

**AGREEMENT BETWEEN**

**BEACON HARBOR OF SAGINAW, INC.**

**and**

**SERVICE EMPLOYEES INTERNATIONAL UNION, LOCAL 517 M**

## **AGREEMENT**

This Agreement, made this \_\_\_\_ day of November, 2006, by and between Beacon Harbor of Saginaw, Inc. (hereinafter referred to as “Company”) and Service Employees International Union Local 517 M (hereinafter referred to as “Union”).

## Article I. Recognition

The Company recognizes the Union to the extent required by the *National Labor Relations Act*, as amended, as the exclusive bargaining agent for the unit of employees consisting of: All full-time and regularly scheduled part-time behavioral technicians/direct care workers and team leaders employed by the Company at the following Saginaw and Pinconning facilities: 1820 Division, Saginaw, MI; 1103 S. Michigan, Saginaw, MI; 806 Piper, Saginaw, MI; 2730 Hospital Rd., Saginaw, MI; 1323 S. Michigan, Saginaw, MI; 2585 Shattuck, Saginaw, MI; and 2076 Garfield Rd., Pinconning, MI, but excluding managers, all other employees and guards and supervisors. This provision does not confer any substantive rights under this Agreement.

## **Article II. Non-Discrimination**

### **Section 1. Non-Discrimination**

The Company shall not permit and the Union shall not condone discrimination against any employee based on race, color, sex, religion, national origin, age, handicap, height, weight, veteran, marital status, or support for or against the Union. The Company and the Union shall not permit any form of harassment, joking remarks or other abusive conduct directed at employees because of their race, color, sex, religion, national origin, age or handicap, height, weight, veteran, marital status, or membership or non-membership in any labor organization.

### **Section 2. Sexual Harassment**

The Company and the Union shall not permit sexual harassment because it is intimidating, an abuse of power, and unlawful. Sexual harassment is defined as unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature. Sexual harassment can take the forms of:

1. Sexual conduct that interferes with another person's work performance or creates an intimidating, hostile or offensive work environment.
2. Personnel decisions (e.g. promotions, raises, scheduling) made by a supervisor or boss based on the employee's submission to or rejection of sexual advances.
3. Submission to a sexual advance used as a condition of keeping or getting a job, whether expressed in explicit or implicit terms.

Any employee who feels subjected to discrimination or harassment should immediately report it to any of the following individuals: his/her immediate supervisor, or the Licensee Administrator or the Residential Administrator, or an officer of the Company. The employee may also report any alleged discrimination or harassment to their Union representative, who shall direct the employee to report to Management. Such reports will be investigated promptly. If the report has merit, disciplinary action will be taken against the offender. Depending on the severity of the misconduct, the disciplinary action could range from a warning to termination.

### **Article III. Management Rights**

The Union recognizes and agrees that all management rights, powers, authority, and functions, whether heretofore or hereafter exercised, and regardless of their frequency or infrequency of their exercise, shall remain vested exclusively in the Company. It is expressly recognized that such rights, powers, authority, and functions include, but are by no means whatever limited to, the full and exclusive control, management and operations of its facilities; the determination of the scope of its activities, services to be provided and methods pertaining thereto, the material and goods to be acquired in support of the services provided, techniques, standards of care and medical devices to be utilized, schedules of work and the right to schedule, change, eliminate, require and assign overtime work; the right to establish, change, combine or eliminate jobs, positions, and job classifications, and facilities; the right to establish wage rates for new or changed jobs or positions; the right to establish or change or discontinue incentive or bonus compensation; the right to introduce or approve procedures, standards of care, methods, processes, facilities, fixtures and equipment or make technological changes; the right to establish, maintain, change or enforce operations, procedures and policies; the right to maintain order and efficiency; the right to establish, maintain or change housekeeping standards; the right to contract, subcontract, whether in-house or off premises, lease, license, transfer, convey or assign any work, or other operation, outside the bargaining unit; the right to conduct internal audits of any and all aspects of operations; the determination of the number, size and location of its facilities or any part thereof, and the extent to which, as well as the means and manner by which, its facilities, departments, sections, units or any part thereof, shall be operated, relocated, remodeled, refurbished, maintained, shut down or abandoned; the right to terminate, merge, consolidate, sell or otherwise transfer its business, facilities, departments, sections, units, or any part thereof; and the right to make, change, and enforce safety and security rules, rules of conduct and work rules; the determination of the number of employees, the assignment of duties thereto, and the right to change, increase, reduce, transfer or interchange the same and the direction of the working force, including but by no means limited to hiring, selecting and training of employees, and disciplining, suspending, discharging, the cause of which shall not be unreasonable, scheduling, assigning, laying off, recalling, promoting, transferring and interchanging of its employees.

It is the intention of the Company and the Union that the rights, powers, authority and functions referred to herein shall remain exclusively vested in the Company except insofar as specifically surrendered or limited by the express provisions of this Agreement.

## **Article IV. Representation**

### **Section 1. Bargaining Committee**

The employees of the bargaining unit shall be represented by a Bargaining Committee composed of two (2) employees (Committee persons) who shall be elected in any manner determined by the employees. The Bargaining Committee will be employees of Company, whose chief responsibility as Committee persons shall be to represent bargaining unit employees in negotiations. The Union will notify the Company as to who are the two (2) employees on the Bargaining Committee. Only employees with a minimum of one (1) year of continuous service are eligible for the Bargaining Committee.

### **Section 2. Stewards**

Employees of the bargaining unit shall be represented by stewards elected in any manner determined by the employees. Stewards will be employees of the Company whose chief responsibility as stewards shall be to represent employees in administration of the provisions of the Agreement. The Union will notify the Company, in writing, as to who are the stewards. Only employees with a minimum of one (1) year of continuous service are eligible to be stewards. Stewards shall not engage in Union business during working time except by written permission of the Residential Administrator or designee, which permission shall not be unreasonably denied.

## Article V. Service Time

### **Section 1. Basis of Service Time**

Service time for the purposes of this Agreement shall mean an employee's length of continuous service with the Company beginning with said employee's date of hire or last date of re-hire.

### **Section 2. Trial Period**

The first 180 working days during which the employee actually performs work as assigned and scheduled shall be considered a trial period. During said trial period, the employee may be terminated at the sole discretion of the Company for any or no reason whatsoever. Termination of an employee during the trial period shall not in any manner be subject to the grievance and arbitration provisions.

### **Section 3. Reduction-in-Force**

When a reduction-in-force becomes necessary, the Company shall determine at its discretion the relative qualifications of employees to perform the available assigned work. Where the qualifications of employees to perform the available assigned work are determined by the Company to be equal, the employee with the most service time shall be preferred by the Company in reducing the work force.

### **Section 4. Temporary Shutdowns**

Service time shall not apply during shutdowns instituted by Federal, State or local licencing and reimbursement authorities.

### **Section 5. Increase-In-Force**

When an increase-in-force becomes necessary, the Company shall determine, in its discretion, the relative qualifications of the employees to perform the available assigned work. Where the qualifications of employees to perform the available assigned work are determined by the Company to be equal, the employee with the most service time shall be preferred by the Company in increasing the work force.

### **Section 6. Loss of Service Time**

Service time shall be considered broken or terminated:

- a) If an employee quits, retires, or is discharged;
- b) If an employee is absent for any working day without notifying the Company;

- c) If an employee fails to return to work from layoff within two (2) days from date of notification;
- d) If an employee is laid off from work for a continuous period equal to his/her service time at the time of such layoff or for one (1) year, whichever is less;
- e) If an employee is on a medical leave due to a non-occupational illness or accident for a continuous period equal to his/her service time or one (1) year, whichever is less;
- f) If the employee fails to return to work at the expiration of a approved leave of absence;
- g) If an employee obtains any type of leave for the purpose of work elsewhere.
- h) If employee is terminated for violation of the Company Rules of Conduct, or for violation of consumer rights.

#### **Section 7. Recall Procedures**

The laid-off employee shall report back to work within one (1) day of verified telephonic notice of recall or within two (2) days of receipt of written notice of recall, either by telegram, mailgram, or certified letter and failure to timely return to work within said period, said employee may, in the Company's discretion, lose all service time rights. For purposes of this notice, the Company shall be entitled to rely upon the employee's last-known address as shown by the Company's records.

#### **Section 8. Temporary Layoffs**

The parties recognize the necessity of temporary layoffs caused by shortage of materials or other reasons. It is, therefore, mutually agreed that such temporary layoffs of not more than fifteen (15) work days may be made from time to time without regard to service time in this Agreement.

#### **Section 9. Service Time List**

A current service time list will be posted on the bulletin board located at the Administrative offices. The list will be updated every 90 days. New employees hired in the same day shall be placed on the service time list by the lottery system. Any employee making an objection to his/her hire date must do so within ten (10) working days after his/her service time date is first posted on such list.

## **Article VI. No Strike/No Lockout**

### **Section 1. Prohibition Against Interrupted Operations**

The Union and the Company agree that uninterrupted operation is essential to maintain the Company's licensure. During the life of this Agreement, the Union shall not authorize, sanction, encourage, ratify, acquiesce in, condone or permit any of its members to take part in, nor shall any member of the Union take part in, a sit-down, stay-in, slow down, curtailment of work, restriction of production, strike, work stoppage, artificial sick call, sympathy strike, unfair labor practice strike, or any interference at or of any operations of the Company or the picketing of, or demonstrations or other activities at, the Company facilities, office, or other premises or the picketing of, or demonstrations or other activities at, the premises of others doing business with the Company during the life of this Agreement, with the limited exception that the Union may engage in picketing of, or demonstrations or other activities at, the premises of Saginaw County Community Mental Health Authority which does not identify or in any way involve the Company. In the event activity prohibited by this section occurs during the life of this Agreement, the Union, its officers, agents, servants, representatives, stewards, committee persons, employees and members, and each of them shall have an affirmative obligation and duty, and in connection therewith, shall exercise whatever powers they possess and take whatever steps are necessary and proper to end such improper activity. The Union agrees that the Company is entitled to expect and rely upon this section as providing the Company with uninterrupted operations during the life of this Agreement. In addition to any other right or remedy the Company may have, and without limitation thereof, the Company shall have the right to discipline or discharge any employee participating in any way in any violation of this section, and shall have the further right to discipline on a selective basis or to impose different degrees of discipline based on the Company's appraisal of the employee's degree of participation in or responsibility for such violation or the continuing violation thereof, all of which shall be without recourse. The Company shall have the right, in the event of violation of this section, to cancel this Agreement by notice, in writing, to the Union in addition to any other remedies the Company may have.

### **Section 2. Prohibition Against Lock-Out**

The Company, for its part, agrees that there shall be no lockout during the term of this Agreement. This lockout provision shall not apply in the event of an authorized strike.

## Article VII. Grievance Procedure

### **Section 1. Definition of a Grievance**

For purposes of this Agreement, a grievance shall be defined as, a complaint arising under and during the term of this Agreement, filed by an employee covered by this Agreement concerning the application and interpretation of a specific provision or provisions of this Agreement as written.

### **Section 2. Grievance Procedure**

Grievances shall be handled in the following manner:

- Step One: An employee having a grievance shall first present it orally to the House Manager or his/her designee, and an effort shall be made to resolve the grievance in this manner.
- Step Two: If the verbal grievance cannot be satisfactorily adjusted in Step One no later than two (2) working days after the facts that occurred which gave rise to the grievance, the grievance shall be reduced to writing and presented to the Company's Licensee Administrator, or his/her designee. The written grievance shall, as a condition of arbitrability, set forth a statement of the facts relied upon, including events, dates and persons involved, the Section or Sections of this Agreement allegedly violated, the specific remedy sought, and shall be signed by the employee. The Licensee Administrator, or his/her designee, shall make a written answer to the grievance within five (5) working days of receipt of a timely grievance and an effort shall be made to resolve the complaint in this manner. If the Licensee Administrator, or his/her designee fails to respond, the grievance may be processed to Step Three.
- Step Three: If the written grievance cannot be satisfactorily settled in Step Two, the Steward and/or the Program Coordinator of the Union may appeal the Licensee Administrator's decision by delivering to the Residential Administrator, or his/her designee, a written request within five (5) working days following receipt of the Step Two answer, or following the date the answer was due. The Residential Administrator, or his/her designee, shall make a written answer to the grievance within ten (10) working days of receipt of a timely grievance, and an effort shall be made to resolve the grievance in this manner. If the Residential Administrator or his/her designee fails to respond, the grievance may be processed to arbitration.

### **Section 3. No Self-Help**

Where an employee is directed to do something which the employee objects to, the employee must follow the directive, and afterwards follow the grievance procedure. The filing in writing of any grievance shall not prevent the Company from taking the complained of action.

### **Section 4. Arbitration**

The Union may seek arbitration of any unresolved grievance which is arbitrable by delivering to the Residential Administrator, or designated representative, a written notice of submission to arbitration within five (5) working days following receipt of the Step 3 answer, or following the date the answer was due. If the Union does not timely seek arbitration, the grievance shall be considered withdrawn, with prejudice to refiling.

### **Section 5. Selection of Arbitrator**

- (a) The impartial arbitrator may be selected by mutual agreement between the Company and the Union. If the parties hereto cannot agree upon an arbitrator, then such arbitrator may be selected with the assistance and under the rules of the Federal Mediation and Conciliation Service Office of Arbitration Services (FMCS-OAS). The Union shall write FMCS-OAS, submitting an arbitration request form, not later than seven (7) working days following the date of the Union's written notice of submission to arbitration, with a copy delivered to the Company's Residential Administrator, or designee. If the Union does not timely write FMCS-OAS, the grievance shall be considered withdrawn, with prejudice to refiling.
- (b) The arbitrator shall be selected from a panel of seven (7) arbitrators submitted by the FMCS-OAS, by each party alternately striking the name of an arbitrator from the panel. The Union shall strike the first name from the list of arbitrators. After six arbitrators have been struck, the remaining individual shall serve as the arbitrator. Either party shall have the option of requesting a second and final panel of seven (7) arbitrators. The panels of arbitrators shall be from across the Mid-West. The fees and expenses of the arbitrator and all hearing location costs shall be paid by the loser. Each party shall pay the fees, expenses, wages, and any other compensation of its own witnesses, representatives and legal counsel.

### **Section 6. Arbitrator's Authority**

The arbitrator shall have no power to alter, modify, or amend any provisions hereof. The arbitrator shall have no power to substitute his/her judgment for that of the Company, nor shall he/she have the power to overrule a decision of the Company unless the Company's judgment or decision is contrary to the express provisions of this Agreement.

## **Section 7. Conduct of Arbitration Hearing**

The arbitration hearing, except as otherwise provided in this Agreement or as agreed to between the Company and the Union, shall be governed by the Labor Arbitration Rules of the Federal Mediation and Conciliation Service. The Arbitrator shall be bound by the facts and evidence submitted during the arbitration hearing. The grieving party shall present its case in support of the grievance first, except in cases involving discipline or discharge. After the close of the grieving party's proofs, the opposing party may respond and present its case. Either party shall have the right to call as witnesses in their respective cases adverse witnesses from the other party, including the grievant. Where one party arranges for the transcription of the arbitration by a court reporter, and the other party orders a copy of the record made, the parties shall share equally the total costs of obtaining the transcript and a copy thereof. The arbitrator shall not, in any way, provide said party with the original or copy of the transcript unless the party shares equally the total costs of obtaining the transcript and a copy thereof.

## **Section 8. Arbitrator's Decisions**

The arbitrator's decision shall be final and binding upon the Union, the Company and the employees in the bargaining unit; provided, however, that either party may have its legal remedies if the arbitrator exceeds the jurisdiction or authority provided in this Agreement.

## **Section 9. Grievance Form**

The grievance form shall be prepared by the Union in a form which coincides with the grievance procedure established in this Agreement.

## **Section 10. Time Limits**

The time limits established in the grievance procedure shall be followed by the parties hereto. If the time procedure is not followed by the Union or the employees represented by the Union, the grievance shall be considered withdrawn with prejudice to refile. Grievances which are considered withdrawn with prejudice to refile shall be deemed not to be arbitrable, and no arbitrator shall have any power to review the grievance or issue any award. If the time procedure is not followed by the Company, the grievance shall automatically advance to the next step, excluding arbitration. The time limits established in the grievance procedure may be extended by the mutual agreement of the parties provided the extension is reduced to writing and the period of extension is specified.

## **Section 11. Time Computation**

Saturdays, Sundays and holidays recognized under this Agreement shall not be counted as working days under the time procedures established in the grievance procedure. All other

days shall be considered to be working days, even if a particular employee does not actually work on that day.

### **Section 12. Discharge or Suspension Grievances**

All grievances concerning discharge or suspension shall be initiated at Step 2 of the grievance procedure. A written grievance signed by the discharged or suspended employee shall be filed within three (3) working days of the employee's discharge or suspension in order to invoke the grievance procedure in such situations. Employees terminated at the direction of local, State or Federal licensing and/or reimbursement authorities shall have no recourse to the Grievance Procedure.

### **Section 13. Arbitration After Termination of Agreement**

Notwithstanding any other provision of this Agreement, the Company shall have no obligation to arbitrate any grievance after the expiration of this Agreement.

## Article VIII. Leaves of Absence

### **Section 1. Family and Medical Leave**

This Agreement shall be construed in a manner that complies with the *Family and Medical Leave Act of 1993*, and the Company shall have the right to exercise any option available to it under the Act.

### **Section 2. Military Leave**

This Agreement shall be construed in a manner that complies with state and federal law with respect to employees in the military.

### **Section 3. Personal Leave**

An employee desiring a personal leave of absence without pay not to exceed ten (10) working days in any calendar year shall obtain written permission from the Residential Manager or designee. The granting of any leave of absence by the Company shall be considered without precedent or prejudice to the Company's rights in the future. Any employee granted leave of absence who shall engage in other employment during said leave shall be treated as having quit their employment and shall not have recourse to the grievance procedure, with the limited exception being leaves of absence granted for any employee to attend Union educational classes or Union conventions.

## **Article IX. Dues Checkoff**

### **Section 1.**

The Company will make dues deductions in the first payroll period of the month. In the event the employee has no earnings in such payroll period, the Company shall deduct the delinquent dues in the next payroll period that the employee does have earnings.

### **Section 2.**

Any employee subject to checkoff deductions whose employment is terminated or service time broken by death, quit, or discharge, or who is laid off or on a leave of absence, shall cease to be subject to checkoff deductions beginning in the month immediately following the month in which termination, layoff or leave occurred or service time was broken.

### **Section 3.**

Dues will be authorized, levied and certified in accordance with the Constitution and By-laws of the local Union, as well as in conformity with the law and this entire Agreement.

### **Section 4.**

Deductions for any calendar month shall be remitted to the Financial Secretary of the Union, with a list of names of all employees for whom deductions have been made, no later than the twenty-fifth (25th) day of the month following the month in which they were deducted.

### **Section 5.**

The Union agrees to indemnify and hold the Company harmless against any and all claims, suits, or other forms of liability arising out of its deduction from an employee's pay of amounts to cover obligations to the Union, and the Union shall intervene and defend the Company in any forum against such claims. The Union assumes full responsibility for the disposition of the deductions so made, once they have been sent to the Union.

### **Section 6.**

Checkoff deductions under all properly executed check-off authorization forms shall begin with the month following the effective date of this Agreement and shall not be retroactive.

### **Article X. Union Status**

As a condition of continued employment, all employees covered by this Agreement shall on the thirty-first (31st) day after employment, or thirty-one (31) days after the effective date of this Article, whichever is later, become and remain members of the Union in good standing.

No employee shall be deprived of employment under this Article for any reason other than his/her failure to tender periodic dues and/or initiation fees or monies equal thereto which are uniformly required as a condition of acquiring and retaining membership.

The Union agrees to indemnify and hold the Company harmless against any and all claims, suits and other forms of liability arising out of the administration of this Article, and the Union shall intervene and defend the Company in any forum against such claims.

## **Article XI. Hours of Work and Wages**

### **Section 1. Work Day and Work Week**

The regular work week shall consist of a total of 40 hours per week.

### **Section 2.**

Employer shall grant a wage increase of not less than 2% to eligible employees on November 1, 2007.

Eligible employees are employees that because of the changes to the minimum wage law in 2006, did not receive an increase in 2007, and will not be entitled to an increase for the duration of the Agreement.

## **Article XII. Holidays**

### **Section 1.**

Employees working on the following holidays shall be compensated at time-and-one-half their regular rate, if Employee works the Company's full scheduled days immediately before and immediately after the holiday.

### **Section 2.**

For purposes of this contract, compensable holidays subject to the terms of Section 1 are:

Thanksgiving  
Christmas  
New Years.

### **Article XIII. Total Agreement**

It is the intent of the parties that the provisions of this Agreement, which supersedes all prior agreements, understandings, and practices, oral or written, express or implied, between such parties, and constitutes the entire agreement between the parties, shall govern their entire relationship and shall be the sole source of any and all rights or claims which may be asserted in the grievance procedure or any other forum.

The provisions of this Agreement can be amended, supplemented, rescinded or otherwise altered only by mutual agreement, in writing, signed by the parties.

The parties acknowledge that during the negotiations which resulted in this Agreement, each party had the unlimited right and opportunity to make demands and proposals with respect to any subject or matter not removed by law from the area of collective bargaining, and that the understandings and agreements arrived at by the parties after exercise of that right and opportunity are set forth in this Agreement. Therefore, the Company and the Union, for the life of this Agreement, each voluntarily and unqualifiedly waive the right, and each agrees that the other shall not be obligated, to bargain collectively with respect to any subject or matter referred to, or covered in this Agreement or with respect to any subject or matter not specifically referred to or covered in this Agreement, even though such subject or matter may not have been within the knowledge or contemplations of either or both of the parties at the time they negotiated or signed this Agreement.

**Article XIV. Termination of Agreement**

This Agreement shall be in full force and effect from the date of signing to and including December 15, 2008, and shall continue in full force and effect from year to year thereafter unless written notice of desire to terminate, modify, or make changes in said Agreement is served by either party upon the other at least 60 days prior to the date of expiration.

**Article XV. Miscellaneous**

**Section 1. Savings Clause**

The provisions of this Agreement shall conform with federal and state laws, executive orders, directives, and official governmental interpretations of such laws, orders and directives, but the voidance of any clause or clauses for the reason of illegality shall not affect the balance of this Agreement which shall remain in full force and effect.

**BEACON HARBOR OF SAGINAW, INC.**

**SERVICE EMPLOYEES  
INTERNATIONAL UNION  
LOCAL 517 M**

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