

Final edition pending

Collective Bargaining Agreement

Between

ABSOLUT OF GASPORT

And

COMMUNICATIONS WORKERS OF AMERICA, AFL-CIO

Effective Date - October 26, 2009

Expires - October 27, 2012

**ARTICLE I
AGREEMENT**

THIS AGREEMENT entered into this 26th day of October, 2009 by and between **ABSOLUT OF GASPORT** herein after referred to as the “Employer” or “Facility” and the **COMMUNICATIONS WORKERS OF AMERICA, AFL-CIO**, herein after collectively referred to as the “Union”.

The purpose of this Agreement is to establish and maintain harmony and cooperation between the Employer, the Union and the employees covered hereunder by setting forth the complete understanding between the parties with respect to wage, hours and other terms and conditions of employment. Further, the parties state it is their common goal to provide the residents of the facility the most efficient, safest and highest quality of care at all times.

**ARTICLE 2
RECOGNITION**

The Employer recognizes the Union as the sole representative of its employees in the bargaining unit, certified by the National Labor Relations Board in Case No. 3-RC-9784:

“All full-time and regular part-time licensed practical nurses employed by the Employer at its facility located 4540 Lincoln Drive, Gasport, New York, excluding all managerial, clerical, service and maintenance, professional and casual employees, guards and supervisors as defined in the Act.”

**ARTICLE 3
BARGAINING UNIT CHANGES**

The Employer shall provide the Union a list of additions to the bargaining unit, a list of terminations and deletions from the bargaining unit, and a list of name and address changes, telephone number, status and date of hire at the end of each month in which such changes occur.

**ARTICLE 4
NON-DISCRIMINATION**

The parties agree that it is the policy of **Absolut** of Gasport to provide equal employment opportunities to all individuals, without regard to race, color, gender, age, marital status, religion, national origin, disability or sexual preference. This policy applies to hiring, promotion, transfer, training, wage and benefit administration and all other aspects of employment.

**ARTICLE 5
AGENCY SHOP**

Section 1. All employees who are members of the Union on the effective date of this Agreement shall, as a condition of employment, remain members for the term of this Agreement. All employees who wish to join the Union and do so after the effective date of this Agreement shall, as a condition of employment, remain members of the Union for the term of this Agreement.

Section 2. Employees who have not joined and who do not wish to join the Union must, after they have completed thirty (30) days of continued employment, or within thirty (30) calendar days after the execution date of this Agreement, pay to the Union an amount equal to the then current dues (but no other charges) applicable to members as a contribution toward the administration of this Agreement. Employees may request payroll deduction for the payment of union dues or Agency fee, as applicable to each employee. Employees who choose not to join the Union may authorize the payment of the Agency fee on an authorization form which is the same as that shown in this Agreement except it will substitute the words "the monthly dues and one initiation fee" in such authorization.

Section 3. Upon written demand by the Union, the Employer shall terminate the employment of any employee who has failed to pay Union dues or the Agency fee, as applicable, without liability on the part of the Employer, within thirty (30) days of said notification. If during said thirty (30) day period the employee pays the Union dues or the Agency fee, as applicable, the Employer shall not be required to discharge such employee.

Section 4. The Union shall indemnify and hold the Employer harmless against any and all claims, suits or liabilities that shall arise out of actions taken or not taken in compliance with the procedure contained in the Article.

**ARTICLE 6
DEDUCTION OF UNION DUES**

Section 1. The Employer agrees that upon receipt of a written request on a form approved by the Employer and signed by an employee covered by this Agreement, the Employer will deduct fifty-two (52) times per year from such employee's wages one-quarter (1/4) of the amount of monthly union dues specified in such request, plus an initiation fee not to exceed \$25.00 in a single deduction for employees who have joined the Union, and forward the full amount thus deducted to the Secretary-Treasurer of the Union or his authorized agent as directed. The request may be revoked by the employee at any time upon their written request to the Employer, and such request should be directed to the appropriate Employer representative.

Section 2. Dues deductions will be made or revoked in designated pay periods in the current payroll for properly executed dues deduction authorizations or revocations received by the appropriate Employer representative on or before the last day, the previous payroll period. The Employer will correct any errors made in making such deductions in a timely manner.

Section 3. The Employer agrees to make payroll deductions of the Union dues, and for Union members one (1) initiation fee, when authorized to do so by the employee on a form as set forth below in an amount as certified to the Employer by the Secretary-Treasurer of the Union and to pay over to the Secretary-Treasurer of the Union any amounts so deducted. Changes in the amount of monthly dues or the amount of the initiation fee will be certified to the Employer at least sixty (60) calendar days prior to the requested change.

Section 4. The Union shall indemnify and hold the Employer harmless against any and all claims, suits or liabilities that shall arise out of actions taken or not taken in compliance with the procedure contained in this Article.

PAYROLL DEDUCTION AUTHORIZATION

NAME: _____ JOB TITLE: _____

The undersigned hereby authorizes **Absolut** of Gasport to deduct from my wages:

CHECK EITHER:

_____ MEMBER The monthly dues and one initiation fee as certified to the Employer from time to time by the Secretary-Treasurer of the Communications Workers of America, and remit same to the Secretary-Treasurer of the Communication Workers of America as his/her duly authorized agent This authorization may be revoked by me at any time by written request to the Employer and by sending a copy of such request to the Secretary-Treasurer of the Union, or

_____ AGENCY A service charge equal to the monthly dues as certified to the Employer from time to time by the Secretary-Treasurer of the Communications Workers of America, and remit same to the Secretary-Treasurer of the Communications Workers of America as his/her duty authorized agent This authorization may be revoked by me at any time by written request to the Employer and by sending a copy of such request to the Secretary-Treasurer of the Union

Union membership dues and agency fees are not deductible as charitable contributions for Federal income tax purposes.

Dues and agency fees, however, may be deductible in limited circumstances subject to various restrictions imposed by the Internal Revenue Code.

Resident Address

Signature of Employee

City/Town

State

Zip Code

Social Security Number _____

Date of Birth _____

Date Received by Company _____

Date Effective _____

**ARTICLE 7
PROBATIONARY PERIOD**

Section 1. All employees covered by this Agreement who are hired on or after the effective date of this Agreement, whether or not previously employed by the Employer, shall be subject to a probationary period of ninety (90) calendar days.

Section 2. The Employer may extend the probationary period by thirty (30) calendar days by giving notice of the extension writing to the employee at least seven (7) calendar days prior to the expiration of the original probationary period.

Section 3. All probationary employees may be dismissed during the probationary period in the Employer's sole discretion. Such dismissal shall not be subject to the grievance or arbitration provisions of this Agreement.

**ARTICLE 8
ORIENTATION**

The Employer will provide orientation to new employees and/or transferees, as needed, depending on previous experience, skill, qualifications and resident care needs.

If an employee feels that she requires additional orientation time, that employee may meet with her supervisor and a union representative, if she wishes, to discuss an area where she feels more orientation is needed.

**ARTICLE 9
PERSONNEL FILES**

Section 1. Employees who have completed his/her probationary period shall, have access to his/her own personnel file. Access will be limited to post-employment information. In order to inspect a file, an employee shall contact the Administrator or his/her Designee who shall indicate to the employee the day and time that the file can be reviewed. The file may be reviewed only in the presence of the Administrator or his/her Designee. No document shall be removed from the personnel file without the express permission of the Administrator or his/her Designee. For any document which is copied, ten cent (\$.10) per page fee will be charged by the Employer.

Section 2. All evaluations and written warnings placed in an employee's personnel file shall be signed and dated by the employee prior to or at the time of inclusion in the file. If an employee refuses to sign, that refusal will be noted on the document.

**ARTICLE 10
JOB DESCRIPTIONS**

The Employer will furnish to the Union a job description for each position covered by this Agreement. Should the Employer decide to change a bargaining unit job description, the Employer will produce the change to writing. The Employer will provide the Union with a copy within fifteen (15) days of implementation and give the Union an opportunity to discuss it.

**ARTICLE 11
PROGRESSIVE DISCIPLINE AND REMEDIATION**

Section 1. The Employer commits to a policy of progressive discipline. Progressive disciplinary measures will include the following:

- a) Verbal Warning;
- b) Written Warning;
- c) **Final Written Warning**
- d) **Suspension and/or Termination.**

In certain cases, the Employer reserves the right to deviate from this action, depending on the nature of the offense, in order to insure a safe, healthy and productive work environment.

Section 2. Non-Probationary employees shall not be disciplined without just cause. Copies of all written notices discharge, suspension and warning shall be furnished to employee.

Section 3. The purpose of this system of progressive corrective action is to assist employees to correct inappropriate work behavior and/or work related performance. It is meant to aid in the development of professional work behaviors and improved "work related performance," rather than be a solely punitive system. In all cases (other than serious misconduct) where a corrective process is anticipated, counseling shall be used as a preliminary approach where possible and appropriate. The employee will be provided a copy of all disciplinary actions.

Section 4. Progressive Remediation:

- a.) **The Employer shall identify certain corrective actions which are needed to assist and support an employee when a problem occurs in the course of performing his/her job and will provide the employee with a written plan of correction at any of the following steps:**
 - Written warning
 - Suspension
 - Final written warning
- b.) **The Union and the Employer agree that the written plan of correction shall not be required when there are non job performance problems.**

- c.) **It is further agreed that this Article does not preclude the Employer from the initiation of disciplinary action for serious performance problems at a higher step despite the absence of a written plan of correction.**

ARTICLE 12 UNION REPRESENTATION

Section 1. The Union may select from employees in the bargaining unit, three (3) Union Stewards for the purpose of handling legitimate Union business (one per shift).

Section 2. Where a Union Steward is requested by the Employer to handle employee matters relating to legitimate Union business, attends a grievance meeting with the Employer or attends a meeting scheduled by the Employer at which the employee is entitled to representation pursuant to Section 5 hereof during working hours, the Steward will be paid for such time. Pursuant to the foregoing, if a Steward is called in by the Employer during non-working hours, she will be paid for actual time in meeting and if a Steward performs such services during work time, she will not be docked.

Section 3. The Union shall furnish the Employer with a listing of designated Stewards whenever there is a change in Stewards, the Union shall give written notice to the Employer and such list of change notice shall be authorized and executed by a Union official designated by the Union.

Section 4. Employees shall not be paid for any time spent in meetings with the Employer which are scheduled outside of the employee's scheduled work time unless the Employer schedules meetings for such times and requires attendance, in which case the employee or employees who are required by the Employer to attend shall be compensated in addition to a Union Steward who is in attendance pursuant to Section 5 hereof and in accordance with the terms of Section 1.

Section 5. When an employee covered by this Agreement is interviewed by any representative of the Employer with the intention of investigating a specific problem or problems which could result in discipline, or when the employee is being disciplined, the employee will be so informed and will be entitled to request Union representation during such meeting.

Section 6. The Employer shall recognize and deal with such representative of the employees as the Union may elect to appoint, pursuant to this Article. No employee shall be paid for time spent meeting with one or more Union representative pursuant to this provision. Meetings generally shall not be held during working hours of any involved employee(s) and if such occurs, it shall only be with the express authorization of the Employer.

Section 7. Time off for Union business shall be considered as time worked for the purpose of determining seniority, wage increases and other benefits with the exception that unpaid time off will not be considered as time worked for the purpose of determining overtime.

Section 8. Any Union official seeking access to the Facility must receive approval from the Administrator or his/her designee twenty-four (24) hours prior to the time of the requested visit. Access will be restricted to non-patient care areas.

Section 9. The Employer agrees to provide excused absence time without pay to one employee member of the Union bargaining committee for all purposes of negotiating a re-opening of this Agreement.

Section 10. The Employer shall provide a total of up to eight (8) calendar days of unpaid excused absence per calendar year to the bargaining unit for employees to conduct Union business, provided the Employer receives at least two (2) calendar weeks notice before each requested day of absence.

ARTICLE 13 GRIEVANCE PROCEDURE

Section 1. A grievance is any difference between the Facility and the Union or between the Facility and the Union on behalf of an employee with respect to the interpretation, or administration of, or compliance with, this Agreement or with respect to disciplinary action taken with any employee, including the reasonableness of any Facility rules of conduct or regulation under which the disciplinary action may have been taken.

Section 2. In the interest of cooperation, the parties (supervisor, steward and/or employee) shall engage in a discussion in an attempt to solve the problem. If the problem can not be resolved:

Step 1: A grievance must be submitted in writing on a grievance form within ten (10) calendar days of the day of the occurrence out of which the difference arises, or ten (10) calendar days of the day of the occurrence became known or should have become known, to the Director of Nursing. A meeting will be arranged with the Director of Nursing, the grievant, and his/her Union steward. The Director of Nursing will give a written answer to the Union within seven (7) calendar days of the date on which the formal grievance is submitted.

Step 2: In the event that the grievance is not settled at Step 1 and the employee or the Union desires it to be considered further, it must be presented in writing within seven (7) calendar days after the Step I response, to the Administrator, who (or whose designee) shall meet with the grievant and the Union steward or a higher Union representative not later than the seventh (7th) calendar day after the day on which the Administrator received the written grievance. The Administrator, or his/her designee, has (7) calendar days after the day on which the Step 2 meeting is held to answer the grievance in writing. If the employee and the Union are not satisfied with the answer, the employee and the Union have thirty (30) calendar days from the date of the Step 2 answer within which to submit the grievance to arbitration (see Article 14 entitled Arbitration). If the Union does not appeal a grievance to arbitration before the appeal time expires, the grievance is deemed satisfied. No individual employee may institute an arbitration proceeding.

Section 3. The time limits set forth herein must be strictly adhered to by the parties and the employees. Any claim or grievance not answered within the specified time periods may be appealed directly to the

next step of the grievance procedure. Should the Union violate the time limitations outlined in this Article, said violation shall be deemed a waiver of the grievance. The parties may by mutual consent extend any such time limit, provided that such extension must be evidenced in writing and signed by both parties.

Section 4. Grievances involving the discharge, suspension or layoff of an employee must be presented in the second step of the grievance procedure within ten (10) calendar days from the date of notice of discharge, suspension or layoff.

ARTICLE 14 ARBITRATION

Section 1. If a grievance is submitted to arbitration, the party choosing to arbitrate shall give written notice to the other party. A joint request will be made to the Director of the Federal Mediation and Conciliation Service to submit a list of at least seven (7) names from which the parties shall select the arbitrator. If no arbitrator is found to be satisfactory, either party may reject the entire panel and another panel shall be requested.

Section 2. No more than one grievance may be appealed to an arbitrator in the course of a single arbitration proceeding, unless the parties expressly agree in writing to the appeal of more than one grievance.

Section 3. Each party shall bear its own expenses with respect to preparation of the matter and presentation to an arbitrator and both parties shall bear equally the expense of the arbitrator.

Section 4. The decision of the arbitrator shall be final and binding on both parties and the employees. The arbitrator shall have authority only to interpret the terms and conditions of this Agreement. An arbitrator shall not have jurisdiction or authority to add to, subtract from, modify or change in any way the provisions of this Agreement.

ARTICLE 15 CATEGORIES OF EMPLOYEES

Section 1. For all employees hired after the effective date of this Agreement, the employees' classifications will be as follows

- a) Full-time employee: An employee who is regularly scheduled to work thirty-seven and one-half (37½) hours per week.
- b) Part-time employee: An employee who is regularly scheduled to work less than thirty-seven and one-half (37½) hours per week, but at least twenty-two and one-half (22½) hours per week.

- c) Limited part-time employee: An employee who is regularly scheduled to work at least seven and one-half (7½) hours per week, but less than twenty-two and one-half (22½) hours per week.
- d) Casual employee: An employee who has completed an orientation and who will be available to work on a varying, call-in, short notice and as needed basis. The names of casual workers currently available shall appear on a call-in list.

ARTICLE 16 HOURS OF WORK AND WORK SCHEDULES

Section 1. The work week for all employees covered by this Agreement begins at 7:00 a.m. on Sunday each week and ends a 6:59 a.m. the following Sunday. The Employer retains the right to change the pay periods with a fifteen (15) day advance notice to the Union.

Section 2. The normal work shifts will be:

- a) 7:00 a.m. to 3:00 p.m.
- b) 3:00 p.m. to 11:00 p.m.
- c) 11:00 p.m. to 7:00 a.m.
- d) 7:00 a.m. to 7:00 p.m.
- e) 7:00 p.m. to 7:00 a.m.
- f) 7:00 p.m. to 11:00 p.m.

Section 3. At times, due to unpredictable circumstances the Employer is in need of employees to work in excess of their scheduled shift in order to maintain minimum staffing requirements. The Employer will follow their Nurse Coverage Plan. If unsuccessful, the Employer may require employees to work in excess of their scheduled shift to ensure quality resident care.

Section 4. Work schedules shall be posted at least two (2) weeks in advance of the time the employee is expected to work. Work schedules, once posted may not be changed by the Employer without the knowledge of the affected employee, except in emergency situations. Once the schedule is posted, if an employee requires a schedule change, such must be approved by the responsible supervisor or his/her designee and the employee must find his/her own non-overtime replacement. The name and signature of the intended replacement must be listed on the completed "Time Off Request" form and submitted to the supervisor for approval at least two (2) business days in advance of the requested time off.

Section 5. The Employer will post a needs list when the schedule is posted. Assignment of extra time will be based on Article 19, Overtime, Section 3 and seniority.

Section 6. Requests for specific non-benefit days scheduled off must be presented in writing and in duplicate on the "Time Off Request" form to the Director of **Human Resources** at least two (2) weeks in advance of the schedule being posted. The Director of Nursing or his/her designee will indicate approval or disapproval prior to the posting of the schedules.

Section 7. Employees will be scheduled every other weekend off, unless minimum staffing requirements warrant otherwise. If, as a result of staffing requirements, an employee is scheduled and works more frequently than every other weekend, said employee shall be scheduled off an additional weekend shift for every additional weekend day worked within the next two (2) scheduling periods.

Section 8. Employees scheduled to work shifts of four (4) hours or more, will receive fifteen (15) minute rest period during each four (4) consecutive hours scheduled. Rest periods will be scheduled by the Charge Nurse.

Section 9. Each employee who works more than a five (5) hour shift will have a thirty (30) minute unpaid break for lunch during his/her shift. Staff luncheon rooms shall be provided to the employees. Employees who miss lunch break at the request of their supervisor will be paid for said time worked.

Section 10. Time worked shall be recorded by the employee on a time clock or any other method chosen by the Employer, provided that a thirty (30) day advanced notice is provided to the Union.

Section 11. Employees are expected and required to report to work as scheduled. An employee who is going to be absent from his/her scheduled shift shall call the supervisor and report said absence, not less than two (2) hours prior to the employee's scheduled start time, unless circumstances exist which prohibit the employee from providing such notice. An employee who fails to report to work or call in to the supervisor to report his/her absence for two (2) consecutive days will be deemed to have resigned his/her position as of the second day of said absence.

Section 12. An employee who is scheduled to work a shift, either on a scheduled basis or through sign-up, is required to work the entire shift and may not leave work prior to the end of the shift unless expressly authorized by his/her supervisor to do so.

Section 13. If an employee is absent from work on a scheduled weekend for any reason, the employee may be required to make-up that weekend missed within the next four (4) consecutive weekends.

Section 14. If a scheduled employee is removed from their weekend commitment in order to schedule an employee for a make up day(s) the scheduled employee will be scheduled those missed hours during the work week or the employee may opt to use benefit time.

ARTICLE 17 TWELVE HOUR SHIFTS

Section 1. Twelve-hour shifts are defined as those shifts that are scheduled 12 hours inclusive of one-half (1/2) hour unpaid meal break and three (3) fifteen minute breaks, 7AM – 7PM and 7PM – 7AM shifts.

Section 2. Every effort will be made to avoid scheduling twelve-hour shift employees to work more than two (2) consecutive twelve-hour shifts unless both parties agree.

Section 3. Paid time off will be paid out in 11.5 hour increments. **Full week increments will be paid out at 37.5 hours. If the employer determines the need to temporarily decrease staffing due to census fluctuation, the Employer starting with the most senior nurse will seek a volunteer. If there are no volunteers, than the least senior nurse will be adjusted according to census. Partial paid time off will be paid when an employee does not work their full scheduled shift at the Employees discretion. This will apply to any licensed nursing shift during low census.**

Section 4. Twelve-hour shift employees must find their own coverage to switch previously scheduled days.

Section 5. Twelve-hour shift employees will be scheduled to work every other weekend.

ARTICLE 18 SHIFT ROTATION

Section 1. Employees hired to work a specific shift shall not be rotated to other shifts except:

- a) in circumstances and/or scheduling situations which are out of the ordinary or where serious resident care issues exist:
- b) upon the request from an employee and approval by the Director of Nursing or her designee; or
- c) with the mutual agreement of the employee and the Employer.

Section 2. Shift Rotation to an off shift will be done by the least senior qualified employee first and then in inverse order of seniority with qualifications. No employee shall be rotated more than four (4) times per month. Nothing in this provision shall limit the number of times per month which an employee may volunteer for shift rotation, including double shift work.

Section 3. "Shift Rotation" pursuant to this provision shall mean changed shifts on an individual day basis.

ARTICLE 19 OVERTIME

Section 1. The Employer will first ask for volunteers as per Article 16, **Hours of Work and Work Schedules**, Section 3. Hours of Work and Work Schedules. If an insufficient number of volunteers are found or until the volunteer arrives, the Employer will **institute** overtime on a rotating basis in reverse seniority order among those then working. It is understood that overtime shall not exceed four (4) hours per shift unless the shift would remain uncovered due to circumstances beyond the Employer's control.

Section 2. An employee shall be paid one and one-half (1-1/2) times **his**/her straight hourly rate for all hours worked in a day after completion of her normal daily schedule of 8 or 12 hours. An employee who works three 12-hour shifts in a work week shall be paid one and one-half times her straight hourly rate for all hours worked in excess of 37.5 hours. All other employees shall be paid overtime after 40 hours worked in a pay period.

Section 3. When extra employees are needed due to absences or other occasional operational needs, the Employer will first call for volunteers using the following procedure when calling employees in such circumstances:

- a) First opportunity will be given to part-time and limited part-time employees who have worked less than thirty seven and one-half (37-1/2) hours during the week in question and are available to work on a straight-time basis involving no overtime pay;
- b) Next opportunity to casual workers on the casual call-in list;
- c) Next opportunity to full-time employees who are available to work on a straight-time basis involving no overtime pay;
- d) Next opportunity to full-time employees whose work would be paid at overtime premium rates if they accept the call-in to work; and
- e) Next opportunity to part-time and limited part-time employees whose work would be paid at overtime premium if they accept the call-in to work.
- f) Management personnel may also be assigned.

Section 4. In the event it is necessary **for** an employee to work beyond his/her scheduled shift, the affected employee will be given one (1) hour notice of overtime when possible.

Section 5. Employees will not be scheduled **overtime** for 16-hour shifts on two consecutive days unless the employee agrees.

Section 6. When an employee volunteers to work a double shift (7.5 or 11.5 hours) they shall receive a meal free of charge.

ARTICLE 20 CALL-IN PAY

Section 1. Any full-time employee called to work on his/her scheduled day off shall receive a minimum of four (4) hours work at his/her applicable rate of pay or if four (4) hours work are not available, he/she shall be paid a total of four (4) hours pay at his/her applicable rate.

Section 2. The above requirement shall be waived if an employee requests to work less than four (4) hours.

Section 3. An employee who voluntarily picks up an extra shift on a scheduled day off will not be mandated unless the employee agrees.

**ARTICLE 21
PAY PERIOD**

Employees will be paid every week on the Friday following the end of the previous pay period. Paychecks will be available on the Thursday preceding payday at the end of the shifts set forth in Article 16, Section 2(b) through 2(f) for those employees working that shift. Any change in pay periods or pay methods must be implemented as per Article 16, Hours of Work and Work Schedules.

**ARTICLE 22
WAGES**

Section 1. Employees will only receive a wage increase once per year effective on the first Sunday following the contract anniversary date.

Effective October 2009:

<u>Start</u>	<u>1 yr.</u>	<u>2 yrs.</u>	<u>3yrs.</u>	<u>4yrs.</u>	<u>5yrs.</u>	<u>6yrs.</u>
16.78	17.12	17.46	17.81	18.16	18.52	20.25

Effective October 2010:

<u>Start</u>	<u>1yr.</u>	<u>2yrs.</u>	<u>3yrs.</u>	<u>4yrs.</u>	<u>5yrs.</u>	<u>6yrs.</u>
17.28	17.63	17.98	18.34	18.70	19.08	20.86

Effective October 2011:

<u>Start</u>	<u>1yr.</u>	<u>2yrs.</u>	<u>3yrs.</u>	<u>4yrs.</u>	<u>5yrs.</u>	<u>6yrs.</u>
17.80	18.16	18.52	18.89	19.26	19.65	21.49

Longevity:	<u>2009</u>	<u>2010</u>	<u>2011</u>
	20.48	21.09	21.72

Section 2. Newly hired employees will receive one (1) year of credit for every one (1) year of comparable external experience, up to a maximum of five (5) years.

**ARTICLE 23
FLEXIBLE BENEFIT PROGRAM**

Section 1. Health Insurance

The Employer will contribute \$1.40/hour for health insurance coverage for full-time and part-time employees. Employees are eligible for health insurance coverage on the first of the month after completion of the probationary period.

Only employees who elect to participate in the company-sponsored health insurance plan will receive the company contribution.

Section 2. Flexible Spending Accounts

Flexible Spending Accounts allow eligible employees to have money deducted on a pre-tax basis into medical and dependent care spending accounts. The amount withheld may be used to pay for qualified medical and dependent care expenses not covered by other insurance programs. The employer will make available to full and part-time employees, the ability to participate through payroll deduction in accordance with plan requirements.

ARTICLE 24 UNIFORM ALLOWANCE

The Employer will provide a uniform allowance as follows:

Section 1. Regular full time and part time employees will receive a \$50 uniform allowance after each 1,000 hours worked.

Section 2. New employees will get a \$50 uniform allowance after completion of the probationary period. Thereafter, they will receive \$50 after each additional 1,000 hours worked.

Section 3. Employees may wear hunter green, ceil blue, or white pants and tops. Additionally, employees may wear any appropriate print scrub top.

ARTICLE 25 HOLIDAY PAY

Section 1. The following days are designated “holidays” and if worked, are paid at one and one-half (1-1/2) times the regular rate:

New Year’s Day
Easter Sunday
Memorial Day
Independence Day

Labor Day
Thanksgiving Day
Christmas Day
Birthday

To be eligible for holiday pay, the employee must work his/her last scheduled day before the holiday and the first scheduled day after the holiday. The only exception to the foregoing sentence will be if an employee is excused by the Director of Nursing or designee.

Section 2. There will be no duplication or pyramiding of Holiday pay. Employees who are scheduled and work a designated holiday may also choose to cash in 7.5 hours of credited personal leave time for straight time pay.

Section 3. A holiday commitment shall be established as follows for the six (6) major holidays:

- a) All affected employees will be required to work at least one (1) holiday in each of the following groups:

Memorial Day	or	Independence Day
Labor Day	or	Thanksgiving Day
Christmas Day	or	New Year's Day

- b) An employee may volunteer to work more than three (3) holidays.
- c) Assignments to work a holiday in each group will be determined by the employee's preference and the previous year's holiday assignment. If staffing is not provided for, the employee who is least senior and had the holiday off the previous year shall be assigned that holiday.

Section 4. The holiday for the 7:00 a.m. to 3:00 p.m., 7:00 a.m. to 7:00 p.m., and the 3:00 p.m. to 11:00 p.m. shifts shall be the actual day of the holiday. The holiday for the 11:00 p.m. to 7:00 a.m. and the 7:00 p.m. to 7:00 a.m. shifts shall be the eve of the holiday.

Section 5. An employee may switch shifts with another employee on a specific holiday by both parties submitting a written request to the Director of Nursing or his/her designee and receiving written approval by same. An employee may switch shifts without affecting his/her holiday commitment for the following year.

ARTICLE 26 VACATIONS

Section 1. Employees accumulate vacation time on a payroll period basis and are credited for that time on his/her anniversary date. For full-time employees, vacation time is accrued as follows:

Full-Time Employees:

1-4 years of service	10 days	At the rate of 1.443 hours/pay period
5-9 years of service	15 days	At the rate of 2.164 hours/pay period
10 years of service	20 days	At the rate of 2.885 hours/pay period.

Part-time and limited part-time employees accumulate vacation on a prorated basis.

Section 2. The vacation year for an eligible employee is the twelve (12) month period beginning on the first anniversary of his/her last date of hire into a union position and successive twelve (12) month

periods beginning on each subsequent anniversary of his/her last date of hire into a union position. Vacation hours do not accrue during leaves of absence.

Section 3. Vacation time may not be accumulated from vacation year to vacation year. Where two or more employees request the same vacation period and operations do not permit some of these employees to take their vacation at the requested time, preference will be given to the employee with the most seniority.

Section 4. Vacation checks are distributed in the same manner as regular checks unless an employee makes special arrangements with the Payroll Department. Vacation pay will be given on the pay day immediately preceding the start of employee's vacation if the vacation period is of at least one (1) week duration and the employee submits, a written request to payroll for advance vacation pay at least 14 days before the vacation is to start.

Section 5. All employees eligible for vacation pursuant to this Article shall be permitted to take credited vacation time in increments equal to their regularly scheduled shift.

- a) A listing of hours showing the accumulation of credited vacation time for each employee shall be established and maintained by payroll and an employee may only take those hours of vacation time credited as shown on the list.
- b) No vacation time can be taken prior to the date it is credited.

Section 6. Vacation requests shall be submitted two (2) times each year as follows:

- a) By November 1st of the preceding year for all requests for January 2nd to June 30th.
- b) By April 1st for July 1st to January 1st.
- c) Employees shall take a maximum of two (2) consecutive weeks of vacation. Employees may request to take vacation in excess of two (2) consecutive weeks, but approval for such request rests solely within the discretion of the Employer.

Section 7. Vacation requests shall be submitted in writing to the Director of Nursing and shall indicate all days requested off. The Director of Nursing or her designee will reply to said requests either indicating approval or denial not later than three (3) weeks after the November 1st or April 1st deadlines. Failure of the manager to reply within three (3) weeks indicates approval of the request. Vacation requests shall not be unreasonably denied. Vacations, once scheduled, may be changed upon four (4) weeks advance notice to the employee by the Director of Nursing when such is necessary for the Employer to meet minimum staffing requirements unless such schedule change will cause undue burden to the employee.

**ARTICLE 27
PERSONAL DAYS**

Section 1. At completion of the introductory period, regular full-time and regular part-time employees will begin to accrue paid personal days.

Section 2. Regular full-time employees shall accumulate personal leave time at a rate equal to 1.443 hours per week worked including all hours which are paid time off up to a maximum of ten (10) personal leave days per year. Regular part-time employees shall accumulate personal leave time at a rate equal to:

- a) 1.153 hours per week worked (4 days);
- b) .865 hours per week worked (3 days);
- c) .576 hours per week worked (2 days);
- d) .288 hours per week worked (1 day).

This time must be requested and approved in advance by the Director of Nursing or his/her designee and as outlined in Article 16, Hours of Work and Work Schedules.

Section 3. Employees may utilize up to four (4) of their earned paid personal leave days as an emergency personal day, but days used in the manner will still count as an absence occurrence where applicable. To utilize such days, employees shall provide two (2) hours notice to the Employer prior to the start of their shift and a paid personal day will automatically be deducted from the employee's credited personal account bank.

Section 4. The maximum amount of personal leave time that can be accumulated is 75 hours. Personal leave days are credited and to be used in increments of 7.5 hours or 11.5 hours for employees regularly scheduled to work twelve hour shifts.

**ARTICLE 28
SICK LEAVE**

Section 1. Each full-time employee shall accumulate sick leave credits based upon paid hours at the rate of 1.443 hours per week. The employee will be credited with the accumulated sick leave after the completion of the probationary period. All part-time employees shall accumulate sick leave at a rate equal to:

- a) 1.153 hours per week at thirty (30) paid hours per week;
- b) .65 hours per week at twenty-two and one-half (22½) paid hours per week.

Section 2. A full-time or part-time employee must take available sick leave when he/she is sick. In the event he/she also receives disability benefits, the employee shall be paid the difference between disability benefits and his/her normal earning each week. A full-time or part-time employee may

accumulate a maximum of thirty (30) sick leave days. Sick days will be taken in increments equal to their regularly scheduled shift.

Section 3. Sick leave with pay shall be granted to the extent of an employee's accumulated unused sick leave credits. A statement signed by a physician or other proof acceptable to the Administrator must be submitted to the Administrator upon return to work after three (3) consecutive sick days in order to receive sick leave.

Section 4. An employee who works the day shift must call in a minimum of one (1) hour prior to the start of their shift.

An employee who works the evening or night shift must call in a minimum of two (2) hours prior to the start of their shift.

Any employee who fails to call in within the appropriate time frame will not receive pay unless it is beyond the employees control and employee provides written justification

ARTICLE 29 401(k) RETIREMENT SAVINGS PLAN

The Employer will provide to all eligible employees, a 401(k) retirement savings plan. The employer contribution match shall be deemed discretionary.

Eligibility

- Must be 21 years of age
- Must have one year of service and have worked 1,000 hours in that year
- Enrollment opportunities are January 1 and July 1 of each year

The vesting schedule is:

0%	-	1 year
20%	-	2 years
50%	-	3 years
75%	-	4 years
100%	-	5 years

Employee vesting percentage will be based on the entry date into the 401(k) plan.

Employee contributions are always vested and can be withdrawn upon termination. If you terminate prior to completing 5 years of service, the Employer contribution, if any that you can take with you is based on the above vesting schedule.

ARTICLE 30 LEAVES OF ABSENCE

Section 1. For compelling personal business not covered by any other provision of this Agreement, a leave of absence without pay may be granted to an employee with at least eighteen (18) months continuous service with the Employer. Leave of absence may be granted up to thirty (30) days in duration and may be extended in increments of up to thirty (30) days to a maximum of four (4) months. Leaves of absence or extensions will not be unreasonably denied.

Section 2. Regular full and part-time employees who have completed the Introductory Period and those employees who wish to continue on leave upon expiration of Family and Medical Leave may have a Medical Leave of Absence initiated. Medical leaves are available to employees who are unable to fulfill the responsibilities of their positions due to medical conditions.

To qualify for a medical leave, the employee must present a physician's statement verifying disability and the expected date of return to full duty. The initial medical leave may be for a maximum of one (1) month and may be extended in increments of up to one (1) month, to a maximum of six (6) months. Extension of leave requires physician verification of continued disability and inability to return to work. Failure to request an extension will result in termination of employment upon expiration of the initial period of leave.

Section 3. An employee's application for a leave of absence must be made in writing to the Administrator (or his/her designee) at least thirty (30) days in advance of the leave. The decision to grant the leave of absence, as well as the decision to waive the thirty (30) day notice requirement in the case of emergencies, shall be made by the Employer on an individual basis and will take into account the needs of the Employer, the employee's length of service and the individual facts-of the case. An application for a leave of absence must state the beginning and ending dates of the leave.

Section 4. The employee on leave of absence may continue to participate in medical, dental and life insurance or other benefit plans by paying the total premiums due and adhering to plan requirements. The administrator/designee will advise the employee of the cost for continuing each benefit plan.

Section 5. Before an employee is granted unpaid leave, all credited paid time off benefits qualifying for use, such as sick leave, vacation, and personal time must be used.

Section 6. Family and medical leaves of absence are available in accordance with federal and state legislation.

Section 7. The Employer will grant unpaid educational leave of not more than one (1) year to an employee who has more than one (1) year continuous service, provided the studies taken are in a health-related field that will be of benefit to the Employer. The length of such a leave may be extended by mutual consent of the parties for up to one (1) additional year. To be eligible for educational leave an employee must submit proof of enrollment in the health-related courses at an educational institution and continuance of the leave will be conditioned upon continued attendance.

Section 8. Provided the employee returns to work upon the expiration of a leave, the granting of said leave will protect the employee's hire date for all purposes for which hire date is used except that time spent on such leave shall not count as time worked for computing vacation pay or any other benefits provided by this Agreement, except where required for military leave.

Section 9. The Employer will hold the position held by the employee from the time his/her approved leave of absence is taken. In the event that a layoff has occurred during the period of leave, if the employee on leave is affected by the layoff, return will be governed by Article 35, Seniority, Layoff and Recall of this Agreement.

ARTICLE 31 BEREAVEMENT LEAVE

Section 1. When a regular full-time employee's father, mother, brother, sister, spouse, child or grandchild dies, he/she will be granted a maximum of three (3) consecutive days leave (one of which must be the day of the funeral), with pay, from the date of death if he/she is absent on days scheduled to work.

Section 2. A regular part-time employee will receive two (2) consecutive days leave (one of which must be the day of the funeral), with pay, pursuant to the terms described in the preceding sentence.

Section 3. When a full-time employee's grandparent or an employee's mother-in-law, father-in-law, daughter-in-law or son-in-law dies, such employee shall get a maximum of two (2) days off with pay if scheduled to work, for the purpose of attending the funeral of such grandparent, mother-in-law, father-in-law, daughter-in-law or son-in-law. When a grandparent of an employee's spouse dies, such employee shall have one (1) day off, with pay if scheduled to work, for the purpose of attending such grandparent in-law's funeral. When a regular full-time employee's step parents, step child, step brother, step sister or legal guardian dies, such employee shall have one (1) day off, with pay if scheduled to work, for the purpose of attending such relative's funeral.

Section 4. The employee must give oral notice to the Director of Nursing or her designee as soon as practicable when the need for funeral leave arises and in addition, must have completed his/her probationary period in order to qualify for any payment for lost time.

Section 5. Upon approval of the employer, employees may be able to have additional days off from work following a death in the family as described pursuant to this provision by utilizing credited vacation and/or personal leave time provided pursuant to this Agreement. If the employee has no credited time, then with the approval of the Administrator, he/she can take an excused absence without pay. Proof of legal relationship and death may be required.

ARTICLE 32 JURY DUTY

Section 1. In the event an employee is required to serve on jury duty, the employee will be granted time off from work. The employer shall pay the employee the difference between his/her Jury duty pay and his/her straight time pay for a period not to exceed three (3) weeks for regular jury duty and four (4) weeks for serving on a Grand Jury, in any calendar year.

Section 2. To be eligible to receive payment pursuant to this Article, employees must notify the Director of Nursing or his/her designee upon receipt of the jury duty notice. Employees will cooperate with the employer in seeking exemption or rescheduling of jury duty whenever deemed necessary by the Employer.

Section 3. All employees must report for work during his/her regularly scheduled hours on any day that he/she is not required to report for jury service.

Section 4. Full days spent on jury duty and/or days on which the employee reports to work in accordance with Section 3 of this Article shall be considered as meeting the employee's regular schedule of hours.

ARTICLE 33 MILITARY LEAVE

A military leave without pay will be granted employees in the Reserves or National Guard as necessary for annual training and other periods of required training and active duty.

An employee entering the armed forces will be granted unpaid military leave for the length of military service in accordance with provisions of the Uniformed Services Employment and Re-Employment Rights Acts.

A copy of the military orders must be provided for Military Leaves. Furthermore, proof of actual performance of duty for the periods of military service may be required.

Employees, other than temporary employees, are eligible for military leave upon day of hire.

Employees may elect to use vacation time immediately prior to or during this leave; however, are not required to do so.

Employee benefits will be maintained or canceled in accordance with current Federal statutes for long or short periods of military duty.

Employees released from active duty will be reinstated in accordance with provisions of the Uniformed Services Employment and Re-Employment Rights Acts.

ARTICLE 34 TERMINATION OF EMPLOYMENT

Employees shall give two (2) weeks' notice of resignation in writing to the Employer. Upon termination of employment, an employee will be paid for credited but unused vacation and personal days only if the employee has provided the required two (2) weeks' notice of resignation and worked all scheduled days during the notice period.

If the employee has previously requested and been granted personal days or vacation days during their final two (2) weeks, this will be considered "scheduled days off."

ARTICLE 35 REINSTATEMENT

An employee who was employed by the Employer for an uninterrupted period of at least twelve (12) months, whose employment with the Employer terminates for reasons other than those constituting just cause and is rehired under the following schedule shall receive their original date of hire, adjusted for the period of separation from employment, for the purpose of calculating compensation at the applicable step and entitlement to all benefits in this Agreement.

An employee who has worked over one (1) year but less than five (5) years may be reinstated under these terms for a period of thirty (30) days after their separation.

An employee, who has worked over five (5) years, but less than ten (10) years, may be reinstated under these terms for a period of sixty (60) days after their separation.

An employee who works more than ten (10) years may be reinstated under these terms for a period of ninety (90) days after their separation. The Employer reserves the exclusive right to determine if the employee is eligible for rehire.

An employee who has worked over one (1) year and whose employment is separated due to the transfer of employee's spouse's job, may be reinstated under these terms for a period of ninety (90) days after their separation, provided the employee provides documentation confirming said transfer.

ARTICLE 36 SENIORITY, LAY-OFF AND RECALL

Section 1. Definition. "Seniority" shall mean the length of unbroken service of an employee covered by this Agreement beginning with his/her most recent date of hire by the Employer in any job classification and continuing to and including the date the employee loses seniority pursuant to this Article.

Section 2. Loss of Seniority. Seniority is lost and an employee is considered terminated when he/she:

- a) resigns or quits;
- b) is discharged for cause;

- c) retires;
- d) is absent from work for two (2) consecutive work days without having contacted the Employer;
- e) has failed to return to work on the expiration of a leave of absence;
- f) is on lay-off and (1) fails to report to work within fourteen (14) calendar days after the date that notice of recall has been sent to him/her by Certified Mail at his/her latest address appearing on the Employer's records, or (2) notifies the Employer that he/she refuses to return to work, if such notice is given within the above fourteen (14) calendar days;
- g) has been on lay-off for six (6) consecutive months;
- h) has engaged in gainful employment while on leave of absence without prior written approval of the Employer;
- i) has failed to return to work on the expiration of New York State Disability or Workers' Compensation.

Section 3. Senior List. The Employer shall maintain an up-to-date seniority list for all bargaining unit employees. Within forty-eight (48) hours after receipt of a written request from the Union, the Company will make an up-to-date seniority list available to the Union.

Section 4. Lay-Offs and Eliminations of Positions. In the event it is necessary to lay-off employees covered by this Agreement or to eliminate a filled position covered by this Agreement, such lay-off or elimination will be done as follows:

- a) All probationary, temporary and casual employees in the shift and category of employment in which a lay-off is to occur will be terminated prior to any regular employee in that shift and category of employment being subject to lay-off;
- b) By subjecting to lay-off the least senior qualified employee or employees in the category of employment (regular full-time, regular part-time) and shift,
- c) The laid-off employee may bump the least senior qualified employee on another shift in the category employment or take a lay-off.

Section 5. Payment of Vacation/Personal Days. All accrued, unused benefit time (up to maximum accumulations allowed pursuant to this Agreement) will be paid to an employee at the time of lay-off.

Section 6. Notice of Lay-Off. The Employer will provide a minimum of two (2) weeks notice of lay-off.

Section 7. Recall from Lay-Off. Employees will be recalled from lay-off in order of seniority to any open job within the bargaining unit, provided they are qualified.

Recalls from lay-off will be by Certified mail to the employee's last known address, and will give the employee a minimum of fourteen (14) calendar days to report for work from the date such notification is received.

Section 8. Insurance Continuation. Employees on lay-off will be permitted to continue, at their own expense, participation with the Employer's health insurance plan, group life insurance and any other group insurance plans until such time, if at all, that the lay-off is considered a termination pursuant to Section 2 above unless otherwise provided by law. Plan premiums must be received by the employer no later than the last business day closest to the 25th day of the month for the next month's coverage.

Section 9. Any employee promoted to a supervisory or management position and returns within ninety (90) days may do so without loss of seniority. Any employee who returns after ninety (90) days will receive their original date of hire for non – competitive purposes only.

ARTICLE 37 FILLING OF VACANCIES, JOB BIDDING AND TRANSFERS

Section 1. Definitions. For the purposes of this Article the following definitions apply:

- a) "Temporary Opening" means a vacancy in a bargaining unit position on a particular shift which is expected to exist for more than one (1) day but not to exceed ninety (90) consecutive calendar days' created by the temporary absence of an employee or by a short-term need for additional personnel.
- b) "Bargaining Unit Position" means regular full-time or regular part-time Licensed Practical Nurse.
- c) "Transfer" means a change in a bargaining unit position from regular full-time to regular part-time or vice versa or a change in shifts within the bargaining unit.
- d) "Vacancy" means an available bargaining unit position, either newly created or resulting from a loss of personnel.
- e) "Shift" means one of the six (6) regular shifts, as defined in Article 16, Hours of Work and Work Schedules.

Section 2. Procedure. Job bidding and the filling of vacancies and transfers within the bargaining unit will be made as follows:

- a) When a temporary opening in a bargaining unit position occurs which the Employer reasonably expects will be for a period of less than thirty (30) days, the additional hours will be offered to regular part-time employees in order of seniority.
- b) When a temporary opening in a bargaining unit position occurs which the Employer reasonably expects will last for a period of thirty (30) calendar days or more, the Employer will post the opening in prominent place for seven (7) calendar days (from the date that the Employer reasonably determines the opening will be for thirty (30) or more calendar days) and will attempt to fill the opening by assigning additional hours to the most senior qualified employee bidding.
- c) When a vacancy in the bargaining unit occurs, the position will be posted in a prominent place for seven (7) calendar days. Duties of the position shall be as defined in the job description.
- d) An employee desiring a transfer to a posted position must apply in writing to the Director of Nursing prior to the expiration of the posting period.
- e) In all instances, the Administrator, the Director of Nursing or a designee will interview all bargaining applicants for the vacancy and make a decision within seven (7) calendar days of the end of the posting period.
- f) The effective transfer date will be determined by the releasing manager and will not be delayed more than eight (8) weeks (fifty-six (56) calendar days).

Section 3. Seniority. Where two or more employees bid on a vacancy/temporary opening and where qualifications are equal the employee with the greatest seniority will be selected for the job.

For the purpose of this Article, seniority shall be defined as the length of uninterrupted service in the bargaining unit from the last date of entry into the unit.

Section 4. Shift Assignment During Training. An employee who is specifically hired for a particular shift may be assigned to any shift for training during his/her orientation period.

Section 5. Filing of Former Temporary Positions. If the Employer desires to fill a vacancy that had previously been filled by a temporary employee, the position shall be posted and filled through the process outlined in this Article.

ARTICLE 38 REIMBURSEMENT FOR TRAVEL EXPENSES

Section 1. Employees will be fully reimbursed for the following expenses incurred in the performance of the Employer' business when a personal automobile is used and such use is approved in advance by the Administrator or his/her designee.

- a) Mileage will be reimbursed at the **current company policy**.
- b) Tolls and parking.

Section 2. Reimbursement pursuant to this Article shall be made to an employee only upon submission by the employee of, completed Expense Report Form provided by the Employer, inclusive of all receipts.

Section 3. Personal automobiles used for approved Employer's business activities shall comply with all applicable New York State laws, rules and regulations. The Employer's insurance will cover the employee's automobile to the extent provided by the Employer's policy as secondary coverage after the employee's insurance limits have been exceeded.

ARTICLE 39 CONTINUING EDUCATION

Section 1. Since continuing education is crucial to the health care profession, employees will be required to up-date their education by attending facility in-service programs inclusive of those mandated by Federal and State law.

Section 2. Employees shall be granted time off with pay and shall be compensated for registration fees for the purpose of attending continuing education programs offered outside of the facility which are approved in writing by the Director of Nursing and the Administrator.

ARTICLE 40 HEALTH EXAMINATIONS

Section 1. All employees will be required to have and pass an annual physical exam in the two (2) months prior to each employee's anniversary date of the last physical and meet all other screenings, as required by law.

Section 2. The physical exam will be completed by the Employer's Medical Director or his/her designee at no cost to the employee. Employees may choose to have this examination done by their personal physicians at their own expense. When an employee uses his/her personal physician for the annual physical exam, and the Employer has reason to question the outcome of that exam, the Employer may receive a second opinion based on a physical examination of the employee by the Employer's Medical Director. The Employer will notify the employee in writing of the need and reason for the second opinion.

Section 3. If an employee fails to meet the requirements, the employee will not be permitted to work until he/she receives approved health assessment, as required by law. During any such time that an employee is not permitted to work pursuant to this Paragraph, the employee's absence will be unpaid and no benefits shall accrue.

Section 4. Any injury or illness sustained in the course of employment should be reported to the immediate supervisor immediately or as soon as such injury or illness becomes apparent. The Employer will file such forms as required by law and the employee shall cooperate in completing such forms.

ARTICLE 41 EMPLOYEE ASSISTANCE

Section 1. In recognition that the health and well-being of its employees and residents is essential to the efficient operation of Absolut of Gasport and the mutual goal of maintaining a drug-free and alcohol-free workplace, the parties agree that:

- a) the use of illegal drugs and/or alcohol on the Employer's premises by employees, and/or reporting to work or working under the influence of illegal drugs and/or alcohol is strictly prohibited;
- b) no employee will be tested for illegal drugs and/or alcohol use at any time unless the Employer has just cause or to test following work-related injury which requires medical treatment more than first aid.

It is not the Employers intention to restrict employees of the legal right to file Workers' Compensation claims for fear of loss of employment

Section 2. "Just cause" pursuant to this provision shall be defined as unusual behavior or appearance of an individual employee which:

- a) is observed on duty by a supervisor or manager employee and confirmed by another eye witness; and
- b) is the type of appearance or behavior recognized and accepted as a symptom of use of a drug or alcohol; and
- c) is not reasonably explained as resulting from causes other than use of a drug or alcohol.

Section 3. Refusal of an employee to submit to a drug and/or alcohol test when there is just cause will result in termination of employment.

Section 4. An employee, who tests positive in violation of the policy dated June 25, 2003, as amended herein, will not be discharged but will be subject to the following:

- a) The Employer will provide to the employee referrals for in-patient and/or out-patient services;
- b) The employee will be suspended, without pay for a minimum of thirty days, pending release to work by employee's physician or under the direction of Professional Assistance Program ("PAP") or any other accredited program. The employee will have to test negative before returning to work.

- c) Upon return to work, the employee and agents of the Union and Employer will sign the attached return to work agreement.

RETURN TO WORK AGREEMENT

The result of the drug/alcohol test you took on _____, were positive. As you are aware, this is a violation of the negotiated drug and alcohol policy of the collective bargaining agreement.

You have been provided referrals for in-patient and/or out-patient services, and you are suspended for a minimum of thirty days, pending release of work by your physician or under the direction of Professional Assistance Program (“PAP”), or any other accredited program.

You have been given an opportunity to correct your problem. If the Employer conducts a proper drug test and/or alcohol test in accordance with the collective bargaining agreement, and you test positive for drugs and/or alcohol within the next two years or you test positive on random testing, not to be conducted more than four (4) times during this two year period, you will be terminated.

You have read and understand the above terms of this agreement.

Date: _____
Employee

Date: _____
Union Representative

Date: _____
Employer Representative

**ARTICLE 42
HEALTH AND SAFETY**

Section 1. The Employer will observe all applicable health and safety laws and shall continue to make reasonable provisions for the health and safety of its employees during the hours of their employment. Protective devices, equipment and procedures necessary to protect employees from injury and illness shall be provided by the Employer. Employees are required to make continuous use of such devices, equipment and procedures furnished for their protection.

Section 2. A quarterly Health and Safety Committee will be convened to allow a representative from each department to attend and participate in the development of safe work practices.

*** Nursing can have an LPN and CNA on the committee.**

**ARTICLE 43
BULLETIN BOARD**

The Employer will provide one (1) bulletin board to be used by the Union in posting notices. Said notices will be limited to the following: notices of Union meetings, announcements of Union elections, changes of Union officers, and announcement of Union-sponsored social functions. A copy of the posting shall be provided to the Administrator prior to the posting.

**ARTICLE 44
DESIGNATED SMOKING AREA**

The Employer will designate a smoking area for employees on a twenty-four (24) hour basis, subject to Federal and/or State regulations. The Employer will notify the Union prior to implementing any change in the designated smoking area.

**ARTICLE 45
LOCKERS**

Lockers with keys will be provided to all employees covered by this Agreement. The key must be returned at the time employment is terminated. Lockers provided pursuant to this provision are subject to inspection by the Employer at any time.

**ARTICLE 46
PARKING**

The Employer shall provide parking immediately adjacent to the facility without cost to the employee.

**ARTICLE 47
BARGAINING UNIT WORK**

Personnel outside the bargaining unit will not be assigned work regularly and customarily performed by bargaining unit employees except in the following circumstances:

- a) to cover emergencies, which shall be defined as situations which arise and which are out of the control of the Employer,
- b) to Instruct and supervise employees;
- c) where determined by the Employer to meet staffing requirements;

- d) to cover absences and/or vacancies which are in the process of being filled, where bargaining unit employees are not readily available to perform the required work; or
- e) where determined by the Employer to respond to essential resident care needs.

**ARTICLE 48
CONTRACTING OUTWORK**

The Employer will not use agency personnel, absent emergency circumstances (defined as situations which arise and which are out of the control of the Employer and/or situations which the Employer determines respond to serious resident care needs). If such use would result in the lay-off of bargaining unit employees, a reduction of employees from full-time to part-time status or reduction in an employee's regularly scheduled hours of work.

**ARTICLE 49
MANAGEMENT RIGHTS**

Section 1. The Employer reserves and retains solely and exclusively all of its inherent rights to manage the facility, as such rights existed prior to the execution of this Agreement, subject only to the express limitations of this Agreement. It is recognized and agreed that the management of the facility, the control of the premises and the direction of the working force is vested solely and exclusively in the Employer.

Section 2. The sole and exclusive rights of the Facility include, but are not limited to:

- a) its right to establish, continue, change or abolish any and/or all of the facility's policies, practices, rules regulations and procedures;
- b) to determine the number, location, hours and types of its operation;
- c) to determine the quality and quantity of the work to be performed;
- d) to determine the residents to be served;
- e) to establish or discontinue processes or operations or to discontinue their performance by employees of the facility;
- f) to determine whether and to what extent the required work shall be performed by employees covered by this Agreement;
- g) to determine the number, classifications and duties of employees;
- h) to determine the necessity for filling vacancies and creating new jobs;
- i) to determine the methods, processes, equipment and materials to be used in the facility operations;

- j) to judge the efficiency, competency and qualifications of employees;
- k) to establish and maintain a job evaluation program;
- l) to establish and change work schedules and work assignments;
- m) to select, hire, assign, supervise, train, direct, transfer, demote and promote employees;
- n) to lay off, terminate and otherwise to relieve employees from duty for lack of work or other reasons;
- o) to abolish any job or classification;
- p) to assign supervisory personnel and/or any other non-bargaining unit personnel to perform any work or duty performed by members of the bargaining unit;
- q) to use independent contractors to perform work or services;
- r) to subcontract, contract out, close down or relocate the employer's operations or any part thereof;
- s) to utilize employees wherever necessary in cases of need or in the interest of resident care;
- t) to establish and change and to enforce rules for the conduct of employees;
- u) to discipline and discharge employees for just cause;
- v) to take any other such measures as may be determined by the facility to be desirable for the successful, proper, orderly and economical operation of the facility.

Section 3. The Employer's failure to exercise any right hereby reserved to it, or the exercising of any right in a particular way, shall not be a waiver of any such right or preclude the Employer from exercising such right in some other way.

Section 4. Management rights shall be retained except to the extent that those rights, powers and authority are specifically abridged or modified by the express provisions of this Agreement.

ARTICLE 50 NO STRIKE-NO LOCKOUT

Section 1. It is expressly agreed that during the term of this Agreement that neither the Union, their officers, agents nor members shall encourage, authorize, or condone any strike, walkout, sickout, slowdown, or refusal to cross a picket line or other work stoppage for any cause. Nor shall the Union

or their officers, agents or members engage in any form of economic pressure through correspondence directed at residents or residents' families The parties specifically intend to include sympathy strike and/or the honoring of picket lines in the above reference to "any strike."

Section 2. In the event of an unauthorized slowdown or work stoppage, the Union agrees to make reasonable efforts to assist the company in its attempts to continue without interrupting the operations of its properties and its facilities and to send written statement addressed to the employees (with copies sent simultaneously to the employer) and signed, respectively, by the International President and the Local President. The statements will declare the strike to be unauthorized and will direct the employees to return to work.

Section 3. An employee who violates Section 1 may be subjected to immediate discipline, up to and including discharge. In the event that an employee is discharged, or otherwise disciplined, for engaging in conduct proscribed in Section 1, the only issue subject to review through the Grievance and Arbitration provision of this Agreement shall be whether the employee was a participant in the unauthorized conduct and/or whether discipline has been discriminately imposed.

Section 4. During the term of thus Agreement, there shall be no Lockouts by the Employer.

ARTICLE 51 SUCCESSORSHIP

The Employer agrees not to sell its business or any portion of its business location to a purchaser who would provide health care services without expressly providing in the contract of sale that the purchaser shall be bound to all of the contract rights of the employees under this collective bargaining agreement.

ARTICLE 52 CHANGE OF LAW

If there is a change in a Federal or State law, rule or regulation that conflicts with a provision of this Agreement; or in the event a court of competent jurisdiction finds that a Federal or State law, rule, or regulation, or Executive order conflicts with the provisions of the Agreement, the provision or provisions so affected shall no longer be operative or binding upon the parties, but the remaining portion of the Agreement shall continue in full force and effect and the parties will meet to negotiate regarding that portion of the Agreement which has been held invalid.

ARTICLE 53 COPE DEDUCTIONS

Section 1. The Employer agrees that, upon receipt of an individual written request in a form approved by the Employer and signed by an employee covered by this Agreement, the Employer will deduct fifty-two (52) times per year from such employee's wages the amount indicated by the employee on the COPE deduction form, and forward the full amount thus deducted to the appropriate

union's committee on political education. The request may be revoked by the employee at any time upon their written request to the Employer, and such request should be directed to the appropriate Employer representative.

Section 2. The Employer assumes no responsibility either to the employee or the Union for any failure to make or for any errors made in making such deductions, but will correct any errors made in making such deductions in the payroll period following notice of such errors. The Union further agrees to hold the Employer harmless for any and all claims arising out of claims under this Article.

ARTICLE 54 COMPLETE AGREEMENT

Thus Agreement concludes the collective bargaining between the parties and constitutes the sole, entire and existing agreement between the parties and supersedes all prior commitments or practices between the parties. The understanding and agreements arrived at by the parties after each has exercised their right to make demands and present proposals are set forth in this Agreement.

ARTICLE 55 AMENDMENTS

During the term of this Agreement, either party may propose that the Agreement be amended, but the other party is not obliged to negotiate or to agree to any proposed amendment on any subject whether referred to in this Agreement or not.

No provision of this Agreement may be deleted, waived, or changed, and no provision may be added to this Agreement except by a written, dated amendment to the Agreement that is signed by each party subsequent to the execution of this Agreement.

ARTICLE 56
DURATION

This Agreement will take effect at 12:01 a.m. on October 26, 2009 and continue for a **three (3)** year period ending at midnight on October 27, 2012. Thereafter, this Agreement shall continue for successive periods of twelve (12) months each, unless not earlier than ninety (90) days nor less than sixty (60) days before midnight of the termination date in any subsequent year, one party officially notifies the other in writing that it desires to amend, modify or terminate this Agreement. The parties by mutual agreement may extend the term of this Agreement to a definite date for the purpose of continuing negotiations.

This Agreement is entered into this _____ day of **November 2009**.

David Denny, Administrator
Absolut of Gasport

Debra M. Hayes, Staff Representative
Communications Workers of America, AFL-CIO

Sharon A. Schultz, Vice President
CWA Local 1168

Linda Flatt, Bargaining Committee Representative
CWA Local 1168

LETTERS OF AGREEMENT
TEMPORARY EMPLOYEES

During the term of this Agreement, the Company will not hire temporary employees to replace members of the bargaining unit.

David Denny, Administrator
Absolut of Gasport

Debra M. Hayes, Staff Representative
Communications Workers of America, AFL-CIO

Date

Date