

# **AGREEMENT**

**Reached by and between**

**Millard Fillmore Surgery Center, LLC**

**and the**

**Communications Workers of America,  
AFL-CIO**

**June 1, 2021**

**to**

**May 31, 2023**

OPEIU 153, AFL-CIO

**Table of Contents**

<b>Article #</b>	<b>Title</b>	<b>Page #</b>
Article 1	Agreement and Application .....	3
Article 2	Responsible Relationship.....	3
Article 3	Recognition .....	3
Article 4	Successorship.....	4
Article 5	Agency Shop.....	4
Article 6	Union Dues Deduction.....	4
Article 7	Political Action Fund (PAF) Deductions.....	6
Article 8	Bulletin Boards .....	6
Article 9	Non-Discrimination .....	7
Article 10	Access to Premises for Union Representatives.....	7
Article 11	Union Representation.....	7
Article 12	Grievance Procedure.....	9
Article 13	Probationary Period .....	11
Article 14	Categories of Employees .....	12
Article 15	Per Diem Employees.....	12
Article 16	Temporary Employees.....	14
Article 17	Hours of Work and Work Schedules .....	14
Article 18	Shift Differential .....	17
Article 19	Call-In Pay .....	18
Article 20	Salaries.....	19
Article 21	Overtime .....	21
Article 22	Paid Time Off .....	22
Article 23	Flexible Benefits Plan.....	26
Article 24	Health Insurance .....	27
Article 25	Dental Plan.....	29
Article 26	Life Insurance .....	31
Article 27	Tax Sheltered Annuities.....	30
Article 28	Retirement Plan.....	30
Article 29	Restricted Duty Program.....	31
Article 30	Leave of Absence.....	32
Article 31	Military Leave.....	37
Article 32	Jury Duty.....	38
Article 33	Bereavement Leave.....	39
Article 34	Disability.....	39
Article 35	Workers' Compensation .....	42
Article 36	Employee Assistance Program .....	45
Article 37	Tuition Assistance.....	46
Article 38	Continuing Education Program.....	48
Article 39	Domestic Partner.....	49
Article 40	Seniority .....	49
Article 41	Job Bidding.....	50

Article 42	Layoff and Recall.....	52
Article 43	Downsizing .....	54
Article 44	Personnel Files .....	55
Article 45	Job Descriptions.....	55
Article 46	Progressive Discipline and Remediation .....	55
Article 47	Resignations/Terminations .....	56
Article 48	Bargaining Unit Work.....	57
Article 49	Contracting Out Work.....	57
Article 50	Management Rights .....	57
Article 51	Employer Policies .....	57
Article 52	No Strike – No Lockout.....	57
Article 53	Designated Smoking Areas.....	58
Article 54	Scrub Apparel .....	58
Article 55	Savings Clause .....	58
Article 56	Joint Labor Management Committee.....	58
Article 57	Security Technology .....	59
Article 58	Duration .....	60
	Memorandum of Understanding #1 Seniority .....	62
	Memorandum of Understanding # 2 Drop and Add Relative to FTE.....	62

**Article 1**  
**Agreement and Application**

Section 1. This Agreement is entered into by and between the Millard Fillmore Surgery Center, LLC, hereinafter referred to as the “Employer,” and the Communications Workers of America, AFL-CIO, hereinafter referred to as the “Union.”

Section 2. The provisions of this Agreement shall supersede and replace the corresponding provisions of any existing bargaining unit agreement that deals with the same issues.

**Article 2**  
**Responsible Relationship**

The Employer and the Union recognize that it is in the best interest of the parties, the employees, and the public that all dealings between them continue to be characterized by mutual responsibility and respect. To insure that this relationship continues and improves, the Employer and the Union and their respective representative at all levels will apply the terms of this contract fairly in accord with its intent and meaning and consistent with the Union’s status as exclusive bargaining representative of all employees covered by this contract. Each party shall bring to the attention of all employees in the units covered by this contract, including new hires, their purpose to conduct themselves in a spirit of responsibility and respect and of the measures they have agreed upon to insure adherence to this purpose.

**Article 3**  
**Recognition**

Section 1. The Employer hereby recognizes the Union as the exclusive representative for the purpose of collective bargaining with respect to rates of pay, wages, hours of employment, and other conditions of employment, for all of its employees in the collective bargaining unit.

Section 2. Except as excluded below, employees in the following titles in all categories of employment, employed by Millard Fillmore Surgery Center, LLC at its 215 Klein Road site are all included in the bargaining unit:

- Central Supply Technician
- Materials Equipment Coordinator
- Materials Handler
- Registered Nurse/First Assistant
- Scheduling Secretary
- Surgical Services Registered Nurse
  - Operating Room
  - Post Anesthesia Care Unit
  - Pre-Operative
- Infection Control RN
- Surgical Technologist
- Unit Secretary
- Radiology Technician

All other employees are excluded.

In the absence of the Infection Control nurse, his / her responsibilities will be assumed by a non-bargaining unit person.

Section 3. The Employer shall provide the Local Union on a monthly basis, a list or lists showing all new hired employees, additions to the bargaining unit, terminations, deletions from the bargaining unit and name and address changes. The Employer shall provide the local Union on a quarterly basis a list **or** lists of name and address changes, a seniority list and an alphabetical bargaining unit list with Social Security numbers.

#### **Article 4 Successorship**

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

#### **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. The Employer will be given a current list of Union members on request, but not more often than once a month.

Section 2. Employees who have not joined and do not wish to join the Union must, after they have completed thirty (30) calendar days of continued employment or on the execution date of this Agreement if on that date they have been employed for thirty (30) calendar days, 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 who choose not to join the Union may authorize the payment of the Agency fee on a form which is the same as that shown in this Agreement except it will substitute the words "service charge equal to the monthly dues" for the words "the monthly dues and one initiation fee" in such authorization.

#### **Article 6 Union Dues Deduction**

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 twenty-six (26) times per year from such employee's wages union dues specified in such request, plus an initiation fee not to exceed \$25.00 in a single deduction, and forward the full amount thus deducted to the Secretary-Treasurer of the Union or his/her 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. In general, dues deductions will be made or revoked in designated pay periods in the current payroll for properly executed dues deductions authorizations or revocations received by the appropriate employer representative on or before the last day of the previous payroll period. However, the Employer assumes no responsibility either to the employee or to 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.

Section 3. The Employer agrees to make payroll deductions of Union dues and 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.

### PAYROLL DEDUCTION AUTHORIZATION

Name \_\_\_\_\_

Job Title \_\_\_\_\_

The undersigned hereby authorizes Millard Fillmore Surgery Center, LLC 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, AFL-CIO, and remit same to the Secretary-Treasurer of the Communications Workers of America, AFL-CIO, 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 FEE PAYER** 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, AFL-CIO 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.

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.

\_\_\_\_\_  
Signature of Employee

\_\_\_\_\_  
Resident Address

---

City/Town State Zip Code

---

Social Security Number

---

Date of Birth

---

(FOR OFFICE USE ONLY)

Date Received by Company \_\_\_\_\_

Date Effective \_\_\_\_\_

**Article 7**  
**Political Action Fund (PAF) 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 twenty-six (26) times per year from such employee's wages the amount indicated by the employee on the PAF 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 his/her 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 to 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 8**  
**Bulletin Boards**

Section 1. The Employer will install and maintain a glass enclosed bulletin board in the hallway near the rear exit for use by all bargaining unit members.

Section 2. The following kinds of materials or literature do not require prior advance notice:

- a.) notices of Union recreational or social affairs;
- b.) notices of Union elections;
- c.) notices of Union appointments and results of Union elections;
- d.) notices of Union meetings; and
- e.) Union educational publications.

Section 3. Bulletin boards shall be used for factual and non-controversial material. The posting of material of a political nature, other than Union elections, of any kind is strictly prohibited.

**Article 9**  
**Non-Discrimination**

Neither the Employer nor the Union shall discriminate against an employee on the basis of age, race, creed, religion, color, national origin, sexual orientation, gender identity and expression, genetic characteristics, military status, sex, disability, or marital status all as defined by State or Federal laws.

**Article 10**  
**Access to Premises for Union Representatives**

Section 1. Accredited union representatives not employed by the Employer will have reasonable access to the Employer premises for the purpose of conferring with management. Advance notice of forty-eight (48) hours shall be served. It is understood, however, that circumstances may dictate a shorter notice.

Section 2. It is agreed to and understood, that Union meetings may be scheduled on Employer property with the prior approval of the Employer.

**Article 11**  
**Union Representation**

Section 1. The Union may select from employees in the bargaining unit, union stewards in any number it desires for the purpose of handling grievances or other legitimate Union business. Paid time off as provided for in Section 4. of this Article shall be provided to Union designated chief stewards.

Section 2. If a steward is not available for Union business, an officer or executive board member may identify themselves to the supervisor as the person who will be acting on behalf of the steward for the period of the absence of such steward.

Section 3. The Union shall furnish the Employer a listing of designated chief stewards. Wherever 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 the Secretary-Treasurer of the Local Union, the Union's Local President, or such other Union official designated by the Union.

Section 4. Chief stewards shall restrict their activities to the handling of grievances or other legitimate Union business. Chief Stewards shall not be permitted more than four (4) hours of paid time per week to conduct union business.

Section 5. The Employer shall not be obligated to pay stewards for time spent in grievance handling or grievance meetings beyond the end of their regular shift nor when they are not scheduled to work, unless the Employer schedules meetings for such times.

Section 6. Chief Stewards shall be required to obtain approval from their immediate supervisor to leave their work station or to take time to investigate and adjust grievances. Where

practical, such approval shall be granted without unreasonable delay. It shall be understood that these employees shall report back to their work station promptly after the completion of Union business.

Section 7. In the interest of the efficient and orderly conduct of business and the economical use of time, the following activities shall not be conducted on Employer paid time by any bargaining unit employee:

- a.) activities connected with organizing efforts and the internal management of the Union;
- b.) solicitation of membership;
- c.) circulation of authorization cards or petitions;
- d.) collection of dues or other assessments;
- e.) solicitation of signatures on dues withholding authorization forms or forms revoking dues withholding authorizations;
- a.) campaigning for Union office;
- g.) distribution of literature.

Section 8. It is agreed that the collection of dues and soliciting of membership shall be allowed on Employer premises, but not on Employer paid time. However, it is to be clearly understood that if any of the above listed activities cause a disturbance or the disruption of the orderly conduct of business, such privileges may be revoked immediately.

Section 9. When an employee covered by this Agreement is interviewed by a representative of the Employer, and the result of such interview could be discipline, the employee will be so informed and will be offered union representation during such interview. It is understood that the Union representative shall not interfere with the Employer representative's interview or investigation.

Section 10. Employees who are elected or appointed to a bargaining committee for the purpose of negotiating a successor to this Agreement will be excused from work for contract negotiations and union bargaining caucus. The Employer will pay the lost time wages for one (1) employee bargaining representative.

Section 11. Employees who are elected or appointed to positions within the Union shall be granted a total of five (5) unpaid days per year for union business.

Section 12. Any employee that is excused from work for union business, regardless of whether it is with or without pay, will maintain his/her category of employment and will not lose

any benefits provided for in this Agreement, including those provided for under the retirement plan.

Section 13. The Union shall be provided thirty (30) minutes at each new employee orientation for the purpose of addressing all new employees hired into the bargaining unit.

## **Article 12 Grievance Procedure**

Section 1. A grievance under this Agreement shall be defined as a claim of an employee, a class of employees or the Local Union, covered by the Agreement which involves the interpretation, administration of, or compliance with a specific provision of this Agreement. A class action grievance will be initially presented at Step 2. of the grievance procedure.

Section 2. The selection and the assignment of supervisory employees is the sole responsibility of the Employer and shall not be subject to the grievance procedure.

Section 3. All grievances shall be reduced to writing on forms provided by the Union. The Steward shall clearly and concisely state all facts which constitute the basis for the grievance and shall specify any Article or Section of the Agreement which may be involved. The grievance form shall be dated and signed by the Steward and at least one employee who claims a violation of this Agreement.

Section 4. For a grievance to be treated as a valid one, it must be presented to an Employer representative in writing, as described in Section 3, within twenty (20) calendar days after the event or events giving rise to the grievance occurred, or within twenty (20) calendar days after those events should have reasonably been known.

Section 5. Any time limit imposed upon the handling of grievances shall commence on the date of receipt. Any time limit so imposed shall be interpreted as calendar days.

Section 6. It is understood by the parties that the Union representative or an aggrieved employee shall undertake every reasonable effort, including but not limited to face to face meetings, to resolve a grievance by first discussing it with the supervisor involved. Whether or not a discussion is held, and the grievance is not resolved, it shall be presented in writing to the Employer as provided for in Section 3. and Section 4. above, and it shall be processed in the following manner:

Step 1: Grievances shall be presented in writing to the aggrieved employee's immediate supervisor for discussion with the Union Steward and the grievant if the aggrieved employee is willing and able to attend. The discussion with the supervisor or his or her designee shall be held promptly after receipt of the grievance and within seven (7) calendar days. The supervisor or designee's written answer shall be made available to the Union Steward within five (5) calendar days after the Step 1 discussion.

Step 2: If no mutually acceptable conclusion is reached in Step 1, the grievance shall then be presented, in writing, to the Employer's Human Resources representative, or designee, which individual shall handle second step grievances for all sites within ten (10) calendar days after the receipt by the Union Steward of the written answer derived from the Step 1 discussion. The matter shall be investigated and discussed by the Human Resources representative, or designee, including such Employer representatives as are needed or appropriate, with the designee(s) of the Union, the grievant if appropriate, and if the aggrieved employee is willing and able to attend. This meeting shall take place within seven (7) calendar days of the request unless mutually waived. The Human Resources representative, or designee, shall render a decision in writing to the Local Union President, or designee, within fourteen (14) calendar days of the Step 2 discussion.

Step 3: If no mutually satisfactory conclusion is reached at the end of Step 2, either party to this Agreement shall give notice of its desire to arbitrate the grievance by sending a letter to the Federal Mediation and Conciliation Service (FMCS) within forty-five (45) calendar days after receipt of the Step 2 answer, which:

- a.) requests arbitration identifying the grievance and including whatever forms are required by the Mediation Service; and
- b.) requests the Mediation Service to send to each party a list of seven (7) names of arbitrators.

Section 7. No later than fourteen (14) calendar days following receipt of the copy of the lists, a representative of each party shall alternately strike a name until one name is left. The determination of who strikes first may be made by the coin toss with the loser making the first strike. The remaining name shall be the arbitrator for that grievance. Either party may reject a panel of arbitrators and request one additional panel.

Section 8. Any grievance not answered within the specified time periods may be appealed to the next Step of the Grievance procedure immediately. Grievances may be entertained at any Step or the time limits may be changed at any Step by mutual consent of the parties in writing. Failure to timely appeal any grievance will close the grievance.

Section 9. The cost and the expense of the arbitrator and the hearing room shall be shared equally by the parties. All other expenses shall be borne by the party incurring them, and neither party shall be responsible for the costs of the other.

Section 10. Not more than a single grievance arising under this Agreement may be arbitrated in a single proceeding before an arbitrator unless by mutual agreement in writing signed by the parties.

Section 11. Any grievance which the Employer may have against the Union shall be reduced to writing and submitted to the chief steward who will promptly arrange a meeting at the Step 2 level of this procedure.

Section 12. A grievance alleging discharge without just cause or grievances concerning layoffs due to a reduction in the work force shall be reduced to writing within seventy-two (72) hours of the Local Union's receipt of written notice of the discharge or notice of layoff or within seventy-two (72) hours after the events should reasonably have become known to the Local Union, and shall be submitted at Step 2. of this procedure.

Section 13. The award of an arbitrator shall be final and binding on the Union, its members, the employee or employees involved and the Employer.

Section 14. The decision of the arbitrator may or may not include "make whole" decisions with respect to back pay, provided, however, if an arbitrator shall award back wages covering the period of an employee's separation from the Employer's payroll, the amount as awarded shall be less any unemployment compensation received or other compensation from any source, which the employee would not have received or earned had they not been suspended or discharged, and provided further that any wages from another job with another employer held by the employee at the time of the suspension or termination will not be the basis for any reduction in back pay awarded.

Section 15. The arbitrator shall have no authority to alter, amend or change in any way the terms and conditions of this Agreement and shall confine their decision to a determination of the facts and interpretation, administration of, and compliance with the terms of the Agreement.

### **Article 13 Probationary Period**

Section 1. All full-time, regular part-time and part-time employees shall be probationary for a period of ninety (90) calendar days following their date of hire inclusive of the orientation period.

Section 2. The Employer may at its option extend the probationary period by thirty (30) calendar days by giving notice of extension in writing to the employee, inclusive of a plan of correction, seven (7) days prior to the expiration of the ninety (90) calendar day probationary period. Further, if the employee is absent for three (3) or more scheduled work days during the probationary period, the period will automatically be extended by the number of hours the employee was absent.

Section 3. During the probationary period or any extension hereof, the Employer may discipline, or discharge, a probationary employee without recourse to this Agreement.

Section 4. A temporary employee is defined as one who is scheduled as per Article 16, of this agreement.

## **Article 14**

### **Categories of Employees**

Section 1. A regular full-time employee is defined as one who is regularly scheduled to work thirty-seven and one-half (37½) hours in a work week (or seventy-five [75] hours in a pay period).

Section 2. A regular part-time employee is defined as one who is regularly scheduled to work less than thirty-seven and one-half (37½) hours in a work week but works a minimum of thirty-seven and one-half [37½] hours in a pay period. Part-time employees must be available to be scheduled for work on any weekday.

Section 3. A per diem employee is defined as one who is scheduled as per Article 15, of this agreement.

Section 4. A temporary employee is defined as one who is scheduled as per Article 16, of this agreement.

## **Article 15**

### **Per Diem Employees**

Section 1. A per diem employee is one that works on a day to day basis in accordance with the provisions of this article. Per diem employees will not be guaranteed to work a specific number of hours or a specific number of shifts per time block.

Section 2. When a per diem position in the bargaining unit is vacant, it must be posted and filled in accordance with Article 42, Job Bidding, before it can be offered to an external candidate.

- a.) Internal applicants must have been employed in the same job title as the per diem position for which they are applying or in a comparable area of practice and have been employed with the Employer for a minimum of one (1) continuous year.

Section 3. Per diem employees will have seniority as defined in Article 41, Seniority.

Section 4. Orientation:

- a.) Orientation requirements will be determined by the manager. Any mandatory requirements must be met within two (2) months from date of transfer/hire.
- b.) Per diem employees will be required to attend other mandatory in-service programs in accordance with Employer policy. Per diem employees will be reimbursed for attendance at non-mandatory in-service programs during their scheduled work hours. It is understood that until the requirements are met, the per diem employee will not be scheduled to work.

Section 5. Per diem employees will not be used to permanently replace regular employees. Per diem employees will be required to work three (3) shifts per time block as needed.

Section 6. Per diem employees will be scheduled as follows:

- a.) Per diem employees will submit their time requests as per Article 17, Hours of Work and Work Schedules. Per diem time requests will be considered after the requests of full-time and part-time employees. The Employer will make a reasonable effort to accommodate these requests.
- b.) Per diem employees shall give the Employer at least four (4) hours notice for cancellation of any given shift.
- c.) The Employer shall give per diem employees at least one (1) hour notice of cancellation of services for any scheduled shift.

Section 7. Benefits:

- a.) Per diem employees are not entitled to paid time off.
- b.) Per diem employees shall continue at the pay step they leave as a regular employee. External applicants shall be hired and shall receive step increases as per Article 20, Salaries. Per diem employees shall receive step increases as per Article 20, Salaries, as well as negotiated wage increases.
- c.) Overtime provisions negotiated shall also apply to per diems.
- d.) All differentials shall be paid if applicable.
- e.) Per diem employees shall be able to participate in any Employer group medical insurance plan that permits the enrollment of per diem employees. However, the Employer shall not be required to pay any part of the per diem employee's premium.
- f.) Per diem employees shall be eligible for the Retirement Plan in accordance with the provisions of each plan.
- g.) Per diem employees are entitled to Workers' Compensation and New York Disability benefits.
- h.) If a per diem employee changes status to a full-time or regular part-time status, the employee shall begin to earn accrual of all benefit time (paid time off) based on their years of continuous employment from their original date of hire.

- i.) Per diem employees shall be entitled to all Employer discounts (i.e., hospital discounts).

Section 8. Employees who transfer to a per diem position shall not lose any paid time off, earned prior to the transfer. The employee shall be paid all accrued, unused paid time off.

## **Article 16 Temporary Employees**

Section 1. A temporary employee is an employee hired from outside of the Employer for a specific job of limited duration not exceeding six (6) months. It is understood, however, that circumstances may exist that require an extension of up to three (3) months. At the expiration of the six (6) month limit, or any extension thereof, the Employer will be required to either delete the temporary position or post it in accordance with Section 5. below.

Section 2. Temporary employees will not be utilized to do bargaining unit work which can be performed by available laid off employees.

Section 3. Temporary employees will not be considered members of the bargaining units and will not be entitled to the protections provided for by this Agreement. Temporary employees are not entitled to benefits.

Section 4. If a temporary employee is selected to fill a permanent position, the employee's original date of hire will be maintained. The temporary employee must complete a full probationary period. The probationary period will be determined according to the temporary employee's original date of hire and the time actually worked in the temporary position, not to exceed ninety (90) days. If a temporary employee is selected to fill a permanent position other than the position worked while in a temporary status and the probationary period has been worked, the employee will serve a trial period as per Article 42, Job Bidding.

Section 5. If the Employer desires to permanently fill a position that has been filled by a temporary employee, the position shall be posted and filled through the normal process as outlined in Article 42, Job Bidding.

## **Article 17 Hours of Work and Work Schedules**

Section 1. The work week for all employees covered by this Agreement will begin at 12:00 am on Monday each week and end the following Friday at closing.

Section 2. The regular work shift for employees working four (4), ten (10) hour shifts will have the majority of hours scheduled, inclusive of a one-half (½) hour unpaid meal period between 6:00 am to 5:00 pm. The regular work shifts for employees working five (5), eight (8) hour shifts will have the majority of hours scheduled, inclusive of a one-half (½) hour unpaid meal period between 6:00 am to 6:00 pm for the dayshift and the majority of hours scheduled,

inclusive of a one-half (½) hour unpaid meal period between 3:00 pm to 11:00 pm for the evening shift. There will be no mixing of 8 and 10 hour shift durations for individuals hired into an 8 or 10 hour shift position unless an employee volunteers to do so.

Should it be necessary to make a change in the scheduling method or starting and ending times, the Employer will produce a suggested change in writing at least thirty (30) calendar days prior to its proposed implementation and give the Union an opportunity to write and present a proposal for discussion regarding the change prior to the date of implementation.

Section 4. Work schedules must be posted at least ten (10) days in advance of time the employee is expected to work. Work schedules may not be changed without the knowledge and agreement of the responsible manager and the affected employee. However, in extreme emergencies it is understood that an employee may have to have his/her schedule changed.

Section 5. Time requests shall be made at least four (4) weeks, but not more than twelve (12) weeks, in advance of the time block on a form provided by the Employer. A time block will be defined as four (4) consecutive weeks. The approval or disapproval of these requests shall be included in the posted schedule.

Approval of time requests will be distributed as evenly as possible. Should a conflict arise between a request for PTO and a request for a day off, the request for PTO will take preference. If conflicts still arise, seniority shall govern.

Section 6. Special time requests for a day off shall be submitted to the responsible manager. A manager will reply indicating approval or denial within two (2) weeks of the request. Failure of the manager to reply within two (2) weeks indicates approval of the time request. A special time request is one that:

- a.) must be made prior to the time frames required in the contract for a regular time request;
- b.) requires approval or denial prior to the posting of the time block that will include the date requested;
- c.) is for circumstances that are of a “special” nature.

A special time request can be for a PTO day or for a day off (long day). Examples of a special time request include but are not limited to:

- a.) a request submitted in January for your child’s wedding in June;
- b.) a request submitted in February for your child’s college graduation in May;
- c.) a request submitted in March for your parent’s 50<sup>th</sup> Wedding Anniversary in September.

Section 7. When time requests are submitted after the time frame(s) outlined in Section 5. above, the employee is responsible for finding his/her own replacement. An individual employee's request to change his/her schedule shall be presented in writing, on a form, to the immediate supervisor. The form must be submitted to the immediate supervisor/department manager, signed by both employees affected, prior to the schedule change. When the above steps have been completed, the time change will be approved providing it does not result in an overtime situation.

Section 8. Extra shifts will be defined as an opening that exists on a schedule, once all employees are scheduled the hours appropriate to their status and all per diem employees are scheduled to fulfill their requirement. Extra shifts will be filled by equally distributing the open shifts to employees who have requested extra time and in seniority order as follows:

- a.) a regular part-time employee who can work extra hours without incurring overtime;
- b.) a part-time or per diem employee who can work extra hours without incurring overtime; and
- c.) full-time employees who will incur overtime, in seniority order on a rotating basis.

Once filled, all extra shifts and overtime shifts will be clearly designated with an \* on the posted schedule. This designation will be used when administering the downsizing language.

Section 9. If staffing shortages occur on shift-to-shift basis (due to disabilities, workers compensation and unscheduled call-ins/FMLA, etc. or increases in volume), the shifts will be distributed by those who have signed up on an availability list for extra time and overtime as follows:

- a. a part-time employee who has signed up on the availability list for the unit and who can work extra hours without incurring overtime;
- b. a per diem employee who has signed up on the availability list for the unit and who can work extra hours without incurring overtime; and
- c. employees who have signed up on the availability list for the unit who will incur overtime in seniority order on a rotating basis (wheel).

In the event there is more than one employee in (a), (b), or (c), the position will be filled by the most senior employee in the same job title and then by employees in the bargaining unit qualified and willing to do the work.

After the process has been completed, openings may be filled by any means available to the Employer.

Section 10. Each employee shall be given an opportunity for a fifteen (15) minute rest period, with pay, at a natural break point in work operations near the mid-point of the first one-half of his/her shift and the second one-half (½) of his/her shift.

Section 11. Each employee shall have a thirty (30) minute break at the mid-point of his/her shift for lunch. It is understood by the parties that the fifteen (15) minute rest period(s) may be added to the lunch break, or combined into a single break, by the mutual agreement of the Employer and the employee.

Section 12. Employees must notify their supervisor if available when they are unable to take a meal break, except where the employee's position does not allow them to leave their work station.

Section 13. Time worked shall be recorded by an automated time system, at the Employer's option.

Section 14. The ability to establish extended shifts can be completed with the mutual agreement of the majority of the affected employees in the department and the Employer. If a decision is made to establish a special shift:

- a.) the Union and the Employer will meet to negotiate the terms of the new shift;
- b.) the new shift will be trialed for a period not to exceed four (4) months;
- c.) the Union and the Employer will meet at the end of the trial period to review:
  - (1.) any change(s) which need to be made;
  - (2.) if the trialed shift will become permanent.

## **Article 18**

### **Shift Differential**

Section 1. Shift differential will be paid to all employees for hours worked on a premium shift (evening and night shifts) in accordance with the provisions of this Article.

Section 2. Shift differential will be used in the computation of overtime.

Section 3. For employees who are hired to work the evening shift, shift differential will be applied to all time that employee is scheduled off with pay.

Section 4. Evening shift differential will be paid for all evening shifts when the majority of hours are scheduled after three o'clock (3:00pm). Shift differential will be paid for all hours worked on that shift.

Section 5. An employee who is called in to work on a premium shift, will receive shift differential for all hours worked on the premium shift.

Section 6. Shift differential premiums shall be as defined in Article 20, Salaries.

### **Article 19 Call-In Pay**

Section 1. Four (4) hours pay or a minimum of four (4) hours work shall be provided to employees called to work for a work assignment outside their regular scheduled work hours. Being called back to work for the purpose of this Article, does not include being held over or starting early.

It is understood that an employee may agree to work a predetermined number of hours that is less than four (4) hours and be paid for less than four (4) hours, i.e. lunch coverage for 2 hours. If the predetermined agreement is exceeded in terms of time frames the employee will be paid a minimum of four (4) hours pay or four (4) hours work shall be provided.

Section 2. Employees who are not scheduled for a shift but are called and report on duty within two (2) hours after the start of the shift in question will receive pay at their applicable hourly rate for the full shift. If called but not required to stay the entire shift, they will be paid a minimum of four (4) hours pay at the applicable rate.

**Article 20  
Salaries**

Section 1.

a.) This section will be effective the first full pay period in June 2021 (current) and will represent a three percent (3%) increase in the base rate::

Grade	Start Rate	1st Anniv.	2nd Anniv.	3rd Anniv.	4th Anniv.	8th Anniv.	12th Anniv.	16th Anniv.	20th Anniv.
	Step 1	Step 2	Step 3	Step 4	Step 5	Step 6	Step 7	Step 8	Step 9
1	\$17.64	\$18.18	\$18.71	\$19.28	\$19.87	\$20.46	\$21.08	\$21.73	\$22.06
2	\$18.28	\$18.61	\$18.98	\$19.34	\$19.72	\$20.13	\$20.49	\$20.88	\$21.20
3	\$18.84	\$19.41	\$19.99	\$20.60	\$21.22	\$21.87	\$22.52	\$23.73	\$24.11
4	\$20.39	\$21.01	\$21.65	\$22.32	\$22.97	\$23.67	\$24.37	\$25.11	\$25.50
5	\$21.62	\$22.03	\$22.47	\$22.87	\$23.32	\$23.78	\$24.26	\$24.71	\$25.07
6	\$24.36	\$25.06	\$25.77	\$26.48	\$27.26	\$28.05	\$28.84	\$29.68	\$30.12
7	\$32.68	\$32.95	\$33.53	\$34.16	\$38.86	\$43.60	\$44.34	\$45.18	\$45.87
8	\$36.04	\$36.71	\$37.43	\$38.16	\$42.74	\$44.51	\$45.27	\$46.11	\$46.77

b.) This section will be effective the first full pay period in June 2022 and will represent a two and one half percent (2.5%) increase in the base rate:

Grade	Start Rate	1st Anniv.	2nd Anniv.	3rd Anniv.	4th Anniv.	8th Anniv.	12th Anniv.	16th Anniv.	20th Anniv.
	Step 1	Step 2	Step 3	Step 4	Step 5	Step 6	Step 7	Step 8	Step 9
1	\$18.08	\$18.64	\$19.18	\$19.76	\$20.37	\$20.97	\$21.60	\$22.28	\$22.62
2	\$18.74	\$19.08	\$19.45	\$19.82	\$20.22	\$20.63	\$21.00	\$21.40	\$21.73
3	\$19.31	\$19.90	\$20.49	\$21.11	\$21.75	\$22.41	\$23.09	\$24.32	\$24.72
4	\$20.90	\$21.54	\$22.19	\$22.88	\$23.54	\$24.26	\$24.98	\$25.74	\$26.14
5	\$22.16	\$22.58	\$23.03	\$23.44	\$23.91	\$24.38	\$24.87	\$25.33	\$25.70
6	\$24.97	\$25.69	\$26.41	\$27.14	\$27.95	\$28.75	\$29.56	\$30.43	\$30.87
7	\$33.49	\$33.77	\$34.37	\$35.02	\$39.83	\$44.69	\$45.45	\$46.31	\$47.01
8	\$36.94	\$37.63	\$38.37	\$39.11	\$43.80	\$45.63	\$46.41	\$47.26	\$47.94

Section 2. Charge pay will be paid to an employee in any case where the employee has been assigned by the normal manager / supervisor the responsibility for decision making and / or managerial responsibilities. Effective the first full pay period following ratification charge pay will be two dollars (\$2.00) per hour.

Section 3. In addition to the base pay, preceptor pay will be one dollar and fifty cents (\$1.50) for all time in excess of one (1) hour that an employee is assigned to preceptor duties.

Section 4. Shift differential for the evening shift with the majority of hours worked subsequent to 3:00 pm will be paid one dollar (\$1.00) per hour.

Section 5. The right to begin new employees in the above Step 1 through Step 5, based on the Employer's assessment of that employee's prior related experience, is reserved to the Employer. Employees hired with experience shall be credited the years of service that correlate to the step at which they are placed for purposes of step progression moving forward. (It's understood that this will apply to all current MFSC employees who were hired previously with experience.)

Section 6. Increases to Steps 2 through Step 5 shall occur on the first day of the payroll period following the appropriate anniversary date of the employee's assignment to that Step.

Section 7. Increases in Step 6, Step 7, Step 8 and Step 9 shall occur on the employee's eighth (8<sup>th</sup>), twelfth (12<sup>th</sup>), sixteenth (16<sup>th</sup>) and twentieth (20<sup>th</sup>) anniversary date, respectively, of continuous service for the Employer.

Section 8. When an employee is promoted, he/she shall be placed in the appropriate step which will not be less than five percent (5%) or more than a ten percent (10%) increase and will not be less than Step 1 for the new job. If there is more than one step in the five percent (5%) to ten percent (10%) range, the employee will be placed at the highest step. At the time of promotion, employees shall be considered to have the years of service that correlate to the Step at which they are placed, pursuant to this Section for purposes of step progression moving forward. Such employee's overall years of service with the Employer shall not dictate step progression.

Section 9. When a Surgical Technologist is promoted from Surg Tech into an RN position, he/she shall be assigned to a Step, in accordance with the following schedule inclusive of any Surgical Technologist who has accepted an RN job prior to the ratification of this Agreement:

- a.) a Surgical Technologist with four (4) or less years of Surgical Technologist experience with MFSC will be placed in Step 1;
- b.) a Surgical Technologist with five (5) through eight (8) years of Surgical Technologist experience with MFSC will be placed at Step 3; finally
- c.) a Surgical Technologist with more than eight (8) years of Surgical Technologist experience with MFSC will be placed at Step 5.

At the time of promotion, employees shall be considered to have the years of service that correlate to the Step at which they are placed, pursuant to this Section for purposes of step progression moving forward. Such employees' overall years of service with the Employer shall not dictate step progression.

Section 10. Paycheck errors of three (3) hours of pay or more will be corrected with a supplemental check upon request within two (2) business days.

Section 11. Job titles are listed below. If the Employer creates a new job, they will negotiate the salary with the Union.

**JOB TITLES:**

**Grade 1**

Unit Secretary

**Grade 2**

Materials Handler

**Grade 3**

Patient Receptionist/Registration

**Grade 4**

Central Supply Technician/Sterile Processing Technician  
Scheduling Secretary

**Grade 5**

Materials Equipment Coordinator

**Grade 6**

Surgical Technologist  
Radiologist Technician

**Grade 7**

Registered Nurse  
- Operating Room  
- Post Anesthesia Care Unit  
- Pre-Op  
- Infection Control Nurse

**Grade 8**

Registered Nurse  
- First Assistance

**Article 21  
Overtime**

Section 1. Overtime shall be paid to all employees covered by this Agreement. No employee will be required to work beyond the end of his/her shift but may volunteer to do so.

Section 2. Overtime shall be paid at one and one-half (1½) times an employee's basic hourly rate (including shift differential) for actual hours worked in excess of thirty-seven and one-half (37½) hours in a scheduled week except in those job titles where the normal work week exceeds

thirty-seven and one-half (37½) hours. In these instances, overtime shall be paid at one and one-half (1½) times the employee’s basic hourly rate (including shift differential) for actual hours worked in excess of the employee’s normal work week.

Section 3. Scheduled paid time off, including personal days will be considered as time worked for the purpose of computing overtime. Unscheduled paid time off will not be considered as time worked for the purpose of computing overtime.

Section 4. All employees who are required to remain at work due to inclement weather or an extreme emergency will be paid at one and one-half (1½) times the employee’s regular hourly salary.

Section 5. Overtime must be authorized in advance by the appropriate supervisor or designee, if available.

**Article 22  
Paid Time Off**

Section 1. All full-time and regular part-time employees are eligible for Paid Time Off (PTO) according to the following schedules.

a.) Plan 1 will apply to all registered nurses.

<b>PTO</b>			
Years of Service	Accrual Rate Per Hours	Maximum Annual PTO Hours	Maximum Annual PTO Days
<b>Date of hire to End of Probation</b>	<b>.0333</b>	<b>174.5</b>	<b>23.25</b>
<b>End of probation to Last Day of 1<sup>st</sup> Year</b>	<b>.1192</b>	<b>174.5</b>	<b>23.25</b>
<b>First Day of 2<sup>nd</sup> Year to Last Day of 4<sup>th</sup> Year</b>	<b>.1192</b>	<b>232.5</b>	<b>31</b>
<b>First Day of 5<sup>th</sup> Year to Last Day of 10<sup>th</sup> Year</b>	<b>.1538</b>	<b>300</b>	<b>40</b>
<b>First Day of 11<sup>th</sup> Year to Last Day of 25<sup>th</sup> Year</b>	<b>.1615</b>	<b>315</b>	<b>42</b>
<b>First day of 26<sup>th</sup> Year and forward</b>	<b>.1731</b>	<b>337.5</b>	<b>45</b>

b.) Plan 2 will apply to all clerical, service and technical employees.

<b>PTO</b>			
Years of Service	Accrual Rate Per Hours	Maximum Annual PTO Hours	Maximum Annual PTO Days
<b>Date of hire to End of Probation</b>	<b>0.0333</b>	<b>158</b>	<b>21</b>
<b>End of probation to Last Day of 1<sup>st</sup> Year</b>	<b>0.1077</b>	<b>158</b>	<b>21</b>
<b>First Day of 2<sup>nd</sup> Year to Last Day of 4<sup>th</sup> Year</b>	<b>0.1077</b>	<b>210</b>	<b>28</b>
<b>First Day of 5<sup>th</sup> Year to Last Day of 10<sup>th</sup> Year</b>	<b>0.1385</b>	<b>270</b>	<b>36</b>
<b>First Day of 11<sup>th</sup> Year to Last Day of 25<sup>th</sup> Year</b>	<b>0.1576</b>	<b>307.5</b>	<b>41</b>
<b>First day of 26<sup>th</sup> Year and forward</b>	<b>0.1731</b>	<b>337.5</b>	<b>45</b>

Section 2. Each eligible employee will be assigned a Paid Time Off (PTO) bank to accumulate hours to use for all paid time off.

Section 3. Eligible employees shall accrue PTO at a rate based on years of service as defined by their date of hire. PTO is accrued on all hours worked up to seventy-five (75) hours in a pay period. During their probationary period, newly hired employees shall only be permitted to use PTO for the reasons set forth in the New York State Paid Sick Leave Law, including illness and medical treatment.

Section 4. Employees are eligible for, and may use PTO as it is earned. Earned hours are those hours that are accrued and accumulated in the PTO bank and owned by the employee. Hours are banked on the Monday following the end of each pay period.

Section 5. The employee's pay check stub should reflect the net PTO balance as of the beginning of the previous pay period.

Section 6. An employee changing from part-time or per diem status to either full-time or regular part-time status shall begin earning PTO from the first day of the pay period worked in the new status.

Section 7. PTO is an accrual system with paid leave time earned for each hour paid as well as for each hour of excused absence, or other paid leave time which substitutes for regular work hours, up to the maximums outlined in Section 1 above.

Section 8. Scheduled PTO will be considered as time worked for the purpose of computing overtime.

Section 9. A part-time employee may request to use PTO in excess of the hours they are hired to work, up to 37.5 per week. For example, an employee who is hired to work three (3) days per week (22.5) may request to use up to five (5) days in a week (37.5) hours.

Section 10. Part-time employees who have worked "extra" hours and earned "extra" PTO as a result, should be scheduled to utilize PTO in increments equal to hours earned. For example, an employee who hired as a 0.6 FTE but who has earned PTO equivalent to a 0.8 FTE, should be paid as a 0.8 FTE when they take the PTO time

Section 11. PTO should be scheduled in advance of the time block with routine time requests but in no event with less than forty-eight (48) hours notice and will be approved in the same manner as routine time requests. Up to two (2) shifts of paid time off will be designated for personal reasons. PTO for personal emergencies will be granted with one (1) hour notice. PTO for personal emergencies cannot be used for a shift after a request for scheduled PTO for that shift has been denied. Unscheduled absences must be reported at least one (1) hour prior to the start of the employees shift. PTO will be paid for all hours of a scheduled or unscheduled shift or partial shift. Employees do not have the option to take time without pay except for excused absence time.

Section 12. The new plan year begins on the first day of the first pay period of the new calendar year. The PTO plan year ends on the last day of the last pay period of the calendar year.

Section 13. Holidays:

- a.) If a major holiday falls on a Saturday, Friday will be considered the holiday. If a major holiday falls on a Sunday, Monday will be considered the holiday.
- b.) 5 Day/Eight Hour employees shall have the option to use PTO or excused absence time for the following holidays: New Year's Day, Memorial Day, Independence Day, Labor Day, Thanksgiving Day, and Christmas Day ("Major Holidays").
- c.) 4 Day/Ten Hour employees shall have the option to use PTO on the Major Holidays and may request to work the remaining four work days in the week, provided that their work hours, PTO, and/or approved time off total to at least 37.5 hours in the workweek.
- d.) The proposed work schedule for each department at the Employer is subject to the approval of the responsible manager prior to the schedule being posted. Work schedules for 4 Day/10 Hour employees for weeks in which a major holiday falls will be approved by management, provided staffing is appropriate for each day of that week, based on the Employer's expected needs.
- e.) Nothing set forth in this Section shall affect or restrict the Employer's ability to engage in downsizing, as provided in this agreement.

Section 14. Requests for PTO of one (1) or more consecutive weeks will be requested on the appropriate form as follows:

- a.) by November 1 of the preceding year for all time requests for February, March, April and May;
- b.) by March 1 for June, July, August and September; and
- c.) by July 1 for October, November, December and January.

Section 15. Employees will be notified of approval or denial within thirty (30) calendar days from the date requests are due. Requests will be approved if the employee is not notified within thirty (30) calendar days. Requests submitted after the due dates set forth above will be considered in the order in which they are received. Approval or denial will be as stated above or within thirty (30) calendar days after requests are submitted. Requests will be approved if the employee is not notified within thirty (30) calendar days.

Section 16. When there is a conflict in PTO selection between two (2) or more employees, the highest seniority date will govern.

Section 17. For PTO requested during the time period between June 15 and September 15, a maximum of ten (10) PTO days or seventy-five (75) hours will be taken. For PTO requested during the time period between December 20 and January 1, a maximum of five (5) PTO days or

thirty-seven and one-half (37½) hours will be taken. It is understood by the parties that days off may be scheduled at the beginning and/or the end of a vacation period.

Section 18. Vacation schedules for management employees will not interfere with the scheduling of bargaining unit personnel.

Section 19. Should an employee desire to change or rescind an approved vacation, the employee will submit the change at least thirty (30) days prior to the first day of the month in which the vacation is requested. Resulting availability of PTO days/week(s) will be offered to an employee who was denied. Approval will be governed by seniority. For the periods of June 15 through September 15 and December 20 through January 1, prime time vacation limits will apply. It is understood that the employer/management may increase availability of PTO at any time as circumstances permit.

Section 20. If a benefit earning employee transfers to a non-benefited position or is laid off, available PTO hours will be paid out in cash in the pay period following the transfer of status or layoff.

Section 21. An eligible employee may voluntarily donate a portion of his/her own PTO benefit hours to another benefited employee who is away from work on an approved leave for disability, Family Medical Leave, or personal leave of absence for hardship reasons. PTO donations, however, may not begin until the employee off on leave has stopped accruing PTO and that time has been utilized. The employee will be eligible to give hours from his/her own accrued balance of PTO. Time donated will be converted to a dollar value which will in turn be converted to the equivalent hours of time based on the recipient's hourly rate. An employee may donate up to thirty-seven and one-half (37½) hours from their accrued balance in each PTO Plan Year. Donations may be made from accrued, unused PTO only. Once donated, the gift is irrevocable. Recipients of donated PTO are eligible to be paid up to seventy-five hours (75) of PTO per pay period.

Section 22. Employees on New York State disability or Workers' Compensation will continue to earn PTO hours any time they draw from their PTO bank to cover waiting periods or supplement their statutory benefit.

Section 23. Employees may request PTO hours over and above the accrued balance in their PTO bank up to a maximum of thirty-seven and one-half (37½) hours for full-time employees and to a maximum of twenty-four (24) hours for regular part-time employees. It is understood that utilization of negative PTO hours will only extend through the last full pay period of April of each calendar year.

Section 24. If an employee terminates employment for any reason, including retirement, all accrued, unused PTO shall be paid out in cash in the second pay period following termination. If the PTO bank is negative at the time of termination an amount equal to the employee's hourly pay rate at the time of termination, times the hours necessary to bring the bank back to zero will be withheld from the employee's last paycheck.

Section 25. Annually, at the close of the PTO plan year, the Employer will provide a listing of the ending PTO balance for each employee. There will be an automatic carryover of up to fifty two and a half (52.5) hours for full-time employees and thirty one and a half (31.5) hours for regular part-time employees.

- a.) Any PTO balance existing at the close of the 2021 PTO plan year that exceeds the required carryover amount, as defined in this section, will be bought out in cash based on the rate of pay in effect at the time payment is made and automatically included in the employee's paycheck, after the end of the first six (6) full pay periods in 2022.
- b.) Carryover hours must be used by the end of thirteen (13) pay periods. It is the employee's responsibility to request and use carryover hours. If an employee makes a good faith effort to use time carried over into 2022 but their requests are denied, the remaining hours will be bought out in cash and payment made by the last pay period in July 2022.
- c.) After July 2022, the PTO buyouts set forth in subsections (a) and (b) above will no longer be available. At the close of the 2022 PTO plan year, and for all subsequent PTO plan years, any PTO balance in excess of the required carryover amount is forfeited. Following the close of the 2022 PTO plan year, and for all subsequent plan years, employees are still required to use any carryover hours by the end of thirteen (13) pay periods. It is the employee's responsibility to request and use carryover hours. Any carryover hours not used by the end of thirteen (13) pay periods is forfeited.

Section 26. The Employer and the Union acknowledge the existence of N.Y. Labor Law 196-b, and hereby agree pursuant to Subsection 9 of that statute that the leave provided pursuant to this Agreement constitutes a comparable benefit that will be provided to bargaining unit employees.

### **Article 23** **Flexible Benefits Plan**

Section 1. The Employer will make available to full-time and regular part-time employees' flexible benefits plan. The flexible benefits plan includes the following options:

- a.) Health Insurance;
- b.) Dental Insurance;
- c.) Vision Insurance;
- d.) Health Care Flexible Spending Account;
- e.) Dependent Care Flexible Spending Account;
- f.) Employee Supplement Life Insurance;
- g.) Dependent Life Insurance (Spouse/Child);
- h.) Supplemental Accidental Death & Dismemberment Insurance;

i.) Long Term Disability Insurance.

Section 2. The plan is a section 125 cafeteria plan. Employee elections may be made when employees become eligible, or during the annual open enrollment period. Elections may be changed only during open enrollment periods, or within thirty (30) days of a qualified family status change as defined by the Internal Revenue Service.

Section 3. Employee contributions to the medical, dental, flexible spending account will be deducted from employees' pay on a pre-tax basis. Employee contributions to supplemental life, dependent life, accidental death and dismemberment and long term disability insurance will be deducted from employees' pay on an after-tax basis.

Section 4. Flexible Spending Accounts:

Employees may contribute pre-tax dollars from their pay to a health care and/or dependent care flexible spending account, up to the annual limits specified in the plan document, and will be reimbursed for eligible expenses as defined in the plan document.

Section 5. Accidental Death & Dismemberment (AD&D):

Employees may elect AD&D coverage for themselves and eligible dependents. This coverage supplements any employer-provided AD&D coverage.

Section 6. Long Term Disability:

Employees may elect long term disability insurance for themselves. Plan descriptions are available from the Site Director.

**Article 24**  
**Health Insurance**

Section 1. The Employer will make the following health plan available to all full-time and regular part-time employees covered by this Agreement inclusive of a three (3) tier prescription drug co-pay.

- a.) Platinum POS Plus
- b.) Silver Classic

This change shall be effective September 1<sup>st</sup>, 2022.

Section 2. In the event that any of the carriers decides to phase out or change any of the current coverage provisions and/or riders listed in this Agreement, the most comparable coverage provision and/or rider offered by that particular carrier will be used as a replacement. In the event that any of the carriers decides to phase out the complete plan, then the Employer will allow the plan participants to select any of the other plans offered. In the event of either referenced changes, the Employer will give (30) days' notice to the Union.

Section 3. Eligible employees may apply for health insurance coverage at the time of

Employment, when they transfer to an eligible status, within thirty (30) days of a qualified family status change, or during the annual open enrollment period held each August with coverage becoming effective the following September 1. An eligible employee may select single, employee and spouse, employee and children, or family coverage.

Section 4. Coverage will begin on the first day of the month following or coinciding with completion of sixty (60) calendar days of employment for new hires. Employees may elect to begin coverage on the following September 1. An eligible employee may select single, employee and spouse, employee and children, or family coverage.

Section 5. For employees who transfer to an eligible status, eligibility for coverage begins on the first day of the month following the status change, provided the employee has already completed sixty (60) calendar days of employment.

Section 6. Employees who terminate employment with the Employer for any reason will continue their health insurance to the last day of the month of termination. Deductions will be taken from the employee's final paycheck.

Section 7. The Employer will contribute toward the cost of selected medical coverage a percentage amount as follows:

- |     |                   |     |
|-----|-------------------|-----|
| a.) | Full-time         | 80% |
| c.) | Regular Part-time | 65% |

Contributions to premium payments by the Employer shall not begin until the first of the month following sixty (60) days of employment. For changes in employment status, employee contributions will begin/change on the first day of the month following the status change.

Section 8. Employees who retire from the Millard Fillmore Surgery Center, LLC will be eligible to participate in the health plan they are enrolled in at time of retirement, or switch to Medicare plan offered by the same carrier of the plan they participate in at time of retirement subject to the insurance company's underwriting requirements. The retiree will be responsible for 100% of the cost of the plan.

Section 9. All employees hired prior to ratification of the 2021 Agreement will be eligible to waive medical coverage and elect to receive a \$60.00 opt-out cash payment for full-time employees and regular part-time employees. This cash payment will be applied to the first two (2) pay periods of each month (twenty-four [24] pay periods per year). Employees must complete the enrollment process and elect the opt-out credit in order to receive these payments.

Section 10. The following riders will be added to all health plans where applicable:

- a.) Durable medical equipment at 50% co-pay;
- b.) Inpatient Detoxification.

## **Article 25 Dental Plan**

Section 1. The Employer will make available to all full-time and regular part-time employees the following Delta dental plan:

- a.) 100% preventive;
- b.) 80% basic restorative;
- c.) fifty percent (50%) major restorative;
- d.) fifty percent (50%) orthodontics with a \$1,000.00 lifetime maximum per person;
- e.) \$1,000.00 annual maximum; and

Section 2. Eligible employees may apply for coverage at the time of employment, when they transfer to an eligible status, within thirty (30) days of a qualified family status change, or during the annual open enrollment period held each February with coverage becoming effective April 1. An eligible employee may select single or family coverage.

Section 3. Coverage will begin on the first day of the month following completion of sixty (60) calendar days of employment for new hires.

Section 4. For employees who transfer to an eligible status, eligibility for coverage begins on the first day of the month following the status change, provided the employee has already completed sixty (60) calendar days of employment. Otherwise, coverage begins on the first day of the month following sixty (60) days of employment.

Section 6. The Employee will pay one hundred percent (100%) of the cost of the premium for single coverage and family coverage.

## **Article 26 Life Insurance**

Section 1. The Employer will provide, without cost to the employee and in accordance with the provisions of a standard group life insurance program, coverage under a group life insurance policy and coverage under a group accidental death and dismemberment (AD&D) insurance policy. Each policy provides coverage that is equal to one (1) times annual base salary (rounded to the next higher one thousand dollars [\$1,000]) for all active full-time and regular part-time employees having one (1) or more years of continuous employment.

Section 2. The coverage amount for regular part-time employees will be computed based on annual budget hours for the position times the hourly rate rounded to the next higher one thousand dollars (\$1,000).

Section 3. The Employer shall make available to all employees eligible for the group life insurance plan, an optional Supplemental and Dependent Life Insurance plan. Employees will pay the full cost of any option they select.

- a.) Eligible employees may obtain additional life insurance on themselves or purchase life insurance coverage on their spouse, dependent children, domestic partner, or any combination of the above in accordance with the provisions of the policy and subject to the underwriting requirements established by the insurance company.
- b.) The employee, through payroll deduction, shall pay all supplemental life insurance premiums.
- c.) Upon termination, the employee has the right to convert such supplemental insurance to an individual subscribership, in accordance with the provisions of the policy and subject to the underwriting requirements established by the insurance company.
- d.) The Employer reserves the right to change carriers at any time subject to reasonable notice to the union provided such change does not result in a decrease of benefits.

#### **Article 27 Tax Sheltered Annuities**

Section 1. The Employer will make available to all employees covered by this Agreement a tax sheltered annuity. Employees currently contributing to an existing program may continue to contribute to that particular plan. Employees who establish a Tax Sheltered Annuity after the effective date of this Agreement will do so through Paychex, Inc. Tax Sheltered Annuity program.

Section 2. The Employer will forward to the appropriate annuity program, the money deducted from the employee's paycheck, within fourteen (14) days from the end of the pay period.

Section 3. The Employer will match employee contributions up to fifty percent (50%) of the first four percent (4%) of employee contributions.

#### **Article 28 Retirement Plan**

Section 1. The Employer will contribute, for each full-time and regular part-time employee, on a monthly basis to the Millard Fillmore Surgery Center, LLC 401 (a) Tax Sheltered Annuity Plan a sum equal to:

- a.) three percent (3%) of gross compensation for all employees with one (1) year of service but less than five (5) years of service;
- b.) four percent (4%) of gross compensation for all employees that have five (5) or more years of service but less than ten (10) years of service; and

- c.) five percent (5%) of gross compensation for all employees that have ten (10) or more years of service.

Section 2. The Employer shall make such contributions within seven (7) days of the end of each month.

Section 3. Employees are eligible to participate in the plan upon completion of one (1) full year of employment.

Section 4. Employees will become fully vested in their account in accordance with the vesting provisions of the Internal Revenue Code.

### **Article 29 Restricted Duty Program**

Section 1. When an employee, who is currently absent due to illness or injury is deemed able to return to work with restrictions, by the employees' private medical doctor or when an employee is physically unable to perform the full scope of their job for a limited duration, the employee may be assigned restricted duty as follows, provided such work is available.

- a.) Employee must provide the Employer with a copy of his/her medical documentation.
- b.) When required, a return to work physical will be performed, within five (5) calendar days of such request to determine the appropriateness for placement of the employee into restricted duty or full duty.
- c.) The employee's restrictions or diminished work capacities will be clearly defined and the restrictions will be stated in a way that the specific accommodations can be made.
- d.) The initial assignment of restricted duty will be for a period not to exceed twelve (12) weeks and renewable for a second period not to exceed twelve (12) weeks.
- e.) Assignment to a restricted duty position will be at the employee's current rate of pay and category of employment.
- f.) The Employer shall provide a minimum of three (3) days written notice to the employee of the requirement to return to work.
- g.) If an employee is a candidate for restricted duty and the work assignment is made suitable to his/her physical condition, skill and qualification, that employee must report to work in that position.
- h.) Regardless of the work assignment all benefits and provisions of the employee's collective bargaining agreement will apply.

Section 2. An employee on restricted duty will not be used to cover a vacant position unless the employee is released to perform all of the assigned duties of that position.

### **Article 30 Leave of Absence**

Section 1. A leave of absence without pay may be granted to all full-time and regular part-time employees covered by this agreement after one (1) year of continuous employment for the following reasons:

- a.) compelling personal;
- b.) educational purposes;
- c.) union business;
- d.) extended personal illness; and
- e.) per the Family and Medical Leave Act.

Leaves of absence will be granted automatically in the case of a workers' compensation or disability dispute, regardless of length of employment.

Leaves of absence shall not exceed six (6) months in duration. Employees may request a six (6) month extension before the end of the original six (6) month period. A request for leave of absence will not be denied arbitrarily. Requests for a leave of absence for maternity reasons will be granted. Requests for a leave of absence will not be approved for an employee who is working for another Employer, unless the second job was held prior to the leave request, or in a business owned by the employee, during the course of the leave of absence.

Section 2. An employee's application for a leave of absence must be made in writing to their supervisor, and except cases of emergency, must be submitted at least thirty (30) calendar days in advance of the date the leave is requested to begin. The request must include the beginning and ending dates of the leave being requested. If the request is granted it shall be the employee's responsibility to arrange for coverage of the cost of any employee benefit programs they wish to continue during the leave of absence. The Employer will not contribute toward the cost of any employee benefit program other than basic life insurance while an employee is on a leave of absence, with the exception of a leave of absence under the FMLA (see Section 8 below).

Emergency leaves of absence will be granted upon request in the following circumstances:

- a.) to pregnant employees where there is a potential threat to the employee's pregnancy;
- b.) serious illness or injury of an immediate family member or dependent; and
- c.) for a death in the immediate family.

Section 3. Employees who are elected or appointed to office in the Union which represents the employees in the bargaining unit covered by this Agreement, will be granted a leave of absence. Such leave of absence shall be without pay, without loss of seniority, and with

continuation of health insurance, life insurance, retirement and dental benefits. It is the employee's responsibility to arrange for coverage of any deductions usually taken from salary checks for these benefits and failure to make such arrangements with the Human Resources representative will be cause for the Employer to terminate the benefits during the leave of absence. The employee will return to last prior position and shall be applied for as provided in Section 2. above.

Section 4. The granting of a leave of absence will protect the employee's hire date for all purposes for which a hire date is used. If an employee returns from a leave of absence within ninety (90) days, or up to a semester for an educational leave, from the effective date of the leave, then he/she will be returned to his/her original position. If an employee returns after ninety (90) days, or up to a semester for an educational leave, from the effective date of the leave, then he/she will be returned to a position of equal rank and status if such a position is available. Every reasonable effort will be made for an employee to return to the position held when the leave began. If there is no such position, the employee would then be placed on layoff status. It is understood that once an employee is on layoff status, that employee will be entitled to all recall rights outlined in the Article 41, Seniority. An employee returning from a leave of absence should contact their supervisor at least seven (7) calendar days prior to the expected return date to determine whether a suitable position is available.

Section 5. The returning employee may need to obtain medical clearance from his/her private medical doctor prior to returning to work following a leave of absence. If an employee is not medically cleared to return to work, they will be eligible to apply for New York State Disability. Employees returning to work following a leave of absence for other than personal illness shall obtain medical clearance only if they missed their yearly health screens while on leave. Employees returning to work from a leave of absence must make arrangements to re-enroll in their benefits.

Section 6. Failure to return to work on the first work day following expiration of a leave of absence or an extension thereof, will be considered as a voluntary termination of employment, except in instances when the expiration date of an approved leave of absence falls within a period for which the employee is receiving New York State Disability benefits.

Section 7. Employees who take a leave of absence may return to work prior to the scheduled expiration date of the leave after complying with Sections 4. and 5. above.

Section 8. Family and Medical Leave Act (FMLA)

a.) An unpaid personal leave of up to twelve (12) weeks during any twelve (12) month period related to a family medical necessity, for employees covered by this Agreement, will be granted under the provisions of the Family and Medical Leave Act of 1993 and this collective bargaining agreement. Family medical necessity will be defined as:

(1) For a birth, or placement of a child with the employee for adoption or foster care and to care for such new child.

- (2) In order to provide care for a son, daughter, spouse, parent, dependent or domestic partner who has been diagnosed with a serious health condition.
- (3) For a leave for the employee's own "serious health condition", if the condition makes the employee unable to perform the daily functions of his/her position.

If an employee's spouse is also an employee, each may take twelve (12) weeks of leave as provided herein.

- b.) Leaves of absence will be granted under the provisions of the Family and Medical Leave Act of 1993 under the same terms and mechanisms outlined in Sections 1. and 2. or after the employee has reached 1,170 hours of service, inclusive of all paid time-off, and union representation time, paid or unpaid, during the twelve (12) month period preceding the leave. The form to be utilized in applying for all leaves should be obtained from Human Resources.
- c.) The following definitions shall be applicable:
  - (1) Son or daughter – a biological, adopted or foster child, step child, legal ward or child of a person standing in “loco parentis.” Dependent – a person who the employee will claim as a dependent on their federal income tax for the year in which the leave is taken.
  - (2) Serious health condition – an illness, injury, impairment or physical or mental condition involving either:
    - (a) Inpatient Care involving at least an overnight stay in a hospital, hospice or residential medical care facility. FMLA leave based on this portion of the definition also extends to any period of “incapacity” (defined as inability to work due to the serious health condition or recovery from that condition), and any subsequent treatment (including examinations to determine the existence of a serious health condition), in connection with the inpatient care.

OR

- (b) Continuing Treatment by a health care provider. FMLA leave based on this portion of the definition is available in any one or more of the circumstances described in (A) – (E) below:
  - (A) A period of incapacity of more than three (3) consecutive calendar days and any subsequent treatment or period of incapacity relating to the same condition that also involves:

- (i) treatment two or three times by a health care provider (or by others, under the supervision of or on orders of or referral by a health care provider), or
    - (ii) treatment by a health care provider on at least one occasion that results in a regiment of continuing treatment (e.g., a course of prescription medication or therapy requiring special equipment) under the supervision of the health care provider.
  - (B) Any period of incapacity due to pregnancy, or for prenatal care.
  - (C) Any period of incapacity, or treatment for such incapacity, due to a chronic serious health condition, which is defined as one that:
    - (i) requires periodic visits to a health care provider;
    - (ii) continues over an extended period of time; and
    - (iii) may cause episodic rather than a continuing period of incapacity (e.g., asthma, diabetes, epilepsy, etc.).
  - (D) A period of incapacity which is permanent or long term due to a condition for which treatment may not be effective. The employee or family member, dependent or domestic partner must be under the continuing supervision or, but need not be receiving active treatment by, a health care provider. (Examples include Alzheimer, severe stroke, or the terminal stages of a disease).
  - (E) Any period of absence to receive multiple treatments (including any period of recovery) by a health care provider (or under orders of, or on referral by, a health care provider), either for restorative surgery after an accident or injury, or for a condition that if left untreated would likely result in a period of incapacity of more than three (3) consecutive calendar days, such as cancer (chemotherapy, radiation, etc.), severe arthritis (physical therapy), and kidney disease (dialysis).
- d.) An eligible health care provider could be a doctor of medicine, an osteopathic doctor, a podiatrist, a dentist, a clinical psychologist, an optometrist, a chiropractor (for certain conditions), a nurse practitioner or nurse midwife, or certain Christian Scientist practitioners.

- e.) An employee may take intermittent leave or may work a reduced leave schedule to reduce the usual number of hours per day or work week, as provided for by the FMLA. Prior approval, as per the FMLA, will be required. An approved request for intermittent FMLA leave is active for a maximum of one (1) year and must be re-approved after one (1) year if intermittent leave is still needed. The employee may periodically be required to provide re-certification of the need for intermittent FMLA leave, but not greater than once in a thirty (30) day period. The Employer will require medical certification of a serious health condition from the employee's physician. Once the leave is certified, Corporate Benefits shall have the sole responsibility for requiring re-certification. Failure to provide medical certification when required may result in denial of the leave.
- f.) A "rolling" twelve (12) month period measured backward from the date an employee uses any FLMA leave is used to determine the "twelve (12) month period" in which the twelve (12) weeks of leave entitlement occurs.
- g.) Eligibility for leave based upon the birth or adoption of a child expires at the end of the twelve (12) month period beginning on the date of birth or placement.
- h.) In cases where the leave is foreseeable, the employee must provide the Employer with at least thirty (30) days advance notice of the leave. If the leave must begin in less than thirty (30) days, the employee should notify the Employer at the earliest time possible. If an employee fails to provide thirty (30) days notice for a foreseeable leave with no reasonable excuse for the delay, the leave may be denied until at least thirty (30) days from the day notice is provided.
- i.) Employees on a leave of absence granted under the provisions of the Family and Medical Leave Act of 1993 for illness of a family member will be entitled to medical and dental insurance coverage for a period of twelve (12) weeks if such employees are currently participating in the medical and dental plans. The twelve (12) week period of jointly paid health insurance, will include any period of disability for which the Employer has paid its share of the health insurance premiums.
- j.) Any employee on a leave of absence granted under the provisions of the Family and Medical Leave Act of 1993 for a period not to exceed twelve (12) weeks will be returned to his/her job at the end of the leave. If the leave exceeds twelve (12) weeks, he/she will be returned to a position of equal rank and status.
- k.) The time period for any period of absence which can be covered by FMLA, including NYS Disability or Workers' Compensation shall include and run concurrent with the time period for any leave required by the Family and Medical Leave Act.

Section 9. No employee shall be required to substitute accrued paid time off toward the aggregate of the leave but may substitute accrued paid time off to the leave if they so desire. The exception to this rule is in the case of an employee taking intermittent FMLA. In that instance, all time absent from work must be covered by accumulated PTO, if available.

Section 10. Deductions from employee pay to cover costs associated with New York State's Paid Family Leave ("PFL") Law shall begin January 1, 2018. When such leaves are also covered by FMLA, they shall run concurrently with FMLA. Employees may use PTO to supplement PFL, if they so choose.

### **Article 31 Military Leave**

Section 1. Leaves of absence shall be granted to all employees entering active duty of the Armed Forces of the United States and those who are absent for the purpose of performing training duty or emergency service in the Armed Forces. Re-employment rights shall be in accordance with the requirements of the Uniformed Services Employment and Re-Employment Act of 1994, as amended from time to time, and/or regulations issued there under.

Section 2. Any employee who is engaged in military service, who enlists or is called to duty should notify their manager or supervisor two (2) weeks prior to the leave effective date, or as soon as notified of upcoming service. Military orders must be provided to management to verify the need for a military leave of absence. The employee will be placed on a leave of absence to cover the time away in service, provided the total leave of absence does not exceed a five (5) year period from the effective beginning date of the leave.

Section 3. Eligible service includes voluntary or involuntary service in one of the military branches of the armed forces of the United States, including:

- a.) active duty;
- b.) active duty for training;
- c.) initial active duty for training;
- d.) inactive duty for training purposes; and
- e.) full-time National Guard duty.

Branches of the military service include:

- a.) Army, Navy, Marine Corps, Air Force, Coast Guard
- b.) Reserve service in Army, Navy, Marine Corp, Air Force or Coast Guard
- c.) Army National Guard or Air National Guard
- d.) The Commissioned Corps of the Public Health Service
- e.) Any other designation issued by the President in time of national emergency or war.

Section 4. An employee ordered to annual active duty training with the National Guard or

Reserve for two (2) weeks or more and who loses time from work as a result will be paid the difference between their regular basic rate of pay and their lower military training pay for up to thirty (30) days in a calendar year. The employee on military leave will be required to submit to human resources a statement of military earnings to receive reimbursement for the differential. Reimbursement will be paid by the payroll department in the employee's regular bi-weekly pay within two pay periods following submission of the military earnings statement. Per Diems are not eligible for the differential payment. Absence from work for inactive duty or for examinations to determine fitness for duty will not be eligible for the military differential. An employee who elects to use paid time off during the leave will not receive a military differential.

Part-time employees will be eligible for the military differential based on their regularly scheduled bi-weekly hours.

Section 5. Regular employees entering active duty in the Armed Forces of the United States will be given the paid time off to which they are entitled under the terms of this contract. If such employees do not elect to take their paid time off before leaving, they will be paid an allowance in cash equal to and in lieu of any paid time off which is due.

Section 6. Employees who enter the service receive military health care benefits automatically, and can enroll their dependents in separate health insurance plans for dependents (CHAMPUS) if they are called to serve for at least thirty-one (31) days. However, they also may want to continue their health insurance coverage. Employees on military leave and their dependents can receive continuation coverage in their health insurance plan for up to eighteen (18) months under COBRA. If the employee elects to cease medical coverage, the coverage will be reinstated when the employee returns to work. However, if the employee's period of military service is thirty-one (31) days or less, the employee would be entitled to continue their medical coverage under the same cost sharing arrangement as prior to the leave. Employees should contact Human Resources to make the necessary arrangements.

Section 7. For computation of pension benefits for a service member returning to his/her employment after a period of military service; compensation for the period of military leave is defined as compensation computed at a rate which the employee would have been earning if the employee had not taken a leave.

## **Article 32 Jury Duty**

Section 1. In the event an employee is required to serve jury duty, the Employer shall compensate full-time and regular part-time employees for the difference between their regular normal earnings and their jury duty fees for a period not to exceed thirty (30) working days in each calendar year.

Section 2. Employees to be eligible for pay, will notify their immediate supervisor upon receipt of the jury duty notice. Employees will cooperate with the Employer in seeking exemption or rescheduling of jury duty whenever, in the judgment of the Employer, it is necessary.

Section 3. For scheduling purposes, day and evening shift employees will not be expected to work on the date they are required to serve (actually spend time on jury duty).

Section 4. When an employee is on call for jury duty, the employee shall report to work on any day they are not required to report for jury duty.

### **Article 33 Bereavement Leave**

Section 1. All regular full-time and regular part-time employees who have completed probation will be eligible for bereavement leave following the death of a spouse/domestic partner, child, brother, sister, parents, stepparents, stepbrother, stepsister, stepchild or children, grandparents, grandchildren, mother-in-law or father-in-law, former legal guardian or foster child.

Section 2. Eligible employees will be excused from work with pay:

- a.) for up to three (3) consecutive scheduled work days (not including weekends) within a six (6) calendar day period up to a maximum of twenty five (25) hours; or
- b.) for up to five (5) consecutive scheduled work days (not including weekends) within a seven (7) calendar day period, up to a maximum of forty (40) hours, during the period of bereavement including the funeral or memorial service for out of town funerals over four hundred (400) miles from Buffalo, providing the employee attends the funeral or memorial service.

An employee's immediate supervisor will make every effort to give the employee additional days off as needed utilizing paid time off or excused absence days.

Section 3. Payment for each day of bereavement leave as defined in Section 2. will be equivalent to the regular hours the employee was scheduled to work.

Section 4. In the event of the death of the employee's brother-in-law, sister-in-law, son-in-law, daughter-in-law, niece, nephew or grandparents of spouse/domestic partner, aunt or uncle a bereavement day for the funeral or memorial service will be given.

### **Article 34 Disability**

Section 1. Employees who become disabled by a non-occupational injury or illness are entitled to the benefits outlined in the New York State Disability Benefits Law (NYSDBL) and this Agreement.

Section 2. All employees, except for high school students, are eligible for disability benefits under the NYSDBL after working four (4) consecutive weeks.

Section 3. All employees will follow the procedure outlined below in filing a disability claim and in qualifying for benefits:

- a.) An employee must be under the care of a health care provider (as defined in the NYSDBL) who certifies that the employee is unable to work due to an injury or illness that did not arise out of, or in the course of employment.
- b.) The employee must notify his/her manager that he/she is disabled and unable to report to work. The manager will provide the employee with a disability claim form to be completed by the employee and his / her attending physician who will forward the claim form to UNUM. The UNUM disability claims administrator will then contact the employee or attending physician for further information if needed.
- c.) It is the responsibility of the disability claims administrator to keep the employee updated on the claim status and any need for further medical documentation.
- d.) The employee and the employee's health care provider must supply all requested information to the disability claims administrator in order for the employee to receive NYSDBL benefits.
- e.) During the period of disability, the employee's wages will come from different sources:
  - 1.) Under the NYSDBL benefits, the employee will receive payments equal to fifty percent (50%) of his/her average weekly wage, up to the maximum benefit provided for by law. The average weekly wage is based on the last eight (8) weeks of employment immediately before the disability occurs. Benefits will be paid for a maximum of twenty-six (26) weeks of disability in a fifty-two (52) week period; and
  - 2.) from the Employer as outlined in Section 4. below.
- f.) There is a seven (7) day waiting period including weekends, during which no benefits will be paid. Benefit rights begin on the eighth (8<sup>th</sup>) consecutive day of disability.
- g.) Disability benefit payments will be mailed to employees directly from the insurance company and will be subject to Social Security, Medicare and withholding taxes. The first payment will arrive within four (4) business days after the fourteenth (14<sup>th</sup>) day of disability or four (4) business days after the receipt of the claim, whichever is later.

- h.) Employees who receive NYS disability payments are responsible for reporting benefits paid as taxable income. The Employer will send a form W-2 stating the amount of taxable benefits paid to each employee who received disability payments during the year.
- i.) The Employer or the disability claims administrator may require employees who are claiming disability benefits to submit to a medical examination by a health care provider designated by the Employer. Such examinations will be paid for by the Employer.
- j.) If an employee's disability satisfies the requirements of both the Family and Medical Leave Act (FMLA) and the NYSDBL, the time spent on disability will count toward the employee's twelve (12) weeks of annual leave under the FMLA. Employees contractual rights under the FMLA are outlined in Article 31, Leave of Absence.
- k.) An employee will not be eligible to receive NYSDBL benefits or supplemental PTO pay while working for another employer or working in a business owned by the employee or conducting any union business for which pay is received.

Section 4. The Employer agrees to provide for all employees covered by this Agreement short term disability coverage through First UNUM Life Insurance Company. The short term disability program is intended to provide income to employees during periods of disability who qualify for benefits as outlined in Section 3. above or who have an injury or illness certified by the employee's medical doctor.

- a.) Employees will be able to use time from their PTO bank to cover the seven (7) day waiting period referred to in Section 1. above.
- b.) Employee's will be entitled to use any available hours in his/her paid time off bank, to supplement the UNUM disability benefits up to the amount of his/her regular weekly pay.
- c.) UNUM coverage shall provide employees with seventy (70%) percent of their salary up to fifteen hundred dollars (\$1,500.00) per week.
- d.) For all grandfathered employees (employees hired during the initial transfer of ownership) the Employer agrees to pay employees the difference between the UNUM disability benefit and their regular weekly earnings as follows:

Weeks 2-8	100%
Weeks 9-10	90%
Weeks 11-12	80%

The Employer will also reimburse the grandfathered employees PTO bank with the number of hours required to cover the waiting period.

Section 5. While an employee is disabled, the Employer will continue to contribute the Employer's share toward the employee's benefits outlined in the Agreement for a period of twenty six (26) weeks. Employees are responsible for paying the employee portion of these benefits.

Section 6. If an employee is still disabled after the benefits provided under the NYSDBL expire, the employee will continue to be classified as disabled as long as the disability continues to be certified by the employee's medical provider. If the disability will continue after the twenty six (26) consecutive week limit, the employee may apply for a leave of absence. The Employer will continue to contribute to the basic life insurance coverage only and employees must pay the full cost of any other benefits they wish to continue during the personal leave of absence.

Section 7. An employee who is preparing to return to work following a disability will follow the procedure outlined below:

- a.) The employee's health care provider must submit documentation to the Employer's disability claim administrator of the employee's ability to return to work.
- b.) The employee may be required to pass a fit-for-duty examination by the Employer's Employee Health Department prior to being authorized to return to work.
- c.) If the employee has any restrictions on regular duties, or with his/her regular hours of work, the employee's manager will be notified and the manager will view the employee's return to work in conjunction with Article 30, Restricted Duty Program, with the Americans with Disabilities Act (ADA), or with the Family and Medical Leave Act (FMLA).
- d.) If an employee does not return to active status or apply for an unpaid leave of absence by the date the employee's health care provider releases the employee to return to active work status, or by the end of the fifty-fourth (54<sup>th</sup>) consecutive week of a period of disability, the employee will be considered to have resigned from active employment.
- e.) When employees are certified as able to return to work, they will return to the position they held prior to their disability.

### **Article 35 Workers' Compensation**

Section 1. Any employee, that sustains an injury or illness arising out of or in the course of employment are entitled to the benefits outlined in the New York State Workers' Compensation Law (NYSWCL) and this Agreement.

Section 2. The procedure to follow after a workplace injury or illness occurs includes the following:

- a.) An employee must be under the care of a health care provider who certifies that the employee is unable to work due to an injury or illness that did arise out of or in the course of employment.
- b.) The employee must notify his/her manager of the workplace injury/illness as soon as possible, but no later than thirty (30) days as per NYSWCL.
- c.) The employee must notify his/her manager as soon as possible if his/her injury is disabling and he/she is unable to work. The manager will report the claim to the Employer's disability claim administrator; within forty-eight (48) hours from when the claim is reported.
- d.) After a sustained injury/illness the employee must report to any one of the Kaleida Health System Emergency Rooms.
- e.) When an employee is required to report to the-Employee Health office or for an independent medical exam, the cost of transportation will be reimbursed on the basis of the mileage involved and the rate of reimbursement currently in existence.
- f.) The disability claims administrator will keep the employee updated on the claim status and any need for further medical documentation in a timely manner.
- g.) Employee currently on Workers' Compensation will continue to receive all benefits as outlined in the previous collective bargaining agreement.

Section 3. During the period of Workers' Compensation, the employee's wages will come from different sources:

- a.) the employee will receive statutory payments which are equal to two-thirds (2/3) of his/her average weekly wage up to the current maximum benefit; and
- b.) from Employer as outlined in Section 7. below.

Section 4. There is a seven (7) day waiting period, including weekends, during which no lost pay benefits will initially be paid. Lost pay benefit rights begin on the eighth (8th) consecutive day of disability. Employees are initially entitled to use Paid Time Off (PTO) to cover 1/3 of their regular wages during this waiting period. In the case that the compensable injury or illness results in a disability of more than fourteen (14) days, workers' compensation shall be paid from

the first full day of lost time from work. PTO may ultimately be used to supplement workers' compensation payments up to the employee's regular budgeted weekly pay.

Section 5. Workers' compensation payments will be taxed in accordance with existing law.

Section 6. If an employee's workers' compensation disability satisfies the requirements of both the Family and Medical Leave Act (FMLA) and NYSWCL, the time spent on Workers' Compensation will count toward the employee's twelve (12) weeks of annual leave under the FMLA. Employees' contractual rights under the FMLA are outlined in Article 31, Leave of Absence.

Section 7. The Employer agrees to provide statutory Workers' Compensation benefits for all employees covered by this Agreement. These benefits are intended to provide income to employees during periods of workers' compensation who qualify for benefits as outlined in Section 2. above or who have an injury or illness certified by the employee's medical doctor.

- a.) Employees will be able to use time from their PTO bank to cover the seven (7) day waiting period as described in Section 4. above.
- b.) Employee's will be entitled to use any available hours in his/her paid time off bank, to supplement workers' compensation benefits up to the amount of his/her regular weekly pay.
- c.) For all grandfathered employees (employees hired during the initial transfer of ownership) the Employer agrees to pay employees the difference between the combination of their workers' compensation benefit and their regular weekly earnings as follows:

Weeks 1-8	100%
Weeks 9-10	90%
Weeks 11-12	80%

The Employer will also reimburse the employees PTO bank with the number of hours required to cover the difference between their Workers' Compensation benefits and their regular weekly earnings during the first two (2) weeks.

Section 8. While the employee is on workers' compensation, the Employer will continue to contribute the Employer's share toward the employee's benefits outlined in this Agreement for a period of fifty-two (52) consecutive weeks. Employees are responsible for paying the employee portion of these benefits. As long as an employee is receiving payments from the PTO bank, the employee's share of benefit premiums will be deducted from those payments. After PTO payments cease, the employee will be required to submit payments each pay period. If an employee is still disabled after the 52-week period expires, the employee may apply for a leave of absence for extended personal illness and will continue to be classified as disabled as long as

the disability continues to be certified by the Workers' Compensation Board. The Employer will continue to contribute to the basic life insurance coverage only and employees must pay the full cost of any other benefits they wish to continue during the personal leave of absence.

Section 9. An employee who is cleared to return to work by his or her provider will follow the procedure outlined below:

- a.) An employee must produce certification from a health care provider that the employee is able to return to work and resume the full responsibility of his/her position. The certification must be submitted to the Employer's disability claims administrator.
- b.) The employee may be required to pass a fit for duty examination by the Employer's Employee Health Department prior to being authorized to return to work.
- c.) If the employee has any restrictions that make him/her unable to perform his/her regular duties or his/her regular hours of work, the employee's manager will be notified and the manager will review the employee's return to work in conjunction with Article 30, Restricted Duty Program, with the Americans with Disabilities Act (ADA), or the Family and Medical Leave Act (FMLA).
- d.) If the employee does not or is unable to return to work after his/her work related injury/illness or apply for an unpaid leave of absence by the date the employee's health provider releases the employee to return to active work status, or by the end of the sixtieth (60<sup>th</sup>) consecutive week of a period of absence for a work related injury/illness, the employee will be considered to have resigned from active employment.
- e.) If an employee is classified for restricted duty and no work is available with the Employer, he/she may work outside the Employer, within the limits of the restrictions noted, and, if so, may not be terminated.

When an employee is certified by his/her provider to return to work at full capacity, he/she will be returned to the position they held prior to their workplace injury/illness.

### **Article 36 Employee Assistance Program**

Section 1. Recognizing that the health and well-being of its employees and their families is vital to the success of the Employer, an Employee Assistance Program (EAP) shall be established and maintained by the Employer. The EAP will provide responsible, confidential assistance to employees experiencing personal problems including alcoholism, drug dependency and mental health issues, which may adversely affect their job performance, work schedules and attendance. There shall be no cost to the employee.

Section 2. The decision to participate in the EAP is voluntary and the personal responsibility of the employee. At no time shall any employee be required to use EAP as a condition of employment except when entered into a “last chance” agreement.

Section 3. Employees who are told by the Employer in writing that they are terminated due to alcohol or drug abuse shall continue to receive the benefits provided in this Article for a period of two (2) months following such termination.

Section 4. No employee will be required to submit to any type of laboratory work unless such work is mandated by state and federal law.

### **Article 37 Tuition Assistance**

Section 1. The Employer recognizes that the continuing educational development of employees is essential to the delivery of quality health care. Hence, the Employer provides tuition assistance for eligible employees in the CWA bargaining units who seek additional training in order to increase their confidence in present jobs or to prepare themselves for advancements into more responsible positions with the Employer in the procedure outlined in Sections 2. through 7. below.

Section 2. A course as defined under the tuition reimbursement plan must meet the following requirements:

- a.) it must have a defined curriculum;
- b.) it must provide credit toward a degree or completion of a prescribed program of study; and
- c.) it must be offered through an accredited program.

A course that meets the above definition will be considered for eligibility under the tuition assistance program if it is job-related and also meets one of the following criteria:

- a.) the course is expected to build competencies and strengthen the performance of the employee on their present job;
- b.) the course is considered a prerequisite for the job presently held or of the job next in line of an obvious progression;
- c.) the course is prescribed for the attainment or maintenance of a program of study or degree in an academic or business that is compatible with the interests of the Employer and the employee.

Programs eligible under Article 39, Continuing Education Program, are not eligible under Tuition Assistance.

Section 3. Procedure:

- a.) Regular full-time and regular part-time employees with one or more years of continuous service prior to the commencement of the approved course shall be

eligible for tuition assistance provided they remain in an active status for the duration of the course(s). Employees classified as per diem, non-benefited, inactive and temporary are not eligible for the educational assistance.

- b.) The MFSC Director shall examine the request for tuition assistance from employees within their departments. Approval shall be granted to eligible employees based on the definition in Section 2. above and the eligibility requirements in Section 4.
- c.) While courses must be submitted for approval on a course by course basis, requests to approve degree programs must be approved by the MFSC Director.
- d.) Prior to enrollment in the course, the employee must obtain management approval on the Request for Tuition Reimbursement form verifying that the course meets the eligibility criteria in Section 2. above. Courses, which do not have management approval prior to the course start date, will not be eligible for reimbursement.
- e.) It shall be understood and communicated that this program is a reimbursement system. Employees shall be responsible for all initial payments to the school or other educational organization.

Section 4. The amount of tuition assistance offered by the Employer shall be a function of length of service, and a passing grade. The schedule of payment is as follows:

<b>LENGTH OF SERVICE:</b>	<b>1-4 YEARS</b>	<b>OVER 4 YEARS</b>
Satisfactory/Pass	75%	100%
Unsatisfactory/Fail	0%	0%
Maximum/Calendar Year	\$1,000.00	\$1,000.00

The employee will not be eligible to receive reimbursement for the same course more than once.

Section 5. Application of the maximum, outlined in Section 4. above, shall be determined by the completion date of the course. For example, a course is completed in December 2017 and reimbursement request is submitted in January 2018, the amount reimbursed will be charged against the 2017 calendar year maximum.

Section 6. Payment will be made directly to the employee upon submission of the following to the MFSC Director:

- a.) Copy of tuition reimbursement form signed by employee's manager to verify that the course of study has been approved.
- b.) Final grade for the course.

- c.) Submission of itemized receipt verifying the payment made to the institution detailing the cost of tuition, fees and documentation of any stipends or scholarships if applicable.

Payroll will make payment directly to the employee's regular paycheck after the director has approved the reimbursement. Tuition reimbursement requests will be processed within two (2) full pay periods of the date received by the director. The employee will have six (6) months from course end date to submit the appropriate information. Any applications received after the six (6) month period will not be processed.

Section 7. No tuition assistance will be paid regardless of prior approval unless the student is still an eligible employee in a covered status throughout the course. Employees who, at the request of the Employer, change job categories to an ineligible job status during the course of their outside training, shall be reimbursed on the same basis as if they had remained eligible for assistance.

Section 8. An employee who voluntarily terminates his/her employment with the Employer shall be required to refund any tuition assistance payments they received during the twelve (12) month period immediately preceding the effective date of termination.

### **Article 38**

#### **Continuing Education Program**

Section 1. A continuing education program will be defined as workshops, conferences, training sessions, continuing education classes or in-services which contribute to an employee's career development. All employees will be eligible to participate in continuing education programs. Participation will be based on the following guidelines.

- a.) If a continuing education program is mandated by the Employer, the Employer will be responsible for all of the costs associated with that program.
- b.) The Employer will budget four thousand dollars (\$4,000) annually for the purpose of continuing education.
- c.) The annual budget for continuing education is intended to cover expenses related to program registration fees and/or travel expenses for areas not addressed by the Employer's internal education programs. Lost time wages may be approved by the employees' immediate supervisor, over the budgeted dollars outlined above, based upon the budget and staffing in the cost center. However, a total of ten (10) paid Continuing Education Days, equal to the duration of an individual's shift, will be available to members of the bargaining unit each calendar year.
- d.) An application for continuing education money will be made to the MFSC Director on a form provided by the Employer. The application will be reviewed and an approval or denial granted, within two (2) weeks of the request being made.

- e.) Such requests will be approved based upon course content (new, or improvements in current, job related skills) and the availability of continuing education dollars, which remain at the operation center.

Section 2. For the purpose of equitable distribution of continuing education dollars, the funds will be made available on an annual basis and on a first come, first serve basis. At the last Joint Labor Management Committee meeting of each year the Director of MFSC LLC will provide a written accounting of Continuing Education Funds spent for that year, and any remaining balance.

### **Article 39 Domestic Partner**

Section 1. A domestic partner will be defined as a person over age 18 who shares living quarters (for a minimum of six [6] months) with another unrelated adult in an exclusive, committed relationship in which the partners are responsible for each other's common welfare and are financially interdependent. To be eligible for the benefits outlined in other provisions of this Agreement, a domestic partner must be specifically listed in the Article and must be registered with Human Resources on a form provided by the Employer.

### **Article 40 Seniority**

Section 1. Seniority shall mean the length of unbroken service of an employee covered by this Agreement beginning with their most recent date of hire by the Employer in any job classification whether or not it is or was in the covered bargaining unit.

Section 2. Seniority shall be lost and an employee shall be terminated when he/she:

- a.) resigns or quits;
- b.) is discharged for cause;
- c.) retires, with or without qualifying for benefits under the Employer's retirement plan or Social Security;
- d.) refuses to recall from layoff or fails to report from a recall within fourteen (14) calendar days;
- e.) fails to report to work on the date agreed upon for return from a leave of absence;
- f.) is absent for three (3) consecutive regularly scheduled shifts without notification to the Employer unless the employee can prove complete inability to notify the Employer;

- g.) is laid off for a period equal to their length of service or a minimum of one hundred and four (104) weeks;
- h.) is absent due to illness or injury for more than fifty-four (54) consecutive weeks or is absent due to Employer connected illness or injury covered by workers' compensation for more than sixty (60) consecutive weeks. The Employer will provide an employee on workers' compensation or disability, four (4) weeks' written notice by certified mail to the employee's last address of record, that the above periods are due to expire. The Union office will be copied on notices sent to employees.

Section 3. The Employer shall maintain an updated seniority list that will be available for inspection by members of the bargaining unit.

Section 4. An employee with at least twelve (12) months of seniority who terminates his or her employment for reasons other than those constituting just cause and is rehired within one (1) year from the date of termination of service shall, after completing twelve (12) months of service, receive his or her original seniority date(s), adjusted for the period of separation.

Section 5. In any instance where seniority is used in this Agreement and two (2) or more employees share the same date the following procedure will be followed:

- a.) The last four (4) digits of each employee's Social Security number will be considered as a whole number; the lowest number is the most senior. For example; Employee A – SSN = 711-04-1501, Employee B – SSN = 325-67-2738 Employee A is senior.
- b.) In the event that the last four (4) digits are equal; add all nine (9) of the number in the SSN and the total lowest number will be most senior.

For Example:

Employee A – SSN = 711-04-1501

Employee B – SSN = 325-67-1501

Then:

Employee A –  $7+1+1+0+4+1+5+0+1=20$

Employee B –  $3+2+5+6+7+1+5+0+1=30$

Employee A is senior.

## **Article 41 Job Bidding**

Section 1. All job vacancies will be posted as follows:

- a.) The position will be posted in a prominent place where members of the bargaining unit work for seven (7) calendar days.

- b.) The posting shall include the position (job title), posting dates, status, hours per pay period, shift, starting and ending times, pay grade and the qualifications for the position as defined in the job description for the position. A copy of all job postings will be sent to the Union.
- c.) Employees may not be accepted for posted positions until they have completed six (6) months of employment. In addition, an employee who has transferred to a position must remain in that position for six (6) months before applying for another posted position. Except that an employee may apply for a posted position which is at a higher pay grade without regard to the six (6) month limit. This paragraph shall not apply to intra cost center shift change or intra cost center status changes.
- d.) It is agreed to and understood by the parties that the Employer will post all temporary vacancies and temporary assignments. Any employee may apply for and be accepted into a position which is labeled and posted as a temporary vacancy or temporary assignment. Only employees who already have the competencies to fill the position and who can fill the position without training will be considered. Employees filling temporary vacancies will receive benefits of that position while in the temporary vacancy and will return to his/her permanent position when the temporary vacancy has been filled permanently or deleted.

Section 2. Posted positions shall be filled by the most senior qualified applicant from within the bargaining unit. If the position cannot be filled from within the bargaining, the Employer may fill the position from any source available to the Employer, provided the candidate meets all of the qualifications for hiring into that position. In all instances, the appropriate manager is responsible for the interview and selection of applicants within fourteen (14) days of the end of the posting.

Section 3. A qualified applicant shall be defined as an employee who possesses the entry level qualifications in the job description and is able to do the work when required. Ability to do the work and documented performance, inclusive of disciplinary record, may be considered when awarding a position. The Employer will notify all applicants of the result of their bid in a timely manner not to exceed two (2) weeks from the date the position is awarded.

Section 4. A successful bidder shall be required to serve a thirty (30) calendar day trial period exclusive of any classroom training required. At the midpoint of the trial period the employee shall be evaluated and given written notification if a problem exists. During the trial period, the employee will be returned to his/her original position if the employee elects to be returned or the Employer finds the employee is unsatisfactory in the new position.

Section 5. The decision as to whether any vacancy in any job classification exists, and if it will be filled, is reserved to the Employer.

## **Article 42 Layoff and Recall**

Section 1. In the event it is necessary to layoff employees covered by this Agreement, or to eliminate a filled position covered by this Agreement, such layoffs or eliminations will be done as follows:

- a.) by providing the Union with the complete plan for staff reduction;
- b.) by subjecting to layoff the least senior employee or employees in the job title, unit and category of employment;
- c.) all temporary and then probationary employees in the job title and unit in which a layoff is to occur will be terminated prior to any regular employee;
- d.) an employee with seniority who is subject to layoff will have the option of a bump within his/her unit, within the same job title, but to a different category of employment;
- e.) regular part-time employees with seniority who are subject to layoff will have the option to bump the least senior regular part-time employee who is hired to work the equivalent number of hours. For example: a regular part-time employee who is hired to work thirty (30) hours per week may bump the least senior employee who is hired to work thirty (30) hours per week; in accordance with the steps in Section 2. below;
- f.) employees may volunteer to be subjected to layoff, by seniority, in the job titles, unit and category of employment.

Section 2. When an employee with seniority is subject to layoff or has their position eliminated under Section 1. above, such affected employee shall be placed in a position in the bargaining unit in the following sequence:

- Step 1: First, they shall be assigned to any vacant position in the bargaining unit which is their category of employment and job title. If there is a vacancy in another category of employment with lesser hours which has not been filled by an employee in that category during Step 1 of this procedure, an employee may opt to fill that vacancy.
- Step 2: Second, if no such vacancy exists, an employee would be permitted to bump any probationary employee in their unit, category of employment and job title.
- Step 3: Third, if there are no probationary employees who may be bumped, then the employee subject to layoff may bump the least senior employee in their category of employment and job title.

Step 4: Fourth, if the employee cannot be placed in their category of employment and job title, they shall be offered the option to bump the least senior employee in their job title.

Step 5: Fifth, if there is no less senior employee in their job title the employee may bump any less senior employee in their grade, provided the employee meets the requirements for hiring into that position.

Step 6: Sixth, if the employee cannot be placed as outlined in Steps 1 through 5 above the employee shall be laid off.

Section 3. When an employee is bumped, they shall have all the rights of this Article as if they were originally subject to layoff, beginning with Section 1. of this Article.

Section 4. At other than Step 1, the employee may elect a layoff. A refusal to accept a position for which the employee meets the requirements will result in the employee being laid off at that point.

Section 5. It is understood that the employee's response must be provided to the appropriate Human Resources representative within twenty-four (24) hours of the time they were informed of their option(s). Failure to timely respond shall be considered as a waiver of the option(s) and the employee will be laid off.

Section 6. The Employer shall give a minimum of seven (7) days' notice of layoff.

Section 7. Employees will be recalled from layoff in order of seniority to any open job within the bargaining unit provided they have the ability to perform the work available. If the opening is in a different category they will have the option to refuse such offer up to two (2) times during the layoff period. Following such refusal the employee will continue to have recall rights to a position in their job title, category of employment and shift as per Section 2.

Section 8. Recalls from layoff 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 after such notification.

Section 9. Severance:

The following applies to eligible employees who are permanently laid off by the Employer due to a closure of the Surgery Center and who relinquish any right to recall at the time of layoff:

- a.) The employee shall receive thirty (30) day's notice.
- b.) The employee shall receive one (1) week's pay for each year of service with the Surgery Center up to a maximum of 8 weeks base pay. Said payment shall be paid in bi-weekly installments with normal payroll withholdings deducted.

- c.) The Employer's premium payment contribution towards the employee's health benefits shall be continued until the end of the month in which the severance payment period expires.
- d.) Employer will not contest the employee's application for unemployment benefits.
- e.) Employee will sign a severance agreement provided by the Employer, which will include, among other terms, a full waiver and release of claims.

### **Article 43 Downsizing**

Section 1. The Employer and the Union recognize the need for a system to temporarily downsize the staff if the census/workload drops. If it becomes necessary to temporarily reduce the number of employees in a unit, the reduction will be completed as follows, except any shift may be skipped if necessary to assure adequate coverage for safe patient care.

- a.) any scheduled overtime (time paid at time and one-half) will be canceled in inverse order of seniority;
- b.) volunteers will be offered paid time off, or if their PTO balance is at or below sixty (60) hours, excused absence time without pay in order of seniority on a rotating basis (wheel), with individuals not on site given thirty (30) minutes to respond before the next most senior employee (on wheel) is granted the time;
- c.) any scheduled agency personnel in the units will be canceled;
- d.) per diem employees who are scheduled will be canceled and/or reassigned as per needs within the unit/department;
- e.) any scheduled hours in excess of an employee's normal workweek, or in the case of regular part-time employees, in excess of the minimum weekly hours for which they are hired will be canceled in inverse order of seniority. (Such employees may use accrued paid time off).

Section 2. In the event management does not achieve the necessary reduction(s) utilizing the steps referenced in Sections 1.(a-f) above, staff may be required to take time off in inverse order of seniority, on a rotating basis.

It is understood that no Full-Time or Part-Time employee will be required to downsize on more than five (5) occurrences per calendar year. This includes a maximum of 9.5 hours per occurrence (47.5 hours max per year).

Employees required to downsize will have the option to take PTO (including negative but only through the last full pay period of April of each calendar year) or excused absence.

Section 3. The Employer will make every effort to contact bargaining unit members at least one (1) hour prior to the start of the shift, but not before the previous business day if they are to be canceled.

#### **Article 44 Personnel Files**

Section 1. Employees who have completed their probationary period shall have access to their own personnel file during reasonable working hours, provided they have their supervisor's permission to leave the work place, and may be accompanied by a Union representative during an inspection of their file. Requests for such inspection shall be made to the Human Resource representative and shall be reasonable as to frequency. All documents placed in the employee's file shall be initialed and dated by the employee at the time of examination. Employees may request copies of documents from their personnel file.

Section 2. Such initialing shall not constitute agreement with its content. The employee shall have the right to respond in writing to any document in the file. Such response shall become part of the employee's personnel file.

#### **Article 45 Job Descriptions**

Section 1. All job descriptions which are currently in place shall remain in effect.

Section 2. Should it become necessary to change existing job descriptions, the Employer will produce a suggested change in writing thirty (30) days prior to the proposed implementation, and give the Union an opportunity to discuss it. If the Union disagrees with the rate of pay as proposed by the Employer, they may file a grievance at Step 2 of the Grievance Procedure Article of this Agreement, provided it does so within twenty (20) calendar days from the date on which the revision or rate is set and announced.

#### **Article 46 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.) suspension;
- d.) termination.

It is understood, however, that nothing in this Article shall prohibit the Employer from advancing the level of discipline in proportion to the seriousness of the offense. A copy of the disciplinary action shall be given to the employee and the Union.

Section 2. Counseling shall not be considered as discipline and should precede any formal disciplinary action.

Section 3. No disciplinary action will be taken without just cause. The Employer will notify the Union, in writing, of a suspension or discharge within seventy-two (72) hours or as soon as reasonably possible, stating the reason for the discipline.

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 the written warning step or suspension step if the suspension step is where the discipline process begins.
- b.) When the employee has demonstrated consistent improvement in performance as a result of the remedial program the documentation of the need for discipline will be removed from the employee's personnel file. It is agreed that documentation of corrective disciplinary measures shall not remain in the employee's personnel file for a period longer than the following providing the behavior in question does not recur:
  - i.) Verbal warning: six (6) months from the date discipline imposed.
  - ii.) Written warning: twelve (12) months from the date discipline imposed.
  - iii.) Suspension: eighteen (18) months from the date discipline imposed.

The time periods referred to above shall refer to actual time worked.

- c.) The Union and the Employer agree that the written plan of correction shall not be required when there are non job performance problems.
- d.) 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 47 Resignations/Terminations**

Section 1. An employee wishing to resign shall give the Employer two (2) weeks' notice of resignation. Resignation notices should be submitted in writing and specify the last day the employee is to be at work.

Section 2. The employee who resigns employment with the Employer and complies with the notice provisions of Section 1., or who is terminated by the Employer, will receive pay for all accrued, unused paid time off in accordance with Article 22., Paid Time Off.

**Article 48**  
**Bargaining Unit Work**

Non-bargaining unit personnel shall not perform work assigned to bargaining unit employees.

**Article 49**  
**Contracting Out Work**

The Employer will not contract out bargaining unit work.

**Article 50**  
**Management Rights**

Section 1. The Employer retains the sole right to manage its business and services and to direct the working force, including the right to decide the number and location of its business and service operations, the business and service operations to be conducted and rendered, the method, process and means used in operating its business and service, and to control buildings, real estate, materials, parts, tools, machinery, and all equipment which may be used in the operations of its business or in supplying its services; to determine whether and to what extent the work required in operating its business and supplying its services shall be performed by employees covered by this Agreement; to maintain order and efficiency in all its departments and operations, including the sole right to discipline, suspend, and discharge employees for just cause; to hire, layoff, assign, transfer, promote, and determine the qualifications of the employees; to determine the starting and quitting time and the number of hours to be worked; all of the foregoing subject only to such regulations governing the exercise of these rights as are expressly provided for in this Agreement.

Section 2. The foregoing rights are not all-inclusive, but indicate the types of matters or rights which are inherent to the Employer. The Employer retains all rights, powers, and authority enjoyed prior to entering this Agreement, except as expressly and specifically abridged, delegated, granted, or modified by this Agreement.

**Article 51**  
**Employer Policies**

The Employer may issue new policies or change existing policies provided such policies are not inconsistent with the specific provisions of this Agreement. Should it become necessary to change existing policies the Employer will inform the Union fourteen (14) calendar days prior to implementation and will forward a copy of the proposed change to the Union for discussion or negotiation as required.

**Article 52**  
**No Strike – No Lockout**

Section 1. There will be no concerted failure to report to work, cessation or interruption of work, slowdown, strike, picketing, or lockout during the term of the Agreement.

Section 2. No officer or representative of the Union shall authorize, instigate, aid, or condone any such activity, nor shall any employee participate in such activity. In the event any employee or group of employees covered by this Agreement shall participate in any such unauthorized strike, slowdown, work stoppage, or picketing, the Union agrees that immediately after being notified by the Employer, it will direct such employee or group of employees to resume work and will take effective means to terminate such unauthorized conduct including the issuance of a notice to the effect that such conduct is neither authorized nor approved by the Union or its officers.

### **Article 53 Designated Smoking Areas**

The Employer's facility shall comply with the smoking restrictions contained in Chapter 45 of New York's Public Health Law.

### **Article 54 Scrub Apparel**

Section 1. The Employer will provide scrub apparel for all employees.

Section 2. Employer provided scrub apparel will not be worn outside of the facility unless approved by a manager. Employees will change into scrub apparel at the beginning of the shift and out of the apparel at the end of the shift.

### **Article 55 Savings Clause**

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 this 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 56 Joint Labor Management Committee**

Millard Fillmore Surgery Center, LLC. and Communications Workers of America agree, subsequent to ratification of the Agreement to establish a formalized joint Labor Management Committee. The purpose will be to discuss issues relative to patient and staff well being. The committee will be responsible to review, address and make recommendations to resolve the following:

1. Workload and staffing issues
2. Health and safety needs
3. Equipment issues
4. Miscellaneous workplace issues

The committee will meet on a bi-monthly basis and shall mutually agree to the agenda items to be covered one (1) week prior to the meeting. The committee shall consist of two (2) Union members (1 RN and 1 from the Technical or Clerical units) and one (1) chief steward (alternating) and an equal number of employer representatives. Committee members and a chief steward will be paid for participation during their regularly scheduled work hours. Staff committee representatives will be voted on and serve a one year term on the committee.

Health & Safety – Guiding principles:

The Employer will continue to comply with all local, state and federal health and safety laws and regulations and will provide and maintain a safe workplace, free of recognized hazards.

The Employer agrees to make available necessary safety equipment, promote safe working conditions, and make other reasonable provisions for the safety and health of employees. The Employee will comply with all safety requirements and will utilize safety equipment provided by the Employer.

A condition or hazard believed to be unsafe should be brought to the attention of the nurse manager/designee, so that the condition can be investigated and dealt with appropriately. If the unsafe condition or hazard is not addressed, it shall be brought to the attention of the Quality Improvement/Risk Management Committee and reviewed at LMC.

Minutes of the Health/Safety portion of the Quality Improvement/Risk Management Committee and minutes of the Joint Labor Management Committee will be posted on the CWA Bulletin Board. A record of all meeting minutes will be kept on site in a binder for review by CWA members upon request.

## **Article 57**

### **Security Technology**

Section 1. The Employer and the Union agree to the following:

- a.) The Employer will not install surveillance cameras solely for the purpose of monitoring employee actions. If the Employer uses surveillance camera video as evidence to support employee discipline, a copy of the video will be provided to the Union prior to any discipline being administered.
- b.) The Union has been provided with the location of all existing surveillance cameras during the negotiations which lead to this Agreement. The Employer agrees to provide the Union with notification prior to any camera relocation or addition.
- c.) The Employer will not install surveillance cameras in any rest room areas, lunch rooms or locker room areas.

**Article 58**  
**Duration**

This Agreement shall be effective June 1, 2021 and shall remain in full force and effect until May 31, 2023 and shall be automatically renewed for one (1) year cycles thereafter unless either party shall notify the other in writing not less than ninety (90) days prior to the end of any termination date (or termination date established by an automatic renewal of this agreement) that it desires to modify this Agreement. In the event that such notice is given, negotiations will begin at a mutually agreeable time prior to the termination date.

Dated: 5/16/22

Millard Fillmore  
Surgery Center, LLC

By:   
Mark Mineo

Communications Workers of America,  
AFL-CIO:

By:   
Erin Spaulding, Staff Representative  
Communications Workers of America, AFL-CIO

By:   
Robert V. Andruszko  
Executive Vice President  
CWA Local 1168

By:   
Margaret Schneller, RN  
Bargaining Committee Representative

By:   
Carrie Gennuso, RN  
Bargaining Committee Representative

**Memorandum of Understanding #1**  
**Seniority**

Employees covered by this Agreement, that transfer from Kaleida Health to the Millard Fillmore Surgery Center, LLC during the initial transfer of ownership will have their most recent date of hire with Kaleida as date of hire for all purposes outlined in this Agreement.

**Memorandum of Understanding # 2**  
**Drop and Add Relative to FTE**

When employee(s) within a unit request a change to their FTE status:

Two (2) employees from the same job title in a unit may propose a change in their FTE status without changing the total FTEs or increase the number of full time employees in that unit/department. Such a change shall not exceed .4 FTE. It is understood the Add / Drop change can only be for FTE's with same shift duration (i.e., 8 hours FT to 8 hours PT and vice versa).

- a.) Requests must be submitted in writing to the manager.
- b.) Once reviewed and approved by management, the hours (portion of FTE relinquished) will be posted on the unit for seven (7) calendar days and awarded by seniority. The Union will be notified of the prospective posting and final disposition of such posting.
- c.) If no other volunteers sign up during this time frame, the change in status will become effective beginning with the next time block after change is authorized with consideration to the needs of the unit and the competency of the affected employees.
- d.) If no employees are interested in increasing their FTE, this process will not continue.
- e.) Per diem employees are not allowed to participate in this process.
- f.) The intent and application of this article in no way supersedes any other article in this collective bargaining agreement.