

**2012  
WINDOW CLEANERS  
AGREEMENT**

BETWEEN  
SERVICE EMPLOYEES INTERNATIONAL UNION,  
LOCAL 32BJ

AND

THE REALTY ADVISORY BOARD ON LABOR  
RELATIONS, INC.

EFFECTIVE JANUARY 1, 2012  
TO DECEMBER 31, 2015

AGREEMENT made between The Realty Advisory Board on Labor Relations, Inc., hereinafter referred to as the “RAB,” and SEIU LOCAL 32BJ, hereinafter referred to as the “Union”.

The RAB and the Employer members of the RAB Window Cleaning Division recognize the Union as the sole and exclusive collective bargaining representative of all non-supervisory window cleaners in the employ of such Employers in the City of New York and in such other areas that are currently within the geographical jurisdiction of the Union and the RAB. In order to more efficiently apply the principles of collective bargaining, to stabilize trade and labor practices in the window cleaning industry and to maintain fair wages, hours and the working conditions for the members of the Union and in consideration of the mutual covenants hereinafter set forth, the parties hereto agree as follows:

**Section 1**

**UNION SHOP AND CHECK-OFF**

(a) Union Shop - It shall be a condition of employment that all employees of any Employer covered by this Agreement who are members of the Union on the effective date of this Agreement shall remain members and those who are not members on the effective date of this Agreement shall, not later than the thirty-first (31<sup>st</sup>) day following the effective date of this Agreement, become and remain members in the Union. It shall also be a condition of employment that all employees covered by this Agreement and hired on or after its effective date shall, not later than the thirty-first (31<sup>st</sup>) day following the beginning of such employment, become and remain members in the Union. The requirement of membership under this section or elsewhere in this Agreement is satisfied by the payment of financial obligations of the Union’s initiation fees and periodic dues uniformly imposed.

In the event of a vacancy or need for additional employment, the Employer agrees to notify the Union of same.

(b) Check-off - The Employer agrees to deduct the Union’s monthly dues and all assessments or agency fees from the pay of each employee from whom it receives written authorization and will continue to make such written deductions while the authorization remains in effect.

Such deductions will be made from the first full pay period worked by each employee following receipt of the employees' dues deduction authorization and thereafter will be made on the first pay day each month and forwarded to the Union not later than the second Friday in each and every current month. The dues deduction shall constitute trust funds while in the possession of the Employer.

If a signatory does not revoke the authorization at the end of the year following the date of authorization, or at the end of the current contract, whichever is earlier, it shall be deemed a renewal of authorization, irrevocable for another year, or until the expiration of the next succeeding contract, whichever is earlier.

The Union agrees to indemnify and save the Employer and the RAB harmless from any liability incurred by reason of such deductions.

The Employer shall be responsible for the cost of arbitration and attorney fees and any other damages suffered by the Union for willful failure to deduct and remit to the Union, union dues from employee(s)' wages.

The Employer agrees to deduct from employees' wages, voluntary political contributions, when it receives written authorization, and will continue to make such deduction while the authorization remains in effect.

## **Section 2**

### **MANAGEMENT RIGHTS**

The Union recognizes management's right to direct and control its policies subject to the obligations of this Agreement.

Employees will cooperate with management within the obligations of this Agreement to facilitate the efficient operation of the business.

## **Section 3**

### **NOTICE OF HIRING**

Each Employer covered by this Agreement shall notify the Union of new employees hired by such Employer within forty-eight (48) hours after such hiring. This notification shall be in writing.

## **Section 4**

### **FAILURE TO GIVE NOTICE OF HIRING**

(a) Employers who fail to notify the Union of the hiring of new employees pursuant to Section 3 of this Agreement shall be required to pay liquidated damages in the sum of \$20.00 for each person so employed for whom the required notice was not given for the first offense, and \$40.00 for each person so employed for whom the required notice was not given for the second offense. Should the Employer be found to have violated for a second time any of the provisions of this Agreement at any time during the term hereof or at any time within one (1) year from the date of its expiration, the

Employer shall be deemed a second offender and the provision hereof in this respect shall survive the Agreement.

(b) In the event the failure of such notification extends beyond thirty (30) days after the employment of such new employee, the liquidated damages shall be \$75.00 for each person so employed for whom the required notice has not been given. For each successive thirty (30) day period there will be an additional liquidated damages of \$75.00.

(c) Such damages as assessed or awarded are to be paid within ten (10) days from the date of assessment or award.

(d) Such damages as assessed or awarded are to be paid to the Union.

(e) In connection with any inquiry under this Section which may be conducted by the Grievance Committee or Board of Arbitration, the Employer may be required to produce and upon demand shall produce compensation payroll records. Failure to produce such records when required hereunder shall be deemed presumptive evidence of the truth of the charges filed against it. Any damages awarded to the Union, payment of which has been temporarily waived or suspended, shall be collectible in the event of further violation within a period of one (1) year beyond the expiration date thereof.

## **Section 5**

### **NO DISCRIMINATION**

There shall be no discrimination against any present or future employee by reason of race, creed, color, age, disability, national origin, sex, union membership, sexual orientation and other characteristics protected by law, including, but not limited to, claims made pursuant to Title VII of the Civil Rights Act, the Americans with Disabilities Act, the Age Discrimination in Employment Act, FMLA, USC Section 1981, the New York State Human Rights Law, the New York City Human Rights Code or any other similar laws, rules or regulations. All such claims shall be subject to the grievance and arbitration procedure (Article VII and VIII) as the sole and exclusive remedy for violations. Arbitrators shall apply appropriate law in rendering decisions based upon claims of discrimination.

The parties have adopted the No-Discrimination Protocol set forth in Appendix A, which Protocol is incorporated by reference and made part of this Agreement.

## **Section 6**

### **HOURS OF WORK**

Forty (40) hours shall constitute a week's work. The hours of work shall be from 7:00 a.m. until 4:00 p.m. from Monday to Friday of each week. Employees shall report at the Employer's office at 7:00 a.m. ready to work and at 4:00 p.m. after work. In the event that earlier starting hours are consented to by the Union, the requirement that employees report to the Employer's office at 7:00 a.m. shall be waived. Should circumstances so require, employees with the consent of the Union, may work from 6:00 a.m. to 3:00 p.m. Employees shall receive the hour between 11:00 a.m. to 12

noon for lunch and no employee shall substitute part of the lunch hour for any part of the regular working day. Employees shall not be required to work on Saturdays, Sundays or Holidays hereinafter enumerated, except under conditions hereinafter set forth.

## **Section 7**

### **WAGES**

#### **(a) General Wage Increases**

(i) Upon execution of this Agreement, each regular employee covered hereunder shall receive a lump-sum bonus of \$600.00, minus applicable taxes, withholdings and deductions.

(ii) Effective January 1, 2013, each employee covered hereunder shall receive a wage increase of \$0.325 for each regular straight time hour worked.

(iii) In the first pay period after July 1, 2013, each regular employee covered hereunder shall receive a lump-sum bonus of \$500.00, minus applicable taxes, withholdings and deductions.

(iv) Effective January 1, 2014, each employee covered hereunder shall receive a wage increase of \$0.45 for each regular straight time hour worked.

(v) Effective January 1, 2015, each employee covered hereunder shall receive a wage increase of \$0.50 for each regular straight time hour worked.

#### **(b) Minimum**

Effective January 1, 2012, minimum wages for window cleaners shall be \$26.116 per hour.

Effective January 1, 2013, minimum wages for window cleaners shall be \$26.441 per hour.

Effective January 1, 2014, minimum wages for window cleaners shall be \$26.896 per hour.

Effective January 1, 2015, minimum wages for window cleaners shall be \$27.396 per hour.

#### **(c) Cost of Living**

Effective January 1, 2013, in the event that the percentage increase in the cost of living (Consumer Price Index for the City of New York-Metropolitan area [New York- New Jersey] Urban Wage Earners and Clerical Workers) from November 2011 to November 2012 exceeds 6½%, then, in that event, an increase of \$.10 per hour for each full 1% increase in the cost of living in excess of 6½% shall be granted effective for the first full week commencing after January 1, 2013. In no event shall said increase pursuant to this provision exceed \$.20 per hour.

Effective January 1, 2014, in the event that the percentage increase in the cost of living (Consumer Price Index for the City of New York-Metropolitan area [New York-New Jersey] Urban Wage Earners and Clerical Workers) from November 2012 to November 2013, exceeds 6%, then, in that event, an increase of \$.10 per hour for each full 1% increase in the cost of living in excess of 6%

shall be granted effective for the first full week commencing after January 1, 2014. In no event shall said increase pursuant to this provision exceed \$.20 per hour.

Effective January 1, 2015, in the event the percentage increase in the cost of living (Consumer Price Index for the City of New York-Metropolitan area [New York-New Jersey] Urban Wage Earners and Clerical Workers) from November 2013 to November 2014, exceeds 6% then, in that event, an increase of \$.10 per hour for each full 1% increase in the cost of living in excess of 6% shall be granted effective for the first full week commencing after January 1, 2015. In no event shall said increase pursuant to this provision exceed \$.20 per hour.

In computing increase in the cost of living above 6%, less than .5% shall be ignored and increase of .5% or more shall be considered a full point. Any increase hereunder shall be added to the minimum.

**(d) Cash Payments**

Employees shall be paid in cash on Friday of each week and the amount due each employee is to be marked on his pay envelope which shall indicate the name of the Employer, the date of payment, the number of straight time hours, the number of overtime hours, all deductions, including Social Security and withholding taxes, and net pay. Payment may be made by check provided means, time and place for cashing checks are provided before 3:00 p.m. on Friday. For payroll purposes only, the five-day work week shall be deemed to end on Thursday.

If a holiday falls on the employee's regular payday, the employee shall be paid on the day prior to the holiday.

The Union recognizes that certain employees and Employers desire to utilize a bi-weekly payroll schedule. Employers recognize that bi-weekly pay may create hardships for certain employees. The parties have previously agreed to create an industry-wide committee to study the bi-weekly pay issue. The industry-wide committee is now authorized to conduct pilot programs instituting bi-weekly pay at any selected site(s) where the Union and the Employer agree to institute bi-weekly pay.

**(e) Scaffold or Boatswain Work**

Employees required to work on any type of scaffold or devices or Boatswain chairs shall receive additional compensation as provided herein below. This rate is above the regular scale paid to such employees called for in the Schedule of Wage Rates.

Effective January 1, 2012.....	\$18.00 per day
Effective January 1, 2013.....	\$18.00 per day
Effective January 1, 2014.....	\$19.00 per day
Effective January 1, 2015.....	\$20.00 per day

Window Cleaners who have been receiving scaffold pay during work periods where they were not actually performing scaffold work, shall continue to receive such pay as per past practice at

the rate of \$13.00 per day. However, employees who do not perform scaffold work because they are physically or otherwise unable or unwilling to do so shall not receive such pay. Prior to reducing any such employee's pay, the Employer shall provide notification to the Union.

**(f) High Ladder**

An employee in a one-person shop required to work on high ladders shall be paid for such time so employed at scaffold rates for all such hours in excess of one (1). (See Schedule of Wage Rates.)

**(g) Substitutes**

All substitutes shall be paid at the minimum wage rates as set forth in this Agreement. (See Schedule of Wage Rates.)

Employers shall only be permitted to engage substitutes on actual days when one of their regular employees is absent from his duties because of illness or voluntary absence on the employee's part, notice of which illness or absence must be immediately reported to the Union by the Employer. Provided the Employer makes immediate request of the Union for a substitute, the substitute shall receive the minimum rate per day until the regular employee returns to work. Thereafter for each day the substitute shall continue to work in order to make up for work time lost because of the regular employee's absence, the substitute shall be paid at the rate received by the regular employee who had been absent. Violation of the provisions of this Section by the Employer shall subject it to the payment of liquidated damages of \$10.00 for each violation and payment of different wages. A substitute shall become a steady employee if and when the Employer requires a steady employee while substitute is in the shop.

**(h) Extra Persons**

Extra persons shall be considered all employees who are to be employed for less than two (2) consecutive weeks' duration in the shop. All extra persons shall be paid at the rate indicated in the Schedule of Wage Rates. No employee shall be considered an extra person if hired by the Employer to fill a steady position.

**(i) Voluntary Increases**

The Employer shall not deduct voluntary increases heretofore or hereinafter granted without the Union's consent, as applied to the individual employee involved unless such increases shall be declared illegal by a duly constituted authority.

**Section 8**

**OVERTIME**

**(a) General**

Overtime, except as hereinafter provided, shall be paid at the rate of time and one-half.

**(b) Saturday, Sunday or Holiday Work**

No work shall be performed on Saturdays, Sundays or holidays unless the Employer has first, in advance thereof, advised the Union of the names of his regular employees he desires to employ for such work. Should the Employer wish to have work performed on any of said days by other than regular employees, it shall first obtain the Union's consent therefore. Except for newly constructed buildings as provided Section 61(b) below, all work performed on a Saturday or a Sunday shall be paid for at the rate of time and a half, except that employees who currently receive double time for work on Sundays shall continue to be paid double time for such work. Work on any of the holidays enumerated in Section 9 hereof shall be paid for at the rate of time and one half in addition to the regular day's pay when said holidays occur during a work week. In the event any said holidays fall on a Saturday and the employee works on that Saturday, he/she shall be entitled to double time in addition to a regular day's pay.

**(c) Minimum Overtime**

Employees requested to work on Saturdays, Sundays or one of the holidays enumerated in Section 8, shall receive a minimum guarantee of four (4) or eight (8) hours pay at the prescribed rates.

**(d) Rotation of Overtime**

All overtime work in the Employer's shop shall be rotated amongst all window cleaners employed so as to equitably and fairly distribute such available overtime work.

**Section 9**

**HOLIDAYS**

**(a)** Employees shall be paid for and not required to work on any of the following legal holidays as set forth in the "Schedule of Holidays."

No employee, other than an extra person, shall be deprived of pay for holidays during a week including one of the following mentioned holidays, provided that the employee has worked for such Employer at least two (2) days during said week.

Sunday holidays that are observed on Monday shall be paid for on the same basis as any other holiday. No new employee is to be paid for any holiday which occurs prior to the date on which said employee commenced employment with the Employer.

**(b) Birthday**

Effective 03/01/99, the employee's birthday shall be exchanged for a personal day.

**(c) Schedule of Holidays**

	<u>2012</u>	<u>2013</u>	<u>2014</u>	<u>2015</u>
New Year's Day	Mon, Jan. 2	Tues, Jan. 1	Wed, Jan. 1	Thurs, Jan. 1
Martin Luther King	Mon, Jan. 16	Mon, Jan. 21	Mon, Jan. 20	Mon, Jan. 19

President's Day	Mon, Feb. 20	Mon, Feb. 18	Mon, Feb.17	Mon, Feb. 16
Good Friday	Fri, Apr. 6	Fri, Mar. 29	Fri, April 18	Fri, April 3
Memorial Day	Mon, May 28	Mon, May 27	Mon, May 26	Mon, May 25
Independence Day	Wed, July 4	Thurs, July 4	Fri, July 4	Fri, July 3
Labor Day	Mon, Sept. 3	Mon, Sept. 2	Mon, Sept. 1	Mon, Sept. 7
Columbus Day	Mon, Oct. 8	Mon, Oct. 14	Mon, Oct. 13	Mon, Oct. 12
Thanksgiving Day	Thurs, Nov. 22	Thurs, Nov. 28	Thurs, Nov 27	Thurs, Nov. 26
Day After Thanksgiving	Fri, Nov. 23	Fri, Nov. 29	Fri, Nov. 28	Fri, Nov. 27
Christmas Day	Tues, Dec. 25	Wed, Dec. 25	Thurs, Dec. 25	Fri, Dec. 25

(d) In the event a holiday falls on Saturday or Sunday, window cleaners shall receive an extra day's pay

### **Section 10**

### **WORKING CONDITIONS**

**(a) Tools**

Employees shall not be required to take to their homes any ladders, pails or other tools or equipment.

**(b) Boatswain and Scaffold Work**

Any job requiring use of boatswain chair or scaffold must be handled by at least two (2) window cleaners. Should a working Employer be one of such workers, the Employer shall perform the same work as fellow workers.

**(c) Safety Devices**

Employers shall provide employees with standard safety devices approved by the New York State Department of Labor and/or jurisdiction over safety rules for window cleaners. No Employer shall permit work to be done under conditions which are substandard or violative of any law, order or regulation of New York State Department of Labor and/or any other governmental agency which has jurisdiction over safety rules for window cleaners.

**(d) High Ladders**

It is agreed that no window cleaner shall be required to work on or carry more than three (3) pieces of ladders and that no less than two (2) window cleaners shall be sent on a job requiring the use of more than three pieces of ladder aggregating eighteen feet or more in length. Under no circumstances, shall any window cleaner be required to work on a job calling for more than six (6) pieces of ladder aggregating thirty-one (31) feet in length. An extension ladder shall be used at a height over thirty-one (31) feet. If the top of a window is more than thirty-five (35) feet above the ground, no ladder shall be permitted. All ladders shall be provided by the Employer with means to prevent slipping. With respect to the use of extension ladders beyond thirty-five (35) feet at the top of the window, this section shall not preclude an application by an Employer to the New York State Department of Labor for a variation due to practical difficulties or unnecessary hardship in



accordance with Section 30 of the Labor Law, provided that the Union is given reasonable notice of such application by certified mail.

**(e) Inspection of Premises**

A duly authorized officer or representative of the Union shall have access to the place where the work of window cleaning is done, or at the Employer's place of business, at any time provided the customers of the Employer shall permit the officer or representative to enter; and further provided the employee shall be on premises.

**(f) Working Employers**

No member of any Employer firm, or corporation whether a partner, officer, stockholder, director, agent or foreperson, shall engage in the work of window cleaning when the firm employs three (3) or more window cleaners. No more than one member of any firm or corporation, whether partner, officer, stockholder, director, agent or foreperson, employing less than three (3) window cleaners shall be permitted to work during any one week and for not more than forty hours per week. The name of the person desiring to work during any work week shall be filed with the Union in writing at least forty-eight (48) hours before the time of commencement of work. A working Employer in a one-person shop shall perform the same work as the fellow worker on all jobs requiring three or more hours to complete. In all shops employing two (2) persons the working Employer must perform the same type of work as the employee, irrespective of the duration of the job and without regard to the work available.

Any Employer working in violation of this provision shall pay liquidated damages as follows:

- \$25 for the first offense
- \$50 for the second offense
- \$100 for the third and each succeeding offense

Such damages as are assessed or awarded are to be paid to the Union within ten (10) days from the date of assessment or award.

**(g) Sanitary Facilities**

Employers shall provide in their office or shop, proper, adequate and sanitary facilities for employees to wash and change clothes before and after work and appropriate lockers for storage of workers' clothes.

**(h) Crossing Picket Lines**

No window cleaner shall be required by the Employer to pass the picket line established by another local of the Service Employees International Union

**(i) Rainy and Snowy Days**

Rainy and snowy days shall be paid for. Window cleaners shall perform work reasonably assigned to them on rainy and snow days. Window cleaners shall not be required to work on a sill on which there remains an accumulation of snow or ice or other slippery substance.

**Section 11**

**DISCHARGES**

If an employee is unjustly discharged, he shall be reinstated to his former position without loss of seniority or rank and without salary reduction. The Joint Industry Grievance Committee or the Arbitrator may determine whether, and to what extent, the employee shall be compensated by the Employer for time lost.

**Section 12**

**DISPUTES AND ARBITRATION**

**A) Grievance Procedure**

1. The parties shall provide for a grievance procedure to perform the following function:

(a) To endeavor to adjust all issues not covered by and not inconsistent with any provision of this Agreement and which the parties are not required to arbitrate under terms of this Agreement.

(b) To endeavor to adjust without arbitration any issue between the parties which under this Agreement the parties are obligated to submit to the Arbitrator. The cost of administering Step II Grievance Meetings, including the retention of a mediator to facilitate of grievances, shall be borne equally by the RAB and the Union.

2. (a) The grievance may first be taken up directly with a representative of the Employer and a representative of the Union.

(b) If the grievance is not resolved it may be presented for resolution at a Step II Grievance Meeting. Counsel for the Union and the Employer may be present at any grievance procedure meeting.

(c) If a grievance is not resolved through the step of the grievance procedure it may be submitted to the Arbitrator, who shall be authorized to take jurisdiction upon the request of either party if there shall be unreasonable delay in the processing of the grievance.

(d) Any grievance, except as otherwise provided herein and except a grievance involving basic wage violations, including Pension, Health, Training, Legal and/or SRSF contributions as set forth in Sections 41, 43, 48, 51 and 52, shall be presented to the Employer in writing one hundred twenty (120) days of its occurrence, except for grievances involving suspension without pay or

discharge, which shall be presented within forty-five (45) days, unless the Employer agrees to an extension, or the Arbitrator finds one should be granted for good cause shown.

**B) Arbitration**

1. There shall at all times be a Contract Arbitrator to decide all differences arising between the parties as to interpretation, application or performance of any part of this Agreement and such other issues as the parties are expressly required to arbitrate before him under the terms of this Agreement. Nothing in this Agreement shall preclude deferral where the National Labor Relations Act provides for deferral.

2. The fee of the Contract Arbitrator and all reasonable expenses involved in his functions shall be borne fifty percent (50%) by the Employer and fifty percent (50%) by the Union, except that in the event the Employer is in violation of any obligation under the provisions relating to Health, Pension, Training, Legal and/or SRSF Funds, wages, dues and initiation fees, or any other violations involving damages, then the Employer shall pay the full fee of the Contract Arbitrator and all expenses in connection with the arbitration of the dispute, including, but not limited to, counsel fees, and court costs, plus a minimum of fifteen percent (15%) per annum on all monies awarded by the Contract Arbitrator.

3. The Arbitrator shall initially schedule a hearing after either party has served written notice upon the other that the grievance procedure has not resulted in an adjustment. The oath-taking and the period and the requirements for service of notice in the form prescribed by statute are hereby waived. The Arbitrator's award shall be made within thirty (30) days after the hearing closes. If the Arbitrator shall fail to render his written award within said thirty-day period, either party may serve a written demand upon him that the award must be made within ten (10) days after said demand. The decision shall be rendered within such additional ten (10) day period unless the parties consent to an extension in writing or an illness of the Arbitrator delays such decision. By mutual consent, the time of both the hearing and decision may be extended in a particular case. In the event of a willful default by either party in appearing before the Arbitrator, after due written notice shall have been given to him, the Arbitrator is authorized to render his award upon testimony of the adversary party. Due written notice means mailing, faxing, telegraphing or hand delivery to the address of the Employer furnished to the Union by the RAB.

4. The procedure herein outlined in respect to matters over which the Contract Arbitrator has jurisdiction shall be the sole and exclusive method for the determination of all such issues, and said Arbitrator shall have the power to grant any remedy required to correct a violation of the Agreement, including, but not limited to, damages and mandatory orders, and said Arbitrator shall have the further power in cases of willful violations (violations reflective of a deliberate intent to violate this Agreement) to award appropriate remedies, including, but not limited to damages, all costs and expenses incurred by the Union in the processing of the grievance and arbitration proceedings, and to issue mandatory orders, the award of the Arbitrator being final and binding upon the parties and the employee(s) involved; provided, however, that nothing herein shall be construed to forbid either of the parties from resorting to court for relief from, or to enforce rights under, any arbitration award.

5. In any proceeding to confirm an award, service may be made by registered or certified mail within or without the State of New York as the case may be.

6. Should either party fail to abide by an arbitration award within two (2) weeks after such award is sent by registered or certified mail to the parties, either party may, in its sole and absolute discretion, take any action necessary to secure such award, including, but not limited to, suits at law. Should either party bring such suit, it shall be entitled, if it succeeds, to receive from the other party all expenses for counsel fees and court costs.

7. Grievants attending grievances and arbitrations during their regularly scheduled hours shall be paid during such attendance. If a grievant requires any employee of the building to be a witness at the hearing and the Employer adjourns the hearing, the employee witness shall be paid by the Employer for his regularly scheduled hours during attendance at such hearing. This provision shall be limited to one employee witness.

No more than one adjournment per party shall be granted by the Arbitrator without the consent of the opposing party.

All Union claims are brought by the Union alone, and no individual shall have the right to compromise or settle any claim without the written permission of the Union.

In the event that the Union appears at arbitration without the grievant, the Arbitrator shall conduct the hearing provided it is not adjourned. The Arbitrator shall decide the case based upon evidence adduced at the hearing.

There is presently an Office of the Contract Arbitrator-Building Service Industry as contract arbitrator for all disputes. It is agreed by the parties hereto that the arbitrators serving such office shall also serve as contract arbitrators under this Agreement. The arbitrators currently are: John Anner, Stuart Bauchner, Melissa Biren, Stephen Bluth, Noel Berman, Howard C. Edelman, Gary Kendellen, Marilyn Levine, Randi Lowitt, Earl Pfeffer and David Reilly.

Upon thirty (30) days written notice to each other, either the Union or the RAB may terminate the services of any Arbitrator on the panel. Successor or additional Arbitrators shall be appointed by mutual agreement of the Union and the RAB. In the event of the removal, death or resignation of all of the Arbitrators, the successors or temporary substitute shall be chosen by the Union and the RAB. If the parties are unable to agree on a successor, then the Chairman of the New York State Employment Relations Board shall appoint a successor after consultation with the parties.

The cost of the Office of the Contract Arbitrator shall be shared equally in a manner determined by the Union and the RAB.

**C) Computation of Time**

In the computation of the periods of time herein provided, Saturdays, Sundays and holidays shall be excluded from such periods.

**D) No Strike or Lockout**

During the pendency of any dispute and until a final determination by the Grievance Committee or Arbitrator, under Section 12 of this Agreement, there shall be no lockout or discharge of the affected employees nor stoppage of work or strike. Each party pledges itself to discipline its respective members who may violate this Agreement. No cessation of work of any kind shall be

deemed an act of the Union unless authorized in writing by the President of the Union who is hereby acknowledged as the exclusive agent of the Union.

**E) Complaints by Employers**

Any Employer, signatory to an Agreement with the Union, whether he/she be a member of the RAB or not, or the RAB itself, may in writing, request the Union to file grievance charges against any other Employer signatory to a contract with the Union for an alleged breach of the Agreement. In the event that the Union shall fail to initiate such proceeding within three (3) days, the requesting Employer or the RAB, if he/she be a member thereof, may initiate such proceeding. Where the complaint is directed against an Employer at the request of or by another Employer or the RAB, the Employer requesting such proceeding shall be entitled to participate in said hearing before the Contract Arbitrator.

**F) Hearings of Non-Association Members**

As provided for in the Agreement executed by the Union and non-RAB members, all disputes unresolved between the Union and the Employer shall be arbitrated before the Contract Arbitrator. The RAB may have a representative present at any such hearing as an observer and the RAB shall receive in each said cases, a copy of the Contract Arbitrator's decision and award.

**Section 13**

**GENERAL WELFARE**

It is further agreed between the respective parties hereto, that the Union and the RAB shall endeavor to mutually promote the general welfare of the members of the respective parties of this Agreement and shall work for the stabilization of the industry and the establishment of wholesome working conditions.

**Section 14**

**SUB-CONTRACTING**

There shall be no sub-contracting without the consent of the Union.

**Section 15**

**CHANGE OF OWNERSHIP**

Where there is a change of ownership or control, the Union must be given thirty (30) days' notice prior to the date of change by certified mail, return receipt requested.

The seller must, as a condition of the sale, require the purchaser to adopt this Agreement in full and hire the existing working force. Anyone failing to abide with the provisions above shall, in addition to damages as may be found by the Arbitrator, pay six month's wages for the benefit of the employees.

The whole Agreement shall be made binding for the length of term upon any purchaser or its successor in the title or possession, and it must be provided that any purchaser of business which is under contract with the Union must be bound by its terms for the length of the contract.

## **Section 16**

### **BUILDING SENIORITY PROVISION**

1. Where current employees covered by this Agreement or any other window cleaning agreement are employed on a full time forty (40) hours per week basis, the Employer shall retain the employees except where, through a change in job specifications or the customer's requirements, there is a decrease in the work load. The Employer shall furnish to the Union details of the revised specification to demonstrate that there is a valid reduction of work. In the event there is a decrease in the work load, the Employer shall be obligated to retain any excess employees in accordance with the collective bargaining agreement.

Notwithstanding the foregoing, an Employer acquiring a new job shall not be required to employ any existing employee who has been employed in the building for less than six (6) months. Any employee having less than six (6) months building seniority shall remain employed by the predecessor Employer and shall bump the employee of the predecessor Employer with the least company seniority.

The employees employed by a new Employer shall retain all their seniority rights as provided for in the collective bargaining agreement.

2. If an employee is removed from a location at the demand of a customer, the Employer may remove the employee from further employment at that location, provided there is a good faith reason to justify such a removal, apart from the demand itself. Upon the Union's request, the Employer will advise the Union of information it has relating to the customer's complaint and make reasonable efforts to secure from the customer a written confirmation of the customer's request. Unless the Employer has cause to discharge the employee, the Employer will place the employee in a similar job at another facility within the same county covered by this Agreement, without loss of entitlement seniority or reduction in pay or benefits and pay Displacement Pay to such employee equivalent to two (2) weeks' pay. In the event an employee is transferred to another building and is not filling a vacant position, the Employer shall seek volunteers on the basis of seniority within the job title. If there are no volunteers, the junior employees shall be selected for transfer and receive the same Displacement Pay and protection afforded to the transferred employee.

## **Section 17**

### **NOTICE OF CANCELLATION**

The Employer shall immediately notify the Union, in writing, by certified mail, return receipt requested, as soon as a cancellation or reduction of services of an account becomes effective where Union members are employed. The Employer shall immediately notify the Union when it acquires a new job.

## **Section 18**

### **COMPENSATION INSURANCE**

The Employer shall carry compensation insurance for each and every window cleaner employed and no employees covered by this contract shall work for an Employer who has not provided compensation insurance. Employers shall, on demand, furnish to the Union, proof that compensation insurance coverage is carried for all employees. The listing, on a compensation payroll report, or on the employees' payroll records, or in any other report used by the Employer, as a window cleaner, of a person who should be a member of the Union under this agreement, shall be deemed prima facie evidence of a non-union window cleaner.

In the event that any Employer fails to carry compensation insurance, such Employer shall be liable for any loss of wages occasioned to employees covered hereunder for the first two (2) weeks employees are prevented from working by reason thereof.

An Employer failing to carry compensation coverage as required herein, shall be liable for the full loss of wages sustained by said employee as a result of an accident compensable under the Compensation Laws in addition to any other liability imposed upon it by the laws of New York State.

## **Section 19**

### **TRANSPORTATION**

No window cleaner shall be permitted to use his/her own automobile in connection with the Employer's work unless the Employer authorizes the window cleaner to do so in writing.

## **Section 20**

### **RAB MEMBERS**

#### **(a) Notice to Union**

Should any member of the RAB be expelled or resign, the RAB agrees to notify the Union to that effect within forty-eight (48) hours of the time that the said member ceases its connection with the RAB, and the RAB agrees that it will notify the Union of all new members employing window cleaners who are accepted into the RAB within forty-eight (48) hours.

#### **(b) Expelled or Resigned Members**

The Union agrees that it will not grant an individual contract or collective bargaining agreement to any contractor who has been expelled or resigned from the RAB until the payment by said contractor of any damage, fine or assessment which may be outstanding and due to the Union by reason of any award granted by the Grievance Committee or Contract Arbitrator under the terms of this Agreement.

It is agreed by and between the parties hereto that the undersigned members of the RAB must remain such members in good standing in the RAB during the term of this Agreement. Upon notice

in writing from the RAB to the Union that any such Employer is being thereafter deprived of the privileges of this Agreement, copy of which is hereto annexed, as though such Individual Agreement were signed by this collective Agreement and such Employer losing its good standing in the RAB shall be required to make the same deposit with the Union as is required of comparable signatories of individual agreements.

**(c) Security**

If an Employer's financial ability is of a doubtful nature and the Employer is not meeting its financial obligations under this Agreement which, in addition to wages, holiday and vacations payments, includes welfare and pension payments, the Union shall have the right to request security for the payment of these obligations up to the sum of \$500.00 for each employee of the Employer, which security shall be held by the Union.

**Section 21**

**INDIVIDUAL WORKING AGREEMENTS**

**(a)** No Employer shall enter into individual employment or working agreement with any window cleaner, nor shall any employee be required to give any security for any reason whatsoever.

**(b)** No employee in the employ of any of the contractors signatory to the Agreement shall solicit or contract for himself/herself any window cleaning work of a commercial nature ordinarily performed by a window cleaning contractor.

**Section 22**

**OTHER AGREEMENTS PROHIBITED**

It is agreed that the RAB will not, during the life of the Agreement, either directly or indirectly, enter into any contract of whatsoever kind, nature or description, dealing with the hiring of Union help or labor with any association or corporation claiming to be a labor union in the window cleaning industry, and that this Contract shall supersede any and all existing contracts which either the RAB or its members may have with any other association or corporation claiming to be a labor union in the window cleaning industry, and the Union agrees that it will enter into no contract with any Employer operating with offices in the five boroughs of New York City, Nassau, Suffolk, Westchester, Rockland and Putnam Counties in New York and Fairfield County in Connecticut, with terms more favorable to the Employer than those herein contained. Provisions of this Section shall not apply to contracts which may be offered to open shops but all contracts shall provide for group insurance with at least equivalent coverage and cost as provided in Section 41 hereof. The Union agrees that it will not sign an agreement with an Employer who is not bona fide. For the purposes of this agreement, a bona fide Employer shall be one who has purchased a business or part of a business from an established concern or one who has developed its own business over a span of one year.



## **Section 23**

### **DIVISION OF WORK AND LAYOFFS**

In the event that an Employer has insufficient work for all the window cleaners in its employ, then, and in that event, the work may be distributed equally among its employees insofar as is practical and with the knowledge and consent and approval of the Union and Employer, but if due to such a lack of work, it is agreed by and between the Union and the Employer that it reduce the number of window cleaners in its employ, then, in such an event, the order of layoffs shall be by the rule of seniority, i.e., the last person hired shall be the first person to be laid-off, except that in cases of layoff no apprentice shall have seniority over a regular journeyman window cleaner. Laid-off employees who have one or more years of service shall be entitled to a preference for a six (6) month period over all others, in the event the Employer shall require additional help any time during that period.

In the event that the Employer and the Union are unable to agree to a reduction in the number of window cleaners occasioned by a lack of work, the matter may be submitted to arbitration. The arbitrator may grant a reduction in force provided that the Employer demonstrates by a preponderance of the evidence that there is a reduction in work equivalent to the reduction in force. The arbitration shall be held within seven days of the written request therefore and no reduction in force shall be implemented by the Employer until or unless directed by the arbitrator.

If an Employer does not have full time work for one person, his/her contract may be cancelled by the Union, provided it can be established that the Employer thereafter obtained business during the reduced work period which the Employer was not requested to service.

## **Section 24**

### **RE-EMPLOYMENT AFTER ACCIDENT OR ILLNESS**

(a) Once during the term of this Agreement upon written application to the Employer and the Union, a regular employee who works five (5) days per week and at least five (5) hours per day and has been employed in the building for five (5) years or more shall be granted a leave of absence for illness or injury not to exceed six (6) months.

The leave of absence outlined above is subject to an extension not exceeding six (6) months in the case of bona fide inability to work whether or not covered by the New York State Workers' Compensation Law or New York State Disability Benefits Law. When such employee is physically and mentally able to resume work, that employee shall on one (1) week's prior written notice to the Employer be then re-employed with no seniority loss.

In cases involving on-the-job injuries, employees who are on medical leave for more than one (1) year may be entitled to return to their jobs if there is good cause shown.

Once during the term of this Agreement, upon written application to the Employer and the Union, a regular employee who works five (5) days per week and at least five (5) hours per day and has been employed in the building for two (2) years but less than five (5) years shall be granted a leave of absence for illness or injury not to exceed sixty (60) days. When such employee is

physically and mentally able to resume work, that employee shall on one (1) week's prior written notice to the Employer be then re-employed with no seniority loss.

(b) Seniority credit shall be given for time worked before and after, but not for, the time that the employee is absent due to sickness or accident off the job. With respect to Worker's Compensation absences, there shall be no loss of seniority.

## **Section 25**

### **DISABILITY BENEFITS LAW-UNEMPLOYMENT INSURANCE LAW**

(a) The Employer shall cover its employees so that they shall receive maximum weekly benefits provided under the New York State Disability Benefits Law, whether or not such coverage is mandatory.

(b) Failure to so cover employees makes the Employer liable for all loss of benefits and insurance.

(c) The Employer will cooperate with employees in processing their claims and shall supply all necessary forms, properly addressed, and shall post adequate notice of places for filing claims.

## **Section 26**

### **SICKNESS BENEFITS**

(a) Any regular full time employee having at least one (1) Year of Service (as defined in Section (e) below) shall receive in a calendar year from the Employer ten (10) paid sick days for a bona fide illness.

Any employee entitled to sickness benefits shall be allowed five (5) single days of paid sick leave. The remaining five (5) days of paid sick leave may be paid either for illness of more than one (1) day's duration or may be counted as unused sick leave days.

The employee shall receive the above sick pay whether or not such illness is covered by the New York State Disability Benefits Law or the New York State Worker's Compensation Act, however, there shall be no pyramiding or duplication of Disability Benefits and/or Workmen's Compensation Benefits with sick pay.

(b) An employee absent from duty due to illness only on a scheduled workday immediately before and/or only on the scheduled workday immediately after a holiday shall not be eligible for sick pay for said absent workday or workdays.

(c) Employees who have continued employment to the end of the calendar year and have not used all sickness benefits shall be paid in the succeeding January for all unused sick leave.

(d) An employee who is entitled to and receives a payment of ten (10) days unused sick days pay shall for such an attendance record also receive a \$125.00 bonus.

(e) For the purpose of this Article, one (1) year's employment shall be reached on the anniversary date of employment.

(f) Employees who complete one (1) year of service after January 1 shall receive a pro-rata share of sickness benefits for the balance of the calendar year.

(g) If the employee informs the Employer he is requesting worker's compensation benefits then no sick leave shall be paid to such employee unless he specifically requests, in writing, payment of such leave. If an employee informs the Employer he is requesting disability benefits, then only five (5) days sick leave shall be paid to such employee (if he has that amount unused) unless he specifically requests, in writing, payments of additional available sick leave.

(h) Any employee required to attend his Workers' Compensation hearing shall be paid for his regularly scheduled hours during such attendance, with a maximum of one (1) day per accident.

### **Section 27**

#### **MEDICAL VISIT**

(a) Every regular full time employee who has been employed for one (1) year or more shall be entitled, upon one (1) weeks' notice to the Employer, to take one (1) day off in each calendar year at straight-time pay for a medical visit. Said employee shall receive a second day off with pay for a medical visit if proof from a doctor is furnished that such a second visit was required. To receive payment for such day or days the employee shall provide a signed statement from his/her physician.

(b) Should an employee be required to visit a physician on more than two (2) occasions, such employee may use his/her sick days for that purpose.

### **Section 28**

#### **DEATH IN THE FAMILY**

A regular, full-time employee with at least one (1) year of employment shall not be required to work for a maximum of three (3) days immediately following the death of his/her parent, grandparents, brother, sister, spouse, child, parent-in-law, son or daughter-in-law, and shall be paid regular straight-time wages for any of such three (3) days on which he/she was regularly scheduled to work or entitled to holiday pay.

### **Section 29**

#### **LEAVE OF ABSENCE**

1. All employees employed by the Employer for four (4) years or more shall be granted a leave of absence for a period of four (4) months a year, including vacation time, at intervals of three (3) years, without loss of employment, seniority and/or vacation accruals. If a holiday should occur during the above mentioned vacation, the employee shall receive a normal day's pay for said holiday, but the period of leave of absence shall be reduced by one (1) day for each holiday occurring during said vacation period.

2. Notice shall be given to the Employer of the employee's request for a leave of absence in the following manner:

(a) If leave of absence is to be taken at the same time of the employee's vacation, by ten (10) days' written notice to the Employer from the Union, or ten (10) days' written notice by certified mail from the employee to the Employer and the Union.

3. The maximum number of employees entitled to a leave of absence in a given year shall not exceed forty (40%) percent of the total number of employees in the Employer's shop and shall be granted in accordance with shop seniority.

If a particular shop is manned by one (1) employee, said employee will be entitled to the leave of absence.

If a particular shop is manned by two (2) employees, only one (1) employee may receive the leave of absence at a time.

4. (a) The employee shall receive service credits for the full period of the leave of absence for pension, vacation, seniority and all other time purposes under the Agreement.

(b) There shall be no contributions made by the Employer to the Pension Fund for the period of a leave of absence with respect to employees taking such leaves. However, if such leaves of absence or any part thereof are covered by replacement employees, the Employer shall make contributions to the Pension Fund for such replacements during the time of their employment.

5. The Employer shall cover the employee on the leave of absence with health benefits, provided that the employee requests same and reimburses the Employer in advance the cost of health benefits for the full period of the absence.

6. Employees on leave of absence as provided for herein shall not be entitled to claim New York State Unemployment Insurance for the period of said leave.

7. It is further agreed by the Employer that any member of the Union who shall be elected or appointed to any office or position within the local Union which requires absence from the service of the company for any period of time, shall receive leaves of absence for said periods until the expiration of the term of office or position or responsibility. The employee's seniority shall not be affected by such leaves of absence.

### **Section 30**

#### **DAMAGE OR BREAKAGE**

It is further agreed that the employees shall not be held liable for any damage or breakage occasioned by them in the course of their employment or for the damage or loss of equipment unless negligence in cases of damage or loss of equipment is established.

## **Section 31**

### **NON-UNION WORK**

Should the Employer request the Union to remove the pickets and permit its members to clean premises on which the work up to that time had been performed under non-union conditions, on the grounds that the work is to be performed by it under union conditions, and should the Union thereafter ascertain that the Employer was not a bona fide contractor employed for that purpose, the matter shall be subject to review by the Grievance Committee herein provided for and should said Grievance Committee or Contract Arbitrator provided for under the plan for the determination of disputes, find the Employer not to have held a bona fide contract or agreement for the cleaning of said premises, it shall pay liquidated damages of \$100.00.

## **Section 32**

### **VACATIONS**

**(a)** New employees who have worked for the Employer or its predecessors seven (7) months shall be entitled to one (1) weeks' vacation with full pay in each calendar year. Such new employee who completes seven (7) months of employment at a time after the regular vacation period but by December 31<sup>st</sup> in that year, shall receive either one (1) weeks' vacation or one (1) week's pay in lieu thereof.

**(b)** Window cleaners who have been employed by the Employer or its predecessors for a continuous period of one (1) year or more shall be entitled to and receive two (2) weeks' vacation with pay in each calendar year.

**(c)** Window cleaners who have been employed by the Employer or its predecessors for a continuous period of five (5) years or more shall be entitled to and receive three (3) weeks' vacation with pay in each calendar year.

**(d)** Window cleaners who have been employed by the Employer or its predecessors for a continuous period of fifteen (15) years or more shall be entitled to and receive four (4) weeks' vacation with pay each calendar year.

**(e)** Window cleaners who have been employed by the Employer or its predecessors for a continuous period of twenty-one (21) years shall be entitled to and receive twenty-one (21) days' vacation; twenty-two (22) years – twenty-two (22) days' vacation; twenty-three (23) years – twenty-three (23) days' vacation; twenty-four (24) years – twenty-four (24) days' vacation.

**(f)** Window cleaners who have been employed by the Employer or its predecessors for a continuous period of twenty-five (25) years or more shall be entitled to and receive five (5) weeks' vacation with pay for each calendar year.

**(g)** The date of each window cleaner's vacation shall be selected by the employee in each shop according to the employee's shop seniority and shall be determined by said employees at least two (2) weeks before the commencement of the vacation period, hereinafter provided. The vacation period shall be at any time during the calendar year on the consent of the Employer and on notice to the

Union. In no event may an employee receive more than one (1) vacation period or its equivalent in any calendar year, regardless of the number of Employers who employed the employee. Vacation pay shall be payable in advance of the commencement of each employee's vacation time. The vacation dates may be changed by mutual agreement.

(h) Part time employees shall receive annually a vacation equivalent to the average number of days worked weekly.

(i) Should an employee take vacation during a week in which a holiday enumerated in Section 8 occurs, such employee shall receive either an extra days' vacation with pay or an extra days' pay.

(j) Any window cleaner, including a part-time window cleaner, who has been employed for one (1) year or more and whose employment terminates for any reason, shall be entitled to a vacation accrual allowance. Such allowance shall be computed on the employee's length of service as provided in the vacation schedule, based on the elapsed period from the last day of his/her previous vacation to the date of termination. However, any employee who has received a vacation during the year and whose employment terminates during the next year shall be entitled to full vacation accrual allowances instead of on the basis of the elapsed period from the previous vacation. Any window cleaner who leaves a position voluntarily without giving one (1) week's termination notice (no later than Monday of that week), shall not receive accrued vacation allowances hereunder.

(k) In order to avoid a winter layoff, the Employer at the request of the Union, shall require each employee in the shop to use one week's vacation, during the months of January, February and March.

### **Section 33**

#### **NON-UNION CONTRACTORS**

An Employer shall not share offices or telephone service with a non-union contractor or window cleaner, nor shall it become interested in or connected with, directly, or indirectly, any non-union shop, either as an officer, director, stockholder or in any other way whatsoever.

### **Section 34**

#### **TRADE NAMES**

The Employer shall register by filing, with the Union, at the time of signing of this contract or at any time prior to adoption and use, each and every trade name, firm or corporate name under which it proposes to do business and it shall not operate or engage in business under any other name, firm, or corporation. An Employer failing to register a trade name used by it shall pay liquidated damages of \$25.00 for each offense.

### **Section 35**

#### **EMPLOYERS' MEMBERSHIP IN UNION PROHIBITED**

An Employer shall not become a member of any union of window cleaners and if he/she be a member presently of any such union, he/she shall resign his/her membership within thirty days of the execution of this contract.

### **Section 36**

#### **NON-UNION EMPLOYEE**

**(a)** Upon receipt by the Employer of a letter from the Union's Secretary-Treasurer requesting an employee's discharge because he/she has not met the requirements of this Article, unless the Employer questions the propriety of so doing, the employee shall be discharged within fifteen (15) days of said notice if prior thereto he/she does not take proper steps to meet said requirement. If the Employer questions the propriety of the discharge, he/she shall immediately submit the matter to the Arbitrator. If the Arbitrator determines that the employee has not complied with paragraph (a), he/she shall be discharged within ten (10) days after written notice of the determination has been given to the Employer.

**(b)** The Union agrees to indemnify and hold harmless the RAB and each of its member Employers affected from any liability incurred by reason of discharge under this section.

### **Section 37**

#### **MILITARY SERVICE**

Drafted or enlisted employees shall, on their discharge, be re-employed without loss of seniority rights. Seniority shall accumulate while an employee is in military service.

### **Section 38**

#### **SCRAPING**

On all new construction work where windows must be scraped, employees doing such scraping shall be paid \$8.00 per day over and above their regular wage rate. Contractors engaged in such scraping work shall report to the Union in writing the site of each operation within twenty-four (24) hours after commencement of each job.

### **Section 39**

#### **OTHER ASSOCIATIONS PROHIBITED**

The Union agrees that during the term of this Agreement, it will make no collective agreement with any other association or group of Employers with respect to grievances, or terms or conditions of employment except for the purpose of providing group insurance.

### **Section 40**

#### **NOTICE OF INTENTION TO LEAVE**

Any employee shall give his/her Employer and the Union one (1) weeks' notice of intention to leave the employ of the Employer but in no event shall such notice be given later than the Monday of the week in which said employee intends to leave. Such notice shall be signed by the employee when requested to do so. If any employee leaves the Employer without giving one (1) weeks' notice, he/she shall be required to return to said Employer and continue to work until proper notice is given.

### **Section 41**

#### **HEALTH FUND**

The Employer shall make contributions to a health fund, known as the "Building Service 32BJ Health Fund, to cover employees covered by this Agreement who work more than two (2) days per week, with such health benefits as may be determined by the Trustees of the Fund. The Employer may, upon execution of a participation agreement in the form acceptable to the Trustees, cover such other of his employees as he may elect, provided such coverage is in compliance with law and the Trust Agreement.

Employees who are on workers' compensation or who are receiving statutory short term disability benefits, Building Service 32BJ long term disability benefits or a Building Service 32BJ disability pension, shall be covered by the Health Fund without Employer contributions until they may be covered by Medicare or thirty months from the date of disability, whichever is earlier.

In no event shall any employee who was previously covered for Health Benefits lose such coverage as a result of a change or elimination of the Health Plan provision extending coverage for disability. In the event the provision extending coverage for disability is discontinued for any reason, the Employer shall be obligated to make contributions for the duration of the period that would have otherwise been available.

Effective January 1, 2012, the rate of contribution to the Health Fund shall be \$13,442.64 per year on behalf of each employee, payable when and how the Trustees determine.

Effective January 1, 2013, the rate of contribution to the Fund shall be \$14,014.64 per year.

Effective January 1, 2014, the rate of contribution to the Fund shall be \$14,794.64 per year.

Effective January 1, 2015, the rate of contribution to the Fund shall be \$15,574.64 per year.



Any Employer who becomes party to this Agreement and who has a plan in effect immediately prior thereto, which provides for health benefits, the equivalent or better than the benefits provided for herein, and the cost of which to the Employer is at least as great, may upon agreement of the Union and RAB, cover its employees under its existing plan in lieu of this Fund.

If, during the term of this Agreement, the Trustees find the payment provided herein is insufficient to maintain benefits, and adequate reserves for such benefits, they shall require the parties to increase the amounts needed to maintain such benefits and reserves. In the event the Trustees are unable to reach agreement on the amount required to maintain benefits and reserves, the matter shall be referred to arbitration pursuant to the deadlock provision of the Fund's Agreement and Declaration of Trust. The preceding maintenance of benefits provision shall be suspended for the life of this Agreement.

The parties agree that if there is governmental healthcare reform mandating payments, in full or in part, by contributing Employers for some or all of the benefits already provided for in the Health Fund to participants, the parties shall meet to discuss what ameliorative steps, if any, might be appropriate to minimize any adverse impact on the Fund, its participants and Employers.

The parties agree that if the recently passed healthcare reform legislation requires (i) any payment by contributing Employers for some or all of the benefits already provided for in the Health Fund to participants or (ii) requires any contributing Employers to pay any excise or other tax, penalty (including assessable payments), fee or other amount relating to or resulting from the eligibility requirements of or the level of benefits provided by the Fund, the parties shall recommend that the trustees revise the plan of benefits under the Fund so that such excise or other tax, penalty (including assessable payments), fee or other amount are not payable. In the event the trustees do not revise the plan of benefits under the Fund so that such excise or other tax, penalty (including assessable payments), fee or other amount are not payable, the affected Employers' contributions to the Fund, or contributions to the other Benefit Funds shall be reduced by the amount of such excise or other tax, penalty (including assessable payments), fee or other amount. With respect to any future governmental healthcare reform that requires any payments described in (i) and/or (ii) in this paragraph, the bargaining parties will bargain over what to recommend to the trustees consistent with the goals of maintaining quality benefits and containing costs.

Health Fund Study Committee - The RAB and the Union agree to continue the work of the Health Fund Study Committee convened in accordance with the 2010 Apartment Building Agreement. The bargaining parties have already accepted the recommendations of the Health Fund Study Committee and recommended to the Health Fund trustees, who acted upon the recommendations, to take all legal action necessary so that (i) such recommended savings measures are implemented by the Health Fund; and (ii) the Health Fund reserves do not fall below an amount equivalent to no less than six (6) full months of benefit costs and operating expenses. The Health Fund Study Committee shall meet regularly, and on an ongoing basis, to continue to monitor and review Health Fund expenditures and trends, to evaluate and consider best practices and developments in cost-effective methods of providing quality benefits for the purposes of ensuring savings are being realized and to recommend any and all appropriate measures to modify or modulate cost-trends, and to make recommendations to the collective

bargaining parties and/or Fund Trustees regarding potential actions including, without limitation, for further savings.

## Section 42

### APPRENTICES

For apprentices employed on or after January 1, 2012, the following shall be the hourly wage progression:

	1/1/12	1/1/13	1/1/14	1/1/15
<b>0 – 4 Months</b>	<b>\$19.35</b>	<b>\$19.59</b>	<b>\$19.92</b>	<b>\$20.29</b>
<b>4 Months</b>	<b>\$20.92</b>	<b>\$21.18</b>	<b>\$21.54</b>	<b>\$21.94</b>
<b>8 Months</b>	<b>\$22.17</b>	<b>\$22.44</b>	<b>\$22.82</b>	<b>\$23.24</b>
<b>12 Months</b>	<b>\$23.43</b>	<b>\$23.72</b>	<b>\$24.12</b>	<b>\$24.57</b>
<b>16 Months</b>	<b>\$24.70</b>	<b>\$25.01</b>	<b>\$25.44</b>	<b>\$25.91</b>
<b>18 Months</b>	<b>\$26.12</b>	<b>\$26.44</b>	<b>\$26.89</b>	<b>\$27.39</b>

The Employer who is eligible to train Apprentices shall meet the qualifying requirements as set forth in the basic labor agreement, namely, for a period of eighteen (18) months from the day of employment each Apprentice shall be required to work with a journeyman window cleaner and be able to provide the necessary work experience for training.

In order for an Apprentice to move to the next progression step, the Apprentice must complete the required educational instruction and tests to be conducted by the Building Service 32BJ Thomas Shortman Training Scholarship and Safety Fund.

### **Cost of Living Clause**

(a) Effective January 1, 2013, in the event that the percentage increase in the cost of living (Consumer Price Index for the City of New York-Metropolitan area [New York-New Jersey] Urban wage-earners and Clerical Workers) from November 2011 to November 2012, exceeds 6½ %, then in that event, an increase of \$.10 per hour for each full 1% increase in the cost of living in excess of 6½ % shall be granted effective for the first week commencing after January 1, 2013. . In no event shall said increase pursuant to this provision exceed \$.20 per hour.

(b) Effective January 1, 2014, in the event that the percentage increase in the cost of living (Consumer Price Index for the City of New York-Metropolitan area [New York-New Jersey] Urban wage-earners and Clerical Workers) from November 2012 to November 2013 exceeds 6% then, in that event, an increase of \$.10 per hour for each full 1% increase in the cost of living in excess of 6% shall be granted effective for the first week commencing after January 1, 2014. In no event shall said increase pursuant to this provision exceed \$.20 per hour.

(c) Effective January 1, 2015, in the event that the percentage increase in the cost of living (Consumer Price Index for the City of New York-Metropolitan area [New York-New Jersey] Urban Wage-earners and Clerical Workers) from November 2013 to November 2014 exceeds 6% then, in that event, an increase of \$10 per hour for each full 1% increase in the cost of living in excess of 6% shall be granted effective for the first week commencing after January 1, 2014. In no event shall said increase pursuant to this provision exceed \$.20 per hour.

(d) In computing increases in the cost of living above 6%, less than .5% shall be ignored and increases of .5% or more shall be considered a full point. Any increases hereunder shall be added to the minimum.

(e) The Employer shall have the right to discharge an apprentice for any reason whatsoever for a period of sixty (60) days from the date of employment. After the sixty (60) day period apprentices may only be discharged for just cause and in accordance with the terms of said Agreement.

(f) An apprentice who leaves the job or is discharged shall be credited with the time of employment in computing the rate of pay to which he/she will be entitled if he/she obtains another job.

(g) High ladder work (over three pieces), scaffold or boatswain chair work, shall not be done by an apprentice until more than thirty (30) days after employment.

(h) Each Employer shall have the right to employ at any one time at least one (1) apprentice, but no one Employer shall have in its employ more than one (1) apprentice for every five (5) cleaners with experience of more than six (6) months, provided, however, that no Employer shall employ more than five (5) apprentices at one time and that the employment of apprentices shall cease immediately after one hundred fifty (150) apprentices have been employed in the industry, provided, however, that if there is a shortage of apprentices this portion of the Agreement relating to the maximum of one hundred fifty (150) apprentices shall be reopened for negotiations concerning a change in such maximum figure and, if the parties cannot agree, that issue shall go to the Contractor Arbitrator, and his/her decision and award shall be binding upon the parties.

(i) The Union and the RAB will embark upon a joint endeavor to teach apprentices the trade of window cleaning. If the Union and the RAB do not jointly consent to a New York City Board of Education apprentices program, then the issue may be submitted to the Contract Arbitrator for determination.

(j) Subject to (e) above, an apprentice shall remain with the Employer for a period of at least six (6) months after the completion of his/her apprenticeship, unless the Employer consents in writing to his/her withdrawal. This section is subject to the arbitration provisions of Section 12 hereof.

### **Section 43**

### **PENSIONS**

(a) Effective January 1, 2012, the Employer shall make contributions to a pension trust fund known as the "Building Service 32BJ Pension Fund," to cover bargaining unit employees who are

regularly employed twenty (20) hours or more per week, including paid time off. The Employer shall also make contributions on behalf of other bargaining unit employees to the extent that such employees work a sufficient number of hours to require benefit accrual pursuant to Section 204 of ERISA.

**(b)** Employees unable to work and who are on statutory short term disability benefits or workers' compensation shall continue to accrue pension credits without Employer contributions during periods of disability up to six (6) months or the period of disability whichever is earlier.

**(c)** Effective January 1, 2012, the rate of contribution to the Fund shall be \$86.75 per week.

Effective January 1, 2013, the rate of contribution to the Fund shall be \$90.75 per week.

Effective January 1, 2014, the rate of contribution to the Fund shall be \$94.75 per week.

Effective January 1, 2015, the rate of contribution to the Fund shall be \$98.75 per week.

The bargaining parties agree that the foregoing contribution requirements for the Pension Fund are consistent with the contribution rate schedules required by the Pension Fund's rehabilitation plan under Section 432 of the Internal Revenue Code.

**(d)** Any employer who becomes party to this Agreement and who immediately prior thereto, has a pension plan in effect which provides benefits equivalent to or better than the benefits provided herein, may, upon agreement of the Union and RAB, cover his employees under his existing plan in lieu of this Fund and be relieved of the obligation to make contributions to the Fund for the period of such other coverage.

If the Employer has an existing plan as referred to above, it shall not discontinue or reduce benefits without prior Union consent and the existing plan shall remain obligated to the employee(s) for whatever benefits to which they may be entitled.

In no event shall the Trustees or any of them, the Union or the RAB, directly or indirectly, by reason of this Agreement, be understood to consent to the extinguishment, change or diminution of any legal rights, vested or otherwise, that anyone may have in the continuation in existing form of any such Employer pension plan, and the Trustees or any of them, Union and the RAB shall be held harmless by an Employer against any action brought by anyone covered under the Employer's plan asserting a claim based upon anything done pursuant to the above paragraph. Notice of the pendency of any such action shall be given the Employer who may defend the action on behalf of the indemnitee.

**(e)** The parties agree that if there are new governmental regulations issued that implement the excise tax provisions of the Pension Protection Act (PPA), or there is further governmental reform relating to the funding of pension funds, the parties shall meet to discuss what steps, if any, might be appropriate to ameliorate any adverse impact on the Funds, its participants and Employers. To the extent that any Employer covered by this Agreement, with respect to employees covered by this Agreement, becomes subject to an automatic Employer surcharge or any excise tax, penalty, fee increased contribution rate or other amount relating to the funding of the Pension Fund (but not including interest, liquidated damages, or other amounts owed as a

consequence of failing to make timely remittance of contributions to the Pension Fund) under Section 432 of the Internal Revenue Code as currently enacted, then the parties agree that the required contributions to the Health Fund, Training Fund and/or Legal Services Fund for each Employer covered under this Agreement shall be reduced dollar for dollar by the aggregate amount of any additional contribution and/or surcharge amounts, excise taxes, penalties, fees or other amounts that such Employer is required to pay, as provided in this subsection. Unless a different allocation among the Funds is agreed upon in advance of any applicable due date for such contributions by the Presidents of the RAB and Local 32BJ, such amount shall be allocated solely from the Health Fund.

#### **Section 44**

#### **JURY DUTY**

Employees who are required to qualify or serve on juries shall receive the difference between their regular rate of pay and the amount they receive for serving on said jury with a maximum of three (3) weeks in any calendar year.

Pending receipt of the jury duty pay, the Employer shall pay the employee his regular pay on his scheduled payday. As soon as the employee receives the jury duty pay, he shall reimburse his Employer by signing the jury duty pay check over to the Employer.

Employees who serve on a jury shall not be required to work any shift during such day. If an employee is a weekend employee and assigned to jury duty, he shall not be required to work the weekend.

In order to receive jury duty pay, the employee must notify the Employer at least two (2) weeks before he is scheduled to serve.

If less notice is given by the employee, the notice provision regarding change in shift shall not apply.

#### **Section 45**

#### **VIOLATIONS OF MUNICIPAL, STATE OR FEDERAL LAWS**

If any provision of this Agreement is found to be in violation of any municipal, state, or federal law, such provisions shall be deemed unenforceable where applicable and neither the RAB, and its members nor the Union shall incur any liability by reason of compliance therewith or violation thereof, provided, however, that such provision shall be reinstated and become thereafter enforceable, if the law applicable to such provisions is repealed or modified in such a way as to make such provisions lawful.

In the event that any provision of this Agreement is found inoperable because it is in violation of a municipal, state, or federal law, then the parties hereto shall rewrite such provisions so as to conform to such law or laws, to the extent permitted by such laws. All other provisions of this Agreement shall nevertheless remain in full force and effect.

## **Section 46**

### **COMMON DISASTER**

There shall be no loss of pay as a result of any Act of God or common disaster causing the shutdown of all or virtually all public transportation in the City of New York making it impossible for employees to report for work or where the Governor of the State of New York directs the citizens not to report to work. The Employer shall not be liable for the loss of pay for more than the first full day affected by such Act of God or common disaster. Employees shall be paid only if they have no reasonable way to report to work and employees refusing the Employer's offer of alternate transportation shall not qualify for such pay. The term "public transportation" as used herein shall include subways and buses.

## **Section 47**

### **IMPEDED INCREASE**

If because of legislation, governmental decree or order, any increase or benefit, herein provided is in any way blocked, frustrated, impeded or diminished, the Union may upon ten (10) days' notice require negotiation between the parties to such measures and reach such revisions in the contract as may legally provide substitute benefits and improvement for employees, at no greater cost to the Employers. If they cannot agree, the dispute shall be submitted to the Arbitrator. In the event that any provision of this contract requires approval of any governmental agency, the RAB shall cooperate with the Union with respect thereto.

## **Section 48**

### **TRAINING, SCHOLARSHIP AND SAFETY FUND**

The Employer shall make contributions to a training and scholarship trust fund known as the "Thomas Shortman Training, Scholarship and Safety Fund" to cover employees covered by this Agreement who work more than two (2) days per week, with such benefits as may be determined by the Trustees.

Effective January 1, 2012, the rate of contribution to the Thomas Shortman Fund shall be \$169.60 per year for each covered employee, payable when and how the Trustees determine.

## **Section 49**

### **EXCLUSIVE RIGHT TO REVIEW**

In the event of a claim by the RAB or any of its members that there has been a violation of any provisions of this Agreement, it is understood and agreed that the exclusive review open to the RAB and its members shall be the grievance and arbitration machinery set forth in this Agreement. It is expressly understood that neither the RAB nor any of its members shall institute any suit for damages by reason of any alleged breach of this Agreement.

## **Section 50**

### **PRODUCTIVITY PROBLEMS**

A Joint Committee shall be created to study all problems in relation to production and the question of creating standards as well as the problem of how to dispose of those cases where such standards, if created, are not met. The parties may, by mutual consent amend this Agreement in accordance with such proposals if they deem such amendment advisable in the interests of productivity, adequate compensation for such productivity and a harmonious and stable relationship.

## **Section 51**

### **SUPPLEMENTAL RETIREMENT AND SAVINGS PLAN**

Effective January 1, 2012, the Employer shall make contributions to the Building Service 32BJ Supplemental Retirement and Savings Fund to cover bargaining unit employees who are regularly employed twenty (20) or more hours per week, including paid time off, with employer contributions as hereinafter provided and shall continue to make tax exempt employee wage deferrals as provided by the Plan and/or Plan rules. Employer contributions for other bargaining unit employees shall also be required for each week in which they work twenty (20) or more hours, including paid time off.

Effective January 1, 2012, the Employer shall contribute \$13.00 per week per covered employee into the SRSF, payable when and how the Trustees determine.

## **Section 52**

### **LEGAL SERVICES**

The Employer shall make contributions to the Building Service 32BJ Legal Services Fund to cover employees covered by this Agreement who work more than two (2) days per week with such benefits as may be determined by the Trustees.

Effective January 1, 2012, the rate of contribution to the Legal Fund shall be \$199.60 per year for each covered employee, payable when and how the Trustees determine.

Effective January 1, 2013, the rate of contribution to the Legal Fund shall be \$199.60 per year for each covered employee, payable when and how the Trustees determine.

Effective January 1, 2014, the rate of contribution to the Legal Fund shall be \$43.60 per year for each covered employee, payable when and how the Trustees determine.

Effective January 1, 2015, the rate of contribution to the Legal Fund shall be \$199.60 per year for each covered employee, payable when and how the Trustees determine.

## **Section 53**

### **PROVISIONS APPLICABLE TO ALL FUNDS**

If the Employer fails to make required reports or payments to the Funds, the Trustees may in their sole and absolute discretion take any action necessary, including but not limited to immediate arbitration and suits at law, to enforce such reports and payments, together with interest and liquidated damages as provided in the Funds' trust agreements, and any and all expenses of collection, including but not limited to counsel fees, arbitration costs and fees and court costs.

Any Employer regularly or consistently delinquent in Health, Pension, Legal, Training or SRSF payments may be required, at the option of the Trustees of the Funds, to provide the appropriate Trust Fund with security guaranteeing prompt payment of such payments.

By agreeing to make the required payments into the Funds, the Employer hereby adopts and shall be bound by the Agreement and Declaration of Trust as it may be amended and the rules and regulations adopted or hereafter adopted by the Trustees of each Fund in connection with the provision and administration of benefits and the collection of contributions.

There shall be no Employer contributions to the Funds on behalf of employees during their first three (3) months of employment.

The parties agree that the Presidents of the RAB and Local 32BJ may determine, in their discretion and upon mutual consent, prior to the beginning of any contract year to allocate any portion of the scheduled contributions in any of the Funds to any other Funds.

## **Section 54**

### **SECURITY BACKGROUND CHECKS**

All employees shall be subject to security background checks at any time. An employee shall cooperate with an Employer as necessary for obtaining security background checks. Any employee who refuses to cooperate shall be subject to peremptory termination. All security background checks shall be confidential, and may be disclosed only, as required by law or on a business need to know basis and/or to the Union as necessary for the administering of this Agreement.

For the purpose of this provision, just cause to terminate an employee who has failed a security background check exists only if it is established that one or more of the findings of the background security check is directly related to his/her job functions or responsibilities, or that the continuation of employment would involve an unreasonable risk to property or to the safety or welfare of specific individuals or the general public or constitute a violation of any applicable governmental rule or regulation. If the customer determines that the employee has failed a security background check, but the Employer lacks cause for termination under this provision, said employee will receive pay equivalent to two (2) weeks' pay and be transferred in accordance with subsection 2 of Section 15 of this Agreement.



**Section 55**

**TAKEOVER OF EXISTING JOBS**

An Employer under this Agreement who takes over a job performed by another Employer under this Agreement shall be required to hire all employees employed at the location at the time of takeover. Thereafter, any changes in job requirements or reductions in force shall be in accordance with Section 23 of this Agreement, but notices of reduction pursuant to Section 23 not resolved between the Union and the Employer within seven (7) days shall be referred to the Grievance Committee and thereafter processed in accordance with this Agreement.

**Section 56**

**SITE AGREEMENTS**

In the event that an Employer takes over a new job which had been previously covered by this Agreement, the Union may, within its sole discretion, consent to negotiate separate economic terms to be applied for an agreed upon period of time at such location.

**Section 57**

**SAVINGS CLAUSE**

If any provision of this Agreement shall be held to be illegal or of no legal effect, it shall be deemed null and void without affecting the obligations of the balance of this Agreement.

**Section 58**

**WORK AUTHORIZATION AND STATUS DISPUTES**

The parties recognize that questions involving an employee's work status or personal information may arise during the course of his/her employment, and that errors in an employee's documentation may be due to mistake or circumstances beyond an employee's control. The parties agree to attempt to minimize the impact of such issues on both the affected employees and Employers by working together to fairly resolve such issues while complying with all applicable laws.

**Section 59**

**VETERAN TRANSITION ASSISTANCE**

The parties recognize that making a successful transition from the military into the civilian workforce can be challenging. Out of respect for those serving in the military and in acknowledgment of the tremendous skills they can bring to the workforce, the parties shall create a committee tasked with assisting veterans in this transition. These efforts shall include, but not be limited to: (i) increasing the industry's advertising/ recruitment efforts to encourage veterans to apply for jobs within the industry; (ii) communicating with the industry about the numerous

benefits associated with hiring veterans; and (iii) providing newly hired veterans with access to training through classes to be created by the Thomas Shortman School aimed at easing the transition to the civilian workforce and teaching the requisite skills.

## **Section 60**

### **JOINT INDUSTRY ADVANCEMENT PROJECT**

The Union and the RAB recognize that they have a common interest in pursuing efforts that will promote development and growth in the real estate industry, as growth and development (1) create a favorable business environment for real estate industry Employers and provide enhanced job opportunities; (2) strengthen communities and New York City's economy; and (3) provide a path for a viable future for New York City. The Union and the RAB agree to establish this Joint Industry Advancement Project to further their common interest, upon the following terms:

1. The Project will be directed by ten (10) directors, five (5) appointed by the Union and five (5) appointed by the RAB. The board of directors shall have two (2) co-chairs, one appointed by the Union and one appointed by the RAB. The Directors may be replaced at will by the respective appointing parties.

2. The Board of Directors of the Project shall meet at least quarterly, or more frequently if the co-chairs so direct. No action may be taken by the Project except upon unanimous consent. Voting shall be by blocks, the five Union-appointed Directors collectively shall cast one vote, and the five RAB-appointed Directors collectively shall cast one vote.

3. The Project may hire employees and contract for services, including accounting and legal services, provided that no financial, contractual or other obligation may be incurred by the Project except upon a vote of the Directors, as provided in paragraph 2.

4. The Union and the RAB may contribute funds and/or provide assistance to the Project upon such terms as are agreed to jointly by the RAB and the Union

5. The actions which the Project may undertake shall include, without limitation, education, research, advertising, and/or publicity for the purpose of enhancing development and growth of the real estate industry.

6. Either in discussions among Directors of the Project, or otherwise, the Union and the RAB commit to disclosing in good faith their respective views and positions on issues of importance to the real estate industry or the Union.

7. The Union and the RAB agree that they shall refrain, insofar as practicable and except as warranted by a change of circumstances, from taking positions on issues contrary to the positions taken by the Project.

8. This Project may be terminated by either the RAB or the Union on thirty (30) days' notice to the other party. Any assets or liabilities of the Project at the time of termination shall be allocated equally to the RAB and the Union.

## **Section 61**

### **NEW DEVELOPMENT**

**(a)** New Development Committee. The Union and the RAB recognize (1) that real estate development strengthens communities and enhances New York's economy; (2) that the economics of developments are complex and not uniform; and (3) that successful development is important to all stakeholders, and to the people of the City of New York. Therefore, the parties shall establish a sitting New Development Committee whose members shall determine, on a project-by-project basis, wage and benefit standards that accord with the needs of the parties and are consistent with applicable law for employees in newly constructed buildings. Any such standards shall be determined only upon the mutual agreement of the Union and the RAB. Any action or inaction of the committee shall not be reviewable in any forum. The committee shall be comprised of an equal number of persons appointed by the President of the Union and the President of the RAB.

**(b)** In newly constructed buildings, employees whose regular shifts include work on Saturday or Sunday shall not receive weekend premium pay for work on those days. This shall not affect eligibility for other premium pay for which the employees might otherwise qualify, including but not limited to overtime pay.

## **Section 62**

### **DURATION**

This Agreement shall be in full force and effect from January 1, 2012 through December 31, 2015.

IN WITNESS WHEREOF, the parties hereto have hereunto signed this memorandum of Agreement by their respective officer and representative, duly authorized thereto, the day and year first above written.

REALTY ADVISORY BOARD  
ON LABOR RELATIONS,  
INCORPORATED

BY: Howard Rothschild, *President*.

SERVICE EMPLOYEES  
INTERNATIONAL UNION  
LOCAL 32BJ

BY: Michael P. Fishman, *President*

**SCHEDULE OF WAGE RATES**

	<b>1/1/12</b>	<b>1/1/13</b>	<b>1/1/14</b>	<b>1/1/15</b>
<b>Hourly Wage Increase</b>	0	.325	.45	.50
<b>Minimum Hourly Rate</b>	26.116	26.441	26.896	27.396
<b>Minimum Weekly Rate</b>	1,044.80	1,057.60	1,076.00	1,096.00
<b>Substitute Daily Rate</b>	208.96	211.52	215.12	219.20
<b>Extra's Daily Wage</b>	211.67	214.32	217.83	221.91
<b>Scaffold per Day</b>	18.00	18.00	19.00	20.00
<b>Scraping Daily Extra</b>	*8.00	8.00	8.00	8.00

\*On all new construction daily.

## Appendix A

### No-Discrimination Protocol

#### (1) Protocol

The parties to this Agreement, the Union and RAB, believe that it is in the best interests of all involved - employees/members, Employers, the Union, the RAB and the public interest - to promptly, fairly and efficiently resolve claims of workplace discrimination, as covered above (collectively “claims”). Such claims are very often intertwined with contractual disputes under this Agreement. The RAB, on behalf of its members, maintains that it is committed to refrain from unlawful discrimination. The Union maintains it will pursue its policy of evaluating such claims and bringing those claims to arbitration where appropriate. To this end, the parties, notwithstanding the continuing disagreement between them described below, establish the following system of mediation and arbitration applicable to all such claims, whenever they arise. The Union and RAB want those covered by this Agreement and any individual attorneys representing them to be aware of this protocol.

As background, following the decision of the Supreme Court in *14 Penn Plaza*, 556 U.S. 247 (2009), the RAB and the Union have had a dispute about the meaning of the “no discrimination clause” and the grievance and arbitration clauses in the collective bargaining agreements (“CBAs”) entered into between these parties. The Union contends that the CBAs do not make provision for arbitration of any claims that the Union does not choose to take to arbitration, including statutory discrimination claims, and therefore, individual employees are not barred from pursuing their discrimination claims in court where the Union has declined to pursue them in arbitration. The RAB contends that the CBAs provide for arbitration of all individual claims, even where the Union has declined to bring such claims to arbitration.

The parties agree that, should either the Union or the RAB deem it appropriate or necessary to do so, that party may bring to arbitration the question so reserved. The parties intend that the reserved question may only be resolved in an arbitration between them and not in any form of judicial proceeding. The outcome of the reserved question hinges on collective bargaining language and bargaining history, which are subjects properly suited for arbitration. Such arbitration may be commenced on 30 days’ written notice to the other party. The arbitrator for such arbitration shall be Roberta Golick, unless she is unable to serve, in which case the parties shall agree upon an arbitrator, and failing agreement shall submit the case to arbitration before the American Arbitration Association, in New York City.

Notwithstanding the above disagreement, in 2010, the parties initiated the pilot program provided for in this section (Agreement and Protocol, February 17, 2010, the “No-Discrimination Protocol”) as an alternative to arbitrating their disagreement. The parties have now agreed to include the No-Discrimination Protocol as part of this Agreement, as set forth below. The Union and the RAB agree that the provisions of this Protocol do not resolve the reserved question. Neither the inclusion of this Protocol in the CBAs nor the terms of the Protocol shall be understood to advance either party’s

contention as to the meaning of the CBAs with regard to the reserved question, and neither party will make any representation to the contrary.

(2) Mediation

(a) Whenever it is claimed that an employer has violated the no discrimination clause (including claims based in statute), whether such claim is made by the Union or by an individual employee, notice shall be provided of such claim to the Union, the RAB and the affected employee(s), and the matter shall be submitted to mediation, absent prior resolution through informal means. A notice of claim shall be filed within the applicable statutory statute of limitations, provided that if an employee has timely filed such claim in a forum provided for by statute, the claim will not be considered time-barred.

(b) Promptly following receipt of the notice, the administrator of the Office of Contract Arbitrator (OCA), 370 Seventh Avenue, New York, NY, shall appoint a Mediator from the Mediation Panel described below. All mediators on the panel shall be attorneys with appropriate training and experience in the conduct of mediations and significant knowledge of employment discrimination statutes. The Mediation Panel shall be a distinct panel from the Contract Arbitrator Panel. A person listed on the Mediation Panel will be removed when either the Union or the RAB gives notice to the other party that such person's name shall be removed. A person may be added to the Mediation Panel list upon mutual agreement of the Union and the RAB. The Union and RAB mutually commit to appointing mediators with appropriate skill and experience, as they view mediation as the important step in which many claims will be resolved.

(c) OCA shall appoint a Mediator from the Mediation Panel. Such appointments shall be made by a random selection (*e.g.* "spinning the wheel") of available panel members.

(d) Within 30 days of being appointed, the Mediator shall notify the Parties of his/her appointment and schedule a pre-mediation conference. (For this purpose, "Parties" refers to the person or entity asserting the claim and the respondent/defendant.) At the conference, the Parties shall discuss such matters as they deem relevant to the mediation process, including discovery. The Mediator shall have the authority, after consulting with the Parties, to (1) schedule dates for the exchange of information and position statements, and (2) schedule a date for mediation. Any disputes shall be decided by the Mediator. In the event the Mediator concludes that there has not been good faith compliance with his/her directive, including directives as to the holding of conferences and the conduct of discovery, the Mediator may, after notice and an opportunity to be heard, order appropriate sanctions.

(e) The entire mediation process is a compromise negotiation for the purposes of the Federal Rules of Evidence and the New York rules of evidence.

(f) At the mediation, each party shall be entitled to present witnesses and/or documentary evidence. The Mediator shall be entitled to meet separately with each Party for the purpose of exploring settlement.

(g) At the conclusion of the mediation, the Mediator shall be entitled to make a proposal to the Parties of a settlement agreement. Neither Party shall be required to adopt the proposal.

(h) Mediation shall be completed before the claim is litigated on the merits. However, if the Union alleges the claim of a violation of the no discrimination clause, the Union may proceed directly to arbitration and bypass this Mediation procedure if it so chooses.

(i) The fees of the Mediator shall be split equally between the Union and the RAB. The Union and RAB shall provide language interpreters at their jointly shared costs.

### (3) Arbitration

(a) The undertakings described here with respect to arbitration apply to those circumstances in which the Union has declined to take an individual employee's employment discrimination claim under the no discrimination clause of the CBA (including statutory claims) to arbitration and the employee is desirous of litigating the claim. The forum described here will be available to employers and employees who are represented by counsel and to those who are unrepresented by counsel.

(b) The Union and the RAB have elicited from the American Arbitration Association a list of arbitrators who (1) are attorneys, and (2) are qualified to decide employment discrimination cases. In the event that an employee and RAB member employer seek arbitration of a discrimination claim in the circumstances described in paragraph A, the list of arbitrators provided by the AAA shall be made available to the individual employee and the RAB member employer by the administrator of OCA. The manner by which selection is made by the RAB member employer and the individual employee and the extent to which each shall bear responsibility for the costs of the arbitrator shall be decided between them. A person may be added to or removed from the Statutory Arbitration Panel list upon mutual agreement of the Union and the RAB. Any such arbitrations shall be conducted pursuant to the AAA National Rules for Employment Disputes, except those rules pertaining to administration by the AAA and the payment of fees, and any disputes about the manner of proceeding shall be decided by the arbitrator selected.

(c) The hearings in any arbitration provided for in the preceding paragraph may be held at the OCA, however, it is understood that this forum is not a forum provided for in the collective bargaining agreement.

(d) The Union will not be a party to the arbitration described above and the arbitrator shall not have authority to award relief that would require amendment of the CBA or other agreement(s) between the Union and the RAB or conflict with any provision of any CBAs or such other agreement(s). Any mediation and/or arbitration outcome shall have no precedential value with respect to the interpretation of the CBAs or other agreement(s) between the Union and the RAB.

4. The parties will create a Committee (i) to study recruitment and retention issues for all under-represented groups, and (ii) to seek the continued prevention of sexual harassment in the commercial industry.