UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 8

LIBERTY RETIREMENT COMMUNITY OF LIMA, INC., LIBERTY HEALTHCARE CORP., LIBERTY RETIREMENT PROPERTIES OF LIMA, LTD., LIBERTY VILLAS OF LIMA, INC. AND LIBERTY NURSING PROPERTIES OF WOODLAND MANOR, LTD., A SINGLE EMPLOYER AND PLUS MANAGEMENT SERVICES, INC. D/B/A BATON ROUGE MEDICAL & REHAB CENTER OF LIMA, JOINT EMPLOYERS

And

Cases 08-CA-198572
08-CA-201287

OHIO COUNCIL 8, AMERICAN FEDERATION OF STATE, COUNTY AND MUNICIPAL EMPLOYEES, AFL-CIO

JOINT MOTION TO TRANSFER CASE TO THE NATIONAL LABOR RELATIONS BOARD FOR SUMMARY JUDGMENT AGAINST RESPONDENTS LIBERTY RETIREMENT COMMUNITY OF LIMA, INC., LIBERTY HEALTHCARE CORP., LIBERTY RETIREMENT PROPERTIES OF LIMA, LTD., LIBERTY VILLAS OF LIMA, INC. AND LIBERTY NURSING PROPERTIES OF WOODLAND MANOR, LTD.

Pursuant to Section 102.24(b) and 102.50 of the Rules and Regulations of the National Labor Relations Board (Board), Counsel for the General Counsel (General Counsel) and Respondents Liberty Retirement Community of Lima, Inc., Liberty Health Care Corporation, Liberty Retirement Properties of Lima, Ltd., Liberty Villas of Lima, Inc., and Liberty Nursing Properties of Woodland Manor, Ltd., a single employer (collectively Respondent Liberty), respectfully move to transfer this case to the Board for summary judgment against Respondent Liberty.

Dated at Cleveland, Ohio on this 6th day of March 2019.

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LIBERTY RETIREMENT COMMUNITY OF LIMA, INC., LIBERTY HEALTHCARE CORP., LIBERTY RETIREMENT PROPERTIES OF LIMA, LTD., LIBERTY VILLAS OF LIMA, INC. AND LIBERTY NURSING PROPERTIES OF WOODLAND MANOR, LTD., A SINGLE EMPLOYER AND PLUS MANAGEMENT SERVICES, INC. D/B/A BATON ROUGE MEDICAL & REHAB CENTER OF LIMA, JOINT EMPLOYERS

And

Cases 08-CA-198572
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OHIO COUNCIL 8, AMERICAN FEDERATION OF STATE, COUNTY AND MUNICIPAL EMPLOYEES, AFL-CIO

JOINT MOTION FOR SUMMARY JUDGMENT

Counsel for the General Counsel and Respondents Liberty Retirement Community of Lima, Inc., Liberty Health Care Corporation, Liberty Retirement Properties of Lima, Ltd., Liberty Villas of Lima, Inc., and Liberty Nursing Properties of Woodland Manor, Ltd., a single employer (collectively Respondent Liberty) respectfully move that Summary Judgment be entered against Respondent Liberty in the above-captioned cases.

I. PROCEDURAL HISTORY

The General Counsel issued an Order Consolidating Cases, Consolidated Complaint and Notice of Hearing (Consolidated Complaint) on May 31, 2018, alleging, *inter alia*, that Respondent Plus Management and Respondent Liberty operated as a joint employer since on or about January 11, 2017 until about April 21, 2017, when Respondent Liberty subsequently

purchased the facility from Respondent Plus Management on April 21, 2017, and continued as the employing entity and is a successor to Respondent Plus Management. (Exh. A).

The Complaint further alleges that the Respondents violated Sections 8(a) (1), (3), (4) and (5) of the National Labor Relations Act (the Act). The hearing before the Administrative Law Judge was scheduled to begin on September 4, 2018. Respondent Plus Management filed its Answer to the Consolidated Complaint on June 12, 2018. (Exh. B). Respondent Liberty filed its Answer to the Consolidated Complaint on June 13, 2018. (Exh. C). On August 30, 2018, the Regional Director issued an Order rescheduling the September 4, 2018 hearing to November 13, 2018 to allow the parties additional time to engage in settlement negotiations. (Exh. D).

On October 19, 2018, the Regional Director issued an Order postponing the November 13, 2018 hearing indefinitely. (Exh. E). Respondent Liberty filed an Amended Answer on October 21, 2018 (Exh. F), and a Second Amended Answer on October 23, 2018, wherein Respondent Liberty admits all allegations as alleged in the Consolidated Complaint. (Exh. G). The General Counsel, Respondent Liberty and the Charging Party Union additionally executed a stipulation that the Union is a labor organization within the meaning of Section 2(5) of the Act. (Exh. H). On January 8, 2019, the Regional Director for Region 8 issued an Order Severing Allegations from the Consolidated Complaint, as they relate to Respondent Plus Management (Exh. I).

II. STATEMENT OF FACTS

Ohio Council 8, American Federation of State, County and Municipal Employees (Union) and Respondent Plus Management had a longstanding bargaining relationship covering full and regular part-time cooks, maintenance workers, dietary crew leaders, food service workers and State Tested Nursing Assistants (STNA). (Exh. A, Paragraphs 15 (A) and (B)). The most recent

collective-bargaining agreement was effective from January 1, 2016 through December 31, 2018. (Exh. A, Paragraph 15 (B)).

On January 11, 2017, Respondent Plus Management entered into an interim operating sales agreement providing that Respondent Liberty would be the agent for Respondent Plus Management and take control over the operation of the facility and its employees. (Exh. A, Paragraph 5(A)(1)). On January 11, 2017, Respondent Liberty's President, Linda Black-Kurek, announced a new attendance policy without notifying or bargaining with the Union. (Exh. A, Paragraph 5).

On April 21, 2017, Respondent Liberty purchased the business of Respondent Plus Management. Respondent Liberty continued to operate the business in an unchanged form and with the same employees that were employed at the facility when Respondent Liberty executed the interim sales agreement. (Exh. A, Paragraphs 5 and 6).

On April 24, 2017, Respondent Liberty terminated thirteen employees because of their union membership and concerted activities, and to avoid its successor bargaining obligations under the Act. (Exh. A, Paragraph 13). On May 10, 2017, Respondent Liberty terminated another employee because she concertedly complained to Respondent Liberty and the Lima Health Department regarding working conditions. (Exh. A, Paragraph 14).

On April 25, 2017, without providing the Union with notice and an opportunity to bargain, Liberty's President, Black-Kurek, distributed a printed version of the attendance policy previously announced on January 11, 2017 and distributed a new employee handbook. (Exh. A, Paragraph 16).

During the period beginning April 25, 2017 through July 11, 2017, the Union made nine written requests to Respondent Liberty to be recognized as the exclusive collective bargaining

representative of the Unit and to bargain with the Union as the collective bargaining representative of the Unit. (Exh. A, Paragraph 17 (A)). At all material times, Respondent Liberty has failed and refused to recognize and to bargain with the Union. (Exh. A, paragraph 17 (B)).

Since June 8, 2017, the Union has requested Respondent Liberty provide it with (1) the sales agreement between Respondent Liberty and Respondent Plus Management; (2) the personnel policies implemented since February 1, 2017; (3) a list of current employees, their dates of hire, job classification and salary information; and (4) a list of all employees terminated after the sales agreement was executed and the reason for their termination. (Exh. A, Paragraph 18 (A)). Respondent Liberty has failed and refused to furnish the Union with the information requested. (Exh. A, Paragraph 18 (C)).

III. THE COMPLAINT AND ANSWER

Respondent Liberty, by its Second Amended Answer and stipulation, admits or stipulates to all material pleadings involving Respondent Liberty, and to certain pleadings involving Respondent Plus Management which are contained in the Consolidated Complaint:

1. Respondent Liberty received the charges referred to in Complaint Paragraphs 1(A), (B), (C) and 2(A) and (B) of the Consolidated Complaint. (Exh. A, Paragraphs 1 and 2).
2. At all material times, Respondent Liberty Retirement Community of Lima, Inc., has been a corporation with an office and place of business in Lima, Ohio (Lima facility) and has been engaged in the operation of a skilled nursing home and residential care facility providing inpatient medical care. (Exh. A, Paragraph 3(A)).
3. At all material times, Respondent Liberty Health Care Corp. has been a corporation with an office and place of business in Bellbrook, Ohio (Bellbrook facility) and has

been engaged in the operation and management of skilled nursing home and residential care facilities at various locations within the State of Ohio, including Cincinnati, Mansfield and the Lima facility described n Complaint Paragraph 3(A). (Exh. A, Paragraph 3(B)).

4. At all material times, Respondent Liberty Retirement Properties of Lima, Ltd., formerly known as Liberty Nursing Properties of Woodland Manor, Ltd., has been a limited partnership with an office and place of business in Bellbrook, Ohio, (Bellbrook facility) and has been engaged in the acquisition of real property, including the real property located at 2440 Baton Rouge Ave., Lima, Ohio. (Exh. A, Paragraph 3(C)).
5. At all material times, Respondent Liberty Villas of Lima, Inc., formerly known as The Villa at Baton Rouge, has been a corporation with an office and place of business in Lima, Ohio (Lima facility) and has been engaged in the operation of an assisted living facility offering assistance to residents with day-to-day living. (Exh. A, Paragraph 3(D)).
6. Respondent Plus Management Services, Inc., d/b/a Baton Rouge Medical and Rehab Center of Lima, has been a corporation with an office and place of business in Lima, Ohio (Lima facility) and has been engaged in the operation of a skilled nursing home and residential care facility providing inpatient medical care. (Exh. A, Paragraph 3(E)).
7. At all material times, Respondent Liberty Retirement Community of Lima, Inc., and Respondents Liberty Health Care Corp., Liberty Retirement Properties of Lima Ltd., Liberty Villas of Lima, Inc., and Liberty Nursing Properties of Woodland

Manor, Ltd., have been affiliated business enterprises with common officers, ownership, directors, management and supervision; have formulated and administered a common labor policy; have shared common premises and facilities; have provided services for and made sales to each other; have interchanged personnel with each other; have interrelated operations with common purchasing, sales and provision of services; and have held themselves out to the public as a single-integrated business enterprise. (Exh. A, Paragraph 4 (A)).

8. Based on its operations described in Complaint Paragraph 4(A), Respondent Liberty Retirement Community of Lima, Inc., Respondents Liberty Health Care Corp., Liberty Retirement Properties of Lima Ltd., Liberty Villas of Lima, Inc., and Liberty Nursing Properties of Woodland Manor, Ltd., constitute a single-integrated business enterprise and a single employer within the meaning of the Act. (Exh. A, Paragraph 4(B)).

9. Since about January 11, 2017, Respondent Plus Management and Respondent Liberty Health Care Corp. have been parties to a sales and interim operating contract providing that Respondent Liberty Health Care Corp., is the agent for Respondent Plus Management in connection with the operation of the Lima facility; and since about January 11, 2017, Respondent Liberty Health Care Corp. has operated the Lima facility as Liberty Retirement Community of Lima, Inc. (Exh. A, Paragraph 5 (A) (1) and (2)).

10. Since about January 11, 2017, Respondent Liberty has possessed control over the labor relations policy of Respondent Plus Management, exercised control over the labor relations policy of Respondent Plus Management and administered a common

labor policy with Plus Management for the employees of Respondent Plus Management at the Lima facility; and at all material times until about April 21, 2017, Respondent Liberty and Respondent Plus Management have been joint employers of the employees of Respondent Plus Management." (Exh. A, Paragraphs 5 (B) and 5 (C)).

11. Since about January 11, 2017, and after April 21, 2017, Respondent Liberty has continued to operate the business of Respondent Plus Management as described in Complaint Paragraph 5(A) in basically unchanged form and has employed as a majority of its employees individuals who were previously employees of Respondent Plus Management; and about April 21, 2017, Respondent Liberty purchased the business conducted at the Lima facility and its real property from Respondent Plus Management, and since then has continued to operate the business of Respondent Plus Management. (Exh. A, Paragraphs 6 (A) and (B)).

12. Based on its operations described in Complaint Paragraphs 6(A) and 6(B) and since about January 11, 2017, Respondent Liberty has continued to be the employing entity and is a successor to Respondent Plus Management. (Exh. A, Paragraph 6 (C)).

13. Respondent Liberty is an Employee engaged in commerce within the meaning of the Act. (Exh. A, Paragraphs 7(A), (B) and 8).

14. Complaint Paragraphs 9(A) and (B) have been severed from this proceeding and aver that "[i]n conducting its operations during the calendar year ending December 31, 2017, Respondent Plus Management derived gross revenues in excess of $100,000;" and "during the same time period Respondent Plus Management

purchased and received at its Lima, Ohio facility products, goods and materials valued in excess of $5,000 directly from points located outside the State of Ohio." (Exh. A, Paragraphs 9 (A) and (B), Exhibit I).

15. Complaint Paragraph 10 has been severed from this proceeding and avers that at all material times, Respondent Plus Management has been an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act, and has been a health care institution within the meaning of Section 2(14) of the Act. (Exh. A, Paragraph 10).

16. The Union is a labor organization within the meaning of the Act. (Exh. A, Paragraph 11; Exhibit H).

17. At all material times Linda Black-Kurek held the positions in the entities set forth below and has been a supervisor of each entity within the meaning of Section 2(11) of the Act and an agent of each entity within the meaning of Section 2(13) of the Act:

Liberty Retirement Community of Lima, Inc.	President
Liberty Health Care Corp.	President
Liberty Retirement Properties of Lima, Ltd.	Managing Member
Liberty Villas of Lima, Inc.	President

(Exh. A, Paragraph (12) (A)).

18. At all material times the following individuals held the positions set forth opposite their respective names and have been supervisors of Respondent Liberty Retirement Community of Lima, Inc. within the meaning of Section 2(11) of the Act and/or agents of Respondent Liberty Retirement Community of Lima, Inc. within the meaning of Section 2(13) of the Act:

Sandra McClellan	Registered Nurse Consultant
Lance Nickles	Administrator
Jeremy Kindle	Former Director of Nursing
Ashli Gatchell	Clinical Manager/Assistant Director of Nursing
Ashley Wagner	Assistant Director of Nursing
Georgiana Saffle	Vice President of Operations
Heather Fogle	Human Resources Manager
Linda Miles	Office Manager
Margaret Gwen	Former Dietary Department Manager (until about April 24, 2017)
Melissa Schmidt	Former Administrator (until about May 2017)
Timothy Storer	Former Administrator (until about May 2017)
Amber Addair	Office Manager
Kurt Lucas	Maintenance Director"

(Exh. A, Paragraph (12) (B)).

19. At all material times the following individuals held the positions set forth opposite their respective names and have been supervisors of Respondent Liberty Health Care Corp. within the meaning of Section 2(11) of the Act and/or agents of

Respondent Liberty Health Care Corp. within the meaning of Section 2(13) of the Act:

Chris Behm	Building Project Manager
Tim Murphy	Maintenance
Chris Theile	Maintenance

(Exh. A, Paragraph (12) (C)).

20. Complaint Paragraph 12 (D) has been severed from the proceeding, except that Respondent Liberty admits that Jerome O'Neal was the Owner and President of Respondent Plus Management and Administrator for Respondent Liberty until February 2017. The severed pleading avers that "At all material times the following individuals held the positions set forth opposite their respective names and have been supervisors of Respondent Plus Management, within the meaning of Section 2(11) of the Act and/or agents of Respondent Plus Management, within the meaning of Section 2(13) of the Act:

Jerome O'Neal	Owner, President, Administrator
Jeremy Kindle	Director of Nursing
Ashli Gatchell	Clinical Manager/Assistant Director of Nursing
Ashley Wagner	Assistant Director of Nursing
Georgiana Saffle	Vice President of Operations
Heather Fogle	Human Resources Manager
Margaret Gwen	Dietary Department Manager

Kurt Lucas	Maintenance Director
Timothy Storer	Administrator"

(Exh. A, Paragraph (12) (D), Exhibit I).

21. About April 24, 2017, Respondent Liberty terminated the following employees:

    (1) Megon Amstutz (Twining);

    (2) Karen Arnett;

    (3) Sharon Bruce;

    (4) April Burden;

    (5) Felicia Forrest (King);

    (6) U'Hura George;

    (7) LaShawnda Gibson;

    (8) Tia Macklin;

    (9) Michael Miller;

    (10) Janice Newland;

    (11) Aneta Shorter;

    (12) Kelly Stevens;

    (13) Diann Williams."

(Exh. A, Paragraphs (13) (A) (1) – (13), Exhibit I).

22. Respondent Liberty engaged in the conduct described in Complaint Paragraphs 13(A)(1) through 13(A)(13) because the named employees were members of the Union and engaged in concerted activities, and to discourage employees from engaging in these activities." (Exh. A, Paragraph (13) (B)).

23. Respondent Liberty engaged in the conducted described in Complaint Paragraph 13(A)(1) because Amstutz (Twining) gave testimony to the Board in the form of an affidavit in connection with the investigation of Case 08-CA-180445; and Respondent Liberty engaged in the conduct described in Complaint Paragraph 13(A)(2) because Arnett filed a charge with the Board in Case 08-CA-180445. (Exh. A, Paragraphs (13) (C) (1) and (2)).

24. Respondent Liberty purchased the business of Respondent Plus Management, as described in Complaint Paragraph 6; and "but for the conduct described in Complaint Paragraphs 13(A)(1) through 13(A)(13), Respondent Liberty would have employed, as a majority of its employees, individuals who were previously employees of Respondent Plus Management; and, based on the conduct described in Complaint Paragraphs 13(A)(1) through 13(A)(13) and Complaint Paragraph 14(B) and the operations described in Complaint Paragraph 6, Respondent Liberty has continued to be the employing entity and is a successor to Respondent Plus Management. (Exh. A, Paragraph 13 (D) (1), (2) and (3)).

25. About May 10, 2017, Respondent Liberty's employee Laquanna Watkins concertedly complained to Respondent Liberty regarding the wages, hour, and working conditions of Respondent Liberty's employees by informing Heather Fogle and Jeremy Kindle that she filed a complaint with the Lima Health Department and Respondent Liberty's compliance line; and about May 11, 2017, Respondent Liberty terminated employee Laquanna Watkins." (Exh. A, Paragraphs 14 (A) and (B)).

26. Respondent Liberty engaged in the conduct described in Complaint Paragraph 14(B) because Watkins engaged in the conduct described in Complaint Paragraph 14(A), and to discourage employees from engaging in these or other concerted activities." (Exh. A, Paragraph 14 (C)).

27. The unit as described in the Complaint Paragraph 15(A) of the Consolidated Complaint constitutes a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act. (Exh. A, Paragraph 15 (A)).

28. From about 2007 until about April 21, 2017, the Union had been the exclusive collective bargaining representative of the Unit employed by Respondent Plus Management and during that time this recognition was embodied in the successive collective bargaining agreements the most recent of which is effective from January 1, 2016 through December 31, 2018; and, since about January 11, 2017, based on the facts described in Complaint Paragraph 6, the Union has been the designated exclusive collective bargaining representative of the Unit. (Exh. A, Paragraphs 15 (B) and (C)).

29. About January 11, 2017, Respondent Liberty, by Linda Black-Kurek, orally announced a new attendance policy; and about April 25, 2017 Respondent Liberty, by Black-Kurek, distributed and implemented the attendance policy described in Complaint Paragraph 16(A)(1), a new employee handbook containing workplace policies, rules, wages, benefits and other terms and conditions of employment. (Exh. A, Paragraphs 16 (A)(1) and (2)).

30. The subjects set forth in Paragraph 16(A)(1) and 16(A)(2) relate to wages, hours, and other terms and conditions of employment of the Unit and are mandatory

subjects for the purposes of collective bargaining; and Respondent Liberty engaged in the conduct described in Complaint Paragraphs 16(A)(1) and (2) without prior notice to the Union and without affording the Union an opportunity to bargain with Respondent Liberty with respect to this conduct. (Exh. A, Paragraphs 16 (B) and (C)).

31. By letters dated April 25, May 2, May 8, May 16, May 25, June 8, June 26, July 5, and July 11, 2017, the Union requested that Respondent Liberty recognize it as the exclusive collective bargaining representative of the Unit and to bargain collectively with the Union as the exclusive collective bargaining representative of the Unit; and since about April 25, 2017, Respondent has failed and refused to recognize and bargain with the Union as the exclusive collective-bargaining representative of the Unit. (Exh. A, Paragraphs 17 (A) and (B)).

32. On or about April 25, 2017, Respondent Liberty withdrew its recognition of the Union as the exclusive collective-bargaining representative of the Unit; and since on or about April 25, 2017, Respondent Liberty repudiated the collective bargaining agreement as described in Complaint Paragraph 15(B). (Exh. A, Paragraphs 17 (C) and (D)).

33. About June 8, 2017, the Union requested in writing that Respondent Liberty furnish the Union with the information set forth in Complaint Paragraphs 18 (A) (1-4). (Exh. A, Paragraphs 18 (A) (1-4)).

34. Since about June 8, 2017, Respondent Liberty, has failed and refused to furnish the Union with the information requested by it as described in Complaint Paragraph

18(A) (1-4) and that is relevant to the Union performing its duties as the exclusive bargaining representative. (Exh. A, Paragraphs 18 (B), and (C)).

35. By the conduct described in Complaint Paragraph 14, Respondent Liberty has been interfering with, restraining, and coercing employees in the exercise of the rights guaranteed in Section 7 of the Act in violation of Section 8(a)(1) of the Act. (Exh. A, Paragraph 19).

36. By the conduct described in Complaint Paragraphs 13(A) and 13(B), Respondent Liberty has been discriminating in regard to the hire or tenure or terms or conditions of employment of its employees, thereby discouraging membership in a labor organization in violation of Section 8(a)(1) and (3) of the Act. (Exh. A, Paragraph 20).

37. By the conduct described in Complaint Paragraphs 13(A)(1), 13(A)(2) and 13(C), Respondent Liberty has been discriminating against employees for filing charges or giving testimony under the Act in violation of Section 8(a)(1) and (4) of the Act. (Exh. A, Paragraph 21).

38. By the conduct in paragraphs 16 through 18 and their subparagraphs, Respondent Liberty has been failing and refusing to bargain collectively and in good faith with the exclusive collective-bargaining representative of its employees within the meaning of Section 8(d) of the Act in violation of Section 8(a)(1) and (5) of the Act. (Exh. A, Paragraph 22).

39. The unfair labor practices of Respondents described in the Complaint affect commerce within the meaning of Section 2(6) and (7) of the Act." (Exh. A, Paragraph 23).

BRIEF IN SUPPORT OF JOINT MOTION FOR SUMMARY JUDGMENT

I. ARGUMENT

Rule 56(c) of the Federal Rules of Civil Procedure provides that summary judgment shall be granted if the "pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." Fed.R.Civ.P. 56(c). The Board, in its discretion, may grant a motion of summary judgment where there is an absence of a genuine issue of material fact requiring a hearing before an administrative law judge. Board Rules and Regulations 102.24(b). *See Teamsters Local 579 (Chambers & Owen)*, 350 NLRB 1166, 1168 (2007).

Respondent Liberty, as set forth in its Second Amended Answer to the Consolidated Complaint, admits to all of the allegations regarding Liberty. Respondent Liberty's Second Amended Answer to the Consolidated Complaint also admits certain allegations as they relate to its relationship with Respondent Plus Management.[1]

Regarding Respondent Liberty's answers that it is without sufficient knowledge to admit or deny allegations regarding Respondent Plus Management, those allegations include the service of the charge to Respondent Plus Management, whether Respondent Plus Management is in commerce within the meaning of Section 2(6) and 2(7) of the Act, and Respondent Plus Management's supervisory and agent status within the meaning of Section 2(11) and Section 2(13)

[1] Those allegations include the following: (1) Respondent Plus Management operating a skilled nursing home and residential care facility; (2) Respondent Plus Management and Respondent Liberty were parties to a sale and interim operating contract providing that Respondent Liberty is the agent for Respondent Plus Management in connection with the operation of the facility; (3) Respondent Liberty possessing control over the labor relations policy of Respondent Plus Management and administering a common labor policy; (4) Respondent Liberty being a joint employer of the employees of Respondent Plus Management until April 21, 2017; and (5) Respondent Liberty operating the business in an unchanged form and being a successor to Respondent Plus Management since January 11, 2017.

of the Act. As noted above, the allegations related to Respondent Plus Management have been severed from this proceeding.

Respondent Liberty's affirmative defenses are limited to mitigation and damages that will be addressed in a Compliance proceeding, in the event a resolution cannot be reached. The affirmative defenses do not implicate any material facts alleged in the Consolidated Complaint. In support of this motion, Counsel for the General Counsel and Respondent Liberty aver as follows:

A. Service of the Charges

Respondent Liberty admits to the service of the original filed charge and amended charges in Cases 08-CA-198572 and 08-CA-201287. There is no dispute that the charges and amended charges were filed and served on Respondent Liberty Retirement Community of Lima, Inc., Respondent Liberty Health Care Corp., Respondent Liberty Retirement Properties of Lima, Ltd., Respondent Liberty Villas of Lima, Inc., Respondent Liberty Nursing Properties of Woodland Manor, Ltd., and Respondent Plus Management.[2]

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[2] Paragraph 1(A) of the Consolidated Complaint alleges that "[t]he charge in Case 08-CA-198572 was filed by the Union on May 11, 2017 and a copy was served on Respondent Liberty Retirement Community of Lima, Inc., Respondent Liberty Health Care Corp., and Respondent Plus Management by U.S. mail on May 11, 2017." Paragraph 1(B) of the Consolidated Complaint alleges that "[t]he first amended charge in Case 08-CA-198572 was filed by the Union on July 28, 2017 and a copy was served on Respondent Liberty Nursing Properties of Woodland Manor, Ltd., Respondent Liberty Retirement Community of Lima, Inc., and Respondent Plus Management by U.S. mail on July 28, 2017." Paragraph 1(C) of the Consolidated Complaint alleges that "[t]he second amended charge in Case 08-CA-198572 was filed by the Union on April 30, 2018 and a copy was served on Respondent Liberty Retirement Community of Lima, Inc., Respondent Liberty Health Care Corp., Respondent Liberty Retirement Properties of Lima, Ltd., Respondent Liberty Villas of Lima, Inc., Respondent Liberty Nursing Properties of Woodland Manor, Ltd., and Respondent Plus Management by U.S. mail on April 30, 2018."
Paragraph 2(A) of the Consolidated Complaint alleges that "[t]he charge in Case 08-CA-201287 was filed by the Union on June 26, 2017 and a copy was served on Respondent Liberty Retirement Community of Lima, Inc., Respondent Liberty Health Care Corp., and Respondent Plus Management by U.S. mail on June 27, 2017." Paragraph 2(B) of the Consolidated Complaint alleges that "[t]he first amended charge in Case 08-CA-201287 was filed by the Union on July 28, 2017 and a copy was served on Respondent Liberty Nursing Properties of Woodland Manor, Ltd., Respondent Liberty Retirement Community of Lima, Inc., and Respondent Plus Management by U.S. mail on July 28, 2017." Paragraph 2(C) of the Consolidated Complaint alleges that "[t]he second amended charge in Case 08-CA-201287 was filed by the Union on April 30, 2018 and a copy was served on Respondent Liberty Retirement Community of Lima, Inc., Respondent Liberty Health Care Corp., Respondent Liberty Retirement Properties of Lima, Ltd., Respondent Liberty Villas of Lima, Inc., Respondent Liberty Nursing Properties of Woodland Manor, Ltd., and Respondent Plus Management by U.S. mail on April 30, 2018."

B. Description of the Liberty Entities

Respondent Liberty Retirement Community of Lima, Inc., Respondent Liberty Health Care Corp. Respondent Liberty Villas of Lima, Inc., formerly known as The Villa at Baton Rouge, and Respondent Plus Management Services, Inc., d/b/a Baton Rouge Medical and Rehab Center of Lima are all corporations with offices and places of business in the State of Ohio and are engaged in the operation of skilled nursing and residential care facilities. Respondent Liberty Retirement Properties of Lima, Ltd., formerly known as Liberty Nursing Properties of Woodland Manor, Ltd., has been a limited partnership with an office and place of business in Bellbrook, Ohio, (Bellbrook facility) and has been engaged in the acquisition of real property.

Respondent Liberty admits that it is engaged in the operation of skilled nursing and residential facilities located within the State of Ohio, including the operation of the Lima, Ohio facility at issue.[3]

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[3] Paragraph 3(A) of the Consolidated Complaint alleges that "[a]t all material times, Respondent Liberty Retirement Community of Lima, Inc., has been a corporation with an office and place of business in Lima, Ohio (Lima facility) and has been engaged in the operation of a skilled nursing home and residential care facility providing inpatient medical care."
Paragraph 3(B) of the Consolidated Complaint alleges that "[a]t all material times, Respondent Liberty Health Care Corp., has been a corporation with an office and place of business in Bellbrook, Ohio (Bellbrook facility) and has been engaged in the operation and management of skilled nursing home and residential care facilities at various locations within the State of Ohio, including Cincinnati, Mansfield and the Lima facility described above in Paragraph 3(A)." Paragraph 3(C) of the Consolidated Complaint alleges that "[a]t all material times, Respondent Liberty Retirement Properties of Lima, Ltd., formerly known as Liberty Nursing Properties of Woodland Manor, Ltd., has been a limited partnership with an office and place of business in Bellbrook, Ohio, (Bellbrook facility) and has been engaged in the acquisition of real property, including the real property located at 2440 Baton Rouge Ave., Lima, Ohio."
Paragraph 3(D) of the Consolidated Complaint alleges "[a]t all material times, Respondent Liberty Villas of Lima, Inc., formerly known as The Villa at Baton Rouge, has been a corporation with an office and place of business in Lima, Ohio (Lima facility) and has been engaged in the operation of an assisted living facility offering assistance to residents with day-to-day living."
Paragraph 3(E) of the Consolidated Complaint alleges that "[a]t all material times, Respondent Plus Management Services, Inc., d/b/a Baton Rouge Medical and Rehab Center of Lima, has been a corporation with an office and place of business in Lima, Ohio (Lima facility) and has been engaged in the operation of a skilled nursing home and residential care facility providing inpatient medical care."

C. Single Employer Status of the Liberty Entities

Respondents Liberty Retirement Community of Lima, Inc., Liberty Health Care Corp., Liberty Retirement Properties of Lima, Ltd., formerly known as Liberty Nursing Properties of Woodland Manor, Ltd., and Liberty Villas of Lima, Inc., formerly known as The Villa at Baton Rouge admit that it is a single employer, having the requisite common ownership and control, common management, functional interrelation of operations; and centralized control of labor relations to be a single integrated enterprise within the meaning of the Act. In finding entities to be a single employer, common ownership or financial controls; common management; functional interrelation of operations; and centralized control of labor relations are the factors to be considered on a case-by-case basis. *Beverly Enterprises, Inc.*, 341 NLRB 296, 306 (2004), citing *Radio & Television Broadcast Technicians Local 1264 v. Broadcast Services of Mobile,* 380 U.S. 255 (1965). Decisive factors in determining single employer status are financial and operational control of both companies, *Polis Wallcovering*, 323 NLRB 873, 880 (1997); and common control of labor relations. *Beverly Enterprises, supra*, 341 NLRB at 306, citing *Parklane Hosiery Co.*, 203 NLRB 597 (1973). Here, Respondent Liberty admits in its Answer that the entities are commonly owned and controlled by Linda Black-Kurek and it operates the skilled nursing home and residential care facility in Lima, Ohio. The facility and its property are owned by Respondent Liberty Retirement Properties of Lima, Ltd., formerly known as Liberty Nursing Properties of Woodland Manor, Ltd., of which Black-Kurek is the managing member.

Black-Kurek is the President of Respondent Liberty Retirement Community of Lima, Inc., Liberty Health Care Corp., Liberty Villas of Lima, Inc., and the Managing Member of Liberty Retirement Properties of Lima, Ltd. Black-Kurek, in her corporate capacity for the Respondent Liberty entities, met with employees, identified herself as a managing representative of the Liberty

entities and Respondent Plus Management. In this capacity, Black-Kurek announced and implemented a new employment attendance policy for employees on January 11, 2017 (Consolidated Complaint Paragraph 16(A)). The Respondent Liberty entities further operated at the Lima facility with an interrelation of supervisors and agents and admit to having shared common personnel with each other as alleged in Consolidated Complaint Paragraphs 12(A) through (C)).

By their admissions to Paragraphs 4(A) and 4(B) of the Consolidated Complaint, the Respondent Liberty entities admit that they are affiliated business enterprises with an interrelation of operations, common management, centralized control of labor relations and common ownership or financial control through their affiliated business enterprises and establish themselves as a single employer. Moreover, Respondent Liberty admits that they have common officers, ownership, directors, management and supervision; formulated and administered a common labor policy; have shared common premises and facilities; have provided services for and made sales to each other; have interchanged personnel with each other; have interrelated operations with common purchasing, sales and provision of services; and have held themselves out to the public as a single-integrated business enterprise. Accordingly, the Respondent Liberty entities, as admitted, constitute a single employer under the Act.

D. <u>Joint Employer</u>

Respondent Liberty and Respondent Plus Management, by their conduct and agreement, operated as joint employers of the employees of the Lima facility from January 11, 2017 through April 21, 2017. Two entities may be found to be joint employers if they are both employers within the meaning of the common law, and they share or codetermine those matters governing the essential terms and conditions of employment. *See Browning-Ferris Industries*, 362 NLRB No.

186 (August 27, 2015). The essential terms and conditions of employment include hiring, firing, discipline, supervision, direction, and determining wages and hours, as well as dictating the number of workers to be supplied, controlling scheduling, seniority, overtime, assigning work, and determining the manner and method of how work is to be performed. *Id.* In *Orchids Paper Products Co.*, 367 NLRB No. 33 slip op. (November 20, 2018), the Board found an employer and staffing company were joint employers because the employer exercised direct control over the terms and conditions of the temporary employees' employment that was more than limited or routine in nature. *Orchids Paper Products Co.*, 367 NLRB No. 33 at FN 14 *citing Browning-Ferris Industries*, 362 NLRB. No. 186 (August 27, 2015).

Here, there is no dispute that the Respondents meet the applicable legal requirements for establishing their joint employer relationship. Respondent Liberty admits Paragraphs 5(A)(1) and (2) of the Consolidated Complaint that Respondent Liberty Health Care Corp. and Respondent Plus Management by its owner and President Jerome O'Neal entered into a sales and interim operating contract providing that Respondent Liberty is the agent for Respondent Plus Management in connection with the operation of the Lima facility, and that since about January 11, 2017, Respondent Liberty has operated the Lima facility.

In its Answer, Respondent Liberty admits that it had asserted control over the employees' terms and conditions of employment as early as January 11, 2017, while Respondent Plus Management's Owner, President and Administrator, Jerome O'Neal, remained at the Lima facility until about February 2017 as the Administrator of the facility. *See Thriftown, Inc.*, 161 NLRB 603, 606-07 (1966) (finding joint employer status where putative joint employer had retained sufficient control over appearance and general operation of department store in operating agreement with shoe department operator). *See also Jewell Smokeless Coal Corp.*, 170 NLRB

392, 393 (1968) (finding joint employer status where putative joint employer retained "considerable control over the manner and means by which the operators extract the coal control" in oral agreements between it and mine operators); *Globe Discount City*, 171 NLRB 830, 830-32 (1968) (licensor was joint employer of its licensee's employees where the licensor retained substantial contractual power to control the labor policies of the licensees and to terminate the license for default which ensured its desires would be followed).

Respondent Liberty admits Paragraphs 5(B) and 5(C) of the Consolidated Complaint that since about January 11, 2017, it possessed and exercised control over the labor relations policy of Respondent Plus Management's employees, and administered a common labor policy with Respondent Plus Management regarding the employees at the Lima facility. Respondent Liberty meaningfully affected the employees' terms and conditions of employment at the Lima facility, as evidenced by Respondent Liberty's admission to Paragraph 16(A)(1) that it, by Black-Kurek, implemented an attendance policy for the employees on or about January 11, 2017. Accordingly, there is no genuine issue of material fact that Respondent Liberty and Respondent Plus Management operated as joint employers of the employees at the Lima facility at all material times until about April 21, 2017, as admitted by Respondent Liberty.

E. <u>Successor Relationship</u>

In addition to being a joint employer with Respondent Plus Management, Respondent Liberty is admittedly also a successor to Respondent Plus Management, as its employees are comprised of a majority of Respondent Plus Management's workforce and it continued the operation of the facility in basically unchanged form. *NLRB v. Burns Int'l Security Servs.*, 406 U.S. 272 (1972). In this connection, Respondent Liberty has an obligation to recognize and bargain with the Union consistent with the Supreme Court's holding in *Burns* that where a majority

of current employees were employed by the preceding employer, a change in ownership is not sufficient to affect the certification of a union and attending collective-bargaining contract. *Id.* at 272, 278-279.

Respondent Liberty's workforce on April 21, 2017 was composed primarily of Respondent Plus Management's employees, who were represented by the Union. Respondent Liberty admits that it reached its representative employee complement, of which a majority of its employees were employees of Respondent Plus Management. *See Fall River Dyeing and Finishing Corp. v. N.L.R.B.*, 482 U.S. 27 (1987), (existence of the substantial and representative complement when the job classifications designated for the operation were filled or substantially filled, when the operation was in normal or substantially normal production, size of the complement on the date of normal production).

Respondent Liberty admits that it operated the Lima facility in basically unchanged form from when it was operated and owned by Respondent Plus Management. While jointly operating the facility from January 11, 2017 to April 21, 2017, Respondent Liberty admits that about April 21, 2017, it purchased the business and the real property from Respondent Plus Management, and has continued to operate the business of Respondent Plus Management since that time.

Closely related to the facts here, the Board has found successorship liability where a new employer/successor assumed control of the predecessor's facility, even though the transfer of assets actually occurred much later. *See East Belden Corp.*, 239 NLRB 776 (1978), enfd. mem. 634 F.2d 635 (9th Cir. 1980).

In *East Belden*, the prospective buyer was in existence and executed a written purchase agreement to buy a restaurant. During the two-month escrow period until the permanent transfer of the restaurant, the buyer took control of the restaurant, and retained a majority of the seller's

unit employees who had been represented by a union. The buyer also paid various operating expenses of the restaurant, including the manager salaries and employee wages, during the escrow period. The buyer was the party to reap the profits or losses of the restaurant during the escrow period. Under these circumstances, the buyer was deemed to have acquired the obligations of a successor employer during escrow. *Id.* at 776, 791 – 792. *See also Sorrento Hotel*, 266 NLRB 350 (1983) (wherein the Board found successorship began when the new lessees executed a written interim management agreement to operate a hostelry and took control of managing the property, obtained and utilized the necessary licensing and permits to manage the property, promised to indemnify the owner for any mismanagement, and utilized the owner's employees).

The facts here are similar to those in *Sorrento Hotel* and *East Belden*. Respondent Liberty admits the allegations in Paragraphs 5(A), (B), and 6(A) and (B) of the Consolidated Complaint that effective January 11, 2017, it became a successor when it executed the sales/ interim operating agreement with Respondent Plus Management and took control over the operation of Respondent Plus Management's Lima facility; it admits that it possessed control over the labor relations policy and administered a common labor policy for Respondent Plus Management's employees. Respondent Liberty admits that when it took control over Respondent Plus Management's facilities it continued to operate a nursing home and rehabilitation facility with the same residents, employed the same size work force as its predecessor and its predecessor's employees continued to use the same skills to perform the same work in their same job classifications.

Based upon the above facts, Respondent Liberty is a successor employer to Respondent Plus Management under the Act and is obligated to recognize and bargain with the Union as the employees' collective-bargaining representative.

F. Commerce Facts for Respondent Liberty

There is no dispute or genuine issue of material fact precluding the Board from exercising jurisdiction over Respondent Liberty. Respondent Liberty admits that it meets the discretionary jurisdictional standards set forth in *East Oakland Health Alliance, Inc.*, 218 NLRB 1270, 1271 (1975) of $100,000 in gross revenues with at least $5000 of goods and services purchased directly from outside the State of Ohio.[4]

Respondent Liberty admits that it meets the gross revenue standard and has been engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act, and meets the Board's standards for jurisdiction over employers in the healthcare industry within the meaning of Section 2(14) of the Act.

G. Labor Organization Status

There is no dispute or issue of material fact that the Ohio Council 8, American Federation of State, County and Municipal Employees, AFL-CIO (Union) is a labor organization within the meaning of Section 2(5) of the Act as alleged in Paragraph 11 of the Consolidated Complaint. Respondent Liberty and the Union entered into a signed stipulation on November 16, 2018 that the Union is a labor organization within the meaning of Section 2(5). (Exh. H).

H. Supervisory and Agency Status of Liberty

Respondent Liberty admits to all of the supervisory and agency allegations set forth in Paragraphs 12(A), 12(B) and 12(C) of the Consolidated Complaint. Specifically admitting that

[4] The Consolidated Complaint alleges in Paragraph 7(A) that "[d]uring the twelve-month period ending July 11, 2017, Respondent Liberty, in conducting its business operations described above in paragraphs 3(A) through 3(D), derived gross revenues in excess of $1,000,000 from all sales or performance of services at its Lima, Bellbrook and other facilities located in the State of Ohio;" in Paragraph 7(B) that "[d]uring the period of time described above in paragraph 7(A), Respondent Liberty, purchased and received at its Lima, Ohio facility products, goods and materials valued in excess of $5,000 directly from points located outside the State of Ohio;" and in Paragraph 8 that "[a]t all material times Respondent Liberty has been engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act, and has been a health care institution within the meaning of Section 2(14) of the Act."

Linda Black-Kurek is President of Liberty Retirement Community of Lima, President of Liberty Health Care Corp., Management Member of Liberty Retirement Properties of Lima, Ltd., and President of Liberty Villas of Lima, Inc. and has been a supervisor of each Liberty entity within the meaning of Section 2(11) of the Act and an agent of each Liberty entity within the meaning of Section 2(13) of the Act.

Respondent Liberty further admits that the following individuals held the positions set forth opposite their respective names and have been supervisors of Respondent Liberty Retirement Community of Lima, Inc. within the meaning of Section 2(11) of the Act and/or agents of Respondent Liberty Retirement Community of Lima, Inc. within the meaning of Section 2(13) of the Act:

Sandra McClellan	Registered Nurse Consultant
Lance Nickles	Administrator
Jeremy Kindle	Former Director of Nursing
Ashli Gatchell	Clinical Manager/Assistant Director of Nursing
Ashley Wagner	Assistant Director of Nursing
Georgiana Saffle	Vice President of Operations
Heather Fogle	Human Resources Manager
Linda Miles	Office Manager
Margaret Gwen	Former Dietary Department Manager (until about April 24, 2017)
Melissa Schmidt	Former Administrator

	(until about May 2017)
Timothy Storer	Former Administrator
	(until about May 2017)
Amber Addair	Office Manager
Kurt Lucas	Maintenance Director"

Respondent Liberty further admits that the following individuals held the positions set forth opposite their respective names and have been supervisors of Respondent Liberty Health Care Corp. within the meaning of Section 2(11) of the Act and/or agents of Respondent Liberty Health Care Corp. within the meaning of Section 2(13) of the Act:

Chris Behm	Building Project Manager
Tim Murphy	Maintenance
Chris Theile	Maintenance"

Respondent Liberty admits that the individuals identified in Paragraphs 12(A) through (C) of the Consolidated Complaint have been supervisors and/or agents of Respondent Liberty and its entities within the meaning of Section 2(11) and 2(13) of the Act, respectively. Therefore, there is no dispute or issue of material fact to prevent the Board from concluding the supervisory and/or agency status of these individuals.

I. <u>The Discharge Allegations</u>

After the sale of the Lima facility from Respondent Plus Management on April 24, 2017, Respondent Liberty admits that it unlawfully discharged its employees Megon Amstutz (Twining), Karen Arnett, Sharon Bruce, April Burden, Felicia Forrest (King), U'Hura George, LaShawnda Gibson, Tia Macklin, Michael Miller, Janice Newland, Arnetta Shorter, Kelly Stevens, and Diann

Williams because the employees engaged in union and other concerted activities and to avoid its bargaining obligation with the Union (Paragraphs 13(A) and 13(B) of the Consolidated Complaint).

The named employees engaged in union and other concerted activities that were known to Respondent Liberty. Respondent Liberty admits that it terminated Amstutz (Twining), Arnett, Bruce, Burden, Forrest (King), George, Gibson, Macklin, Miller, Newland, Arnetta, Stevens, and Williams because of their union and other concerted activities, and to make it appear that a majority of its employee complement were not former employees of Respondent Plus Management. *Director, Office of Workers' Comp. Programs v. Greenwich Collieries*, 512 U.S. 267, 278 (1994), *clarifying NLRB v. Transportation Management*, 462 U.S. 393, 395, 403 n.7 (1983); *Wright Line*, 251 NLRB 1083, 1089 (1980).

Similar to Respondent Liberty, the successor employer in *Love's Barbeque Restaurant No. 62*, 245 NLRB 78 (1979), enfd. in pertinent part 640 F.2d 1094 (9th Cir. 1981), violated Section 8(a)(3) by discriminatorily refusing to hire its predecessor's employees based on unlawful considerations, and violated Section 8(a)(5) by unlawfully refusing to hire its predecessor's employees to ensure that its employee complement was not comprised of a majority of represented employees. The Board concluded that but for the employer's unlawful refusal to hire, the union's status as the exclusive bargaining representative would have survived the successor's takeover of the business. *Love's Barbeque, supra* at 82.

Here, Respondent Liberty admits that it unlawfully discharged the thirteen named employees on April 24, 2017, not only due to their known union and other concerted activities, but also to avoid its obligation to recognize and bargain with the Union by making certain that it did not employ a majority of those employees previously employed by Respondent Plus Management.

Respondent Liberty also admits that in addition to their union and other concerted activities, and in its attempt to avoid its obligation to recognize and bargain with the Union, it terminated Arnett and Amstutz (Twining) on April 24, 2017 because Arnett filed an unfair labor practice charge in Case 08-CA-180445, and because Amstutz (Twining) provided affidavit testimony to the Board in connection with the investigation of that charge in violation of Section 8(a)(4) of the Act. (Paragraphs 13(C)(1) and 13(C)(2) of the Consolidated Complaint). Respondent Liberty admits that it discharged Amstutz and Arnett because they participated in the Board's processes. *See Newcor Bay City Division*, 351 NLRB 1034 fn. 4 (2007); *All Pro Vending, Inc.*, 350 NLRB 503, 515 (2007); *Wright Line*, 251 NLRB 1083 (1980), enfd. 662 F.2d 899 (1st Cir. 1981), cert, denied 455 U.S. 989 (1982). Respondent Liberty violated Section 8(a)(3), (4) and (5) by discharging Arnett and Amstutz because they engaged in known union activities, because they participated in the Board's processes by filing an unfair labor practice charge and by giving testimony in the investigation of that charge, and because the Respondent sought to avoid its bargaining obligation. (Paragraphs 13(C)(1) and (2) of the Consolidated Complaint).

Finally, on or about May 11, 2017, Respondent Liberty admits that it discharged Laquanna Watkins because she concertedly complained to Respondent Liberty regarding wages, hours and working conditions of Respondent Liberty's employees (Paragraph 14 of the Consolidated Complaint). Watkins concertedly complained to Respondent Liberty about working conditions of her and her coworkers. Respondent Liberty admits that Watkins told Human Resources Manager Heather Fogle and Director of Nursing Jeremy Kindle that she filed a complaint with the Lima Health Department and Respondent Liberty's compliance line (Paragraph 14(A) of the Consolidated Complaint). Respondent Liberty had knowledge of Watkins' concerted activity and it admits that the decision to discharge Watkins was motivated by her concerted complaints to the

health department and the corporate compliance line. *Meyers Industries*, 268 NLRB 493, 497 (1984) (*Meyers I*). Respondent Liberty admits that it violated Section 8(a)(1) when it discharged Watkins on May 11, 2017 because of her concerted complaints and to discourage employees from engaging in similar concerted activities (Paragraphs 14(B) and (C) of the Consolidated Complaint).

Based on its admissions to Paragraph 13 and 14 of the Consolidated Complaint, there is no genuine issue of material fact to preclude a judgment that Respondent Liberty violated Section 8(a)(1) and (3) of the Act by discharging the above-named thirteen employees on April 24, 2017 because of their union and other concerted activities; violated Section 8(a)(4) of the Act by discharging Amstutz and Arnett because they gave testimony to the Board and filed a charge with the Board; and violated Section 8(a)(1) of the Act by discharging Watkins on May 10, 2017 because she engaged in protected concerted activities.

J. <u>The Bargaining Unit</u>

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

> All full-time and regular part-time, and occasional part-time associates of [the Employer] at its care facility located in Lima, Ohio, in the following classifications: Cook, Maintenance Worker, Dietary Crew Leader, Food Service Worker, and State Tested Nursing Assistant (STNA).[5]

From about 2007 until April 21, 2017, the Union had been the exclusive collective-bargaining representative of the bargaining unit employees employed by Respondent Plus Management and during that time, such recognition was embodied in successive collective bargaining agreements, the most recent of which was effective from January 1, 2016 through December 31, 2018 (Paragraph 15(B) of the Consolidated Complaint). Since about January 11, 2017, based upon the facts described in Paragraph 6 of the Consolidated Complaint, the Union has

[5] Paragraph 15(A) of the Consolidated Complaint.

been the designated exclusive collective-bargaining representative of the Unit (Paragraph 15(C) of the Consolidated Complaint).

Respondent Liberty admits Paragraphs 15(A), 15(B) and 15(C) of the Consolidated Complaint. Accordingly, there is no dispute or issue of material fact to prevent the Board from concluding that the Unit is appropriate and that the Union has, at all material times, been the exclusive collective-bargaining representative of the Unit.

K. <u>Unilateral Changes</u>

Respondent Liberty took operational control effective January 11, 2017 pursuant to the interim sales and operating agreement with Respondent Plus Management. On that day, Respondent Liberty, by Black-Kurek, made unilateral changes to employees' terms and conditions of work without notifying and without bargaining with the Union. An employer violates Section 8(a) (5) and (1) of the Act if it changes the wages, hours, or terms and conditions of employment of represented employees without providing the Union with prior notice and an opportunity to bargain over such changes. *See NLRB v. Katz*, 369 U.S. 736, 743, 747 (1962). In order to be a mandatory subject of bargaining, the change must have a "material, substantial, and significant" impact on the terms and conditions of work. *Flambeau Airmold Corp.*, 334 NLRB 165, 165 (2001). Here, Respondent Liberty admits that it orally announced a new attendance policy on January 11, 2017, and distributed and implemented the attendance policy and a new employee handbook on about April 25, 2017. Respondent Liberty admits that it made those changes without notifying and without bargaining with the Union. (Paragraphs 16(A)(1) and (2) of the Consolidated Complaint). There is no dispute that an employer's attendance policy and changes to an employee handbook that includes wages, hours, or terms and conditions are mandatory subjects of bargaining. *Dorsey Trailers*, 327 NLRB 835, 853 fn. 26 (1999); *E.I. du Pont & Co.*, 259 NLRB

1210, 1211 (1982). Respondent Liberty admits that the attendance policy and the employee handbook are related to wages, hours and other terms and conditions of employment and are mandatory subjects of bargaining, and that it did not give notice to or bargain with the Union about the decisions or the effects of the changes to the attendance policy and the employee handbook (Paragraphs 16(B) and (C) of the Consolidated Complaint).

Accordingly, there is no dispute that Respondent violated Section 8(a)(5) of the Act by making unilateral changes to employees' terms and conditions of work without giving the Union notice of and the opportunity to bargain over the changes and their effects.

L. Refusal to Recognize and Bargain with the Union and Withdrawal of Recognition

Respondent Liberty, as a *Burns* successor, failed to recognize and bargain with the Union and therefore cannot rely on its discharge of thirteen bargaining unit employees and employee disaffection to challenge the Union's majority status, avoid its bargaining obligation, and withdraw recognition. *See Lee Lumber & Building Material Corp.* 334 NLRB 399 (2001) enfd. 310 F.3d 209 (D.C. Cir. 2002). *See also Love's Barbecue Restaurant No. 62*, 245 NLRB 78, 82 (1979) (where the Board held that "but for" the successor's unlawful conduct, the union's status as the bargaining representative would have survived the successor's takeover of the business)

Here, the Union made nine written requests that Respondent Liberty recognize the Union as the exclusive bargaining representative of the Unit and to bargain collectively with the Union. Respondent Liberty refused. Rather than bargain with the Union for a reasonable period of time, Respondent Liberty discharged thirteen employees to avoid its successor bargaining obligation, refused to recognize and bargain with the Union, and unlawfully withdrew recognition from the Union.

Respondent Liberty admits that the Union has been the exclusive collective bargaining representative of the Unit employed by Respondent Plus Management from 2007 until April 21, 2017, and that recognition has been embodied in successive collective bargaining agreements (Paragraph 15(B) of the Consolidated Complaint). Respondent Liberty also admits that it purchased the business of Respondent Plus Management on April 21, 2017 and, but for the discharge of thirteen employees, Respondent Liberty would have employed a majority of Respondent Plus Management Unit employees (Paragraphs 13(A), 13 (D) (1) and (2) of the Consolidated Complaint). Respondent Liberty also admits that the Union demanded recognition and bargaining by letters dated April 25, May 2, May 8, May 16, May 25, June 8, June 26, July 5, and July 11, 2017, and that since about April 25, 2017, it has failed and refused to recognize and bargain with the Union as the exclusive collective-bargaining representative of the Unit (Paragraphs 17(A) and (B) of the Consolidated Complaint).

Respondent Liberty admits that it unlawfully withdrew recognition from the Union on or about April 25, 2017, and repudiated the collective bargaining agreement (Paragraphs 17(C) and (D) of the Consolidated Complaint).

Respondent Liberty has not fulfilled its obligation as a *Burns* successor to recognize and bargain with the incumbent Union, and accordingly the Union's majority status is protected from challenge for a reasonable period of time. *UGL-UNICCO Service Co.*, 357 NLRB 801 (2011). The successor bar commences "when a successor employer acts in accordance with its legal obligation to recognize an incumbent representative of its employees" *Id.* at 801.

Based on the foregoing admissions, it is undisputed that Respondent Liberty violated Section 8(a)(5) of the Act by failing to recognize and bargain with the Union, by repudiating the collective bargaining agreement, and thereafter by withdrawing recognition.

M. Information Requests

Respondent Liberty admits it unlawfully refused to provide the Union with information it requested that was necessary for and relevant to the Union to perform its function as the exclusive collective-bargaining representative of the Unit. Since about June 8, 2017, the Union requested in writing, that Respondent Liberty furnish the Union a copy of the sales agreement between Liberty and Jerome O'Neal; the personnel policies put into effect since February 1, 2017; a list of all employees, including job classification, date of hire and salary information; a list of all employees terminated on or after the signing of the sales agreement and the reason for termination (Paragraph 18(A) of the Consolidated Complaint).

The Union's request for bargaining unit information, specifically the policies applicable to bargaining unit employees, a list of all employees, the names of employees discharged since the execution of the interim operating and sales agreement and the reason for the discharge, is presumptively relevant information that Respondent Liberty is obligated to furnish to the Union. Moreover, the request for the interim operating and sales agreement is necessary and relevant for the Union to identify the parameters of Respondent Liberty's control over terms and conditions of work of the bargaining unit employees. (Consolidated Complaint Paragraph 18(B)). *See Country Ford Trucks, Inc. v. NLRB*, 229 F.3d 1184, 1191 (D.C. Cir. 2000) (noting "[i]nformation related to the wages, benefits, hours, [and] working conditions" of unit employees is presumptively relevant); *Brewery Products Inc.*, 302 NLRB 98, 103 (1991) (affirming Administrative Law Judge's decision noting a union's information request for a sales agreement was "clearly relevant and necessary for the Union to intelligently prepare for bargaining with Respondent over the effects of the sale.") Respondent Liberty admits that the information requested by the Union on or about June 8, 2017 is necessary and relevant information.

Respondent Liberty makes no claim that the Union's request was in bad faith, that the information requested is not relevant or privileged. Rather, Respondent Liberty admits that it failed and refused to provide the information to the Union (Paragraph 18(C) of the Consolidated Complaint). Accordingly, there is no issue of material fact in dispute that Respondent Liberty violated Section 8(a)(5) of the Act by failing to provide the Union with the requested information.

N. <u>Statutory Conclusions</u>

Respondent Liberty admits its conduct expressly violates Sections 8(a)(1), (3), (4) and (5) of the Act, as alleged in Consolidated Complaint Paragraphs 19, 20, 21 and 22. Finally, Respondent Liberty admits that its unfair labor practices described above affect commerce within the meaning of Section 2(6) and (7) of the Act (Paragraph 23 of the Consolidated Complaint).

By the material admissions described above, Respondent Liberty's actions reveal a determined effort to evade its bargaining obligation with the Union while it exercised control and direction of the bargaining unit employees employed at the Lima facility. It admits that it was a joint employer with Respondent Plus Management and a *Burns* successor to Respondent Plus Management. Respondent Liberty further admits that, as a joint employer and a successor to Respondent Plus Management, it unilaterally implemented policies that substantially impacted the terms and conditions of work of the unit employees; it discharged employees because of their union and other concerted activities; it discharged employees because they filed charges and participated in the investigation of those charges; it discharged an employee because of her protected concerted activities; its discharge of employees was motivated by its intent to evade its obligation to recognize and bargain with the Union; it refused to recognize and bargain with the Union; it withdrew recognition from the Union, and it refused to provide the Union with requested necessary and relevant information. Accordingly, the General Counsel is entitled to a judgment

as a matter of law as there are no contested issues of material fact based on extant Board precedent. *See Conoco Chemicals Co.*, 275 NLRB 39, 40 (1985) (citing *Stephens College*, 260 NLRB 1049, 1050 (1982) ("It is a settled principle that for summary judgment to be appropriate the record must show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law.")

II. CONCLUSION

As there are no genuine issues of material fact and the General Counsel has demonstrated that it is entitled to a judgment as a matter of law, the undersigned Counsel for the General Counsel moves jointly with Respondent Liberty that: (1) the Complaint and this proceeding be transferred to and continued before the Board; (2) the Board find the allegations of the Complaint to be true; (3) the Board issue a Decision and Order based on such findings requiring Respondent Liberty:

> (1) Recognize and bargain in good faith with the Union as the exclusive bargaining representative of the employees and, if an understanding is reached, embody the agreement in a signed document;
>
> (2) Cease and desist from interfering with, restraining, or coercing employees in the exercise of their Section 7 rights;
>
> (3) Pay the named discriminatees in Paragraphs 13 and 14 of the Consolidated Complaint for the wages and other benefits they lost as a result of the Respondent Liberty's unlawful actions; [6]
>
> (4) Remove from its files all references to the discharges of the named discriminatees in Paragraphs 13 and 14 of the Consolidated Complaint and

[6] The discriminatees identified in Paragraphs 13 and 14 of the Consolidated Complaint have signed waivers of reinstatement to their former positions.

notify the employees in writing that this has been done and that the discharge will not be used against them in any way;

(5) Upon request by the Union, rescind any or all changes to the Unit's wages, hours and terms and conditions of employment that were made without giving the Union prior notice and an opportunity to bargain;

(6) Provide the Union with the following information, which it requested by letter on June 8, 2017: (i) A copy of the sales agreement between Liberty and Jerome O'Neal; (ii) Personnel policies that have come into effect since February 1, 2017; (iii) A list of all employees, including job classification, date of hire and salary information; and (iv) A list of all employees terminated on or after the signing of the sales agreement, and the reason for termination;

(7) Post copies of the Board's Order in all locations where other notices to employees are customarily posted, maintain these postings during the Board's administrative process free from all obstructions and defacement and grant to agents of the Board reasonable access to these facilities in order to maintain compliance with the posting requirements; and

(8) Grant such other and further relief as the Board deems appropriate.

Dated at Cleveland, Ohio on this 14th day of March 2019.

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EXHIBIT A

UNITED STATES OF AMERICA
NATIONAL LABOR RELATIONS BOARD
REGION 8

LIBERTY RETIREMENT COMMUNITY OF LIMA, INC., LIBERTY HEALTH CARE CORP., LIBERTY RETIREMENT PROPERTIES OF LIMA LTD., LIBERTY VILLAS OF LIMA, INC., AND LIBERTY NURSING PROPERTIES OF WOODLAND MANOR, LTD., A SINGLE EMPLOYER AND		
PLUS MANAGEMENT SERVICES, INC. D/B/A BATON ROUGE MEDICAL AND REHAB CENTER OF LIMA,		
JOINT EMPLOYERS		
and	**Cases**	**08-CA-198572** **08-CA-201287**
AMERICAN FEDERATION OF STATE, COUNTY AND MUNICIPAL EMPLOYEES, AFL-CIO, OHIO COUNCIL 8		

ORDER CONSOLIDATING CASES, CONSOLIDATED COMPLAINT AND NOTICE OF HEARING

Pursuant to Section 102.33 of the Rules and Regulations of the National Labor Relations Board (the Board), and to avoid unnecessary costs or delay, IT IS ORDERED THAT Case 08-CA-198572 and Case 08-CA-201287, which are based on charges filed by the American Federation of State, County and Municipal Employees, AFL-CIO, Ohio Council 8 (the Union) against Plus Management Services, Inc. d/b/a Baton Rouge Medical and Rehab Center of Lima (Respondent Plus Management), a joint employer with successor employer Liberty Retirement Community of Lima, Inc., Liberty Health Care Corp., Liberty Retirement Properties of Lima Ltd., Liberty Villas of Lima, Inc., and

Liberty Nursing Properties of Woodland Manor, Ltd., (collectively, Respondent Liberty) a single employer (collectively, Respondents) are consolidated.

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

1. (A) The charge in Case 08-CA-198572 was filed by the Union on May 11, 2017 and a copy was served on Respondent Liberty Retirement Community of Lima, Inc., Respondent Liberty Health Care Corp., and Respondent Plus Management by U.S. mail on May 11, 2017.

(B) The first amended charge in Case 08-CA-198572 was filed by the Union on July 28, 2017 and a copy was served on Respondent Liberty Nursing Properties of Woodland Manor, Ltd., Respondent Liberty Retirement Community of Lima, Inc., and Respondent Plus Management by U.S. mail on July 28, 2017.

(C) The second amended charge in Case 08-CA-198572 was filed by the Union on April 30, 2018 and a copy was served on Respondent Liberty Retirement Community of Lima, Inc., Respondent Liberty Health Care Corp., Respondent Liberty Retirement Properties of Lima, Ltd., Respondent Liberty Villas of Lima, Inc., Respondent Liberty Nursing Properties of Woodland Manor, Ltd., and Respondent Plus Management by U.S. mail on April 30, 2018.

2. (A) The charge in Case 08-CA-201287 was filed by the Union on June 26, 2017 and a copy was served on Respondent Liberty Retirement Community of Lima,

Inc., Respondent Liberty Health Care Corp., and Respondent Plus Management by U.S. mail on June 27, 2017.

(B) The first amended charge in Case 08-CA-201287 was filed by the Union on July 28, 2017 and a copy was served on Respondent Liberty Nursing Properties of Woodland Manor, Ltd., Respondent Liberty Retirement Community of Lima, Inc., and Respondent Plus Management by U.S. mail on July 28, 2017.

(C) The second amended charge in Case 08-CA-201287 was filed by the Union on April 30, 2018 and a copy was served on Respondent Liberty Retirement Community of Lima, Inc., Respondent Liberty Health Care Corp., Respondent Liberty Retirement Properties of Lima, Ltd., Respondent Liberty Villas of Lima, Inc., Respondent Liberty Nursing Properties of Woodland Manor, Ltd., and Respondent Plus Management by U.S. mail on April 30, 2018.

3. (A) At all material times, Respondent Liberty Retirement Community of Lima, Inc., has been a corporation with an office and place of business in Lima, Ohio (Lima facility) and has been engaged in the operation of a skilled nursing home and residential care facility providing inpatient medical care.

(B) At all material times, Respondent Liberty Health Care Corp. has been a corporation with an office and place of business in Bellbrook, Ohio (Bellbrook facility) and has been engaged in the operation and management of skilled nursing home and residential care facilities at various locations within the State of Ohio, including Cincinnati, Mansfield and the Lima facility described above in paragraph 3(A).

(C) At all material times, Respondent Liberty Retirement Properties of Lima, Ltd., formerly known as Liberty Nursing Properties of Woodland Manor, Ltd., has

been a limited partnership with an office and place of business in Bellbrook, Ohio, (Bellbrook facility) and has been engaged in the acquisition of real property, including the real property located at 2440 Baton Rouge Ave., Lima, Ohio.

(D) At all material times, Respondent Liberty Villas of Lima, Inc., formerly known as The Villa at Baton Rouge, has been a corporation with an office and place of business in Lima, Ohio (Lima facility) and has been engaged in the operation of an assisted living facility offering assistance to residents with day-to-day living.

(E) At all material times, Respondent Plus Management Services, Inc. d/b/a Baton Rouge Medical and Rehab Center of Lima has been a corporation with an office and place of business in Lima, Ohio (Lima facility) and has been engaged in the operation of a skilled nursing home and residential care facility providing inpatient medical care.

4. (A) At all material times, Respondent Liberty Retirement Community of Lima, Inc., and Respondents Liberty Health Care Corp., Liberty Retirement Properties of Lima Ltd., Liberty Villas of Lima, Inc., and Liberty Nursing Properties of Woodland Manor, Ltd., have been affiliated business enterprises with common officers, ownership, directors, management and supervision; have formulated and administered a common labor policy; have shared common premises and facilities; have provided services for and made sales to each other; have interchanged personnel with each other; have interrelated operations with common purchasing, sales and provision of services; and have held themselves out to the public as a single-integrated business enterprise.

(B) Based on its operations described above in paragraph 4(A), Respondent Liberty Retirement Community of Lima, Inc., Respondents Liberty Health

Care Corp., Liberty Retirement Properties of Lima Ltd., Liberty Villas of Lima, Inc., and Liberty Nursing Properties of Woodland Manor, Ltd. constitute a single-integrated business enterprise and a single employer within the meaning of the Act.

5. (A) (1) Since about January 11, 2017, Respondent Plus Management and Respondent Liberty Health Care Corp. have been parties to a sales and interim operating contract providing that Respondent Liberty Health Care Corp. is the agent for Respondent Plus Management in connection with the operation of the Lima facility.

(2) Since about January 11, 2017, Respondent Liberty Health Care Corp. has operated the Lima facility as Liberty Retirement Community of Lima, Inc.

(B) Since about January 11, 2017, Respondent Liberty has possessed control over the labor relations policy of Respondent Plus Management, exercised control over the labor relations policy of Respondent Plus Management and administered a common labor policy with Plus Management for the employees of Respondent Plus Management at the Lima facility.

(C) At all material times until about April 21, 2017, Respondent Liberty and Respondent Plus Management have been joint employers of the employees of Respondent Plus Management.

6. (A) Since about January 11, 2017, and after April 21, 2017, Respondent Liberty has continued to operate the business of Respondent Plus Management described above in paragraph 5(A) in basically unchanged form and has

employed as a majority of its employees individuals who were previously employees of Respondent Plus Management.

(B) About April 21, 2017, Respondent Liberty purchased the business conducted at the Lima facility and its real property from Respondent Plus Management, and since then has continued to operate the business of Respondent Plus Management.

(C) Based on its operations described above in paragraphs 6(A) and 6(B) and since about January 11, 2017, Respondent Liberty has continued to be the employing entity and is a successor to Respondent Plus Management.

7. (A) During the twelve-month period ending July 11, 2017, Respondent Liberty, in conducting its business operations described above in paragraphs 3(A) through 3(D), derived gross revenues in excess of $1,000,000 from all sales or performance of services at its Lima, Bellbrook and other facilities located in the State of Ohio.

(B) During the period of time described above in paragraph 7(A), Respondent Liberty, purchased and received at its Lima, Ohio facility products, goods and materials valued in excess of $5,000 directly from points located outside the State of Ohio.

8. At all material times Respondent Liberty has been engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act, and has been a health care institution within the meaning of Section 2(14) of the Act.

9. (A) In conducting its operations during the calendar year ending December 31, 2017, Respondent Plus Management derived gross revenues in excess of $100,000.

(B) During the period of time described above in paragraph 9(A), Respondent Plus Management purchased and received at its Lima, Ohio facility products, goods and materials valued in excess of $5,000 directly from points located outside the State of Ohio.

10. At all material times, Respondent Plus Management has been an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act, and has been a health care institution within the meaning of Section 2(14) of the Act.

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

12. (A) At all material times Linda Black-Kurek held the positions in the entities set forth below and has been a supervisor of each entity within the meaning of Section 2(11) of the Act and an agent of each entity within the meaning of Section 2(13) of the Act:

Liberty Retirement Community of Lima, Inc.	President
Liberty Health Care Corp.	President
Liberty Retirement Properties of Lima, Ltd.	Managing Member
Liberty Villas of Lima, Inc.	President

(B) At all material times the following individuals held the positions set forth opposite their respective names and have been supervisors of Respondent Liberty Retirement Community of Lima, Inc. within the meaning of Section 2(11) of the Act and/or agents of Respondent Liberty Retirement Community of Lima, Inc. within the meaning of Section 2(13) of the Act:

Sandra McClellan	Registered Nurse Consultant

Lance Nickles	Administrator
Jeremy Kindle	Former Director of Nursing
Ashli Gatchell	Clinical Manager/Assistant Director of Nursing
Ashley Wagner	Assistant Director of Nursing
Georgiana Saffle	Vice President of Operations
Heather Fogle	Human Resources Manager
Linda Miles	Office Manager
Margaret Gwen	Former Dietary Department Manager (until about April 24, 2017)
Melissa Schmidt	Former Administrator (until about May 2017)
Timothy Storer	Former Administrator (until about May 2017)
Amber Addair	Office Manager
Kurt Lucas	Maintenance Director

(C) At all material times the following individuals held the positions set forth opposite their respective names and have been supervisors of Respondent Liberty Health Care Corp. within the meaning of Section 2(11) of the Act and/or agents of Respondent Liberty Health Care Corp. within the meaning of Section 2(13) of the Act:

Chris Behm	Building Project Manager

Tim Murphy	Maintenance
Chris Theile	Maintenance

(D) At all material times the following individuals held the positions set forth opposite their respective names and have been supervisors of Respondent Plus Management, within the meaning of Section 2(11) of the Act and/or agents of Respondent Plus Management, within the meaning of Section 2(13) of the Act:

Jerome O'Neal	Owner, President, Administrator
Jeremy Kindle	Director of Nursing
Ashli Gatchell	Clinical Manager/Assistant Director of Nursing
Ashley Wagner	Assistant Director of Nursing
Georgiana Saffle	Vice President of Operations
Heather Fogle	Human Resources Manager
Margaret Gwen	Dietary Department Manager
Kurt Lucas	Maintenance Director
Timothy Storer	Administrator

13. (A) About April 24, 2017, Respondent Liberty terminated the following employees:

(1) Megon Amstutz (Twining);

(2) Karen Arnett;

(3) Sharon Bruce;

(4) April Burden;

(5) Felicia Forrest (King);

(6) U'Hura George;

(7) LaShawnda Gibson;

(8) Tia Macklin;

(9) Michael Miller;

(10) Janice Newland;

(11) Aneta Shorter;

(12) Kelly Stevens;

(13) Diann Williams.

(B) Respondent Liberty engaged in the conduct described above in paragraph 13(A)(1) through 13(A)(13) because the named employees were members of the Union and engaged in concerted activities, and to discourage employees from engaging in these activities.

(C) (1) Respondent Liberty engaged in the conducted described above in paragraphs 13(A)(1) because Amstutz (Twining) gave testimony to the Board in the form of an affidavit in connection with the investigation of Case 08-CA-180445.

(2) Respondent Liberty engaged in the conduct described above in paragraph 13(A)(2) because Arnett filed a charge with the Board in Case 08-CA-180445.

(D) (1) About April 21, 2017, Respondent Liberty purchased the business of Respondent Plus Management, as described above in paragraph 6.

(2) But for the conduct described above in paragraphs 13(A)(1) through 13(A)(13), Respondent Liberty would have employed, as a majority of its

employees, individuals who were previously employees of Respondent Plus Management.

(3) Based on the conduct described above in paragraphs 13(A)(1) through 13(A)(13) and below in paragraph 14(B) and the operations described above in paragraph 6, Respondent Liberty has continued to be the employing entity and is a successor to Respondent Plus Management.

14. (A) About May 10, 2017, Respondent Liberty's employee Laquanna Watkins concertedly complained to Respondent Liberty regarding the wages, hour, and working conditions of Respondent Liberty's employees by informing Heather Fogle and Jeremy Kindle that she filed a complaint with the Lima Health Department and Respondent Liberty's compliance line.

(B) About May 11, 2017, Respondent Liberty terminated employee Laquanna Watkins.

(C) Respondent Liberty engaged in the conduct described above in paragraph 14(B) because Watkins engaged in the conduct described above in paragraph 14(A), and to discourage employees from engaging in these or other concerted activities.

15. (A) The following employees of Respondents (the Unit) constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act:

> All full-time and regular part-time, and occasional part-time associates of [the Employer] at its care facility located in Lima, Ohio, in the following classifications: Cook, Maintenance Worker, Dietary Crew Leader, Food Service Worker, and State Tested Nursing Assistant (STNA).

(B) From about 2007 until about April 21, 2017, the Union had been the exclusive collective bargaining representative of the Unit employed by Respondent

Plus Management and during that time this recognition was embodied in the successive collective bargaining agreements the most recent of which is effective from January 1, 2016 through December 31, 2018.

(C) Since about January 11, 2017, based on the facts described above in paragraph 6, the Union has been the designated exclusive collective bargaining representative of the Unit.

16. (A) (1) About January 11, 2017, Respondent Liberty, by Linda Black-Kurek, orally announced a new attendance policy.

(2) About April 25, 2017 Respondent Liberty, by Black-Kurek, distributed and implemented the attendance policy described above in paragraph 16(A)(1), a new employee handbook containing workplace policies, rules, wages, benefits and other terms and conditions of employment.

(B) The subjects set forth above in paragraph 16(A)(1) and 16(A)(2) relate to wages, hours, and other terms and conditions of employment of the Unit and are mandatory subjects for the purposes of collective bargaining.

(C) Respondent Liberty engaged in the conduct described above in paragraphs 16(A)(1) and (2) without prior notice to the Union and without affording the Union an opportunity to bargain with Respondent Liberty with respect to this conduct.

17. (A) By letters dated April 25, May 2, May 8, May 16, May 25, June 8, June 26, July 5, and July 11, 2017, the Union requested that Respondent Liberty recognize it as the exclusive collective bargaining representative of the Unit and to bargain collectively with the Union as the exclusive collective bargaining representative of the Unit.

(B) Since about April 25, 2017, Respondent has failed and refused to recognize and bargain with the Union as the exclusive collective-bargaining representative of the Unit.

(C) On or about April 25, 2017, Respondent Liberty withdrew its recognition of the Union as the exclusive collective-bargaining representative of the Unit.

(D) Since on or about April 25, 2017, Respondent Liberty repudiated the collective bargaining agreement as described above in paragraph 15(B).

18. (A) Since about June 8, 2017, the Union has requested in writing that Respondent Liberty furnish the Union with the following information:

(1) A copy of the sales agreement between Liberty and Jerome O'Neal;

(2) Personnel policies that have come into effect since February 1, 2017;

(3) A list of all employees, including job classification, date of hire and salary information; and

(4) A list of all employees terminated on or after the signing of the sales agreement, and the reason for termination.

(B) The information requested by the Union, as described above in paragraph 18(A) and its subparagraphs, is necessary for, and relevant to, the Union's performance of its duties as the exclusive collective bargaining representative of the Unit.

(C) Since about June 8, 2017, Respondent Liberty, has failed and refused to furnish the Union with the information requested by it as described above in paragraph 18(A) and its subparagraphs.

19. By the conduct described above in paragraph 14, Respondent Liberty has been interfering with, restraining, and coercing employees in the exercise of the rights guaranteed in Section 7 of the Act in violation of Section 8(a)(1) of the Act.

20. By the conduct described above in paragraph 13(A) and 13(B), Respondent Liberty has been discriminating in regard to the hire or tenure or terms or conditions of employment of its employees, thereby discouraging membership in a labor organization in violation of Section 8(a)(1) and (3) of the Act.

21. By the conduct described above in paragraph 13(A)(1), 13(A)(2) and 13(C), Respondent Liberty has been discriminating against employees for filing charges or giving testimony under the Act in violation of Section 8(a)(1) and (4) of the Act.

22. By the conduct described above in paragraphs 16 through 18 and their subparagraphs, Respondent Liberty has been failing and refusing to bargain collectively and in good faith with the exclusive collective-bargaining representative of its employees within the meaning of Section 8(d) of the Act in violation of Section 8(a)(1) and (5) of the Act.

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

WHEREFORE, as a part of the remedy for the unfair labor practices alleged above in paragraphs 13 through 18 and their subparagraphs, the General Counsel seeks an Order requiring that at a meeting or meetings scheduled to ensure the widest possible attendance, Respondent Liberty's representative, Linda Black-Kurek, read the Notice to the employees in English on work time in the presence of a Board agent. Alternatively, the General Counsel seeks an Order requiring that Respondent Liberty promptly have a

Board agent read the Notice to employees during work time in the presence of Respondent Liberty's supervisors and agents identified above in paragraph 12 and its subparagraphs.

The General Counsel further seeks all other relief as may be just and proper to remedy the unfair labor practices alleged.

ANSWER REQUIREMENT

Respondent is notified that, pursuant to Sections 102.20 and 102.21 of the Board's Rules and Regulations, it must file an answer to the complaint. The answer must be **received by this office on or before June 14, 2018, or postmarked on or before June 13, 2018**. Respondent should file an original and four copies of the answer with this office and serve a copy of the answer on each of the other parties.

An answer may also be filed electronically through the Agency's website. To file electronically, go to www.nlrb.gov, click on **E-File Documents,** enter the NLRB Case Number, and follow the detailed instructions. The responsibility for the receipt and usability of the answer rests exclusively upon the sender. Unless notification on the Agency's website informs users that the Agency's E-Filing system is officially determined to be in technical failure because it is unable to receive documents for a continuous period of more than 2 hours after 12:00 noon (Eastern Time) on the due date for filing, a failure to timely file the answer will not be excused on the basis that the transmission could not be accomplished because the Agency's website was off-line or unavailable for some other reason. The Board's Rules and Regulations require that an answer be signed by counsel or non-attorney representative for represented parties or by the party if not represented. See Section 102.21. If the answer being filed electronically is a pdf document containing the required signature, no paper copies of the answer need to

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

NOTICE OF HEARING

PLEASE TAKE NOTICE THAT on the 4th day of September 2018, at 1:00 p.m., in a court room of the Common Pleas Court, Allen County Courthouse, 301 N. Main Street, Lima, Ohio, , and on consecutive days thereafter until concluded, a hearing will be conducted before an administrative law judge of the National Labor Relations Board. At the hearing, Respondent and any other party to this proceeding have the right to appear and present testimony regarding the allegations in this complaint. The procedures to be followed at the hearing are described in the attached Form NLRB-4668. The procedure to request a postponement of the hearing is described in the attached Form NLRB-4338.

Dated at Cleveland, Ohio this 31st day of May 2018.

/s/ Allen Binstock

ALLEN BINSTOCK
REGIONAL DIRECTOR
NATIONAL LABOR RELATIONS BOARD
REGION 08
1240 E 9TH ST
STE 1695
CLEVELAND, OH 44199-2086

Attachments

UNITED STATES GOVERNMENT
NATIONAL LABOR RELATIONS BOARD

NOTICE

Cases 08-CA-198572;
08-CA-201287

The issuance of the notice of formal hearing in this case does not mean that the matter cannot be disposed of by agreement of the parties. On the contrary, it is the policy of this office to encourage voluntary adjustments. The examiner or attorney assigned to the case will be pleased to receive and to act promptly upon your suggestions or comments to this end.

An agreement between the parties, approved by the Regional Director, would serve to cancel the hearing. However, unless otherwise specifically ordered, the hearing will be held at the date, hour, and place indicated. Postponements ***will not be granted*** unless good and sufficient grounds are shown ***and*** the following requirements are met:

(1) The request must be in writing. An original and two copies must be filed with the Regional Director when appropriate under 29 CFR 102.16(a) or with the Division of Judges when appropriate under 29 CFR 102.16(b).

(2) Grounds must be set forth in ***detail***;

(3) Alternative dates for any rescheduled hearing must be given;

(4) The positions of all other parties must be ascertained in advance by the requesting party and set forth in the request; and

(5) Copies must be simultaneously served on all other parties (listed below), and that fact must be noted on the request.

Except under the most extreme conditions, no request for postponement will be granted during the three days immediately preceding the date of hearing.

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Jerome O'Neal
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Procedures in NLRB Unfair Labor Practice Hearings

The attached complaint has scheduled a hearing that will be conducted by an administrative law judge (ALJ) of the National Labor Relations Board who will be an independent, impartial finder of facts and applicable law. **You may be represented at this hearing by an attorney or other representative.** If you are not currently represented by an attorney, and wish to have one represent you at the hearing, you should make such arrangements as soon as possible. A more complete description of the hearing process and the ALJ's role may be found at Sections 102.34, 102.35, and 102.45 of the Board's Rules and Regulations. The Board's Rules and regulations are available at the following link: www.nlrb.gov/sites/default/files/attachments/basic-page/node-1717/rules_and_regs_part_102.pdf.

The NLRB allows you to file certain documents electronically and you are encouraged to do so because it ensures that your government resources are used efficiently. To e-file go to the NLRB's website at www.nlrb.gov, click on "e-file documents," enter the 10-digit case number on the complaint (the first number if there is more than one), and follow the prompts. You will receive a confirmation number and an e-mail notification that the documents were successfully filed.

Although this matter is set for trial, this does not mean that this matter cannot be resolved through a settlement agreement. The NLRB recognizes that adjustments or settlements consistent with the policies of the National Labor Relations Act reduce government expenditures and promote amity in labor relations and encourages the parties to engage in settlement efforts.

I. BEFORE THE HEARING

The rules pertaining to the Board's pre-hearing procedures, including rules concerning filing an answer, requesting a postponement, filing other motions, and obtaining subpoenas to compel the attendance of witnesses and production of documents from other parties, may be found at Sections 102.20 through 102.32 of the Board's Rules and Regulations. In addition, you should be aware of the following:

- **Special Needs:** If you or any of the witnesses you wish to have testify at the hearing have special needs and require auxiliary aids to participate in the hearing, you should notify the Regional Director as soon as possible and request the necessary assistance. Assistance will be provided to persons who have handicaps falling within the provisions of Section 504 of the Rehabilitation Act of 1973, as amended, and 29 C.F.R. 100.603.

- **Pre-hearing Conference:** One or more weeks before the hearing, the ALJ may conduct a telephonic prehearing conference with the parties. During the conference, the ALJ will explore whether the case may be settled, discuss the issues to be litigated and any logistical issues related to the hearing, and attempt to resolve or narrow outstanding issues, such as disputes relating to subpoenaed witnesses and documents. This conference is usually not recorded, but during the hearing the ALJ or the parties sometimes refer to discussions at the pre-hearing conference. You do not have to wait until the prehearing conference to meet with the other parties to discuss settling this case or any other issues.

II. DURING THE HEARING

The rules pertaining to the Board's hearing procedures are found at Sections 102.34 through 102.43 of the Board's Rules and Regulations. Please note in particular the following:

- **Witnesses and Evidence**: At the hearing, you will have the right to call, examine, and cross-examine witnesses and to introduce into the record documents and other evidence.

- **Exhibits: Each exhibit offered in evidence must be provided in duplicate to the court reporter and a copy of each of each exhibit should be supplied to the ALJ and each party when the exhibit is offered in evidence.** If a copy of any exhibit is not available when the original is received, it will be the responsibility of the party offering such exhibit to submit the copy to the ALJ before the close of hearing. If a copy is not submitted, and the filing has not been waived by the ALJ, any ruling receiving the exhibit may be rescinded and the exhibit rejected.

- **Transcripts**: An official court reporter will make the only official transcript of the proceedings, and all citations in briefs and arguments must refer to the official record. The Board will not certify any transcript other than the official transcript for use in any court litigation. Proposed corrections of the transcript should be submitted, either by way of stipulation or motion, to the ALJ for approval. Everything said at the hearing while the hearing is in session will be recorded by the official reporter unless the ALJ specifically directs off-the-record discussion. If any party wishes to make off-the-record statements, a request to go off the record should be directed to the ALJ.

- **Oral Argument:** You are entitled, on request, to a reasonable period of time at the close of the hearing for oral argument, which shall be included in the transcript of the hearing. Alternatively, the ALJ may ask for oral argument if, at the close of the hearing, if it is believed that such argument would be beneficial to the understanding of the contentions of the parties and the factual issues involved.

- **Date for Filing Post-Hearing Brief**: Before the hearing closes, you may request to file a written brief or proposed findings and conclusions, or both, with the ALJ. The ALJ has the discretion to grant this request and to will set a deadline for filing, up to 35 days.

III. AFTER THE HEARING

The Rules pertaining to filing post-hearing briefs and the procedures after the ALJ issues a decision are found at Sections 102.42 through 102.48 of the Board's Rules and Regulations. Please note in particular the following:

- **Extension of Time for Filing Brief with the ALJ:** If you need an extension of time to file a post-hearing brief, you must follow Section 102.42 of the Board's Rules and Regulations, which requires you to file a request with the appropriate chief or associate chief administrative law judge, depending on where the trial occurred. You must immediately serve a copy of any request for an extension of time on all other parties and furnish proof of that service with your request. You are encouraged to seek the agreement of the other parties and state their positions in your request.

- **ALJ's Decision:** In due course, the ALJ will prepare and file with the Board a decision in this matter. Upon receipt of this decision, the Board will enter an order transferring the case to the Board and specifying when exceptions are due to the ALJ's decision. The Board will serve copies of that order and the ALJ's decision on all parties.

- **Exceptions to the ALJ's Decision**: The procedure to be followed with respect to appealing all or any part of the ALJ's decision (by filing exceptions with the Board), submitting briefs, requests for oral argument before the Board, and related matters is set forth in the Board's Rules and Regulations, particularly in Section 102.46 and following sections. A summary of the more pertinent of these provisions will be provided to the parties with the order transferring the matter to the Board.

EXHIBIT B

UNITED STATES OF AMERICA
NATIONAL LABOR RELATIONS BOARD
REGION 8

Liberty Retirement Community of Lima, Inc., **Liberty Health Care Corp.,** **Liberty Retirement Properties of Lime LTD.,** **Liberty Villas of Lima, Inc., AND** **Liberty Nursing Properties of Woodland Manor, LTD., a single Employer; and** **Plus Management Services, Inc. d/b/a** **Baton Rouge Medical and Rehab Center of Lima,** **Joint Employers;**	
and	**Cases 08-CA-198572** **08-CA-201287**
American Federation of State, County and Municipal Employees, AFL-CIO, Ohio Council 8	

PLUS MANAGEMENT SERVICES, INC.'S ANSWER

Plus Management Services, Inc. ("Plus Management"), by and through undersigned counsel, hereby answers the Complaints in Cases 08-CA-198572 and 08-CA-201287 as follows:

1. Plus Management is without knowledge to answer Paragraph 1(A)-1(C) of the Complaint and therefore denies same.
2. Plus Management is without knowledge to answer Paragraph 2(A)-2(C) of the Complaint and therefore denies same.
3. Plus Management is without knowledge to answer Paragraph 3(A)-3(D) of the Complaint and therefore denies same.
4. In answering Paragraph 3(E), Plus Management admits it was a corporation with an office and place of business in Lima, Ohio and was engaged in the operation of a skilled

nursing home and residential care facility providing inpatient medical care but is without knowledge to admit it has been engaged in such activity "At all material times" and therefore denies same.

5. Plus Management is without knowledge to answer Paragraph 4(A)-4(B) of the Complaint and therefore denies same.
6. Plus Management denies the allegations in Paragraph 5(A)-5(C) of the Complaint.
7. Plus Management is without knowledge to answer Paragraph 6(A)-6(C) of the Complaint and therefore denies same.
8. Plus Management is without knowledge to answer Paragraph 7(A)-7(B) of the Complaint and therefore denies same.
9. Plus Management is without knowledge to answer Paragraph 8 of the Complaint and therefore denies same.
10. Plus Management denies the allegations in Paragraph 9(A)-9(B) of the Complaint.
11. Plus Management is without knowledge to answer Paragraph 10 of the Complaint and therefore denies same.
12. Plus Management is without knowledge to answer Paragraph 11 of the Complaint and therefore denies same.
13. Plus Management is without knowledge to answer Paragraph 12(A)-12(D) of the Complaint and therefore denies same.
14. Plus Management is without knowledge to answer Paragraph 13(A)-13(D) of the Complaint and therefore denies same.
15. Plus Management is without knowledge to answer Paragraph 14(A)-14(C) of the Complaint and therefore denies same.

16. Plus Management is without knowledge to answer Paragraph 15(A)-15(C) of the Complaint and therefore denies same.

17. Plus Management is without knowledge to answer Paragraph 16(A)-(C) of the Complaint and therefore denies same.

18. Plus Management is without knowledge to answer Paragraph 17(A)-17(D) of the Complaint and therefore denies same.

19. Plus Management is without knowledge to answer Paragraph 18(A)-18(C) of the Complaint and therefore denies same.

20. Plus Management is without knowledge to answer Paragraph 19 of the Complaint and therefore denies same.

21. Plus Management is without knowledge to answer Paragraph 20 of the Complaint and therefore denies same.

22. Plus Management is without knowledge to answer Paragraph 21 of the Complaint and therefore denies same.

23. Plus Management is without knowledge to answer Paragraph 22 of the Complaint and therefore denies same.

24. Plus Management is without knowledge to answer Paragraph 23 of the Complaint and therefore denies same.

25. Plus Management hereby denies each and every allegation in the Complaint not specifically admitted to or denied for lack of knowledge herein.

DEFENSES

26. Plus Management hereby asserts the following in defense to the Complaint:

a. Plus Management entered into an Interim Operating Agreement and a Purchase and Sale Agreement with Respondent Liberty on January 11, 2017 whereby Respondent Liberty was to administer and manage the health care facilities as an independent contractor. A true and accurate copy of the Interim Operating Agreement is attached hereto as **Exhibit 1.**

b. Respondent Liberty commenced litigation in the Montgomery County, Ohio Court of Common Pleas against Plus Management on March 23, 2017.

c. As a result of the March 23, 2017 litigation, Plus Management was enjoined from taking any action that would obstruct, hinder, or interfere with the interim operation and management by Respondent Liberty of the health care facilities; was enjoined from removing, selling, disposing of or encumbering any of the assets of the health care facilities; and was enjoined from terminating or removing Respondent Liberty as manager of the health care facilities. A true and accurate copy of this Order is attached hereto as **Exhibit 2**.

d. Wherefore, as a result of the Interim Operating Agreement and the Court Order, Plus Management was not involved in any of the management, administration, or activities of the health care facilities after January 11, 2017. Plus Management did not share or co-determine employment matters; Plus Management had no ability to hire, fire, or discipline employees, affect their compensation and benefits, or to direct and supervise their performance. Plus Management did not exercise any direction or control over the management, administration or activities of the health care facilities after January 11, 2017. Respondent Liberty acted as an independent contractor, and Plus Management was not a joint

employer and cannot be held responsible or liable for Respondent Liberty's actions. Plus Management respectfully requests it be dismissed from these matters.

Dated at Bellefontaine, Ohio this 12th day of June 2018.

Respectfully submitted,

THOMPSON, DUNLAP & HEYDINGER, LTD.

Terrence G. Stolly (#0073266)
Melissa A. Marino (#0090569)
1111 Rush Avenue, P.O. Box 68
Bellefontaine, Ohio 43311
Telephone: (937)593-6065
Facsimile: (937)593-9978
E-mail: tstolly@tdhlaw.com
mmarino@tdhlaw.com

ATTORNEYS FOR PLUS MANAGEMENT SERVICES INC.

Attachments

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing has been filed electronically with Allen Binstock, Regional Director, National Labor Relations Board, Region 08, 1240 E. 9th St., Suite 1695, Cleveland, Ohio 44199, and was served upon the following via regular U.S. Mail this 12 day of June, 2018:

Linda Black-Kurek, Statutory Agent
Liberty Nursing Properties of Woodland
Manor Ltd. and Liberty Retirement
Community of Lima, etc.
2440 Baton Rouge
Lima, Ohio 45805

James Allen, Esq.
National Labor Relations Advocates
312 Walnut Street, Suite 1600
Cincinnati, Ohio 45202

Michelle R. Evans
Associate General Counsel
Ohio Council 8, AFSCME, AFL-CIO
6800 North High Street
Worthington, Ohio 43085

Terrence G. Stolly (#0073266)
Melissa A. Marino (#0090569)

INTERIM OPERATING AGREEMENT

THIS INTERIM OPERATING AGREEMENT ("Agreement") is made and entered into this 11th day of January, 2017 (the "Effective Date"), by and between **LIBERTY HEALTH CARE CORPORATION**, an Ohio corporation ("Manager") and **PLUS MANAGEMENT SERVICES, INC.**, an Ohio corporation ("Operator").

W I T N E S E T H:

WHEREAS, Operator owns and operates a licensed and dually-certified one hundred thirty-three (133) bed nursing home commonly known as Baton Rouge Medical and Rehabilitation Center of Lima, located at 2440 Baton Rouge Avenue, Lima, Ohio 45805 (the "Facility Real Property"), and a licensed thirty-four (34) bed residential cate facility commonly known as The Villa at Baton Rouge, also located at the Facility Real Property (collectively, the "Facility"); and

WHEREAS, simultaneously with execution of this Agreement, Operator and any other necessary related parties (collectively, "Seller") have entered into an Asset Purchase Agreement (the "APA") with the Manager or an affiliate of Manager (collectively, "Purchaser"), whereby Seller has agreed to sell, and Purchaser has agreed to purchase, upon the terms and conditions set forth in the APA, substantially all of the assets of the Facility, including, but not limited to, all land owned and/or controlled by Seller and adjacent to the Facility Real Property and a certain home health agency owned and/or controlled by Seller; and

WHEREAS, it is a condition precedent to the execution of the APA and the Purchaser's obligations thereunder that Operator enter into this Agreement with Manager.

NOW, THEREFORE, in consideration of the mutual promises and covenants of the parties contained herein, and for such other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties hereby incorporate the foregoing Recitals as if fully rewritten herein and further agree as follows:

ARTICLE 1

APPOINTMENT AND NON-DELEGATION OF LEGAL AUTHORITY

1.1 **Appointment.** Operator hereby appoints and contracts with Manager, pursuant to the terms and conditions specifically set forth in this Agreement, to administer and manage the Facility as an independent contractor. Manager shall not, by entering into and performing this Agreement, assume or become liable for any of the existing or future obligations, liabilities, or debts of Operator or the Facility; and will, in its role as Manager, have only the obligations to exercise reasonable care in its management and as otherwise provided in this Agreement.

1.2 **Non-Delegation of Legal Authority.** Notwithstanding any provisions to the contrary in this Agreement, there shall be no delegation of the responsibilities vested exclusively in Operator by law, and Operator shall retain the ultimate authority and responsibility for the operation of the Facility. Nothing in this Agreement is intended to delegate to Manager any of the powers, duties or responsibilities vested exclusively in Operator by law.

ARTICLE 2

REPRESENTATIONS AND WARRANTIES

2.1 **Representations and Warranties of the Manager**. Manager represents and warrants that: (a) Manager is a corporation duly organized, validly existing and in good standing under the laws of the State of Ohio; (b) Manager's principal offices are located at 4336 West Franklin Street, Bellbrook, OH 43505; (c) the execution of this Agreement and the performance of Manager's duties and responsibilities hereunder will not violate Manager's organizational documents or any other written agreement to which it is a party or require the consent or approval of any third person or entity which has not been obtained in accordance with its required terms; (d) Manager has received the requisite approval and has been granted the authority to execute this Agreement and to perform Manager's duties and responsibilities hereunder from its Board of Directors; and (e) upon the execution and delivery of this Agreement by Manager, this Agreement will constitute its valid and binding obligation enforceable in accordance with its terms.

2.2 **Representations and Warranties of Operator**. Operator represents and warrants: (a) Operator is an Ohio corporation, duly organized, validly existing and in good standing under the laws of the State of Ohio; (b) Operator's principal place of business is located at 2440 Baton Rouge Avenue, Lima, Ohio 45805; (c) Operator maintains in good standing all required governmental approvals to operate for its intended purpose as a licensed and Medicare- and Medicaid-certified skilled nursing facility and a licensed residential care facility; (d) the execution of this Agreement and the performance of Operator's duties and responsibilities hereunder will not violate its organizational documents or any other written agreement to which it is a party, or require the consent or approval of any third person or entity; (e) Operator has received the requisite approval and has been granted the authority to execute this Agreement and to perform Operator's duties and responsibilities hereunder from its Board of Directors; (f) upon execution and delivery of this Agreement, this Agreement will constitute a valid and binding obligation of Operator enforceable in accordance with its terms; (g) neither Operator nor any director, officer or shareholder of Operator has ever been convicted of, or has been investigated for, any act or omission constituting Medicare or Medicaid fraud, any other offense or violation under Title XXII, XIX or X of the Social Security Act, 349 Stat 620 (1935), as amended, or a final adverse action, as such term is defined by the federal Medicare and Medicaid regulations, as amended; and (h) the balance sheets and statements of income and cash flow of Operator and Facility for the calendar year ending December 31, 2015, and for the period of January 1, 2016, through November 30, 2016, attached hereto as Schedule 2.2(A) attached hereto and incorporated herein (collectively, the "Financial Statements") have been prepared in accordance with generally accepted accounting principles and present accurately and fairly in all respects the financial condition of Operator and Facility as of such dates and the results of operations of Operator and Facility for such periods. Operator and Facility have no obligation or liability (whether accrued, absolute, contingent, unliquidated or otherwise, or whether due or to become due and regardless of when asserted), arising out of transactions entered into at or prior to the Effective Date or any state of facts existing at or prior to the Effective Date, other than: (i) liabilities set forth on the Financial Statements; (ii) performance obligations of Operator and Facility under this Agreement; or (iii) as otherwise set for on Schedule 2.2(B) attached hereto and incorporated herein.

ARTICLE 3

TERM AND TERMINATION

3.1 Term. The term of this Agreement shall commence on the Effective Date, and, unless earlier terminated pursuant to the terms and conditions hereof, shall terminate effective as of 11:59:59 p.m. on March 31, 2017.

3.2 Termination Rights. Notwithstanding any other provision of this Agreement, either party may immediately terminate this Agreement at any time upon written notice to the other party under any of the following circumstances:

(a) if a party fails to observe or perform any other term, covenant or condition of this Agreement and such failure is not cured within a period of ten (10) days after written notice thereof; or

(b) if a party does any of the following: (i) admits in writing its inability to pay its debts generally as they become due; (ii) files a petition or answer in bankruptcy or a petition or answer to take advantage of any federal or state insolvency law; (iii) makes a general assignment for the benefit of its creditors; (iv) consents to the appointment of a receiver of itself or of the whole or any substantial part of its property; or (v) files a petition or answer seeking reorganization or arrangement under the Federal bankruptcy laws or any other applicable law or statute of the United States of America or any state thereof, or

(c) if a party shall be liquidated or dissolved, or shall begin proceedings toward such liquidation or dissolution, or shall, in any manner, permit the sale or divestiture of substantially all of its assets; or

(d) if any party's representations or warranties set forth in this Agreement proves to be untrue when made in any respect which materially and adversely affects the other party.

3.3 Additional Manager Termination Rights. Notwithstanding any other provision of this Agreement, and in addition to the termination rights set forth in Section 3.2 of this Agreement, Manager may immediately terminate this Agreement at any time upon written notice to Operator under any of the following circumstances:

(a) if any suspension, termination or restriction is placed upon the Operator, or the Facility, or the ability to admit residents or patients (e.g., an admissions ban or non-payment for new admissions by Medicare or Medicaid), as the result of an action or omission of Operator; or

(b) if Operator ceases to maintain in effect any license, permit, certificate or approval necessary or otherwise required to operate the Facility as a skilled nursing facility, or if there is a termination of Medicaid or Medicare provider agreements, as the result of an action or omission of Operator;

(c) if the APA is terminated for any reason whatsoever; or

(d) if Operator fails to give Manager sole and exclusive signing authority over Operator's and Facility's bank accounts within two (2) business days after the Effective Date; or

(e) if Operator interferes with, does not implement, or in any way contradicts Manager's powers and duties set forth in Article 4 of this Agreement.

3.4 **Effect of Termination.** The termination of this Agreement by either Operator or Manager, or both parties, pursuant to the terms and provisions of this Article 3, will not be construed to limit the rights of either party hereto with respect to any remedy available in law or in equity, including, without' limitation, any liability with respect to any right to recover for a breach of this Agreement. Upon the termination of this Agreement, Manager shall: (a) deliver possession of the Facility to Operator; and (b) deliver possession to Operator of all of the resident trust funds, Operating Accounts, and all other banking or other funds and accounts relating to the Facility, together with a true, accurate and complete accounting of same.

ARTICLE 4

POWERS AND DUTIES OF MANAGER

4.1 **General Administration.** Manager shall administer and manage the operations of the Facility in a commercially reasonable manner consistent with all laws, rules and regulations applicable to the Facility in the State of Ohio and shall perform such duties and obligations incident thereto as more fully detailed in this Article 4. The Facility's survey results shall not by itself constitute a breach of Manager's duties under this Agreement if such survey results did not result from a breach of Manager's duties under this Agreement. All expenses of Facility and/or Operator shall be borne by Facility and/or Operator and paid by Manager out of the Operating Accounts (as hereinafter defined) of the Facility and/or Operator. As further described in this Article 4, Manager shall have the exclusive right and power to manage the Facility in the business judgment of Manager, it being understood and agreed that the Manager shall not be required to devote the entire time or attention of Manager's employees to the Facility. Subject to limitations imposed by applicable laws or governmental regulations, orders or decrees, and the other provisions of this Agreement, Manager shall have all authority as may be necessary, desirable or appropriate in connection with the discharge of its duty to manage, direct and conduct the Facility, including but not limited to the powers to:

(a) Expand, contract or otherwise adjust the operations of the Facility.

(b) Negotiate, execute or otherwise enter into, adjust, compromise or otherwise deal with, vendors, contracts, agreements and documents relating to the Facility.

(c) Purchase inventory and supplies on behalf of Facility and/or Operator, including, but not be limited to, raw food and dietary supplies, nursing and pharmaceutical supplies, housekeeping and laundry supplies, office supplies, and supplies necessary for the operation, repair and maintenance of the Facility.

(d) Retain, invest or reinvest funds not immediately necessary, and other engage in reasonable financial transactions, for the purpose of operation the Facility.

(e) Supervise the work of the Facility's administrator, director of nursing, department heads, and all operating and service employees performing services in and about the Facility.

4.2 **Operating Policies and Procedures.** Manager shall review, update and implement for the Facility such operating policies and procedures necessary for operating and managing the Facility in a reasonable and prudent manor, in accordance with all applicable laws, as deemed necessary by Manager.

4.3 **Employment of Staff.**

(a) Manager shall review, update and implement for the Facility employment policies and procedures, as well as personnel policies and procedures as provided in Section 5.3(c) of this Agreement, necessary for operating and managing Facility in a reasonable and prudent manor, as deemed necessary by Manager during the term of this Agreement.

(b) Manager shall review current administrative personnel and staff of the Facility from time to time as Manager deems necessary, and shall make the necessary employment determinations regarding proper staffing necessary for the appropriate and efficient operation of Facility in compliance with all laws, rules and regulations applicable to the Facility during the term of this Agreement. Manager shall have the authority to hire and discharge employees of the Facility in the ordinary course of business, in accordance with all applicable laws and regulations. All Facility personnel except the administrator shall remain employees of Operator during their employment relationship, and not employees of the Manager, unless otherwise agreed to by Operator. Jerome O'Neal shall remain as administrator of the Facility, at his current rate of compensation, until a replacement administrator is hired by Manager. All salaries, wages, benefits or other compensation for such Facility Personnel will be determined by Manager and shall be the cost and expense of Operator paid by Manager out of the Operating Accounts pursuant to this Agreement.

(c) The personnel policies and procedures to be used in managing the Facility shall be in accordance with all laws, rules and regulations applicable to the Facility and shall include, but not be limited to, the following subjects: (i) employment, supervision, discipline and termination of personnel; (ii) compensation arrangements and benefits; (iii) designation of working hours (including designation of holidays and vacations); and (iv) job classifications.

(d) Manager will maintain all payroll records, including, but not limited to, employees' earnings records, payroll tax summaries, and employees' withholding tax statements. Manager will be responsible for assuring the preparation of federal and state payroll tax returns and disbursing patrol checks to employees on a timely basis during the term of this Agreement. Manager will be responsible for assuring the filing of federal and state payroll returns during the term of this Agreement.

4.4 **Billing and Collection of Accounts.** Manager shall issue monthly billings to appropriate payment sources, including, but not limited to private pay, Medicare, Medicaid, MyCare Ohio, and other third party payors for services rendered by the Facility to its patients, as well as maintain on behalf of the Facility records in connection with patient billings necessary to collect for the services rendered by Facility. Manager shall exert all commercially reasonable and necessary efforts to collect all monies due under such billings, and may employ independent collection specialists at Facility's expense. All monies collected shall be deposited into the Facility's Operating Accounts.

4.5 **Inventory Control and Purchasing Authority.** Manager shall review, on an ongoing basis, the inventory of supplies to ensure Facility maintains an inventory which shall be sufficient to operate Facility in an appropriate and efficient manner. All supplies are to be purchased under the supervision of the Manager and shall be paid for by Manager out of the Facility's Operating Accounts on behalf of Facility.

4.6 **Outside Services.** Manager may review, secure and contract with, on behalf of and in the name of Operator, services required for the Facility to operate and care for its residents from outside providers other than those services required by this Agreement to be performed by Manager (the "Outside Services"). Manager may contract for Outside Services on behalf of the Facility, with affiliated companies of the Manager, Operator or Facility, as well as other goods and services. Operator hereby approves Manager's retention of LBK Health Care, Inc., an Ohio corporation ("LBK"), for the provision of accounting services for a flat fee of Fifteen Thousand and 00/100 Dollars $15,000.00) per month. Operator further approves Manager's retention of LBK for nurse consulting ($110/hour) and data management ($65/hour) services as required. All fees for Outside Services shall be paid for by Manager out of the Facility's Operating Accounts on behalf of Facility.

4.7 **Records and Accounts.** Manager shall maintain on behalf of Facility accounting, billing, and resident collection records, including charts of accounts, accounting systems and internal controls, classifications and accounting procedures in a reasonable and prudent manner in accordance with the requirements of applicable laws, statues, rules and regulations of the State of Ohio. As appropriate, Manager shall cause to be prepared on behalf of Facility by LBK all cost and other reports required by the governmental program or other third party payors in connection with the operation of Facility and prepare and file all claims and rate increase requests and all other necessary and appropriate reports and forms which relate to the operation and management of Facility under such government or other third party programs. All costs associated with preparing and filing such cost or other reports shall be paid by Manager out of the Facility's Operating Accounts on behalf of Facility.

4.8 **Government Notices and Actions.** Manager shall represent the Facility in cooperation with the Facility's in connection with any and all surveys, audits, and other federal, state and local hearings, examinations or investigations (collectively, the "Reviews"). Manager may retain accounting and legal services for the Reviews, and such services shall be paid by Manager out of the Facility's Operating Accounts on behalf of Facility.

4.9 **Marketing and Public Relations Program.** Manager may review, revise and implement, from time to time, a marketing program for the Facility. Manager and designated Facility

personnel shall be responsible for marketing and public relations on behalf of the Facility and the Facility shall assist with the same. Expenses associated with implementing and carrying out the marketing programs shall be paid for by Manager out of the Facility's Operating Accounts on behalf of Facility.

4.10 **Taxes, Charges and Assessments.** All taxes, charges, assessments and contributions incurred, assessed or required to be paid in connection with Facility including, but not limited to, the payment of taxes on real property and personal property and the payment of contributions to the State of Ohio's workers' compensation and unemployment compensation funds, shall be paid on behalf of Facility by Manager out of the Facility's Operating Accounts on behalf of Facility. Manager shall cause all reports and filings in connection therewith shall to be prepared and timely filed during the term of this Agreement. Except as set forth herein, Manager shall not, directly or indirectly, have any responsibility or liability for the preparation or filing of returns or reports with respect to the income of Facility or for payment of any taxes, interest or penalties attributable thereto.

4.11 **Insurance.** Operator has obtained and shall maintain on behalf of the Facility, at all times during the terms of this Agreement, insurance with minimum limits as may be required by Operator, including but not limited to, business interruption, fire and extended coverage, professional and general liability insurance, which shall be paid for by Manager out of the Facility's Operating Accounts on behalf of Facility. Manager shall use reasonable efforts to assist the Facility in renewing said insurance if and when applicable, and may change insurance providers if deemed beneficial to the Facility. Manager shall be named as a named insured under Operator's policies with respect to the Facility and provided with coverage for all acts and responsibilities performed in accordance with this Agreement on behalf of the Facility on all policies of insurance purchased and maintained by Facility on or with respect to the operation of Facility, and such policies shall provide that the same shall not be amended, modified or terminated except upon thirty (30) days prior written notice to Manager. The Facility's professional liability coverage shall be primary coverage over any other insurance which may be carried by Manager. As a condition precedent to the effectiveness of this Agreement, Operator shall provide evidence of insurance coverage, with Manager named as a named additional insured, to Manager as of the Effective Date.

4.12 **Banking Accounts and Other Fiscal Matters.**

(a) Operator has established on behalf of the Facility an operating account and a payroll account, for the purpose of conducting and paying the day-to-day operating expenses of Facility (collectively, the "Operating Accounts"). Within one (1) business day after the Effective Date, Operator shall give Manager sole and exclusive signing authority over the Operating Accounts. Such signing authority shall not be changed until the issuance of a "tie-in notice" by the Centers for Medicare and Medicaid Services as provided in Section 7(c)(iii) of the APA. Manager shall provide written notice (which may be by e-mail) to Operator of all checks, wire transfers, payments, withdrawals, and other disbursements from the Operating Accounts that exceed $5,000.00 either in a single disbursement or as the aggregate of a series of disbursements for the same purpose and that are related to capital expenditures. All expenses incurred in connection with the operation of Facility shall be paid from the Operating Accounts. Such expenses include but are not limited to, accounts payable, employee compensation and benefits, taxes, insurance premiums, and audit fees, accounting and legal costs incurred in connection with

the Facility and the Manager's compensation pursuant to Article 6 of this Agreement.

(b) All revenues and receipts generated from the operation of Facility shall be deposited on behalf of the Facility in the Facility's Operating Accounts.

4.13 Complete List of Services. The foregoing Section 4.1 through 4.13 is a complete list of services to be provided by Manager under this Agreement. Any additional services requested by Facility shall be performed for a mutually agreeable additional fee based upon the services requested.

ARTICLE 5

DUTIES OF OPERATOR

5.1 Cooperation with Manager. Operator shall furnish Manager with, or provide Manager reasonable access to, all information and documents in connection with the operation of the Facility to which the Operator has access. Operator shall make available to Manager sufficient and reasonable space and other non-financial resources to perform Manager's Duties powers and duties under Article 4 of this Agreement, and shall keep and retain all other rights, duties, obligations and responsibilities not specifically delegated to Manager pursuant to this Agreement.

5.2 Non-Interference. Operator covenants and agrees not to interfere with or in any way contradict Manager's powers and duties set forth in Article 4 of this Agreement, including, but not limited to, failing to implement any suggestion or recommendation made by Manager within the scope of Manager's powers and duties set forth in Article 4 of this Agreement, but for which Manager's consent or approval is legally required.

5.3 Litigation. Operator, with assistance of Manager if necessary, shall arrange for the defense of all claims, actions and causes of action brought by or against Facility or Operator, whether or not covered by applicable insurance coverage of Facility, through the use of insurance defense counsel or by engaging legal counsel of Operator's choice if such claims are not covered by insurance. Operator shall keep Manager fully informed of all litigation brought by or against Facility or Operator, including the status of settlement negotiations or judicial or arbitration proceedings, and shall authorize legal counsel engaged by Operator to discuss such matters with Manager's legal counsel.

ARTICLE 6

FINANCIAL ARRANGEMENTS

6.1 Management Fee. During the term of this Agreement, Manager will be entitled to a management fee equal to five percent (5%) of the gross revenues of the Facility, including all receipts and billings from Medicaid, Medicare, private resources, insurance companies, and ancillary services, but excluding non-operational revenue such as interest income and proceeds of insurance claims and litigation (collectively, the "Management Fee"). The Management Fee shall be paid on or before the fifth (5th) day of each month during the term of this Agreement for the preceding month by Manager out of the Facility's Operating Accounts on behalf of Facility. In

the event that this Agreement is terminated for any reason, all unpaid Management Fees shall be due and payable within five (5) days after termination of the Agreement. Any unpaid portion of the Management Fee or any fees due LBK may be off-set against the purchase price under the APA upon the closing of the APA; provided, however, that if the APA does not close for any reason whatsoever, Manager and/or LBK shall be entitled to receive payment of any unpaid portion of the Management Fee or any fees due LBK.

6.2 **Working Capital.** Manager shall provide working capital as deemed necessary by Manager in an amount not to exceed $2,000,000 during the term of this Agreement (collectively, the "Manager's Contribution"). Operator shall retain legal responsibility for any and all expenses incurred prior to the Effective Date and during the term of this Agreement, including, without limitation, all current liabilities, principal and interest payments due under any short-term or long-term debt, and any other expense incurred by Operator in connection with the operation of the Facility, including, without limitation, payroll, insurance (including health, property, liability and workers compensation), utilities, the rent payments, equipment leases, taxes and maintenance (collectively, the "Operator's Obligations"). Anything to the contrary notwithstanding, this Agreement shall not be deemed to create any third party beneficiary rights for any third party with respect to the Operator's Obligations. Manager in its reasonable business judgment will pay from the Operating Account expenses of operations necessary to continue Operator's business; provided, however, that Manager shall not be required to make any payments on loans from Jerome O'Neal or relatives of Jerome O'Neal, except for the payment of a loan from the mother of Jerome O'Neal in an amount not to exceed $2,150 per month. In the event that this Agreement is terminated for any reason, any unpaid portion of the Manager's Contribution shall be due and payable within ten (10) days after termination of the Agreement. Any unpaid portion of the Manager's Contribution may be off-set against the purchase price under the APA upon the closing of the APA; provided, however, that if the APA does not close for any reason whatsoever, Manager shall be entitled to receive payment of any unpaid portion of the Manager's Contribution. Except as specifically provided in this Section 6.2, the parties acknowledge and agree that Manager does not assume any obligation to invest, loan or otherwise contribute any of Manager's own funds in or to the Operating Account in connection with the operation of the Facility, including, without limitation, as relating to maintenance, capital expenditure, licensure and/or certification costs. Notwithstanding the foregoing, Manager shall not be obligated to make any payments from the Manager's Contribution until all of the following conditions are satisfied:

(a) Manager is named as a named insured under Operator's insurance policies with respect to the Facility pursuant to Section 4.11 of this Agreement.

(b) Operator gives Manager signing authority over Operator's and Facility's bank accounts pursuant to Section 4.12 of this Agreement.

(c) The requirements of Section 6.3 of this Agreement are satisfied.

(d) The APA is fully-executed by Seller and Purchaser.

Each Manager's Contribution will bear interest at the rate of five percent (5%) per year from the date the Manager's Contribution is made until the date the Manager's Contribution is off-set against the purchase price under the APA or otherwise repaid.

6.3 **ND Acquisitions Corp. v. Plus Management Services., Inc. et al.** The parties understand that ND Acquisitions Corp., a Delaware corporation d/b/a NuScript Rx ("NuScript") has obtained a judgement against Operator and various affiliates of Operator (collectively, the "Defendants") in the Court of Common Pleas, Allen County, Ohio, Trial Court Case No. CV16 315 (collectively, the "Judgment"). The Judgement includes a final Revised Order Appointing a Receiver (the "Receiver Order"), and the Defendants have filed a Notice of Appeal to the Third District Court of Appeals appealing the Judgement. The parties further agree that, within one business day of the satisfaction of the following conditions, that Manager shall contribute up to $200,000.00 (the "NuScript Contribution") to satisfy the Judgment:

(a) Operator shall provide Manager a copy of a specimen settlement agreement including a full and final release of the Defendants (the "Settlement Agreement").

(b) The Settlement Agreement shall provide that upon the receipt of the NuScript Contribution, that the Judgement will be fully settled and satisfied, and that the Receiver Order and all filings related to the Judgement will be dismissed with prejudice.

(c) Operator shall provider Manager with written confirmation (which may be by e-mail) that the form and content of the Settlement Agreement is acceptable to NuScript.

(d) The form and content of the Settlement Agreement is approved in writing (which may be by e-mail) by counsel to Manager.

The NuScript Contribution will be part of the Manager's Contribution described in Section 6.2 of this Agreement.

ARTICLE 7

INDEMNIFICATION

7.1 **Operator Indemnification.** Operator shall indemnify, defend and hold harmless the Manager from and against any and all liabilities, losses, costs, expenses, including reasonable attorney's fees, claims, actions to causes of action, which result, directly or indirectly, from any breach by the Operator or Facility of any of Operator or the Facility's duties, obligations and responsibilities under this Agreement or from the performance or the failure to perform by Operator or the Facility of any of Operator or the Facility's duties, obligations and responsibilities under this Agreement.

7.2 **Manager Indemnification.** Manager shall indemnify, defend and hold harmless Operator from and against any and all liabilities, losses, costs, expenses, including reasonable attorney's fees, claims, actions or causes of action, which result, directly or indirectly, from any breach by the Manager of any of the Manager's duties, obligations and responsibilities under this Agreement

or from the performance or the failure to perform by the Manager any of the Manager's duties, obligations and responsibilities under this Agreement.

ARTICLE 8

ASSIGNMENT

Neither party shall have the right to assign this Agreement, or their rights, duties, obligations and responsibilities under this Agreement to any other party without the prior written consent of the other party.

ARTICLE 9

NOTICES

Any notice required to be given by any party hereunder shall be in writing, and shall be delivered to the following addresses either by (i) messenger, with written receipted delivery evidence (ii) overnight delivery, with written receipted delivery evidence or, (iii) if mailed, sent by certified mail, return receipt requested, addressed as set forth above or addressed to such other address as shall be designated by one party to the other from time to time.

As to Operator: Plus Management Services, Inc.
3737 Shawnee Road
Lima, Ohio 45806
Attention: President

As to Manager: Liberty Health Care Corporation
4336 West Franklin Street
Bellbrook, OH 43505
Attention: President

ARTICLE 10

RECORD RETENTION AND SUBCONTRACTING

10.1 **Record Retention.** Operator and Manager agree to retain the records of the Facility pursuant to all applicable laws, rules and regulations governing Facility, and to comply with any changes that occur. Upon termination of this Agreement, any and all records of Facility through the date of termination maintained by Manager outside of Facility shall be immediately returned to Facility.

10.2 **Access to Records.** During the terms of this Agreement and continuing until the expiration of four (4) years after the furnishing of any services pursuant to this Agreement, upon written request by the Secretary of Health and Human Services in compliance with 42 CFR Sec. 420 (D), Manager will provide the Secretary of Health and Human Services, the Comptroller General, or a duly authorized representative, access to this Agreement and all books, documents and records

which are necessary to verify the nature and extent of the costs of the services provided under this Agreement.

10.3 **Subcontracting.** Any subcontract or series of any subcontracts entered into by Manager with a related organization with significant ownership or significant common control, for the provision of any of the services under this Agreement, the cost or value of which is Ten Thousand Dollars ($10,000.00) or more in a twelve (12) month period, shall contain a clause providing that, during the term of such subcontract and continuing until the expiration of four (4) years after the furnishing of any services pursuant to such subcontract, upon written request by the Secretary of Health and Human Services in compliance with 42 CFR Sec. 420 (D), the subcontractor will provide to the Secretary of Health and Human Services, the Comptroller General, or a duly authorized representative, access to such subcontract and all books, documents and records necessary to verify the nature and extent of the costs of services provided under such subcontract.

10.4 **Compliance with HIPAA.** The parties agree to comply with all applicable provisions of the Health Insurance Portability and Accountability Act of 1996 and the regulations promulgated thereunder.

ARTICLE 11

INDEPENDENT CONTRACTOR

In the performance of the duties and obligations of Manager under this Agreement, it is mutually understood, acknowledged and agreed that Manager shall at all times be acting in the capacity of an independent contractor. It is expressly agreed by the parties hereto that no work, act, commission or omission by Manager pursuant to the terms and conditions of this Agreement shall be construed to make or render Manager the agent, employee, or partner of Operator. Each party shall pay all compensation, benefits, payroll taxes and worker's compensation for the personnel they individually employee and furnish hereunder, and hold each other harmless and free from liability or costs (including attorney's fees) arising from any claim of or on behalf of Facility or any governmental agency or any other entity, or individual alleging that any individual furnished by one party is an employee of the other party. There shall be no third party beneficiaries under this Agreement. Furthermore, it is expressly understood and agreed between the parties that entering into this Agreement shall not preclude or prohibit Manager or any related entity from submitting an offer to lease or purchase the Facility pursuant to 11 U.S.C. §363.

ARTICLE 12

PROPRIETARY MATERIAL

12.1 **Proprietary Material.**

(a) As used herein, Manager's "Proprietary Marks" means all trademarks, trade names, symbols, logos, slogans, designs, insignia, emblems, designs, service marks and distinctive designs of buildings and signs, or combinations thereof, which are used in connection with the operation of the Facility during the Term. The term "Proprietary Marks" will include all present and future Proprietary Marks, whether they are not or hereafter owned by Manager or any of its affiliates, and whether or not they are registered under the laws of the United States or

any other country. Such Proprietary Marks will in all events remain the exclusive property of Manager, and nothing contained herein will confer on Operator the right to use the Proprietary Marks. Upon the termination of this Agreement, any use of or right to use the Proprietary Marks by Operator will cease forthwith and Operator will promptly remove from the Facility any signs or similar items that contain the Proprietary Marks.

(b) Manager's Software ("Software" means computer software and accompanying documentation, including all future upgrades, enhancements, additions, substitutions and modifications thereof which have been developed by, or specifically on behalf of, and owned by Manager or an affiliate of Manager, other than computer software that is commercially available, which are used by Manager in connection with its operations at the Facility), is and will remain the exclusive property of Manager or one of its affiliates, and Operator will have no right to use, or to copy, any Software. Upon termination of this Agreement, Manager will have the right to remove from the Facility, without compensation to Operator, all Software. Furthermore, upon the termination of this Agreement, Manager will be entitled to remove from the Facility any computer equipment that is utilized as part of a centralized operations control or property management system of Manager. If any of such removed computer equipment is owned by Operator, Manager will reimburse Operator for the replacement value of such equipment and will repair any damage caused by the removal of such computer equipment.

(c) Manager's Intellectual Property ("Intellectual Property" means: (i) all Software developed and owned by Manager or any affiliate of Manager; and (ii) all manuals, instructions, policies, procedures and directives issued by Manager to employees at the Facility regarding the procedures and techniques to be used in the management of the Facility to the extent such policies, manuals, instructions, procedures and directives are exclusive to Manager) will at all times be proprietary to Manager or its affiliates, and will be the exclusive property of Manager or its affiliates. During the Term, Manager will be entitled to take all reasonable steps to ensure that the Intellectual Property remains confidential. Upon termination, all Intellectual Property will be removed from the Facility by Manager, without compensation to Operator.

ARTICLE 13

MISCELLANEOUS

13.1 Captions and Headings. The captions and headings of this Agreement are for convenience of reference only and shall not define or limit any of the terms or provisions hereof.

13.2 Variations in Pronouns. All the terms and words used in this Agreement, regardless of the number and gender in which they are used, shall be deemed and construed to include any other number, singular or plural, and any other gender, masculine, feminine or neuter, as the context of this Agreement or any paragraph or clause herein may require, the same as if such word had been fully and properly written in the number and gender so required.

13.3 Non-Waiver. Any waiver by any party of any act, failure to act or breach on the part of the other party, shall not constitute a waiver by such waiving party of any prior or subsequent act, failure to act or breach by such other party.

13.4 **Severability.** In the event any provision of this Agreement shall be held to be invalid, illegal or unenforceable by any court of competent jurisdiction, such holding shall not invalidate or render unenforceable any other provision hereof and such invalid, illegal or unenforceable provision shall be deemed enforceable to the fullest extent permitted by law.

13.5 **Negation of Partnership, Joint Venture and Agency.** Nothing contained in this Agreement shall constitute or be construed to be or to create a partnership, joint venture or lease between Operator and Manager with respect to Facility.

13.6 **Attorneys' Fees and Other Costs of Enforcement.** In the event a party to this Agreement is required to bring legal action to enforce the terms and provisions of this Agreement, the prevailing party will be entitled to recover the expenses and costs of such action, including, without limitation, witness fees and per diems and its reasonable attorneys' fees incurred in connection therewith.

13.7 **Governing Law.** This Agreement shall be governed by, and construed in accordance with, the laws of the State of Ohio. All parties hereto agree that jurisdiction and venue of any legal or judicial proceeding shall be in the U.S. District Court or Court of Common Pleas in the State of Ohio and County of Montgomery.

13.8 **Binding Effect and Entire Agreement.** This Agreement shall inure to the benefit of, and shall be binding upon, Operator and Manager and their respective successors, heirs and permitted assigns. This Agreement evidences the entire agreement of the parties hereto with respect to the subject matter hereof. Any amendments or modifications of this Agreement shall not be effective except in writing executed by all of the parties hereto.

13.9 **Force Majeure.** Notwithstanding anything herein to the contrary, Manager shall not be deemed in violation of this Agreement, if it is prevented from performing any of its obligations hereunder for any reason beyond its reasonable control including, without limitation, strikes, walkouts or other employee disturbances, acts of God or the promulgation of any statute, rule, regulation or order by any federal, state or local governmental or judicial agency or official.

[Signature Page Follows]

IN WITNESS WHEREOF, the parties hereto have executed this Agreement on the date first above written.

"OPERATOR"

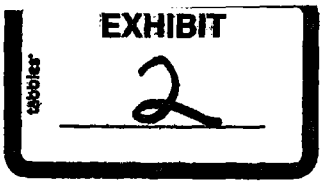
PLUS MANAGEMENT SERVICES, INC., an Ohio corporation

By: _____
Name: Jerome J. O'Neal
Title: President

"MANAGER"

LIBERTY HEALTH CARE CORPORATION, an Ohio corporation

By: _____
Linda Black-Kurek, President



ELECTRONICALLY FILED
COURT OF COMMON PLEAS
Wednesday, April 5, 2017 12:52:02 PM
CASE NUMBER: 2017 CV 01454 Docket ID: 30737044
GREGORY A BRUSH
CLERK OF COURTS MONTGOMERY COUNTY OHIO

IN THE COMMON PLEAS COURT OF MONTGOMERY COUNTY, OHIO
CIVIL DIVISION

LIBERTY RETIREMENT PROPERTIES OF LIMA, LTD., et al.	*	**CASE NO. 2017CV-01454**
		Judge Steven K. Dankof
Plaintiffs	*	
v.		
PLUS MANAGEMENT SERVICES, INC.	*	**AGREED ORDER**
Defendant.	*	

On March 31, 2017, the above-named parties came before this court for a hearing on plaintiff's request for a preliminary injunction. Prior to the hearing, the parties informed the Court that they have reached an agreement regarding the following:

A. Defendant Plus Management Services, Inc. is hereby enjoined from taking any action that will obstruct, hinder, or interfere with the interim operation and management by Liberty Healthcare Corporation of the health care facilities described in the complaint of the plaintiffs, excluding the home health agency, until closing or further order of the court or agreement of the parties:

B. That defendant Plus Management Services, Inc. is hereby enjoined from removing, selling, disposing of or encumbering any of the assets of the health care facilities described in the complaint of the plaintiff and/or the purchase and sale agreement and/or the interim operating agreement, excluding the home health agency:

C. That defendant Plus Management Services, Inc. is hereby enjoined from terminating or removing Liberty Healthcare Corporation as manager of the health care facilities described in the complaint of the plaintiffs, excluding the home health agency, until closing or further order of the court or agreement of the parties:

D. The trial court has scheduled this matter for a telephone status conference on April 5, 2017 at 3:30 p.m.

E. Plaintiffs assert they have already produced the following requested information, but, in the event defendant has not received the documents, and makes a specific follow up request, they agree to provide all information requested by defendant concerning or relating to the fifth third bank account, the chase bank account and related reasonable documentation providing supporting or explanatory facts concerning any

transaction shown on those accounts. Plaintiffs shall also provide of a summary of the operating revenues received and operating expenses paid during the management period to support the two million working capital infusion made by plaintiffs.

IT IS SO ORDERED.

JUDGE STEVEN K. DANKOF

/s/ Wayne E. Waite
Wayne E. Waite (0008352)
Christopher F. Johnson (0005240)
Jennifer D. Brumby (0076440)
POLING LAW
4244 Indian Ripple Road, Suite 150
Dayton, OH 45440
Ph: 937-431-9660
Fax: 937-431-9670
wwaite@poling-law.com
Attorneys for Plaintiffs

/s/ Timothy G. Pepper
Timothy G. Pepper
Nadia A. Klaff
Taft, Stettiunius & Hollister LLP
40 North Main Street, Suite 1700
Dayton, OH 45423
937-228-2838
pepper@taftlaw.com
nklarr@taftlaw.com
Attorneys for Defendant
Plus Management Services, Inc.

General Divison

Montgomery County Common Pleas Court

41 N. Perry Street, Dayton, Ohio 45422

Type: Order:

Case Number: 2017 CV 01454

Case Title: LIBERTY RETIREMENT PROPERTIES OF LIMA LTD vs PLUS MANAGEMENT SERVICES INC

So Ordered

EXHIBIT C

UNITED STATE OF AMERICA
NATIONAL LABOR RELATIONS BOARD
Region 8

LIBERTY RETIREMENT COMMUNITY OF LIMA, INC.; LIBERTY HEALTHCARE CORP.; LIBERTY RETIRMENT PROPERTIES OF LIMA LTD.; LIBERTY VILLAS OF LIMA, INC.; AND LIBERTY NURSING PROPERTIES OF WOODLAND MANOR, LTD., A SINGLE EMPLOYER, AND	:	
PLUS MANAGEMENT SERVICES, INC. D/B/A BATON ROUGE MEDICAL AND REHAB CENTER OF LIMA,	:	
JOINT EMPLOYERS	:	
Respondents,	:	
and	:	Case No. 08-CA-198572 08-CA-201287
AMERICAN FEDERATION OF STATE, COUNTY AND MUNICIPAL EMPLOYEES, AFL-CIO, OHIO COUNCIL 8	:	
Charging Party	:	

RESPONDENT'S ANSWER AND AFFIRMATIVE DEFENSES

LIBERTY RETIREMENT COMMUNITY OF LIMA, INC.; LIBERTY HEALTHCARE CORP.; LIBERTY RETIRMENT PROPERTIES OF LIMA LTD.; LIBERTY VILLAS OF LIMA, INC.; AND LIBERTY NURSING PROPERTIES OF WOODLAND MANOR, LTD. (collectively "Liberty") submits the following answer to the complaint filed in the above-captioned case(s). Regarding the specific allegations contained in the complaint, the Employers respond as follows:

1. (A) Respondent admits as to Liberty, but lacks sufficient information as to Plus Management.

   (B) Respondent admits as to Liberty, but lacks sufficient information as to Plus

Management.

(C) Respondent admits as to Liberty, but lacks sufficient information as to Plus Management.

2. (A) Respondent admits as to Liberty, but lacks sufficient information as to Plus Management.

(B) Respondent admits as to Liberty, but lacks sufficient information as to Plus Management.

(C) Respondent admits as to Liberty, but lacks sufficient information as to Plus Management.

3. (A) Respondent admits.

(B) Respondent admits.

(C) Respondent admits.

(D) Respondent denies.

(E) Respondent denies.

4. (A) Respondent denies.

(B) Respondent denies.

5. (A) (1) Respondent denies.

(2) Respondent denies.

(B) Respondent denies.

(C) Respondent denies.

6. (A) Respondent denies.

(B) Respondent denies.

(C) Respondent denies.

7. (A) Respondent admits in part as to total gross revenue and denies in part as this paragraph refers to, or incorporates, the allegation contained in 3(D) above which Respondent denied.

(B) Respondent admits in part as to purchase and receipt of goods at its Lima facility and denies in part as this paragraph refers to, or incorporates, the allegation contained in 3(D) above, as referenced in 7(A), which Respondent denied.

8. Respondent admits.

9. (A) Respondent is without sufficient knowledge to admit or deny.

(B) Respondent is without sufficient knowledge to admit or deny.

10. Respondent is without sufficient knowledge to admit or deny.

11. Respondent is without sufficient knowledge to admit or deny.

12. (A) Respondent admits.

(B) Respondent denies.

(C) Respondent denies.

(D) Respondent is without sufficient knowledge to admit or deny.

12 (A) (1) Respondent denies.

(2) Respondent denies.

(3) Respondent denies.

(4) Respondent denies.

(5) Respondent denies.

(6) Respondent denies.

(7) Respondent denies.

(8) Respondent denies.

(9) Respondent denies.

(10) Respondent denies.

(11) Respondent denies.

(12) Respondent denies.

(13) Respondent denies.

(B) Respondent denies.

(C) (1) Respondent denies.

(2) Respondent denies.

(D) (1) Respondent denies.

(2) Respondent denies.

(3) Respondent denies.

14. (A) Respondent denies.

(B) Respondent denies.

(C) Respondent denies.

15. (A) Respondent denies.

(B) Respondent denies.

(C) Respondent denies.

16. (A) (1) Respondent denies.

(2) Respondent denies.

(B) Respondent denies.

(C) Respondent denies.

17. (A) Respondent admits.

(B) Respondent admits.

(C) Respondent denies.

(D) Respondent denies.

18. (A) (1) Respondent admits.

(2) Respondent admits.

(3) Respondent admits.

(4) Respondent admits.

(B) Respondent denies.

(C) Respondent admits.

19. Respondent denies.

20. Respondent denies.

21. Respondent denies.

22. Respondent denies.

23. Respondent denies.

AFFIRMATIVE DEFENSE NO. 1

Respondent asserts as its first affirmative defense that the Charging Party fails to state a claim upon which relief may be granted under the Act.

1. No credible evidence exists demonstrating any conduct of the Employer toward the Charging Party or any of its members or former members was motivated in any way by protected or concerted activity or any mutual aid and protection activity or any activity defined in or protected by the Act.
2. Absent credible evidence demonstrating the existence of a nexus to protected activity, the Charging Party is not entitled to any special status or protection under the Act, and thus no claim exists upon which the Board may grant relief.

AFFIRMATIVE DEFENSE NO. 2

Respondent asserts as its second affirmative defense that the Charging Party failed to reasonably mitigate any damages allegedly sustained. Any damages actually sustained by the Charging Party should be reduced proportionally for the failure to reasonably mitigate such losses.

AFFIRMATIVE DEFENSE NO. 3

Respondent asserts as its third affirmative defense that the Charging Party's damages, if any, were the direct and proximate cause of the Charging Party's own actions. The Charging Party's recovery, if any, should be proportionally reduced.

AFFIRMATIVE DEFENSE NO. 4

Respondent asserts *laches* as it fourth affirmative defense.

1. The Region investigated this matter before determining merit for twelve (12) months.
2. The original charge was filed on or about May 11, 2017.
3. The original charge involved allegations of unlawful termination, refusal to hire, and unlawful withdrawal of recognition and refusal to bargain.
4. The above-stated allegations are considered high-priority charges under long-standing Board policy.
5. The Region in its Request for Evidence solicited the charged party's position on appropriateness of relief under 10(j) further demonstrating the priority of the allegations asserted.
6. The undersigned made contact with LerVal Elva, Field Attorney investigating the charge, on or about May 19, 2017.
7. There was at least a four (4) month time period in which no investigative activity was apparent from mid-October 2017 until mid-February 2018.

8. The undersigned's experience has been that merit findings are generally made within thirty (30) to sixty (60) days. At no time, in the course of the undersigned's career, has he ever experienced a merit finding that took just shy of one (1) year as in the instant case.

9. This undue delay in processing the matter prior to a merit determination and issuance of formal complaint unnecessarily prejudices the Respondent.

10. Any damages actually sustained by the Charging Party should be reduced proportionally for the failure of the Region to afford proper, timely due process to the Respondent.

RESERVATION TO SUPPLEMENT DEFENSES

The Respondent reserves the right to supplement this Answer with any additional Affirmative Defenses.

WHEREFORE, the Respondent prays that the Complaint be dismissed with prejudice, that the matter be dismissed, and that the NLRB order any and all such further relief as is appropriate, equitable, and available.

Dated: June 11, 2018

Respectfully submitted by:

James Allen
National Labor Relations Advocates
922 Dry Valley
Villa Hills, Kentucky 41017
(513) 646-6472
(877) 700-7541 – fax
jallen@NLRAdvocates.com
Representative for A360

CERTIFICATE OF SERVICE

I certify that a copy of the foregoing has been made on Region 08 of the National Labor Relations Board via the Agency's e-filing portal, and courtesy copies have been electronically served on June 11, 2018 to the following parties:

LerVal M. Elva, Esq.
Field Attorney, NLRB Region 8
1240 E 9th St. STE 1695
Cleveland, OH 44199-2086
LerVal.Elva@nlrb.gov

James Allen
National Labor Relations Advocates

EXHIBIT D

UNITED STATES OF AMERICA
NATIONAL LABOR RELATIONS BOARD
REGION 8

LIBERTY RETIREMENT COMMUNITY OF LIMA, INC.,
LIBERTY HEALTH CARE CORP.,
LIBERTY RETIREMENT PROPERTIES OF LIMA LTD.,
LIBERTY VILLAS OF LIMA, INC., AND
LIBERTY NURSING PROPERTIES OF WOODLAND MANOR, LTD., A SINGLE EMPLOYER AND

PLUS MANAGEMENT SERVICES, INC. D/B/A
BATON ROUGE MEDICAL AND REHAB CENTER OF LIMA,

JOINT EMPLOYERS

and **Cases** **08-CA-198572**
08-CA-201287

AMERICAN FEDERATION OF STATE, COUNTY AND MUNICIPAL EMPLOYEES, AFL-CIO, OHIO COUNCIL 8

ORDER RESCHEDULING HEARING

IT IS HEREBY ORDERED that the hearing in the above-entitled matters scheduled for the 4th day of September 2018, at 1:00 p.m. has been rescheduled to the 13th day of November 2018, and consecutive days thereafter, at 10:00 a.m., in a court room of the Wood County Courthouse, One Courthouse Square, Bowling Green, Ohio.

Dated at Cleveland, Ohio this 30th day of August 2018.

/s/ Allen Binstock
ALLEN BINSTOCK
REGIONAL DIRECTOR
NATIONAL LABOR RELATIONS BOARD
REGION 08
1240 E 9TH ST
STE 1695
CLEVELAND, OH 44199-2086

UNITED STATES OF AMERICA
NATIONAL LABOR RELATIONS BOARD
REGION 8

LIBERTY RETIREMENT COMMUNITY OF LIMA, INC.,
LIBERTY HEALTH CARE CORP.,
LIBERTY RETIREMENT PROPERTIES OF LIMA LTD.,
LIBERTY VILLAS OF LIMA, INC., AND
LIBERTY NURSING PROPERTIES OF WOODLAND MANOR, LTD., A SINGLE EMPLOYER AND

PLUS MANAGEMENT SERVICES, INC. D/B/A
BATON ROUGE MEDICAL AND REHAB CENTER OF LIMA,

JOINT EMPLOYERS

and **Cases** **08-CA-198572**
08-CA-201287

AMERICAN FEDERATION OF STATE, COUNTY AND MUNICIPAL EMPLOYEES, AFL-CIO, OHIO COUNCIL 8

AFFIDAVIT OF SERVICE OF ORDER RESCHEDULING HEARING (fr. 9/4/18)

I, the undersigned employee of the National Labor Relations Board, being duly sworn, say that on **8/30/18,** I served the above-entitled document(s) by **regular mail** upon the following persons, addressed to them at the following addresses:

James Allen, Esq.
National Labor Relations Advocates
312 Walnut Street, Suite 1600
Cincinnati, OH 45202

Linda Black-Kurek, Statutory Agent
Liberty Nursing Properties of Woodland Manor Ltd.and Liberty Retirement Community of Lima, etc.
2440 Baton Rouge
Lima, OH 45805-5104

Michelle R. Evans,
Associate General Counsel
Ohio Council 8, AFSCME, AFL-CIO
6800 North High Street
Worthington, Ohio 43085-2512

Jerome O'Neal
Plus Management Services, Inc.
3737 Shawnee Rd
Lima, OH 45806

Terrence G. Stolly, Esq.,
Attorney for Plus Management
Thompson, Dunlap & Heydinger, LTD
1111 Rush Ave
Bellefontaine, OH 43311-9488

Jerome O'Neal
2905 Oak Hill Court
Lima, OH 45805

Melissa A. Marino , Esq.,
Attorney for Plus Management
Thompson, Dunlap & Heydinger, LTD
1111 Rush Ave
Bellefontaine, OH 43311-9488

8/30/18

Date

Sharon Zilinskas
Designated Agent of NLRB

Name

/s/ Sharon Zilinskas

Signature

EXHIBIT E

UNITED STATES OF AMERICA
NATIONAL LABOR RELATIONS BOARD
REGION 8

LIBERTY RETIREMENT COMMUNITY OF LIMA, INC.,
LIBERTY HEALTH CARE CORP.,
LIBERTY RETIREMENT PROPERTIES OF LIMA LTD.,
LIBERTY VILLAS OF LIMA, INC., AND
LIBERTY NURSING PROPERTIES OF WOODLAND MANOR, LTD., A SINGLE EMPLOYER AND

PLUS MANAGEMENT SERVICES, INC. D/B/A
BATON ROUGE MEDICAL AND REHAB CENTER OF LIMA,

JOINT EMPLOYERS

and **Cases** **08-CA-198572**
08-CA-201287

AMERICAN FEDERATION OF STATE, COUNTY AND MUNICIPAL EMPLOYEES, AFL-CIO, OHIO COUNCIL 8

ORDER POSTPONING HEARING INDEFINITELY

IT IS HEREBY ORDERED that the hearing in the above-entitled matters scheduled for the 13th day of November 2018 is indefinitely postponed.

Dated at Cleveland, Ohio this 19th day of October 2018.

/s/ Allen Binstock

ALLEN BINSTOCK
REGIONAL DIRECTOR
NATIONAL LABOR RELATIONS BOARD
REGION 08
1240 E 9TH ST
STE 1695
CLEVELAND, OH 44199-2086

UNITED STATES OF AMERICA
NATIONAL LABOR RELATIONS BOARD
REGION 8

LIBERTY RETIREMENT COMMUNITY OF LIMA, INC.,
LIBERTY HEALTH CARE CORP.,
LIBERTY RETIREMENT PROPERTIES OF LIMA LTD.,
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LIBERTY NURSING PROPERTIES OF WOODLAND MANOR, LTD., A SINGLE EMPLOYER AND

PLUS MANAGEMENT SERVICES, INC. D/B/A
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JOINT EMPLOYERS

and **Cases** **08-CA-198572**
08-CA-201287

AMERICAN FEDERATION OF STATE, COUNTY AND MUNICIPAL EMPLOYEES, AFL-CIO, OHIO COUNCIL 8

AFFIDAVIT OF SERVICE OF ORDER POSTPONING HEARING INDEFINITELY (fr. 11/13/18)

I, the undersigned employee of the National Labor Relations Board, being duly sworn, say that on **10/1918,** I served the above-entitled document(s) by **regular mail** upon the following persons, addressed to them at the following addresses:

James Allen, Esq.
National Labor Relations Advocates
312 Walnut Street, Suite 1600
Cincinnati, OH 45202

Linda Black-Kurek, Statutory Agent
Liberty Nursing Properties of Woodland Manor Ltd.and Liberty Retirement Community of Lima, etc.
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Ohio Council 8, AFSCME, AFL-CIO
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Jerome O'Neal
2905 Oak Hill Court
Lima, OH 45805

Melissa A. Marino , Esq.,
Attorney for Plus Management
Thompson, Dunlap & Heydinger, LTD
1111 Rush Ave
Bellefontaine, OH 43311-9488

10/19/18

Date

Sharon Zilinskas
Designated Agent of NLRB

Name

/s/ Sharon Zilinskas

Signature

EXHIBIT F

UNITED STATE OF AMERICA
NATIONAL LABOR RELATIONS BOARD
Region 8

LIBERTY RETIREMENT COMMUNITY OF LIMA, INC.; LIBERTY HEALTHCARE CORP.; LIBERTY RETIRMENT PROPERTIES OF LIMA LTD.; LIBERTY VILLAS OF LIMA, INC.; AND LIBERTY NURSING PROPERTIES OF WOODLAND MANOR, LTD., A SINGLE EMPLOYER, AND	:	
PLUS MANAGEMENT SERVICES, INC. D/B/A BATON ROUGE MEDICAL AND REHAB CENTER OF LIMA,	:	
JOINT EMPLOYERS	:	
Respondents,	:	
and	:	**Case No. 08-CA-198572**
	:	**08-CA-201287**
AMERICAN FEDERATION OF STATE, COUNTY AND MUNICIPAL EMPLOYEES, AFL-CIO, OHIO COUNCIL 8	:	
Charging Party	:	

RESPONDENT'S AMENDED ANSWER TO THE COMPLAINT

LIBERTY RETIREMENT COMMUNITY OF LIMA, INC.; LIBERTY HEALTHCARE CORP.; LIBERTY RETIRMENT PROPERTIES OF LIMA LTD.; LIBERTY VILLAS OF LIMA, INC.; AND LIBERTY NURSING PROPERTIES OF WOODLAND MANOR, LTD. (collectively "Liberty") submits the following answer to the complaint filed in the above-captioned case(s). Regarding the specific allegations contained in the complaint, the Employers respond as follows:

1. (A) Respondent admits as to Liberty, but lacks sufficient information as to Plus Management.

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Management.

(C) Respondent admits as to Liberty, but lacks sufficient information as to Plus Management.

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(C) Respondent admits as to Liberty, but lacks sufficient information as to Plus Management.

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(B) Respondent admits.

(C) Respondent admits.

(D) Respondent denies.

(E) Respondent denies.

4. (A) Respondent denies.

(B) Respondent denies.

5. (A) (1) Respondent denies.

(2) Respondent denies.

(B) Respondent denies.

(C) Respondent denies.

6. (A) Respondent denies.

(B) Respondent denies.

(C) Respondent denies.

7. (A) Respondent admits in part as to total gross revenue and denies in part as this paragraph refers to, or incorporates, the allegation contained in 3(D) above which Respondent denied.

(B) Respondent admits in part as to purchase and receipt of goods at its Lima facility and denies in part as this paragraph refers to, or incorporates, the allegation contained in 3(D) above, as referenced in 7(A), which Respondent denied.

8. Respondent admits.

9. (A) Respondent is without sufficient knowledge to admit or deny.

(B) Respondent is without sufficient knowledge to admit or deny.

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(B) Respondent denies.

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(D) Respondent is without sufficient knowledge to admit or deny.

13. (A) (1) Respondent admits.

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(6) Respondent admits.

(7) Respondent admits.

(8) Respondent admits.

(9) Respondent admits.

(10) Respondent admits.

(11) Respondent admits.

(12) Respondent admits.

(13) Respondent admits.

(B) Respondent admits.

(C) (1) Respondent admits.

(2) Respondent admits.

(D) (1) Respondent admits.

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17. (A) Respondent admits.

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18. (A) (1) Respondent admits.

(2) Respondent admits.

(3) Respondent admits.

(4) Respondent admits.

(B) Respondent admits.

(C) Respondent admits.

19. Respondent admits.

20. Respondent admits.

21. Respondent admits.

22. Respondent admits.

23. Respondent admits.

AFFIRMATIVE DEFENSE NO. 1

Respondent withdraws its previously asserted first affirmative defense that the Charging Party fails to state a claim upon which relief may be granted under the Act.

AFFIRMATIVE DEFENSE NO. 2

Respondent asserts as its second affirmative defense that the Charging Party failed to reasonably mitigate any damages allegedly sustained. Any damages actually sustained by the Charging Party should be reduced proportionally for the failure to reasonably mitigate such losses.

AFFIRMATIVE DEFENSE NO. 3

Respondent asserts as its third affirmative defense that the Charging Party's damages, if any, were the direct and proximate cause of the Charging Party's own actions. The Charging Party's recovery, if any, should be proportionally reduced.

AFFIRMATIVE DEFENSE NO. 4

Respondent withdraws its previously asserted *laches* affirmative defense.

RESERVATION TO SUPPLEMENT DEFENSES

The Respondent reserves the right to supplement this Answer with any additional Affirmative Defenses.

WHEREFORE, the Respondent prays the NLRB order any and all such further relief as is appropriate, equitable, and available.

Dated: October 21, 2018

Respectfully submitted by:

James Allen
National Labor Relations Advocates
922 Dry Valley
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Representative for A360

CERTIFICATE OF SERVICE

I certify that a copy of the foregoing has been made on Region 08 of the National Labor Relations Board via the Agency's e-filing portal, and courtesy copies have been electronically served on October 21, 2018 to the following parties:

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James Allen

James Allen
National Labor Relations Advocates

EXHIBIT G

UNITED STATE OF AMERICA
NATIONAL LABOR RELATIONS BOARD
Region 8

LIBERTY RETIREMENT COMMUNITY OF LIMA, INC.; LIBERTY HEALTHCARE CORP.; LIBERTY RETIRMENT PROPERTIES OF LIMA LTD.; LIBERTY VILLAS OF LIMA, INC.; AND LIBERTY NURSING PROPERTIES OF WOODLAND MANOR, LTD., A SINGLE EMPLOYER, AND	:	
PLUS MANAGEMENT SERVICES, INC. D/B/A BATON ROUGE MEDICAL AND REHAB CENTER OF LIMA,	:	
JOINT EMPLOYERS	:	
Respondents,	:	
and	:	**Case No. 08-CA-198572**
	:	**08-CA-201287**
AMERICAN FEDERATION OF STATE, COUNTY AND MUNICIPAL EMPLOYEES, AFL-CIO, OHIO COUNCIL 8	:	
Charging Party	:	

RESPONDENT'S SECOND AMENDED ANSWER TO THE COMPLAINT

LIBERTY RETIREMENT COMMUNITY OF LIMA, INC.; LIBERTY HEALTHCARE CORP.; LIBERTY RETIRMENT PROPERTIES OF LIMA LTD.; LIBERTY VILLAS OF LIMA, INC.; AND LIBERTY NURSING PROPERTIES OF WOODLAND MANOR, LTD. (collectively "Liberty") submits the following answer to the complaint filed in the above-captioned case(s). Regarding the specific allegations contained in the complaint, the Employers respond as follows:

1. (A) Respondent admits as to Liberty, but lacks sufficient information as to Plus Management.

   (B) Respondent admits as to Liberty, but lacks sufficient information as to Plus

Management.

(C) Respondent admits as to Liberty, but lacks sufficient information as to Plus Management.

2. (A) Respondent admits as to Liberty, but lacks sufficient information as to Plus Management.

(B) Respondent admits as to Liberty, but lacks sufficient information as to Plus Management.

(C) Respondent admits as to Liberty, but lacks sufficient information as to Plus Management.

3. (A) Respondent admits.

(B) Respondent admits.

(C) Respondent admits.

(D) Respondent admits.

(E) Respondent admits.

4. (A) Respondent admits.

(B) Respondent admits.

5. (A) (1) Respondent admits.

(2) Respondent admits.

(B) Respondent admits.

(C) Respondent admits.

6. (A) Respondent admits.

(B) Respondent admits.

(C) Respondent admits.

7. (A) Respondent admits.

(B) Respondent admits.

8. Respondent admits.

9. (A) Respondent is without sufficient knowledge to admit or deny.

(B) Respondent is without sufficient knowledge to admit or deny.

10. Respondent is without sufficient knowledge to admit or deny.

11. Respondent is without sufficient knowledge to admit or deny.

12. (A) Respondent admits.

(B) Respondent admits.

(C) Respondent admits.

(D) Respondent is without sufficient knowledge to admit or deny.

13. (A) (1) Respondent admits.

(2) Respondent admits.

(3) Respondent admits.

(4) Respondent admits.

(5) Respondent admits.

(6) Respondent admits.

(7) Respondent admits.

(8) Respondent admits.

(9) Respondent admits.

(10) Respondent admits.

(11) Respondent admits.

(12) Respondent admits.

(13) Respondent admits.

(B) Respondent admits.

(C) (1) Respondent admits.

(2) Respondent admits.

(D) (1) Respondent admits.

(2) Respondent admits.

(3) Respondent admits.

14. (A) Respondent admits.

(B) Respondent admits.

(C) Respondent admits.

15. (A) Respondent admits.

(B) Respondent admits.

(C) Respondent admits.

16. (A) (1) Respondent admits.

(2) Respondent admits.

(B) Respondent admits.

(C) Respondent admits.

17. (A) Respondent admits.

(B) Respondent admits.

(C) Respondent admits.

(D) Respondent admits.

18. (A) (1) Respondent admits.

(2) Respondent admits.

(3) Respondent admits.

(4) Respondent admits.

(B) Respondent admits.

(C) Respondent admits.

19. Respondent admits.

20. Respondent admits.

21. Respondent admits.

22. Respondent admits.

23. Respondent admits.

AFFIRMATIVE DEFENSE NO. 1

Respondent withdraws its previously asserted first affirmative defense that the Charging Party fails to state a claim upon which relief may be granted under the Act.

AFFIRMATIVE DEFENSE NO. 2

Respondent asserts as its second affirmative defense that the Charging Party failed to reasonably mitigate any damages allegedly sustained. Any damages actually sustained by the Charging Party should be reduced proportionally for the failure to reasonably mitigate such losses.

AFFIRMATIVE DEFENSE NO. 3

Respondent asserts as its third affirmative defense that the Charging Party's damages, if any, were the direct and proximate cause of the Charging Party's own actions. The Charging Party's recovery, if any, should be proportionally reduced.

AFFIRMATIVE DEFENSE NO. 4

Respondent withdraws its previously asserted *laches* affirmative defense.

RESERVATION TO SUPPLEMENT DEFENSES

The Respondent reserves the right to supplement this Answer with any additional Affirmative Defenses.

WHEREFORE, the Respondent prays the NLRB order any and all such further relief as is appropriate, equitable, and available.

Dated: October 23, 2018

Respectfully submitted by:

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Representative for Liberty

CERTIFICATE OF SERVICE

I certify that a copy of the foregoing has been made on Region 08 of the National Labor Relations Board via the Agency's e-filing portal, and courtesy copies have been electronically served on October 23, 2018 to the following parties:

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EXHIBIT H

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 8

LIBERTY RETIREMENT COMMUNITY OF LIMA, INC.,
LIBERTY HEALTH CARE CORP.,
LIBERTY RETIREMENT PROPERTIES OF LIMA, LTD.,
LIBERTY VILLAS OF LIMA, INC., AND
LIBERTY NURSING PROPERTIES OF WOODLAND
MANOR, LTD., A SINGLE EMPLOYER AND

PLUS MANAGEMENT SERVICES, INC. D/B/A
BATON ROUGE MEDICAL AND REHAB CENTER OF LIMA,

JOINT EMPLOYERS

AND Cases 08-CA-198572
08-CA-201287

AMERICAN FEDERATION OF STATE, COUNTY
AND MUNICIPAL EMPLOYEES, AFL-CIO, OHIO COUNCIL 8

STIPULATION

The General Counsel, Charging Party Union and Respondent Liberty Retirement Community of Lima, Inc., Liberty Health Care Corp., Liberty Retirement Properties of Lima LTD., Liberty Villas of Lima, Inc., and Liberty Nursing Properties of Woodland Manor, LTD., (Respondent Liberty), stipulate and agree that:

The American Federation of State, County and Municipal Employees, AFL-CIO, Ohio Council 8 (Union), at all material times, has been a labor organization within the meaning of Section 2(5) of the Act and the Union has represented the employees concerning grievances, labor disputes, wages, rates of pay, hours of employment, and other terms and conditions of work.

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11/16/18
Date

Michelle R. Evans

11/16/18
Date

Michelle R. Evans
Associate General Counsel
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11/15/18
Date

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EXHIBIT I

UNITED STATES OF AMERICA
NATIONAL LABOR RELATIONS BOARD
REGION 8

LIBERTY RETIREMENT COMMUNITY OF LIMA, INC., LIBERTY HEALTH CARE CORP., LIBERTY RETIREMENT PROPERTIES OF LIMA LTD., LIBERTY VILLAS OF LIMA, INC., AND LIBERTY NURSING PROPERTIES OF WOODLAND MANOR, LTD., A SINGLE EMPLOYER AND		
PLUS MANAGEMENT SERVICES, INC. D/B/A BATON ROUGE MEDICAL AND REHAB CENTER OF LIMA,		
JOINT EMPLOYERS		
and	**Cases**	**08-CA-198572** **08-CA-201287**
AMERICAN FEDERATION OF STATE, COUNTY AND MUNICIPAL EMPLOYEES, AFL-CIO, OHIO COUNCIL 8		

ORDER SEVERING ALLEGATIONS FROM THE CONSOLIDATED COMPLAINT

In order to avoid unnecessary costs and delay, **IT IS ORDERED** that certain allegations pertaining to Respondent Plus Management contained in the Order Consolidating Cases, Consolidated Complaint and Notice of Hearing that issued on May 31, 2018 in Cases 08-CA-198572 and 08-CA-201287, specifically the portions of paragraphs 1(A), 1(B), 1(C), 2(A), 2(B), 2(C), 3(E), 9(A), 9(B), 10, and 12(D) pertaining to Respondent Plus Management, are hereby severed from the remaining allegations contained in the Consolidated Complaint. The remaining allegations will be the subject of a Motion for Summary Judgment filed with the National Labor Relations Board (the Board) against Respondents Liberty Retirement Community of Lima, Inc.,

Liberty Health Care Corp., Liberty Retirement Properties of Lima, Ltd., Liberty Villas of Lima, Inc., and Liberty Nursing Properties of Woodland Manor, Ltd., a single employer.

Dated at Cleveland, Ohio this 8th day of January 2019.

/s/ Allen Binstock

Allen Binstock
Regional Director, Region 8
National Labor Relations Board
1240 E. 9th Street, Room 1695
Cleveland, OH 44199

CERTIFICATE OF SERVICE

The undersigned certifies that a copy of the foregoing Order Severing Allegations from the Consolidated Complaint was served on the parties listed below by regular U.S. mail on this 8th day of January 2019:

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