain after the scheduled end time of their shift). Failure to work overtime when required is subject to discipline by the Employer. Further, notwithstanding the above, with regard to LPNs, the Employer shall follow the guidelines set forth in its Nurse Coverage Plan before requiring an LPN to remain after the LPN's shift to work overtime.

Section 9: The scheduling of rest and meal periods is wholly within the reasonable discretion of the Employer, and need not be at the same fixed time for employees on the same shift.

Section 10: The Employer shall continue to allow employees, consistent with past practice and with permission of a supervisor, to exchange break times on the same shift provided there will be no disruption to patient care.

ARTICLE IX - BEREAVEMENT

Section 1: In the event a regular full-time employee experiences the death of his/her immediate family member, then such employee shall be entitled to up to a maximum of three (3) consecutive regular work days off with pay to attend the funeral and to the affairs of the deceased. The bereavement leave must be taken during the period between the date of death and the day of the funeral and may not be split or postponed. The bereavement days must be taken consecutively and include the day of the funeral attended by the employee. The bereavement days include only the days on which an employee would be regularly scheduled to work.

Section 2: Payment for each such day is at the employee's base rate of pay and paid for actual scheduled work hours on such work day.

Section 3: Employees are required to provide the Employer with as much notice as reasonably practicable regarding their need to take bereavement leave. The Employer reserves the right to demand proof of death and such evidence as may be needed to substantiate the need for a bereavement leave and the entitlement to benefits under this Article.

Section 4: The term "immediate family member" is defined as: father, mother, current spouse, domestic partner, natural or adopted child, current step-child, children for which the employee is the legal guardian, current father-in-law, current mother in-law, grandparents, sister, brother, current brother-in-law, current sister-in-law, and grandchildren.

ARTICLE X - JURY DUTY AND MILITARY LEAVE

Section 1: Any full-time or regular part-time employee who is required to perform jury duty must immediately notify his/her supervisor and will be granted a leave of absence for the hours during which he or she is necessarily absent from scheduled work as a result of such jury duty. The Employer may request the employee to submit a written request to the appropriate authorities to be excused or exempted from or rescheduled for jury duty and the employee will fully cooperate with the Employer to request such exemption from or rescheduling of jury duty.

Section 2: Employees will be required to provide satisfactory evidence of jury duty including, but not limited to, the notice or subpoena requiring jury duty service and a certificate of service upon return to work. For any scheduled hours missed for jury duty leave under this Article, employees will be paid the difference between the pay they receive for such jury duty and the base rate of pay they would have received for regularly scheduled hours had they worked during such leave up to a maximum of five (5) working days per calendar year for regular jury duty.

Section 3: If an employee is released from jury duty early enough to work at least half of his/her regular shift, then such employee must contact his/her supervisor for instructions as to whether to attend work.

Section 4: The jury duty provisions in Sections 1, 2 and 3 of this Article do not apply to any situation in which an employee may be subpoenaed to serve as a witness in a trial or as a witness in a grand jury.

Section 5: An employee on active duty with the United States Armed Forces is eligible for an unpaid leave of absence and reinstatement consistent with applicable law. An employee who is a member of the Reserves is eligible for an unpaid leave of absence for the duration of the training period required by the Reserve Unit with reinstatement consistent with applicable law. Employees will be required to provide satisfactory evidence of military duty.

Section 6: Whenever possible, employees shall coordinate such military leave with the Employer so as not to interfere with the Employer's scheduling or staffing.

ARTICLE XI - LEAVES OF ABSENCE

Section 1: In its discretion, the Employer may grant an employee, who has successfully completed his/her probationary period, an unpaid leave of absence for extraordinary reasons of a personal nature; provided that, the leave of absence does not exceed thirty (30) calendar days in a rolling twelve (12) month period. The employee must request the personal leave of absence in writing at least thirty (30) calendar days in advance. The employee's request for a leave of absence must set forth the specific reasons the employee is requesting the leave of absence and must state the starting date and expiration of the requested leave of absence. The Employer may also, in its discretion and consistent with applicable law, grant an employee's request for a leave of absence for medical reasons. A leave of absence may only be taken with written approval of the employee's supervisor.

Section 2: An employee on an approved leave of absence shall retain seniority but shall not accrue additional seniority or other benefits.

Section 3: If an employee desires to return to work before a granted leave expires, the Employer will make reasonable efforts to return an employee to work prior to the scheduled end of his/her leave of absence but only upon at least ten (10) calendar days advance notice and no guarantee exists that the employee will be returned from the leave of absence early.

Section 4: When an employee returns from an approved leave of absence, the Employer will make reasonable efforts to place the employee in a similar position, location and shift to the one the employee vacated but no guarantee exists that the employee will be placed in the same or similar position, location or shift with the same or similar compensation nor that the employee will be placed immediately upon return from the leave, since reinstatement is contingent on the availability of a position for which the employee has the requisite skills and the Employer's business needs at the time.

Section 5: In the event an employee is granted a personal leave of absence, the employee is responsible to timely remit the full monthly cost (pro rated for partial months) to maintain his/her health and dental insurance benefits for the duration of the leave. In the event

that an employee fails to timely remit the requisite monthly premiums for any insurance program, the employee's coverage under such program shall end.

Section 6: An employee who accepts any employment or engages in self-employment or other business relationship with another employer, entity or person (including the employee himself) while on a leave of absence shall be deemed to have voluntarily resigned and such employee's employment shall end.

Section 7: In the event that an employee fails to timely return from a leave of absence, such employee's employment shall end.

Section 8: An employee who gives an inaccurate or false reason, in whole or in part, for requesting or obtaining a leave of absence shall be discharged.

ARTICLE XII- SENIORITY

Section 1: Seniority shall mean the length of continuous active employment with the Employer and shall accrue from one's most recent date of hire by the Employer; however, the principles of seniority shall only apply to employees in the bargaining unit and not apply to any employee within the probationary period. If more than one employee is hired on the same date, then the method of determining the senior employee shall be to compare each employee's date of birth and the employee with a date of birth earlier in the calendar year shall be the more senior employee.

Section 2: One seniority list containing both full-time employees and regular part-time employees shall be maintained by the Employer.

Section 3: In the event that it becomes necessary to layoff employees, the Employer shall provide twenty (20) calendar days advance notice to the Union and, at the Employer's option, post a notice advising the employees that those who wish to go on layoff for a stated length of time may volunteer for such layoff as evidenced by their timely signatures on the posted layoff list. In the event that it becomes necessary to layoff employees (including employees who have either volunteered or not volunteered for layoff or if the Employer opts to not post a notice seeking volunteers for layoff), then the Employer shall layoff in reverse order of seniority and recall in order of greatest seniority in the job classification.

Section 4: If a regular part-time employee has greater seniority than a full-time employee in the same classification who is to be laid off, the regular part-time employee must be willing to accept full-time employment to continue working. A regular part-time employee on layoff shall have recall rights to a full-time position only if he/she is willing to work the required full-time schedule of hours.

Section 5: Seniority rights shall be lost and an employee's employment with Employer shall end for any of the following reasons:

- (a) An employee resigns, quits, or retires;

(b) An employee who has been laid off does not report to work from recall within two (2) calendar days after the employee and/or the Union have been notified by telephone, email, facsimile, hand delivery, overnight mail or registered mail to return to work and it shall be the responsibility of the employee to keep the Employer and the Union advised of his/her current mailing address;

(c) An employee is discharged;

(d) An employee overstays a leave of absence without prior written approval of the Company;

(e) An absence from work of two (2) or more work days without notifying the Employer with a reason for absence (or an absence of one (1) work day without notifying the Employer with a reason for absence during an employee's first ninety (90) days of employment);

(f) An employee is on layoff in excess of six (6) months;

(g) An employee is absent from work due to medical reasons or is otherwise unable to return to work within six (6) months;

(h) An employee fails to notify the Employer within forty-eight (48) hours after being released by a treating physician to return to work in connection with an illness or accident preventing work;

(i) Acceptance of employment or self-employment of any nature while on a leave of absence.

Section 6: The Employer shall provide the Union with a seniority list, including job classifications, on or about the effective date of this Agreement and said list shall be updated periodically upon reasonable requests by the Union.

Section 7: Seniority does not accrue during the time an employee holds a non-bargaining unit position.

Section 8: Promotions within the bargaining unit shall be upon the basis of skill, ability and qualifications. When these are reasonably equal, seniority shall prevail. Seniority shall be one of the factors considered in making assignments together with relative skill, ability, and qualifications which shall all be equally considered. When positions in the bargaining unit become available, current employees who apply for such positions will be given preference with due consideration to skill, ability, qualifications and seniority.

ARTICLE XIII - GRIEVANCE AND ARBITRATION PROCEDURES

Section 1: An employee may discuss concerns and complaints with his/her immediate supervisor in an attempt to resolve the issue prior to it becoming a written grievance.

Section 2: A grievance under this Article is hereby defined as a complaint by either the Employer or the Union that this Agreement has been violated. Grievances shall be processed as follows:

Step 1: All grievances shall be presented, in writing or forms adopted by the Union and the Employer, to the Director of Nursing within thirty (30) calendar days of the occurrence giving rise to such grievance or from the time such occurrence should reasonably have become known, whichever is later. The Employer shall give its answer to the employee and/or his/her Union delegate or other representative within seven (7) working days after the presentation of the grievance in Step 1.

Step 2: If a grievance has not been settled or timely responded to in Step 1, the grievance may be presented at Step 2 within seven (7) working days after the earlier of when the answer in Step 1 was due or issued. When grievances are presented in Step 2, they shall be reduced to writing, signed by the grievant and his/her Union representative and presented to the Administrator or his/her designee. The Employer shall give its written answer to the employee and/or his/her Union delegate or other representative within seven (7) working days after the presentation of the grievance in Step 2.

Step 3: If a grievance has not been settled or timely responded to in Step 2, the grievance may be presented at Step 3 within seven (7) working days after the earlier of when the answer in Step 2 was due or issued. When grievances are presented in Step 3, they shall be reduced to writing, signed by the grievant and/or his/her Union representative and presented to the Vice President of Human Resources or his/her designee. A grievance meeting will be promptly scheduled for a mutually agreeable date and time during normal business hours promptly following the receipt by either party of a written request by the other for such grievance meeting. The Employer or the Union, as the case may be, shall give its written answer within seven (7) working days after the later of either the presentation of the grievance at Step 3 or the Step 3 meeting. All third step decisions from the Employer will be mailed to the Union's Organizer and Area Director in-care of the Union Headquarters, 155 Washington Avenue, Albany, NY 12210 and a copy given to the delegate who handled the case. Anything to the contrary herein notwithstanding, a grievance concerning a discharge or suspension or a grievance by the Employer will be presented initially at Step 3.

Step 4: If a grievance has not been settled or timely responded to in Step 3 and the aggrieved party desires to proceed to arbitration, then it must be submitted to arbitration within thirty (30) calendar days after the earlier of when the answer in Step 3 was due or issued.

In the event of arbitration arising out of a grievance involving the Union's Greater New York Health Plan, the arbitrator shall be Martin F. Scheinman. In the event Mr. Scheinman is unable or unwilling to serve as the arbitrator in such a dispute, then the parties shall agree upon an alternative arbitrator and, if they are unable to do so, then the arbitrator shall be selected in the manner below.

In the event of arbitration arising out of a grievance involving any matter other than the Union's Greater New York Health Plan, then the Employer or the Union, as the case may be, shall request the American Arbitration Association to provide the Employer and the Union a panel of at least seven (7) arbitrators and pursuant to which the Employer and the Union shall rank such arbitrators as are agreeable to each of them. If the parties are unable to agree upon an arbitrator from the initial list, they will request a second panel of arbitrators from the American Arbitration Association and they shall alternately strike names from the second list with the Union striking the first name. The one person remaining shall be the arbitrator.

Section 3: If the employee or the Union fails to file or process a grievance at any step within the time limits set forth above and the procedure is not waived by mutual written agreement, that grievance shall be considered and deemed waived or settled. Failure on the part of the Employer's designated representative to answer a grievance at any of the steps in the grievance procedure shall not be deemed acquiescence thereto, but the grievance may progress to the next step if so processed by the Union.

Section 4: An employee shall comply with all instructions and perform all duties, when and as instructed, even though he or she may feel aggrieved provided that the employee's safety is not placed in serious peril.

Section 5: Grievances resolved at any step of the grievance procedure will not be regarded as setting precedent for future interpretation of this Agreement. Any grievance may be moved directly to a more advanced step of the grievance procedure by the Employer.

Section 6: The arbitration of a grievance shall be extended only to those grievances which are arbitrable under this Agreement. In order for a grievance to be arbitrable: (1) it must have been processed through the grievance procedure properly and within the applicable time limits as set forth in this Agreement unless otherwise mutually agreed upon in writing by the parties; (2) it must be referred to arbitration within the applicable time limits as set forth in this Agreement; and (3) it must not require the arbitrator, in order to rule in favor of the grievant, to exceed the scope of his or her jurisdiction as defined in this Article.

Section 7: The Arbitrator shall consider only the particular issue or issues presented in writing by the Employer and the Union, and the decision and award shall be based solely upon his/her interpretation of the meaning or application of the terms of this Agreement to the facts of the grievance presented. The Arbitrator has no authority or power to add to, delete from, modify, disregard, or alter any of the written terms of this Agreement. A decision of the arbitrator on any

grievance within the scope of the issues submitted and within the arbitrator's authority shall be final and binding on the Company, the Union and the employees involved.

Section 8: Subject to the terms of the Discipline and Discharge Article, the Arbitrator shall have the authority to order or deny reinstatement of an employee with or without back pay.

Section 9: The arbitrator's fees and expenses shall be borne equally by the parties to this Agreement. The expenses incidental to each party's witnesses shall be borne by the party calling the witnesses.

Section 10: The fact that a claim or dispute has been processed under the grievance procedure set forth in this Agreement will not preclude the raising of the question of arbitrability with respect to such claim or dispute before the arbitrator selected to hear such claim or dispute.

Section 11: No more than one (1) grievance shall be submitted to the same arbitrator at a single hearing, except by mutual agreement of the parties.

ARTICLE XIV - STRIKES AND LOCKOUTS

Section 1: No employee shall engage in any strike, sit-down, sit-in, slow-down, cessation or stoppage or interruption of work, boycott, or other interference with the operations of the Employer.

Section 2: The Union, its officers, agents, representatives and members, shall not in any way, directly or indirectly, authorize, assist, encourage, participate in or sanction any strike, sit-down, sit-in, slow-down, cessation or stoppage or interruption of work, boycott, or other interference with the operations of the Employer, or ratify, condone or lend support to any such conduct or action.

Section 3: In addition to any other liability, remedy or right provided by applicable law or statute, should a strike, sit-down, sit-in, slow-down, cessation or stoppage or interruption of work, boycott, or other interference with the operations of the Employer occur, the Union, within twenty-four (24) hours of a request by the Employer, shall:

- (a) Publicly disavow such action by the employees.
- (b) Advise the Employer in writing that such action by employees has not been called or sanctioned by the Union.
- (c) Notify employees of its disapproval of such action and instruct such employees to cease such action and return to work immediately.

- (d) Post notices at Union Bulletin Boards advising that it disapproves such action, and instructing employees to return to work immediately.

Section 4: The Employer agrees that it will not lock out employees during the term of this Agreement.

ARTICLE XV - UNION VISITATION AND BULLETIN BOARDS

Section 1: No Union delegate or employee shall engage in any union activity (including, but not limited to, the distribution of literature) during his/her work time, during the work time of the intended recipient of the solicitation or distribution, or in work areas, except to the extent expressly permitted under the Grievance Procedures set forth in Article XIII of this Agreement.

Section 2: A non-employee representative of the Union may visit the Employer's job site at reasonable times during regular work hours for the purposes of administering this Agreement. Notice of any such visit to the Employer's job site needs to be provided in advance with at least twenty four (24) hours advance notice, except in the event of an emergency in which case notice of the visit needs to be provided with as much advance notice as practical under the circumstances. All such visits need to be conducted so as to not interrupt employee work schedules or interfere or disrupt the Employer's operations. The Union representative accessing the Employer's premises is required to comply with all rules and regulations of the Employer. The Union representative is required to check in at the designated area established by the Employer and then may proceed to the requested work area.

Section 3: The Employer shall permit the Union to hang a bulletin board, supplied by the Union, at the Employer's job site for the posting of proper union notices (as defined in Sections 4 and 5 below). The bulletin board shall not be used for any other purpose. Such notices or bulletins may be posted there only by the Union, by or through its authorized and designated officers, delegates and representatives, and may not be posted in any other location or place, either inside or outside the Employer's facilities. The bulletin board shall be mutually agreeable in size and structure and shall be placed at a mutually agreeable location at the Employer's facility.

Section 4: The term "proper union notices" means the information that may be posted on the bulletin board restricted to the following types: notices or bulletins concerning official Union business affecting the bargaining unit employees' terms or conditions of employment, notices of recreational and social affairs; notices of union elections, officer appointments and results of union elections; notices of union meetings; and other notices concerning Union affairs so long as they would not adversely impact the Employer's business or operations.

Section 5: The term "proper union notices" means that no notice, bulletin, writing or other document posted by or on behalf of the Union on its designated bulletin board will contain

anything which is profane or obscene, unlawfully discriminatory, or which is defamatory toward or disparaging of the Employer, its services, or any of its officers, managers, supervisors, employees, or affiliates.

Section 6: In the event that there is a dispute regarding whether information constitutes a “proper union notice” under Sections 4 and/or 5 above, then it may be resolved through the grievance and arbitration procedures of this Agreement.

Section 7: The Employer may require the Union to remove any material which it reasonably determines violates this Article. If the Union fails to promptly comply, the Employer may itself remove the material.

ARTICLE XVI – DELEGATES

Section 1: The Employer recognizes the right of the Union to elect Delegates to take up with the Employer, at reasonable times, the various problems that might arise at the place of employment.

Section 2: A Union delegate or other employee must conduct union business during a regularly scheduled break time or on non-work time and arranged so as not to interrupt employee work schedules or disrupt the Employer’s operations. Any necessary time away from a work assignment by a delegate shall be approved, in its discretion, by management in advance, shall be scheduled as far in advance as practical so as to minimize disruption to the Employer’s operations, and shall be unpaid, unless management schedules the meeting at its request and the delegate is required to attend in which case only the actual time in attendance at the required meeting and any time reasonably necessary for preparation for such meeting will be paid (not to exceed one hour in paid preparation time).

ARTICLE XVII - NON-BARGAINING UNIT EMPLOYEES

Supervisors and other regular employees of the Employer who are not members of the bargaining unit may perform bargaining unit work to the extent consistent with the Employer’s practices prior to the effective date of this Agreement including, but not limited to, answering call bells and responding when needed to ensure proper patient care, filling in due to staffing shortages, to instruct or train employees or in emergency circumstances.

ARTICLE XVIII - SAFETY COMMITTEE

The designated representatives of the Employer and the Union will meet up to two (2) times per contract year upon the written request of either the Employer or the Union to discuss accidents, safety and security issues. The Safety Committee will consist of two (2) representatives of the Union and two (2) representatives of the Employer. The Safety Committee meetings will be scheduled at a mutually agreeable place, date and time and not last longer than one (1) hour in duration. The Employer is not obligated to adopt, in whole or in part, any suggestions or recommendations submitted by the Union to the Employer through the Safety Committee.

ARTICLE XIX - SUBSTANCE ABUSE

The Employer's Drug Free Work Place Policy is incorporated herein by reference.

ARTICLE XX - ATTENDANCE AND ABSENTEEISM

The Employer's Attendance Policy and Absence Guidelines Matrix are incorporated herein by reference.

ARTICLE XXI - STANDARDS OF CONDUCT

The Employer's Standards of Conduct and the Employer's other policies, procedures and practices that it maintains shall continue and are incorporated herein by reference.

ARTICLE XXII – PAID TIME OFF

The Employer's Paid Time Off (PTO) Policy is incorporated herein by reference. The accrual rates under the Employer's PTO Policy are as follows:

- **Accrual rates:** Eligible regular full time bargaining unit employees hired or who become eligible for PTO accrual on or after April 1, 2013 accrue PTO in accordance with the chart below:

Day One through completion of 3 rd year:	3.69 hours/week (24 days per year)
4 th year	4.46 hours/week (29 days per year)
Beginning of 5 th year through completion of 6 th year:	4.61 hours/week (30 days per year)
Beginning of 7 th year and through tenure	4.77 hours/week (31 days per year)

- **Accrual rates:** Eligible regular full time bargaining unit employees hired or who became eligible for PTO accrual before April 1, 2013 accrue PTO in accordance with the chart below:

Day One through completion of 3 rd year:	4.00 hours/week (26 days per year)
4 th year	4.77 hours/week (31 days per year)
Beginning of 5 th year through completion of 6 th year:	4.92 hours/week (32 days per year)
Beginning of 7 th year and through tenure	5.08 hours/week (33 days per year)

ARTICLE XXIII - 401(K) PLAN

Section 1: The employees are eligible to participate in the Employer's 401(k) Plan at the benefit levels in effect at the time of the effective date of this Agreement, and the plan terms (including, but not limited to, the benefit levels) may be modified from time to time in the Employer's discretion in the same manner as for other employees of the Employer at the facility covered by this Agreement.

Section 2: The Employer agrees to use reasonable efforts to notify the Union's representative and the employees of any changes in the Employer's 401(k) Plan terms in advance of implementation.

ARTICLE XXIV - WAGES

Section 1: The Employer reserves the right to establish the starting wage rates for newly hired employees subject to the minimum wage rates set forth below. This Article is not intended to grant any right to a particular job, or particular work to anyone or any job title.

Section 2: Effective March 5, 2017, all employees on the payroll in the titles of Dietary Aide, Cook, Unit Aide, and Unit Secretary (Ward Clerk) shall receive an increase of \$0.50/hour. Effective March 5, 2017, all LPNs and CNAs on the payroll shall receive the greater of either the wage rates set forth in Section 3 below or a 3% increase.

Section 3: The minimum wage rates for each title noted below shall be effective March 5, 2017. This Section is intended solely to describe the wages to be provided employees who are employed by the Employer as of March 5, 2017 or who are subsequently newly hired into the LPN or CNA positions after such date. This Section is not intended to provide an annual wage increase for employees based on increasing years of certification or licensure.

<u>Years of Certification/Licensure</u>	<u>CNA</u>	<u>LPN</u>
0	\$12.50	\$21.25
1	\$13.00	\$21.75
2	\$13.19	\$22.07
3	\$13.38	\$22.39
4	\$13.56	\$22.71
5	\$13.75	\$23.03
6	\$13.94	\$23.34
7	\$14.13	\$23.66
8	\$14.31	\$23.98
9	\$14.50	\$24.30
10	\$14.69	\$24.62

11	\$14.88	\$24.94
12	\$15.06	\$25.26
13	\$15.25	\$25.59
14	\$15.44	\$25.91
15	\$15.63	\$26.24
Per Diem	\$14.00	\$25.00

Section 4: The annual wage increase or bonus for all employees is set forth below:

Effective January 1, 2018: 2% wage increase

Effective January 1, 2019: 2% wage increase

Effective January 1, 2020: 2% bonus

Effective January 1, 2021: 2% wage increase

As for the 2020 calendar year, the 2% bonus is calculated and paid as follows:

A. The bonus for the first calendar quarter of 2020 will be calculated by multiplying 2% of the aggregate amount of regular (i.e., non-overtime) hours worked at the employee's regular hourly rate of pay for the months of January-March 2020 and such bonus amount will be paid on the first regular pay date of April 2020; provided that the employee remains employed by the Employer as of the pay date.

B. The bonus for the second calendar quarter of 2020 will be calculated by multiplying 2% of the aggregate amount of regular (i.e., non-overtime) hours worked at the employee's regular hourly rate of pay for the months of April - June 2020 and such bonus amount will be paid on the first regular pay date of July 2020; provided that the employee remains employed by the Employer as of the pay date.

C. The bonus for the third calendar quarter of 2020 will be calculated by multiplying 2% of the aggregate amount of regular (i.e., non-overtime) hours worked at the employee's regular hourly rate of pay for the months of July-September 2020 and such bonus amount will be paid on the first regular pay date of October 2020; provided that the employee remains employed by the Employer as of the pay date.

D. The bonus for the fourth calendar quarter of 2020 will be calculated by multiplying 2% of the aggregate amount of regular (i.e., non-overtime) hours worked at the employee's regular hourly rate of pay for the months of October-December 2020 and such bonus

amount will be paid on the first regular pay date of January 2021; provided that the employee remains employed by the Employer as of the pay date.

ARTICLE XXV - MEDICAL INSURANCE

Section 1: For the 2017, 2018 and 2019 plan years (i.e., April 1 – March 31), the Employer agrees to offer the employees covered by this Agreement the same health, dental and vision insurance program(s) on the same terms and conditions and at the same level of employee contributions as it offers to the other employees at the Employer's facility subject to: (a) the terms of such medical insurance programs, and (b) the terms set forth in Section 2 below.

Section 2: The following terms shall apply to the 2017-2019 plan years:

A. 2017 Plan Year: The Employer shall pay the full premium for individual coverage under the HRA plan for those employees who have selected such individual coverage during the open enrollment period.

B. 2018 Plan Year: The Employer shall pay the full premium for individual coverage under the HRA plan for those employees who have selected such individual coverage during the open enrollment period. The Employer shall pay the equivalent of the full premium for individual coverage under the HRA plan and one-half (50%) of the increased premium (or upcharge) between individual coverage and multi-person coverage under the HRA plan offered by the Employer for those employees who have selected such multi-person coverage during the open enrollment period.

C. 2019 Plan Year: The Employer shall pay the full premium for individual coverage under the HRA plan for those employees who have selected such individual coverage during the open enrollment period. The Employer shall pay the equivalent of the full premium for individual coverage under the HRA plan and one-half (50%) of the increased premium (or upcharge) between individual coverage and multi-person coverage under the HRA plan offered by the Employer for those employees who have selected such multi-person coverage during the open enrollment period.

D. As for the 2018-2019 Plan Years, the Employer agrees not to: (1) increase the employee's share of any annual premium increases by more than 3.5% per year; (2) increase the individual or family deductibles for such health insurance; and (3) increase the prescription drug co-pays. The Employer further agrees that any other changes to the health insurance benefit applicable to the employees covered by this Agreement will be consistent with the changes made throughout the Employer's portfolio.

Section 3: The following terms shall apply to the 2020-2021 plan years:

A. 2020 Plan Year (i.e., January 1 – December 31): The Employer agrees to participate in the Greater New York Health Plan offered by the Union for those regular full time bargaining unit employees who work 35 hours or more per work week and any employee who works thirty (30) hours per week and who elected health coverage prior to the Employer's entry into the Greater New York Health Plan.

B. 2021 Plan Year (i.e., January 1 – December 31): The Employer agrees to participate in the Greater New York Health Plan offered by the Union for those regular full time bargaining unit employees who work 35 hours or more per work week and any employees who were covered in 2020 pursuant to Paragraph A above, subject to the Health Care Coverage Reversion Provision as set forth in the parties' Memorandum of Understanding entered into on the same date as this Agreement.

ARTICLE XXVI – MAINTENANCE OF STANDARDS

Section 1: The Employer shall maintain the fringe benefits (i.e., break swapping practices, Turkeys at Thanksgiving, etc.) applicable to employees prior to the effective date of this Agreement; provided that, nothing in this provision shall constrain or restrict the Employer's Management Rights as set forth in Article IV above.

ARTICLE XXVII – FIVE STAR BONUS PROGRAM

Section 1: The Employer will continue its Five Star Bonus Program or a similar program, as determined in the Employer's discretion, to reward employees on a facility wide basis for goal achievement.

ARTICLE XXVIII – SUCCESSORS

In the event of a transfer, sale or assignment of the Employer's facility, the Union shall be notified at least thirty (30) days in advance of such action. The Employer will notify the prospective buyer/assignee of the existence of this Agreement and will provide the prospective buyer/assignee a copy of this Agreement. The Union will contemporaneously be provided with a copy of said notice.

ARTICLE XXIX - SEVERABILITY

In the event that any provision(s) of the Agreement shall be held to be invalid, illegal or otherwise prohibited by law, then such provision (or portion thereof) shall be deemed amended so as to comply with such law, to the extent possible, or if such amendment is not possible, then

such provision shall be null and void but such invalidity shall not affect the enforceability of the remainder of the Agreement.

ARTICLE XXX - DURATION

Section 1: This Agreement shall become effective as of 12:01 a.m. on the ___ day of May, 2017 and shall remain in full force and effect until 12:00 p.m. midnight on the 31st day of December, 2021; and shall renew itself without change from year to year thereafter, unless written notice of termination or desire to modify is given at least one hundred twenty (120) calendar days prior to the expiration date of this Agreement, or any succeeding yearly term, by either of the parties hereto. Timely notice to modify and/or terminate this Agreement shall cause all provisions of this Agreement and all rights claimed to emanate therefrom to expire on the expiration date of the Agreement, and no such provisions or rights shall survive the expiration.

Section 2: The Employer and the Union acknowledge that during the negotiations that resulted in this Agreement, each had the unlimited right and opportunity to make demands and proposals with respect to any subject or matter not removed by law from the area of collective bargaining, and that the understanding and agreement arrived at by the parties after the exercise of that right and opportunity is set forth in full in this Agreement. Therefore, it is agreed that the terms set forth in this Agreement constitute the sole and entire agreement between the parties and supersedes any and all prior agreements or understandings, either oral or written. The Employer and the Union agree that this Agreement may only be modified, in writing, by mutual agreement of the parties.

Section 3: The parties agree that there will be no retroactivity as to any terms of this Agreement, except that the minimum hourly wage rates set forth in Article XXIV (Wages) were effective as of March 5, 2017.

ARTICLE XXXI – RATIFICATION

This Agreement is subject to ratification by the Union and the Employer.

In Witness Whereof, the parties hereto, through their duly authorized representatives have executed this Agreement on this ___ day of May 2017.

WINGATE OF DUTCHESS, INC.

1199 SEIU UNITED HEALTHCARE WORKERS EAST

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APPENDIX "A"

Standards of Conduct

The following types of conduct are prohibited and shall result in discharge in the first instance:

1. Patient or resident abuse.
2. The points resulting in termination under the medication errors policy.
3. Intentional falsification of personnel or Company records including, but not limited to, employment application information, patient related records, and time records.
4. Intentional falsification of any information relating to the Company's compliance with federal or state rules and regulations including, but not limited to, records, patient or resident logs and other documents.
5. Unauthorized possession of firearms, explosives or weapons on Company premises.
6. Intentional theft or intentional removal from the premises, without proper authorization, of any Company property or property of a resident, patient, person or entity.
7. Removal from the premises of patient records or, without authorization, taking a photograph of a resident or posting resident information (including but not limited to photographs, audio or video) on social media. This is not intended to encompass pictures taken at the direction or request of a resident or resident's family member provided that the picture does not also include a resident for whom authorization to be included in the picture was not provided.
8. Fighting, threatening physical harm, or committing an act of violence against another during working hours or on Company premises.
9. Reporting for work while under the influence of alcohol or illegal drugs, drinking any alcoholic beverage or using illegal drugs on Company premises or on Company time, possession of alcohol, illegal drugs.
10. Leaving the facility prior to the end of one's work shift without permission.
11. Conviction of any felony or conviction of a crime which adversely affects the Company's reputation related to patient care.
12. Intentional sleeping while on duty (other than on an authorized break in the employee break room).

13. Loss of requisite licenses due to an egregious act, being listed on the applicable federal or state health care exclusion list and/or violation of any federal or state rules or regulations that require discharge under such rules and regulations.

EXHIBIT 4

2017 – 2021
COLLECTIVE BARGAINING AGREEMENT
BETWEEN
WINGATE OF ULSTER, INC.
AND
1199 SEIU UNITED HEALTHCARE WORKERS EAST

(May 17, 2017)

ARTICLE I - RECOGNITION

Section 1: Wingate of Ulster, Inc. (hereinafter referred to as the “Employer” or the “Company”) recognizes 1199 SEIU United Healthcare Workers East (hereinafter referred to as the “Union”) as the exclusive representative for the purpose of collective bargaining with respect to wages, hours of work, and other terms and conditions of employment of those employees of the Employer (hereinafter referred to as either “employees” or “employee”) for whom the Union was certified as the collective bargaining representative effective August 1, 2014 (NLRB Case No. 03-RC-130608), September 5, 2014 (NLRB Case No. 03-RC-132878), and September 5, 2014 (NLRB Case No. 03-RC-132885 involving Health Care Services Group, Inc.), respectively, as follows:

A. All full-time, regular part-time and per diem certified nursing aides, licensed practical nurses, and unit secretaries employed by the Employer at its Highland, New York facility; excluding guards, confidential employees, professional employees and supervisors as defined in the Act, and all other employees.

B. All full-time, regular part-time and per diem staff registered nurses/floor registered nurses employed by the Employer at its Highland, New York facility; excluding guards, confidential employees, case managers, MDS Coordinators, Director of Professional Development, unit managers, all other professional employees and supervisors as defined in the Act, and all other employees.

C. All full-time, regular part-time, and per-diem dietary aides and cooks employed by the Employer at its Highland, New York facility; excluding guards, professional employees and supervisors as defined in the Act, and all other employees.

ARTICLE II - UNION SECURITY

Section 1: All employees who are members of the Union shall maintain their membership in the Union in good standing as a condition of continued employment.

Section 2: All employees hired after ratification shall become members of the Union no later than the thirtieth (30th) day following the beginning of such employment and shall thereafter maintain their membership in the Union in good standing as a condition of continued employment.

Section 3: For the purposes of this Article, an employee shall be considered a member of the Union in good standing if he/she tenders his/her periodic dues and initiation fee uniformly required as a condition of membership.

Section 4: Subject to Article XIII (Grievance and Arbitration Procedures), an employee who has failed to maintain membership in good standing as required by this Article shall, within twenty (20) calendar days following receipt of a written demand from the Union

requesting his/her discharge, be discharged if, during such period, the required dues and initiation fee have not been tendered.

Section 5: The Union shall indemnify and hold the Employer, its directors, officers, employees and representatives harmless against any and all claims, demands, actions or other forms of liability that shall relate to, arise out of or result from any action taken or not taken by the Employer with the purpose of carrying out or complying with any of the foregoing provisions in this Article. The Union shall defend, with competent legal counsel, the Employer, its directors, officers, employees and representatives against any and all such claims, demands, actions or other forms of liability. In the event that there is a conflict of interest with the counsel selected by the Union pursuant to the duty to defend noted above, then the Employer, its directors, officers, employees and/or representatives may select their own counsel to defend any action relating to actions or omissions taken pursuant to this Article and reasonable attorneys fees and costs incurred through such defense shall be reimbursed by the Union.

ARTICLE III - DUES CHECK OFF

Section 1: Upon written authorization, the Employer shall deduct biweekly from the wages paid employees in each month all dues, assessments and initiation fees which the Union shall notify the Employer to be due to the Union from the employee. The monies so deducted shall be held by the Employer in trust and they shall remit them to the Union promptly, together with a list of employees paying said dues, including categories and wages paid. It is the agreement of the Employer and the Union, to implement, wherever possible, electronic transmission of dues remittances and to streamline reporting requirements. The Employer and the Union will meet to discuss the most practicable implementation program to achieve this objective. In the event the Employer without justification fails to promptly remit such monies, the arbitrator may upon application assess interest at the legal rate against the Employer.

Section 2: The Union shall have the right to audit payroll records of bargaining unit employees to insure that Union dues are properly deducted and remitted.

Section 3: Upon written authorization, the Employer shall deduct from the wages of employees voluntary contributions to the 1199 Political Action Fund established by the Union for political education purposes.

Section 4: The Employer shall be relieved from making the above deductions upon an employee's termination of employment, layoff from work, leave of absence, transfer to a position outside the bargaining unit covered by this Agreement, and/or revocation of the authorization to make such deductions. The Employer shall immediately resume the deductions upon an employee's return to work from the above enumerated absences, provided that the applicable authorization has not been revoked by the employee. This provision, however, shall not relieve any employee of the obligation to make the required dues and initiation fee payment pursuant to the Union constitution in order to remain a member in good standing of the Union.

Section 5: The Employer shall not be obliged to make deductions of any kind from any employee who, during any biweekly wage payment involved, shall have failed to receive sufficient wages to equal the dues deductions.

Section 6: It is specifically agreed that the Employer assumes no obligation, financial or otherwise, arising out of compliance with the provisions of this Article. The Union shall indemnify and hold the Employer, its directors, officers, employees and representatives harmless against any and all claims, demands, actions or other forms of liability that shall relate to, arise out of or result from any action taken or not taken by the Employer with the purpose of carrying out or complying with any of the foregoing provisions in this Article. Once funds are remitted to the Union, their disposition thereafter shall be the sole and exclusive obligation and responsibility of the Union. The Union shall defend, with competent legal counsel, the Employer, its directors, officers, employees and representatives against any and all such claims, demands, actions or other forms of liability. In the event that there is a conflict of interest with the counsel selected by the Union pursuant to the duty to defend noted above, then the Employer, its directors, officers, employees and/or representatives may select their own counsel to defend any action relating to actions or omissions taken pursuant to this Article and reasonable attorneys fees and costs incurred through such defense shall be reimbursed by the Union.

Section 7: The Employer shall furnish each month the names of newly hired bargaining unit employees, their address, social security number, classification of work, their date of hire, and the names of terminated employees together with their dates of termination, and names of employees on leave of absence.

Section 8: The 1199SEIU Federal Credit Union. Upon receipt of a written authorization from an employee, the Employer shall, pursuant to such authorization, deduct from the wages due said employee each pay period, starting not earlier than the first period following the completion of the employee's first thirty (30) days of employment, the sum specified in said authorization and remit same to the 1199SEIU Federal Credit Union, or successor credit union, bank or other financial institution ("the Credit Union") to the credit or account of said employee. If the Employer's payroll system permits, such deductions shall be remitted to the Credit Union on each pay date via ACH or similar electronic funds transfer system, directly to the account of the Credit Union as designated by the Credit Union as to account number and place, for the benefit of each participant, with funds available in "US Funds" on the scheduled payroll date. Such transmittal shall contain for each participant, the name, social security number prefixed with a "0" (making a 10-digit number), description, Institution name, and Institution's Credit Union ID.

If an ACH transfer is not possible under the employer's payroll system, the employer shall wire the funds to the Credit Union on each pay date to the account of the Credit Union as designated by the Credit Union as to account number and place, and shall at the same time email to the Credit Union a file containing the same information as listed above, written in a common spreadsheet program or ASCII, together with the total of the funds that have been transmitted.

ARTICLE IV - MANAGEMENT RIGHTS

Section 1: Except to the extent abridged by a specific provision of this Agreement, the Employer reserves and retains, solely and exclusively, all of its rights to manage the business, as such rights existed prior to the execution of this or any other previous agreement with the Union. The sole and exclusive rights of management which are not abridged by this Agreement shall include, but are not limited to, its right to establish, continue, discontinue, or change policies, practices and procedures for the conduct and/or operation of the business subject to the policies, practices, and procedures referenced in this Agreement; the right to determine and from time to time redetermine the number, location and types of its facilities or operations, as well as the methods, processes, equipment and materials to be utilized; to reasonably regulate the quality and quantity of work of its employees; to discontinue temporarily or permanently and either in whole or in part, the conduct of its business, its processes or operations; to continue to subcontract the kind of work which the Employer has historically contracted out; to determine and from time to time redetermine the number of hours per day or per week that operations shall be carried on; to select and to determine the number and types of employees required for the positions at a facility, to staff shifts and to perform tasks; to assign and reassign work to employees and the location at which such work will be performed in accordance with the reasonable requirements determined by management; to determine and from time to time redetermine qualifications for positions and whether an employee assigned or to be assigned to a position meets the qualifications of the position; to establish and modify work schedules, work assignments, location assignments, and reasonable productivity standards; to establish and modify the starting and quitting times and the breaks and meal times for employees; to determine and from time to time redetermine training programs to be offered or required for employees; to establish and modify job classifications; to determine the equipment to be utilized in its operations; to transfer or promote employees; to lay off or otherwise relieve employees from duty for lack of work or other business reasons; to enact, modify and enforce reasonable work rules; to enact, modify and enforce reasonable safety rules including, but not limited to, drug and alcohol or substance abuse policies and procedures; to demote, suspend, discharge, or otherwise discipline employees for just cause; and otherwise to take or refrain from taking such actions or measures as management may determine to be necessary or appropriate for the orderly, efficient and/or productive operations of the business. The Employer agrees it will not exercise the foregoing rights in an arbitrary or capricious manner.

Section 2: All rights heretofore exercised by the Employer or inherent in the Employer's rights and not contracted away by the specific provisions of this Agreement are retained solely by the Employer. The failure of the Employer to exercise any function, power, or right reserved or retained by it, or the exercise of any power, function or right in a particular manner, shall not be deemed a waiver of the right of the Employer to exercise such power, function, authority, or right, or preclude the Employer from exercising the same in some manner so long as it does not directly conflict with a specific provision of this Agreement.

Section 3: It is further agreed that the rights of the Employer specified herein or elsewhere in this Agreement may not be impaired, in whole or in part, by an arbitrator or in arbitration even though the parties may agree to arbitrate the issue involved in the manner provided in the Grievance and Arbitration procedures of this Agreement.

Section 4: The Union recognizes that the Company may introduce a revision in the method or methods of operation which will produce a revision in job duties or functions and a reduction in personnel. The Union agrees that nothing in this Agreement shall prevent the implementation of any program the Company may implement whether or not the implementation of such program results in a reduction of the work force, subject to the layoff notice provision in Article XII, Section 3 of this Agreement.

Section 5: The Union, on behalf of the employees, agrees to cooperate with the Company to attain and maintain full efficiency in its operations and to comply with all federal and state regulations.

Section 6: All operational and human resources policies and procedures maintained by the Company and/or as set forth in the Company's Employee Handbook as of the date of this Agreement shall apply to the employees covered by this Agreement unless such policy or procedure is inconsistent with a term of this Agreement.

ARTICLE V - NON-DISCRIMINATION

Section 1: The Employer and the Union agree to not discriminate against any employee covered by this Agreement with respect to terms and conditions of employment due to such employee's race, color, religion, gender, national origin, age, disability, sexual orientation, marital status, or any other legally protected characteristic, consistent with applicable federal, state, and local law.

Section 2: Whenever any words are used in this Agreement in the masculine gender, they are to be construed as though they were also used in the feminine gender as the context may require, and vice versa.

ARTICLE VI - PROBATIONARY PERIOD

Section 1: The initial ninety (90) calendar days of a new employee's employment shall be considered to be a probationary period, excluding any calendar days missed for illness or other reasons. All such missed calendar days shall be added to and extend the employee's probationary period. The Employer may, in its discretion and with notice to the Union, extend the probationary period up to another thirty (30) calendar days to more fully evaluate an employee's performance.

Section 2: During and/or at the end of an employee's probationary period, as extended, the employee may be disciplined or terminated from employment with or without cause at the sole discretion of the Employer. Any discipline or termination from employment occurring within or at the end of such probationary period shall not be subject to or reviewable under the Grievance and Arbitration provisions of this Agreement.

Section 3: Probationary employees who are retained by the Employer after the end of their probationary period shall be credited with their most recent date of hire by the Employer for the purpose of determining their seniority and eligibility for those contractual benefits that are based upon length of service with the Employer. An employee or the Union, on behalf of an employee, may only utilize the Grievance and Arbitration provisions of this Agreement after an employee has successfully completed the probationary period (inclusive of any extensions).

Section 4: If an employee is promoted to another bargaining unit position, the Employer shall have one hundred eighty (180) calendar days from the date of the promotion or the completion of any job training program, to judge the competency of the employee. During or at the end of this probationary period, the Employer may, in its sole discretion, return the employee to the position previously held by the employee at the employee's previous rate of pay. The return to the previous position/rate of pay shall not be subject to or reviewable under the Grievance and Arbitration provisions of this Agreement.

ARTICLE VII - DISCIPLINE AND DISCHARGE

Section 1: Upon conclusion of the probationary period, the Employer shall have the right to discharge, suspend or discipline any employee only for just cause. The Employer will notify the Union in writing of any discharge or suspension within two (2) business days (excluding Saturdays, Sundays and holidays) from the time of the discharge or suspension.

Section 2: An employee or a witness is required to sign a discipline note as evidence of receipt.

Section 3: All protests of disciplinary action taken by the Union must be processed through the Grievance and Arbitration provisions as outlined in this Agreement.

Section 4: One progressive discipline procedure will exist for all discipline including, but not limited to, unsatisfactory performance, violations of work rules, and/or violations of other Company policies. The progressive discipline procedure is set forth in the Wingate Corrective Action Policy which is incorporated herein by reference. The arbitrator has the authority to determine and impose the appropriate penalty for discipline except in the following circumstances: (a) the penalty or consequences for an alleged infraction is specified in the Employer's policies in which case the penalty or consequences set forth in such policy shall govern (i.e., Attendance Policy, Absence Guidelines Matrix, Medication Errors Policy, Corrective Action Policy); or (b) the employee's conduct violates one or more of the standards of conduct that are listed in Appendix "A" in which case the penalty for such violation is discharge on a first offense and the arbitrator may not review the penalty assessed but the arbitrator's jurisdiction is limited only to determining whether the offense occurred.

Section 5: In the event that disciplinary action is submitted to outside arbitration under the grievance and arbitration provisions, the arbitrator shall not consider the failure of a visitor, resident, patient, or third party witness to appear at a hearing as prejudicial to the Employer's case.

ARTICLE VIII - HOURS OF WORK

Section 1: The typical regular work week for full time employees is: (i) thirty-seven and one half (37.5) hours for CNA's (eight hours per work day and five work days per work week), and (ii) forty (40) hours for RN's and LPN's (eight and one half hours per work day and five work days per work week), except where necessary to provide for rotating weekends off, subject to instances in which an employee may volunteer or be required to work additional hours or days. Each employee shall receive one (1) thirty (30) minute unpaid meal period and one (1) fifteen (15) minute break per shift.

Section 2: Any continuous number of hours in excess of forty (40) hours per work week shall be considered as overtime hours. Overtime at the rate of one and one half (1 ½) times the regular rate of pay shall be paid to employees for all hours worked in excess of forty (40) hours in a work week.

Section 3: An employee's actual hours worked shall be counted in calculating the forty (40) hours in a work week beyond which the overtime rate of pay is paid, unless otherwise specified in this Agreement.

Section 4: Each employee must timely report to work by his/her scheduled start time and be prepared to commence work at the start of the employee's shift. No employee may punch in at the time clock earlier than seven (7) minutes prior to the start of the employee's scheduled work time. No employee may punch out at the time clock prior to the end of the employee's scheduled work time unless the employee has been authorized to leave work early. No employee may work prior to the scheduled starting time of his/her shift nor continue to work after the scheduled ending time of his/her shift unless the employee has been directed by management to do so. No time prior to the start of an employee's scheduled shift or after the end of an employee's scheduled shift shall constitute hours worked or overtime unless at the direction or with the approval of the Employer.

Section 5: The Employer will use reasonable efforts to maximize the use of full time employees as compared to part time employees consistent with its business needs; provided however, the Employer retains the sole discretion to require an employee to either not work, arrive later than the employee's regular start time, and/or leave prior to the end of the employee's regular end time on any work day on account of census, resident acuity, resident needs or in the event of an emergency, and provided that, before the Employer implements one of these options, it will follow the order of procedures as set forth below to avoid sending employees home:

- 1) Evaluate needs on other floors and float staff
- 2) Cancel agency coverage (if within the notice period)
- 3) Ask for qualified volunteers to be sent home due to lack of work (and allow employees, if they choose, to use available PTO time if the employee elects to do so)
- 4) Cancel extra shifts (the shift pick-ups beyond standard hours)
- 5) Cancel per diem coverage

- 6) Adjust staff (based on unit assignment and seniority with requisite skills)

If, after having followed the foregoing procedure in all cases where staff reductions are required, employees are required not to work or are sent home before the end of their scheduled shift (in which case they will be paid only for hours actually worked), then: (i) if the census is less than 90%, the Employer will try to make up the lost hours for any employee who is sent home, but the Employer cannot guarantee replacement hours, or (ii) if the census is 90% or more, the Employer will be obligated to offer replacement hours on a similar shift (which could include being recalled on short notice). If the employee declines, the Employer will have fulfilled its obligation. If the Employer cannot offer replacement hours within two (2) weeks, the Employer will be obligated to pay for the lost hours.

Section 6: There shall be no pyramiding of overtime.

Section 7: The Employer shall use reasonable efforts to provide employees with two (2) hours advance notification of the need to work overtime, unless business circumstances prevent such advance notice.

Section 8: The Employer may, in its discretion, require an entire shift, department or job classification to work overtime. In the event that an entire shift, department or job classification is not required to work overtime, then the Employer shall assign overtime as set forth herein. The Employer shall first ask the most senior employee in the job classification and on the shift where the overtime is required if he/she is willing to accept the overtime assignment. If the employee accepts or rejects the overtime assignment, his/her name goes to the bottom of the overtime roster and, if the overtime need has not been satisfied, then the Employer shall offer the overtime assignment to the next senior employee. The Employer shall continue this same process until the overtime needs are filled. In the event that an employee is inadvertently overlooked for an overtime assignment, that employee will be offered the next available overtime and no other remedy. The Employer will use reasonable efforts to attempt to equalize actual overtime hours worked by employees. In the event that an insufficient number of employees have volunteered to satisfy the need for overtime, then the Employer may, in its discretion, assign employees to work overtime on a mandatory basis in reverse order of seniority within the job classification starting with the employees working the then current shift (i.e. requiring such employees to remain after the scheduled end time of their shift). Failure to work overtime when required is subject to discipline by the Employer. Further, notwithstanding the above, with regard to LPNs and RNs, the Employer shall follow the guidelines set forth in its Nurse Coverage Plan before requiring an LPN or RN to remain after the LPN's or RN's shift to work overtime.

Section 9: The scheduling of rest and meal periods is wholly within the reasonable discretion of the Employer, and need not be at the same fixed time for employees on the same shift.

Section 10: The Employer shall continue to allow employees, consistent with past practice and with permission of a supervisor, to exchange break times on the same shift provided there will be no disruption to patient care.

ARTICLE IX - BEREAVEMENT

Section 1: In the event a regular full-time employee experiences the death of his/her immediate family member, then such employee shall be entitled to up to a maximum of three (3) consecutive regular work days off with pay to attend the funeral and to the affairs of the deceased. The bereavement leave must be taken during the period between the date of death and the day of the funeral and may not be split or postponed. The bereavement days must be taken consecutively and include the day of the funeral attended by the employee. The bereavement days include only the days on which an employee would be regularly scheduled to work.

Section 2: Payment for each such day is at the employee's base rate of pay and paid for actual scheduled work hours on such work day.

Section 3: Employees are required to provide the Employer with as much notice as reasonably practicable regarding their need to take bereavement leave. The Employer reserves the right to demand proof of death and such evidence as may be needed to substantiate the need for a bereavement leave and the entitlement to benefits under this Article.

Section 4: The term "immediate family member" is defined as: father, mother, current spouse, domestic partner, natural or adopted child, current step-child, children for which the employee is the legal guardian, current father-in-law, current mother in-law, grandparents, sister, brother, current brother-in-law, current sister-in-law, and grandchildren.

ARTICLE X - JURY DUTY AND MILITARY LEAVE

Section 1: Any full-time or regular part-time employee who is required to perform jury duty must immediately notify his/her supervisor and will be granted a leave of absence for the hours during which he or she is necessarily absent from scheduled work as a result of such jury duty. The Employer may request the employee to submit a written request to the appropriate authorities to be excused or exempted from or rescheduled for jury duty and the employee will fully cooperate with the Employer to request such exemption from or rescheduling of jury duty.

Section 2: Employees will be required to provide satisfactory evidence of jury duty including, but not limited to, the notice or subpoena requiring jury duty service and a certificate of service upon return to work. For any scheduled hours missed for jury duty leave under this Article, employees will be paid the difference between the pay they receive for such jury duty and the base rate of pay they would have received for regularly scheduled hours had they worked during such leave up to a maximum of five (5) working days per calendar year for regular jury duty.

Section 3: If an employee is released from jury duty early enough to work at least half of his/her regular shift, then such employee must contact his/her supervisor for instructions as to whether to attend work.

Section 4: The jury duty provisions in Sections 1, 2 and 3 of this Article do not apply to any situation in which an employee may be subpoenaed to serve as a witness in a trial or as a witness in a grand jury.

Section 5: An employee on active duty with the United States Armed Forces is eligible for an unpaid leave of absence and reinstatement consistent with applicable law. An employee who is a member of the Reserves is eligible for an unpaid leave of absence for the duration of the training period required by the Reserve Unit with reinstatement consistent with applicable law. Employees will be required to provide satisfactory evidence of military duty.

Section 6: Whenever possible, employees shall coordinate such military leave with the Employer so as not to interfere with the Employer's scheduling or staffing.

ARTICLE XI - LEAVES OF ABSENCE

Section 1: In its discretion, the Employer may grant an employee, who has successfully completed his/her probationary period, an unpaid leave of absence for extraordinary reasons of a personal nature; provided that, the leave of absence does not exceed thirty (30) calendar days in a rolling twelve (12) month period. The employee must request the personal leave of absence in writing at least thirty (30) calendar days in advance. The employee's request for a leave of absence must set forth the specific reasons the employee is requesting the leave of absence and must state the starting date and expiration of the requested leave of absence. The Employer may also, in its discretion and consistent with applicable law, grant an employee's request for a leave of absence for medical reasons. A leave of absence may only be taken with written approval of the employee's supervisor.

Section 2: An employee on an approved leave of absence shall retain seniority but shall not accrue additional seniority or other benefits.

Section 3: If an employee desires to return to work before a granted leave expires, the Employer will make reasonable efforts to return an employee to work prior to the scheduled end of his/her leave of absence but only upon at least ten (10) calendar days advance notice and no guarantee exists that the employee will be returned from the leave of absence early.

Section 4: When an employee returns from an approved leave of absence, the Employer will make reasonable efforts to place the employee in a similar position, location and shift to the one the employee vacated but no guarantee exists that the employee will be placed in the same or similar position, location or shift with the same or similar compensation nor that the employee will be placed immediately upon return from the leave, since reinstatement is contingent on the availability of a position for which the employee has the requisite skills and the Employer's business needs at the time.

Section 5: In the event an employee is granted a personal leave of absence, the employee is responsible to timely remit the full monthly cost (pro rated for partial months) to maintain his/her health and dental insurance benefits for the duration of the leave. In the event that an employee fails to timely remit the requisite monthly premiums for any insurance program, the employee's coverage under such program shall end.

Section 6: An employee who accepts any employment or engages in self-employment or other business relationship with another employer, entity or person (including the employee himself) while on a leave of absence shall be deemed to have voluntarily resigned and such employee's employment shall end.

Section 7: In the event that an employee fails to timely return from a leave of absence, such employee's employment shall end.

Section 8: An employee who gives an inaccurate or false reason, in whole or in part, for requesting or obtaining a leave of absence shall be discharged.

ARTICLE XII- SENIORITY

Section 1: Seniority shall mean the length of continuous active employment with the Employer and shall accrue from one's most recent date of hire by the Employer; however, the principles of seniority shall only apply to employees in the bargaining unit and not apply to any employee within the probationary period. If more than one employee is hired on the same date, then the method of determining the senior employee shall be to compare each employee's date of birth and the employee with a date of birth earlier in the calendar year shall be the more senior employee.

Section 2: One seniority list containing both full-time employees and regular part-time employees shall be maintained by the Employer.

Section 3: In the event that it becomes necessary to layoff employees, the Employer shall provide twenty (20) calendar days advance notice to the Union and, at the Employer's option, post a notice advising the employees that those who wish to go on layoff for a stated length of time may volunteer for such layoff as evidenced by their timely signatures on the posted layoff list. In the event that it becomes necessary to layoff employees (including employees who have either volunteered or not volunteered for layoff or if the Employer opts to not post a notice seeking volunteers for layoff), then the Employer shall layoff in reverse order of seniority and recall in order of greatest seniority in the job classification.

Section 4: If a regular part-time employee has greater seniority than a full-time employee in the same classification who is to be laid off, the regular part-time employee must be willing to accept full-time employment to continue working. A regular part-time employee on

layoff shall have recall rights to a full-time position only if he/she is willing to work the required full-time schedule of hours.

Section 5: Seniority rights shall be lost and an employee's employment with Employer shall end for any of the following reasons:

- (a) An employee resigns, quits, or retires;
- (b) An employee who has been laid off does not report to work from recall within two (2) calendar days after the employee and/or the Union have been notified by telephone, email, facsimile, hand delivery, overnight mail or registered mail to return to work and it shall be the responsibility of the employee to keep the Employer and the Union advised of his/her current mailing address;
- (c) An employee is discharged;
- (d) An employee overstays a leave of absence without prior written approval of the Company;
- (e) An absence from work of two (2) or more work days without notifying the Employer with a reason for absence (or an absence of one (1) work day without notifying the Employer with a reason for absence during an employee's first ninety (90) days of employment);
- (f) An employee is on layoff in excess of six (6) months;
- (g) An employee is absent from work due to medical reasons or is otherwise unable to return to work within six (6) months;
- (h) An employee fails to notify the Employer within forty-eight (48) hours after being released by a treating physician to return to work in connection with an illness or accident preventing work;
- (i) Acceptance of employment or self-employment of any nature while on a leave of absence.

Section 6: The Employer shall provide the Union with a seniority list, including job classifications, on or about the effective date of this Agreement and said list shall be updated periodically upon reasonable requests by the Union.

Section 7: Seniority does not accrue during the time an employee holds a non-bargaining unit position.

Section 8: Promotions within the bargaining unit shall be upon the basis of skill, ability and qualifications. When these are reasonably equal, seniority shall prevail. Seniority shall be one of the factors considered in making assignments together with relative skill, ability, and qualifications which shall all be equally considered. When positions in the bargaining unit

become available, current employees who apply for such positions will be given preference with due consideration to skill, ability, qualifications and seniority.

ARTICLE XIII - GRIEVANCE AND ARBITRATION PROCEDURES

Section 1: An employee may discuss concerns and complaints with his/her immediate supervisor in an attempt to resolve the issue prior to it becoming a written grievance.

Section 2: A grievance under this Article is hereby defined as a complaint by either the Employer or the Union that this Agreement has been violated. Grievances shall be processed as follows:

Step 1: All grievances shall be presented, in writing or forms adopted by the Union and the Employer, to the Director of Nursing within thirty (30) calendar days of the occurrence giving rise to such grievance or from the time such occurrence should reasonably have become known, whichever is later. The Employer shall give its answer to the employee and/or his/her Union delegate or other representative within seven (7) working days after the presentation of the grievance in Step 1.

Step 2: If a grievance has not been settled or timely responded to in Step 1, the grievance may be presented at Step 2 within seven (7) working days after the earlier of when the answer in Step 1 was due or issued. When grievances are presented in Step 2, they shall be reduced to writing, signed by the grievant and his/her Union representative and presented to the Administrator or his/her designee. The Employer shall give its written answer to the employee and/or his/her Union delegate or other representative within seven (7) working days after the presentation of the grievance in Step 2.

Step 3: If a grievance has not been settled or timely responded to in Step 2, the grievance may be presented at Step 3 within seven (7) working days after the earlier of when the answer in Step 2 was due or issued. When grievances are presented in Step 3, they shall be reduced to writing, signed by the grievant and/or his/her Union representative and presented to the Vice President of Human Resources or his/her designee. A grievance meeting will be promptly scheduled for a mutually agreeable date and time during normal business hours promptly following the receipt by either party of a written request by the other for such grievance meeting. The Employer or the Union, as the case may be, shall give its written answer within seven (7) working days after the later of either the presentation of the grievance at Step 3 or the Step 3 meeting. All third step decisions from the Employer will be mailed to the Union's Organizer and Area

Director in care of the Union Headquarters, 155 Washington Avenue, Albany, NY 12210 and a copy given to the delegate who handled the case. Anything to the contrary herein notwithstanding, a grievance concerning a discharge or suspension or a grievance by the Employer will be presented initially at Step 3.

Step 4: If a grievance has not been settled or timely responded to in Step 3 and the aggrieved party desires to proceed to arbitration, then it must be submitted to arbitration within thirty (30) calendar days after the earlier of when the answer in Step 3 was due or issued.

In the event of arbitration arising out of a grievance involving the Union's Greater New York Health Plan, the arbitrator shall be Martin F. Scheinman. In the event Mr. Scheinman is unable or unwilling to serve as the arbitrator in such a dispute, then the parties shall agree upon an alternative arbitrator and, if they are unable to do so, then the arbitrator shall be selected in the manner below.

In the event of arbitration arising out of a grievance involving any matter other than the Union's Greater New York Health Plan, then the Employer or the Union, as the case may be, shall request the American Arbitration Association to provide the Employer and the Union a panel of at least seven (7) arbitrators and pursuant to which the Employer and the Union shall rank such arbitrators as are agreeable to each of them. If the parties are unable to agree upon an arbitrator from the initial list, they will request a second panel of arbitrators from the American Arbitration Association and they shall alternately strike names from the second list with the Union striking the first name. The one person remaining shall be the arbitrator.

Section 3: If the employee or the Union fails to file or process a grievance at any step within the time limits set forth above and the procedure is not waived by mutual written agreement, that grievance shall be considered and deemed waived or settled. Failure on the part of the Employer's designated representative to answer a grievance at any of the steps in the grievance procedure shall not be deemed acquiescence thereto, but the grievance may progress to the next step if so processed by the Union.

Section 4: An employee shall comply with all instructions and perform all duties, when and as instructed, even though he or she may feel aggrieved provided that the employee's safety is not placed in serious peril.

Section 5: Grievances resolved at any step of the grievance procedure will not be regarded as setting precedent for future interpretation of this Agreement. Any grievance may be moved directly to a more advanced step of the grievance procedure by the Employer.

Section 6: The arbitration of a grievance shall be extended only to those grievances which are arbitrable under this Agreement. In order for a grievance to be arbitrable: (1) it must have been processed through the grievance procedure properly and within the applicable time limits as set forth in this Agreement unless otherwise mutually agreed upon in writing by the

parties; (2) it must be referred to arbitration within the applicable time limits as set forth in this Agreement; and (3) it must not require the arbitrator, in order to rule in favor of the grievant, to exceed the scope of his or her jurisdiction as defined in this Article.

Section 7: The Arbitrator shall consider only the particular issue or issues presented in writing by the Employer and the Union, and the decision and award shall be based solely upon his/her interpretation of the meaning or application of the terms of this Agreement to the facts of the grievance presented. The Arbitrator has no authority or power to add to, delete from, modify, disregard, or alter any of the written terms of this Agreement. A decision of the arbitrator on any grievance within the scope of the issues submitted and within the arbitrator's authority shall be final and binding on the Company, the Union and the employees involved.

Section 8: Subject to the terms of the Discipline and Discharge Article, the Arbitrator shall have the authority to order or deny reinstatement of an employee with or without back pay.

Section 9: The arbitrator's fees and expenses shall be borne equally by the parties to this Agreement. The expenses incidental to each party's witnesses shall be borne by the party calling the witnesses.

Section 10: The fact that a claim or dispute has been processed under the grievance procedure set forth in this Agreement will not preclude the raising of the question of arbitrability with respect to such claim or dispute before the arbitrator selected to hear such claim or dispute.

Section 11: No more than one (1) grievance shall be submitted to the same arbitrator at a single hearing, except by mutual agreement of the parties.

ARTICLE XIV - STRIKES AND LOCKOUTS

Section 1: No employee shall engage in any strike, sit-down, sit-in, slow-down, cessation or stoppage or interruption of work, boycott, or other interference with the operations of the Employer.

Section 2: The Union, its officers, agents, representatives and members, shall not in any way, directly or indirectly, authorize, assist, encourage, participate in or sanction any strike, sit-down, sit-in, slow-down, cessation or stoppage or interruption of work, boycott, or other interference with the operations of the Employer, or ratify, condone or lend support to any such conduct or action.

Section 3: In addition to any other liability, remedy or right provided by applicable law or statute, should a strike, sit-down, sit-in, slow-down, cessation or stoppage or interruption of work, boycott, or other interference with the operations of the Employer occur, the Union, within twenty-four (24) hours of a request by the Employer, shall:

- (a) Publicly disavow such action by the employees.

- (b) Advise the Employer in writing that such action by employees has not been called or sanctioned by the Union.
- (c) Notify employees of its disapproval of such action and instruct such employees to cease such action and return to work immediately.
- (d) Post notices at Union Bulletin Boards advising that it disapproves such action, and instructing employees to return to work immediately.

Section 4: The Employer agrees that it will not lock out employees during the term of this Agreement.

ARTICLE XV - UNION VISITATION AND BULLETIN BOARDS

Section 1: No Union delegate or employee shall engage in any union activity (including, but not limited to, the distribution of literature) during his/her work time, during the work time of the intended recipient of the solicitation or distribution, or in work areas, except to the extent expressly permitted under the Grievance Procedures set forth in Article XIII of this Agreement.

Section 2: A non-employee representative of the Union may visit the Employer's job site at reasonable times during regular work hours for the purposes of administering this Agreement. Notice of any such visit to the Employer's job site needs to be provided in advance with at least twenty four (24) hours advance notice, except in the event of an emergency in which case notice of the visit needs to be provided with as much advance notice as practical under the circumstances. All such visits need to be conducted so as to not interrupt employee work schedules or interfere or disrupt the Employer's operations. The Union representative accessing the Employer's premises is required to comply with all rules and regulations of the Employer. The Union representative is required to check in at the designated area established by the Employer and then may proceed to the requested work area.

Section 3: The Employer shall permit the Union to hang a bulletin board, supplied by the Union, at the Employer's job site for the posting of proper union notices (as defined in Sections 4 and 5 below). The bulletin board shall not be used for any other purpose. Such notices or bulletins may be posted there only by the Union, by or through its authorized and designated officers, delegates and representatives, and may not be posted in any other location or place, either inside or outside the Employer's facilities. The bulletin board shall be mutually agreeable in size and structure and shall be placed at a mutually agreeable location at the Employer's facility.

Section 4: The term "proper union notices" means the information that may be posted on the bulletin board restricted to the following types: notices or bulletins concerning official Union business affecting the bargaining unit employees' terms or conditions of

employment, notices of recreational and social affairs; notices of union elections, officer appointments and results of union elections; notices of union meetings; and other notices concerning Union affairs so long as they would not adversely impact the Employer's business or operations.

Section 5: The term "proper union notices" means that no notice, bulletin, writing or other document posted by or on behalf of the Union on its designated bulletin board will contain anything which is profane or obscene, unlawfully discriminatory, or which is defamatory toward or disparaging of the Employer, its services, or any of its officers, managers, supervisors, employees, or affiliates.

Section 6: In the event that there is a dispute regarding whether information constitutes a "proper union notice" under Sections 4 and/or 5 above, then it may be resolved through the grievance and arbitration procedures of this Agreement.

Section 7: The Employer may require the Union to remove any material which it reasonably determines violates this Article. If the Union fails to promptly comply, the Employer may itself remove the material.

ARTICLE XVI – DELEGATES

Section 1: The Employer recognizes the right of the Union to elect Delegates to take up with the Employer, at reasonable times, the various problems that might arise at the place of employment.

Section 2: A Union delegate or other employee must conduct union business during a regularly scheduled break time or on non-work time and arranged so as not to interrupt employee work schedules or disrupt the Employer's operations. Any necessary time away from a work assignment by a delegate shall be approved, in its discretion, by management in advance, shall be scheduled as far in advance as practical so as to minimize disruption to the Employer's operations, and shall be unpaid, unless management schedules the meeting at its request and the delegate is required to attend in which case only the actual time in attendance at the required meeting and any time reasonably necessary for preparation for such meeting will be paid (not to exceed one hour in paid preparation time).

ARTICLE XVII - NON-BARGAINING UNIT EMPLOYEES

Supervisors and other regular employees of the Employer who are not members of the bargaining unit may perform bargaining unit work to the extent consistent with the Employer's practices prior to the effective date of this Agreement including, but not limited to, answering call bells and responding when needed to ensure proper patient care, filling in due to staffing shortages, to instruct or train employees or in emergency circumstances.

ARTICLE XVIII - SAFETY COMMITTEE

The designated representatives of the Employer and the Union will meet up to two (2) times per contract year upon the written request of either the Employer or the Union to discuss accidents, safety and security issues. The Safety Committee will consist of two (2) representatives of the Union and two (2) representatives of the Employer. The Safety Committee meetings will be scheduled at a mutually agreeable place, date and time and not last longer than one (1) hour in duration. The Employer is not obligated to adopt, in whole or in part, any suggestions or recommendations submitted by the Union to the Employer through the Safety Committee.

ARTICLE XIX - SUBSTANCE ABUSE

The Employer's Drug Free Work Place Policy is incorporated herein by reference.

ARTICLE XX - ATTENDANCE AND ABSENTEEISM

The Employer's Attendance Policy and Absence Guidelines Matrix are incorporated herein by reference.

ARTICLE XXI - STANDARDS OF CONDUCT

The Employer's Standards of Conduct and the Employer's other policies, procedures and practices that it maintains shall continue and are incorporated herein by reference.

ARTICLE XXII – PAID TIME OFF

The Employer's Paid Time Off (PTO) Policy is incorporated herein by reference. The accrual rates under the Employer's PTO Policy are as follows:

- **Accrual rates:** Eligible regular full time bargaining unit employees hired or who become eligible for PTO accrual on or after April 1, 2013 accrue PTO in accordance with the chart below:

Day One through completion of 3 rd year:	3.69 hours/week (24 days per year)
4 th year	4.46 hours/week (29 days per year)
Beginning of 5 th year through completion of 6 th year:	4.61 hours/week (30 days per year)
Beginning of 7 th year and through tenure	4.77 hours/week (31 days per year)

- **Accrual rates:** Eligible regular full time bargaining unit employees hired or who became eligible for PTO accrual before April 1, 2013 accrue PTO in accordance with the chart below:

Day One through completion of 3 rd year:	4.00 hours/week (26 days per year)
4 th year	4.77 hours/week (31 days per year)
Beginning of 5 th year through completion of 6 th year:	4.92 hours/week (32 days per year)
Beginning of 7 th year and through tenure	5.08 hours/week (33 days per year)

ARTICLE XXIII - 401(K) PLAN

Section 1: The employees are eligible to participate in the Employer's 401(k) Plan at the benefit levels in effect at the time of the effective date of this Agreement, and the plan terms (including, but not limited to, the benefit levels) may be modified from time to time in the Employer's discretion in the same manner as for other employees of the Employer at the facility covered by this Agreement.

Section 2: The Employer agrees to use reasonable efforts to notify the Union's representative and the employees of any changes in the Employer's 401(k) Plan terms in advance of implementation.

ARTICLE XXIV - WAGES

Section 1: The Employer reserves the right to establish the starting wage rates for newly hired employees subject to the minimum wage rates set forth below. This Article is not intended to grant any right to a particular job, or particular work to anyone or any job title.

Section 2: Effective March 5, 2017, all employees on the payroll in the titles of Dietary Aide, Cook, and Unit Secretary (Ward Clerk) shall receive an increase of \$0.50/hour. Effective March 5, 2017, all LPNs and CNAs on the payroll shall receive the greater of either the wage rates set forth in Section 3 below or a 3% increase.

Section 3: The minimum wage rates for each title noted below shall be effective March 5, 2017. This Section is intended solely to describe the wages to be provided employees who are employed by the Employer as of March 5, 2017 or who are subsequently newly hired into the RN, LPN or CNA positions after such date. This Section is not intended to provide an annual wage increase for employees based on increasing years of certification or licensure.

<u>Years of Certification/Licensure</u>	<u>CNA</u>	<u>LPN</u>	<u>RN</u>
0	\$12.50	\$21.25	\$26.06
1	\$13.00	\$21.75	\$26.50
2	\$13.19	\$22.07	\$26.89
3	\$13.38	\$22.39	\$27.28
4	\$13.56	\$22.71	\$27.67
5	\$13.75	\$23.03	\$28.06
6	\$13.94	\$23.34	\$28.45
7	\$14.13	\$23.66	\$28.85
8	\$14.31	\$23.98	\$29.24
9	\$14.50	\$24.30	\$29.63
10	\$14.69	\$24.62	\$30.02

11	\$14.88	\$24.94	\$30.41
12	\$15.06	\$25.26	\$30.80
13	\$15.25	\$25.59	\$31.19
14	\$15.44	\$25.91	\$31.58
15	\$15.63	\$26.24	\$31.97
Per Diem	\$14.00	\$25.00	\$30.00

Section 4: The annual wage increase or bonus for all employees is set forth below:

Effective January 1, 2018: 2% wage increase

Effective January 1, 2019: 2% wage increase

Effective January 1, 2020: 2% bonus

Effective January 1, 2021: 2% wage increase

As for the 2020 calendar year, the 2% bonus is calculated and paid as follows:

A. The bonus for the first calendar quarter of 2020 will be calculated by multiplying 2% of the aggregate amount of regular (i.e., non-overtime) hours worked at the employee's regular hourly rate of pay for the months of January-March 2020 and such bonus amount will be paid on the first regular pay date of April 2020; provided that the employee remains employed by the Employer as of the pay date.

B. The bonus for the second calendar quarter of 2020 will be calculated by multiplying 2% of the aggregate amount of regular (i.e., non-overtime) hours worked at the employee's regular hourly rate of pay for the months of April - June 2020 and such bonus amount will be paid on the first regular pay date of July 2020; provided that the employee remains employed by the Employer as of the pay date.

C. The bonus for the third calendar quarter of 2020 will be calculated by multiplying 2% of the aggregate amount of regular (i.e., non-overtime) hours worked at the employee's regular hourly rate of pay for the months of July-September 2020 and such bonus amount will be paid on the first regular pay date of October 2020; provided that the employee remains employed by the Employer as of the pay date.

D. The bonus for the fourth calendar quarter of 2020 will be calculated by multiplying 2% of the aggregate amount of regular (i.e., non-overtime) hours worked at the employee's regular hourly rate of pay for the months of October-December 2020 and such bonus

amount will be paid on the first regular pay date of January 2021; provided that the employee remains employed by the Employer as of the pay date.

ARTICLE XXV - MEDICAL INSURANCE

Section 1: For the 2017, 2018 and 2019 plan years (i.e., April 1 – March 31), the Employer agrees to offer the employees covered by this Agreement the same health, dental and vision insurance program(s) on the same terms and conditions and at the same level of employee contributions as it offers to the other employees at the Employer's facility subject to: (a) the terms of such medical insurance programs, and (b) the terms set forth in Section 2 below.

Section 2: The following terms shall apply to the 2017-2019 plan years:

A. 2017 Plan Year: The Employer shall pay the full premium for individual coverage under the HRA plan for those employees who have selected such individual coverage during the open enrollment period.

B. 2018 Plan Year: The Employer shall pay the full premium for individual coverage under the HRA plan for those employees who have selected such individual coverage during the open enrollment period. The Employer shall pay the equivalent of the full premium for individual coverage under the HRA plan and one-half (50%) of the increased premium (or upcharge) between individual coverage and multi-person coverage under the HRA plan offered by the Employer for those employees who have selected such multi-person coverage during the open enrollment period.

C. 2019 Plan Year: The Employer shall pay the full premium for individual coverage under the HRA plan for those employees who have selected such individual coverage during the open enrollment period. The Employer shall pay the equivalent of the full premium for individual coverage under the HRA plan and one-half (50%) of the increased premium (or upcharge) between individual coverage and multi-person coverage under the HRA plan offered by the Employer for those employees who have selected such multi-person coverage during the open enrollment period.

D. As for the 2018-2019 Plan Years, the Employer agrees not to: (1) increase the employee's share of any annual premium increases by more than 3.5% per year; (2) increase the individual or family deductibles for such health insurance; and (3) increase the prescription drug co-pays. The Employer further agrees that any other changes to the health insurance benefit applicable to the employees covered by this Agreement will be consistent with the changes made throughout the Employer's portfolio.

Section 3: The following terms shall apply to the 2020-2021 plan years:

A. 2020 Plan Year (i.e., January 1 – December 31): The Employer agrees to participate in the Greater New York Health Plan offered by the Union for those regular full time bargaining unit employees who work 35 hours or more per work week and any

employee who works thirty (30) hours per week and who elected health coverage prior to the Employer's entry into the Greater New York Health Plan.

B. 2021 Plan Year (i.e., January 1 – December 31): The Employer agrees to participate in the Greater New York Health Plan offered by the Union for those regular full time bargaining unit employees who work 35 hours or more per work week and any employees who were covered in 2020 pursuant to Paragraph A above, subject to the Health Care Coverage Reversion Provision as set forth in the parties' Memorandum of Understanding entered into on the same date as this Agreement.

ARTICLE XXVI – MAINTENANCE OF STANDARDS

Section 1: The Employer shall maintain the fringe benefits (i.e., break swapping practices, Turkeys at Thanksgiving, etc.) applicable to employees prior to the effective date of this Agreement; provided that, nothing in this provision shall constrain or restrict the Employer's Management Rights as set forth in Article IV above.

ARTICLE XXVII – FIVE STAR BONUS PROGRAM

Section 1: The Employer will continue its Five Star Bonus Program or a similar program, as determined in the Employer's discretion, to reward employees on a facility wide basis for goal achievement.

ARTICLE XXVIII – SUCCESSORS

In the event of a transfer, sale or assignment of the Employer's facility, the Union shall be notified at least thirty (30) days in advance of such action. The Employer will notify the prospective buyer/assignee of the existence of this Agreement and will provide the prospective buyer/assignee a copy of this Agreement. The Union will contemporaneously be provided with a copy of said notice.

ARTICLE XXIX - SEVERABILITY

In the event that any provision(s) of the Agreement shall be held to be invalid, illegal or otherwise prohibited by law, then such provision (or portion thereof) shall be deemed amended so as to comply with such law, to the extent possible, or if such amendment is not possible, then such provision shall be null and void but such invalidity shall not affect the enforceability of the remainder of the Agreement.

ARTICLE XXX - DURATION

Section 1: This Agreement shall become effective as of 12:01 a.m. on the ___ day of May 2017 and shall remain in full force and effect until 12:00 p.m. midnight on the 31st day of December, 2021; and shall renew itself without change from year to year thereafter, unless written notice of termination or desire to modify is given at least one hundred twenty (120) calendar days prior to the expiration date of this Agreement, or any succeeding yearly term, by either of the parties hereto. Timely notice to modify and/or terminate this Agreement shall cause all provisions of this Agreement and all rights claimed to emanate therefrom to expire on the expiration date of the Agreement, and no such provisions or rights shall survive the expiration.

Section 2: The Employer and the Union acknowledge that during the negotiations that resulted in this Agreement, each had the unlimited right and opportunity to make demands and proposals with respect to any subject or matter not removed by law from the area of collective bargaining, and that the understanding and agreement arrived at by the parties after the exercise of that right and opportunity is set forth in full in this Agreement. Therefore, it is agreed that the terms set forth in this Agreement constitute the sole and entire agreement between the parties and supersedes any and all prior agreements or understandings, either oral or written. The Employer and the Union agree that this Agreement may only be modified, in writing, by mutual agreement of the parties.

Section 3: The parties agree that there will be no retroactivity as to any terms of this Agreement, except that the minimum hourly wage rates set forth in Article XXIV (Wages) were effective as of March 5, 2017.

ARTICLE XXXI – RATIFICATION

This Agreement is subject to ratification by the Union and the Employer.

In Witness Whereof, the parties hereto, through their duly authorized representatives have executed this Agreement on this ____ day of May 2017.

WINGATE OF ULSTER, INC.

1199 SEIU UNITED HEALTHCARE WORKERS EAST

DM2\5432366.15

APPENDIX "A"

Standards of Conduct

The following types of conduct are prohibited and shall result in discharge in the first instance:

1. Patient or resident abuse.
2. The points resulting in termination under the medication errors policy.
3. Intentional falsification of personnel or Company records including, but not limited to, employment application information, patient related records, and time records.
4. Intentional falsification of any information relating to the Company's compliance with federal or state rules and regulations including, but not limited to, records, patient or resident logs and other documents.
5. Unauthorized possession of firearms, explosives or weapons on Company premises.
6. Intentional theft or intentional removal from the premises, without proper authorization, of any Company property or property of a resident, patient, person or entity.
7. Removal from the premises of patient records or, without authorization, taking a photograph of a resident or posting resident information (including but not limited to photographs, audio or video) on social media. This is not intended to encompass pictures taken at the direction or request of a resident or resident's family member provided that the picture does not also include a resident for whom authorization to be included in the picture was not provided.
8. Fighting, threatening physical harm, or committing an act of violence against another during working hours or on Company premises.
9. Reporting for work while under the influence of alcohol or illegal drugs, drinking any alcoholic beverage or using illegal drugs on Company premises or on Company time, possession of alcohol, illegal drugs.
10. Leaving the facility prior to the end of one's work shift without permission.
11. Conviction of any felony or conviction of a crime which adversely affects the Company's reputation related to patient care.
12. Intentional sleeping while on duty (other than on an authorized break in the employee break room).

13. Loss of requisite licenses due to an egregious act, being listed on the applicable federal or state health care exclusion list and/or violation of any federal or state rules or regulations that require discharge under such rules and regulations.