

**2005**  
**Long Island Independent Contractors Agreement**

Between

**Local 32BJ, Service Employees International Union**

and

**Long Island Independent Contractors**

TERM

January 1, 2005

to

December 31, 2007

## **2005 Long Island Independent Contractors Agreement**

This Agreement is made between Local 32BJ, Service Employees International Union (hereinafter "Union") and the undersigned cleaning contractor \_\_\_\_\_ hereinafter "Employer").

### **Article 1. Recognition**

1.1 This Agreement shall apply to all service employees employed in any facility (except for commercial facilities under 100,000 square feet) in Nassau and Suffolk Counties in the State of New York. Economic terms and conditions for residential buildings, hospitals, department stores, schools, charitable, educational and religious institutions, race tracks, nursing homes, theaters, hotels, shopping malls, golf courses, bowling alleys and industrial facilities, and route work, shall be set forth in riders negotiated for each location covered by this Agreement.

1.2 The Union is recognized as the exclusive collective bargaining representative for all classifications of service employees within the bargaining unit defined above.

1.3 The Employer shall be bound by the 2005 Independent Contractors Agreement (or the 2005 RAB Contractors Agreement), the 2005 Hudson Valley Contractors Agreement, the 2005 New Jersey Contractors Agreement, and the 2005 Fairfield County and Hartford County Agreements (or their RAB counterparts), in the event the Employer performs work within the geographic areas covered by those agreements.

1.4 Upon the execution of this Agreement, the Employer will provide the Union with a list of all its locations subject to the Agreement where it provides services. Upon the Union's written request, except to the extent prohibited by law, the Employer will provide the Union in writing for each account the name, address, job classification, pay rate and shift of each employee assigned to each account. The Employer will, upon request, up-date this information at reasonable intervals.

1.5 Within five (5) business days after notification that the Employer has become a service provider at a new location subject to this Agreement, the Employer shall notify the Union in writing of the new location. The notice shall be sent by facsimile to the Union at 101 Avenue of the Americas, New York, New York.

1.6 The Employer will not impede the Union's access to its employees at the work-site. The Union will not disrupt the employees' work and shall provide reasonable notice. The Union and the Employer will develop procedures to provide for Union access appropriate for work sites with special security requirements. 1

1.7 The Employer (and its agents) will not take any action or make any statements that state or imply opposition to the employees selecting the Union as their collective bargaining agent. Where required by law, and upon the Union's demonstration that a majority of employees at a location (or contiguous grouping of locations), or at any other appropriate grouping of locations, at the Union's option, have designated the Union as their bargaining representative by signing authorization cards or petitions, the Employer shall recognize the Union for that location or locations.

1.8 Route work is all work performed by the Employer other than in facilities where the Employer contracts directly with the owner and/or agent. For purposes of this provision, Route work shall include bank branches.

## **Article 2. Union Security and Check-off**

2.1 It shall be a condition of employment that all employees covered by this Agreement shall become and remain members in the Union on the 31<sup>st</sup> day following the date this Article applies to their work-location or their employment, whichever is later. The requirement of membership under this section is satisfied by the payment of the financial obligations of the Union's initiation fee and periodic dues uniformly imposed.

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

2.3 The Employer shall be responsible for all revenue lost by the Union by reason of any failure to discharge an employee who is not a member of the Union, if the Union has so requested in writing. In cases involving removal of employees for non-payment of the requirements of this Article, the Arbitrator shall have the authority to assess liquidated damages.

2.4 The Union shall have the right to inspect the Employer's payroll records to determine the employees of the Employer who are covered by this Agreement.

2.5 The Employer agrees to deduct monthly dues, initiation fees, American Dream Fund or Political Action Fund contributions, from the wages of an employee, when authorized by the employee in writing in accordance with applicable law. The Union will furnish to the Employer the necessary authorization forms.

2.6 If the Employer fails to deduct or remit to the Union the dues or other monies in accordance with this Article by the 20<sup>th</sup> day, the Employer shall pay interest on such dues at the rate of one percent per month beginning on the 21<sup>st</sup> day, unless the Employer can demonstrate the delay was for good cause due to circumstances beyond its control. 2

2.7 If an employee does not revoke his dues check-off authorization at the end of the year following the date of authorization, or at the end of the current contract, whichever is earlier, the employee shall be deemed to have renewed his authorization for another year, or until the expiration of the next succeeding contract, whichever is earlier.

## **Article 3. Discharge/Discipline**

3.1 Employees shall not be discharged, suspended or otherwise disciplined by the Employer without just cause after a sixty (60) calendar day trial or probationary period.

3.2 The Employer shall give any employee discharged or disciplined a written statement of the grounds for the discharge or discipline within five working days after the discharge or imposition of discipline. A copy of the statement shall be sent to the Union at the same time.

#### **Article 4. Grievance/Arbitration**

4.1 All disputes or differences involving the interpretation or application of this agreement that arise between the Employer and the Union shall be resolved as provided in this Article, except where otherwise provided in this Agreement.

4.2 All grievances shall be brought within thirty (30) working days after the Union has or should have had knowledge of the dispute, except for basic wage violations including Fund contributions.

4.3 Employer and Union representatives shall hold a Step 2 meeting on unresolved grievances within thirty (30) calendar days of the grievance except by mutual consent.

4.4 All grievances not resolved at Step 2 shall be subject to arbitration before the Office of the Contract Arbitrator ("OCA") as provided for and under the arbitration provisions of the 2005 RAB Contractors Agreement, which portions are incorporated herein. All hearings shall be held at the location designated by OCA unless otherwise agreed to by the Employer and the Union.

#### **Article 5. Contractor Transition**

5.1 When taking over or acquiring an account/location covered by this Agreement, the Employer is required to retain the incumbent employees and to maintain the same number of employees (and their hours) as was employed at the account/location by the predecessor employer, provided that the staffing level does not exceed the level in effect 90 days prior to the takeover, except where there were increases in the staffing levels during that period resulting from customer requirements. Any employer who adds employees to any job in anticipation of being terminated from that job shall be required to place the added employees on its payroll permanently. These employees shall not replace any regular employees already on the payroll of that employer. The Employer may not reduce the staffing level on takeover of the account/location unless the Employer can demonstrate an appreciable decrease in the work to be done. 3

5.2 Employees retained by the employer shall be given credit for length of service with the predecessor employer(s) for all purposes including but not limited to seniority and vacation entitlement, and completion of the trial period. Employees retained on takeover shall not have their rates of pay, hours worked or other terms and conditions reduced.

5.3 The Employer shall be required to notify in writing the Union within two (2) business days after the Employer receives written cancellation of an account/location. Within five (5) business days of such cancellation notice, the Employer shall provide to the Union a list of all employees at the account/location, their wage rates, the number of hours worked, the dates of hire, the number of sick days, the number of holidays, benefit contributions made for employees, and vacation benefits.

5.4 Failure of the Employer to notify the Union as required in 5.3, coupled with the successor employer's failure to recognize the Union and to maintain the terms and conditions of this agreement, will require the Employer to pay liquidated damages to the affected employees equal to two months wages.

5.5 When an Employer bids on work covered by this Agreement, the Union will provide to all invited bidders within five (5) business days after receipt of their written request, the information described in the 5.3 above. Inaccuracies in the information

provided by the incumbent Employer shall not excuse any obligations under this agreement of the Employer acquiring the account/location.

5.6 The Employer shall provide the Union within five (5) business days of taking over the account/location the names, rates of pay, hours and other benefits provided at the location.

5.7 Any Employer assuming this Agreement shall be responsible for payment of vacation pay and granting of vacations required under this Agreement which may have accrued prior to the Employer taking over the building less any amounts paid or given for that vacation year. The outgoing Employer shall provide information to the Union regarding the entitlements of employees at the building within seven (7) calendar days of losing the account. Any Employer assuming this Agreement shall also be responsible for accrued unused sick days.

### **Article 6. Seniority and Bumping**

6.1 After completion of the probationary period, an employee shall attain seniority as of his date of employment. Seniority of an employee shall be based upon total length of service with the Employer or in the location, whichever is greater. Location shall be defined as the building or buildings located in the same complex covered by the same contract between the Employer and the managing agent or owner. Continuity of employment for all purposes, including but not limited to vacation, sick pay, termination pay, shall not be broken unless the employee severs employment at the building and with the company simultaneously. 4

6.2 In the event of a layoff due to a reduction in force, the inverse order of classification seniority, where applicable, shall be followed. Classifications shall not be based on the hours that employees work. In the event of bumping, there shall be no more than one bump. For layoffs within a building, seniority shall be based upon total length of service in the building.

6.3 In the event of a layoff due to the loss of a building to a non-union employer, 90 days after the lay-off or reduction from the location (as defined in 6.1), employees with more than two years seniority may bump the least senior employee within their classification within the counties subject to this Agreement. Route employees and Building employees shall each bump only within their own group, i.e., route employees bump route employees, and building employees bump building employees.

6.4 Seniority shall continue to accrue while an employee is on leave of absence for less than six months, or for up to one year for employees laid off or covered by a workers compensation claim.

6.5 Seniority rights are lost if any employee quits, is discharged for cause, fails to report or communicate within 7 business days after notice of recall or is laid-off for more than six months.

6.6 Seniority shall prevail for the assignment of vacation selections. Overtime shall be offered to all employees in rotation by seniority. Nothing in this provision is intended to prevent the Employer from offering extra hours to part-time employees rather than to full time employees where the latter would receive overtime pay for those hours.

6.7 The Employer shall not transfer employees from one location to another without the Union's consent.

### **Article 7. Workload/Reductions**

7.1 No employee shall be assigned an unreasonable workload.

7.2 The Employer shall not reduce the workforce assigned to any location either through attrition or lay-off without bargaining with the Union first, such bargaining to take place on an expedited basis.

### **Article 8. Leaves of Absence**

8.1 Employees may request a sixty (60) day Personal or Emergency Leave if they have been employed at least 12 months. The employee must request Personal Leave in writing 30 days prior to the date of the requested leave. The Employer shall not unreasonably withhold approval of such leave providing that the leave is compatible with the proper operation of the location. Emergency Leave may be requested on an emergency basis, provided that upon the employee's return to work the employer may request documentation of the emergency. No employee shall be entitled to a personal leave of absence more than once every two years, unless otherwise required by law.

8.2 The Employer shall provide employees with leaves of absence for union related activities, where practicable, provided that such leave shall not be unreasonably denied. The Union and the Employer shall discuss the number and duration of such leaves of absence in any period of time.

8.3 The Employer will comply with the provisions of applicable state and federal Family Leave laws regardless of the number of employees employed at any location or by the Employer.

8.4 Employees with two years or more seniority shall be entitled to a leave of absence for illness or injury not to exceed six months.

8.5 The Employer shall not contribute to the Pension Fund for the period of a leave of absence with respect to employees taking such leaves. However, if such employees are replaced during the leave of absence or any part thereof, the Employer shall make contributions to the Pension Fund for such replacements during the period of such replacements. If there is no replacement, there shall be no contributions by the Employer to the Pension Fund during such leave for the employee on leave of absence unless the Employer allocates the work of those on leave to other employees, thus increasing their customary working assignment, in which event the Employer shall pay into the Pension Fund for the number of excess hours times \$.31 up to a maximum for such excess of \$54 per month in each individual case. This figure shall be increased proportionately to reflect any increase in the regular pension contribution.

8.6 Any employee requesting a leave of absence who is otherwise covered for health benefits shall be covered for health benefits during the period of the leave provided the employee requests health coverage while on leave of absence and pays the Employer in advance for the cost of same.

8.7 Any employee otherwise covered for health benefits who is on leave due to Workers' Compensation or disability shall continue to be covered for health benefits without the necessity of payment to the Employer in accordance with Article 21 below.

8.8 Employees on leave of absence shall not be entitled to claim New York Unemployment Insurance for the period of the leave.

### **Article 9. Bereavement Pay**

9.1 In the event of a death in the employee's immediate family (parent, spouse, child, brother or sister) the employee shall receive the next three succeeding days off from the date of death and shall be paid for any time lost from his regular schedule or holiday pay as a result of such absence. 6

9.2 In the event of a death in the employee's spouse's family (mother-in-law, father-in-law, sister-in-law, brother-in-law) the employee shall receive one day off for the purpose of attending the funeral and shall be paid lost time due to such absence. With respect to grandparents, the Employer shall grant a paid day off on the day of the funeral if such day is a regularly scheduled workday.

9.3 An employee may be required to submit proof of death and/or that the deceased was within the class of relatives specified and/or that the employee attended the funeral.

### **Article 10. Jury Duty**

10.1 An employee who has completed his probationary period and who is required to report to court to answer a jury summons or serve as a juror on days he is regularly scheduled to work will be reimbursed the difference between the amount he receives for jury service and his regular pay. Jury Duty pay shall be limited to three weeks in any year. No employee may be required to work on a day he has jury duty.

### **Article 11. Sick Leave**

11.1 Any regular employee with at least one (1) year of service as defined in 11.4 below in the facility or with the same employer shall receive in a calendar year from the Employer ten (10) paid sick days for bona fide illness. Employees shall receive sick pay whether such illness is covered by New York State Disability Benefits and/or Workers Compensation Benefits; however, there shall be no pyramiding or duplication of Disability Benefits and/or Workers Compensation, with sick pay.

11.2 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 one full day's pay for each unused sick day. The Employer at the end of the calendar year shall be responsible for paying all unused sick pay.

11.3 For the purposes of this Article, one (1) year's employment shall be reached on the anniversary date of employment. Employees employed less than forty hours a week on a regular basis shall receive a pro rata portion of sickness benefits computed on a forty hour workweek.

11.4 Any employee who has a perfect attendance record for the calendar year shall receive an attendance bonus of \$125.00 in addition to payment of unused sick days. Perfect attendance means the employee has not used any sick days, except that any sick day or unpaid leave that qualifies under the Family Medical Leave Act shall not be considered.

### **Article 12. Vacations 7**

12.1 All employees shall accrue vacation with pay in accordance with the following schedule:

## **Months on Payroll Vacation with Pay**

6 months 3 days

1 year 1 week

2 years 2 weeks

5 years 3 weeks

10 years 4 weeks

25 years 5 weeks

12.2 An employee who leaves his job on his own accord or who is terminated shall be entitled to his accrued vacation pay and any other accrued benefits.

12.3 Vacation pay shall be paid in advance of the vacation period and shall be based on the employee's straight time hourly earnings in the 8 weeks immediately preceding the vacation period.

12.4 If a holiday falls during a scheduled vacation the employee at his or her option shall receive either an extra day's pay or an extra vacation day off with pay to be taken in the same manner as a personal day.

12.5 Time off for vacations shall be scheduled giving preference by seniority. The number of employees who may take vacation at any given time shall be subject to the proper operation of the facility, but permission shall not be unreasonably denied.

### **Article 13. Holidays and Other Leave**

13.1 The following holidays are designated as paid holidays for post-probationary employees: New Years Day, Labor Day, Memorial Day, Thanksgiving Day, Christmas Day, Independence Day, Lincoln's Birthday, Washington's Birthday, Martin Luther King's Day, Columbus Day, and Election Day.

13.2 In the event the building holiday list does not specify the holidays listed in 13.1, the employees shall be given a paid personal day to substitute for the missing holiday. Employees shall give the Employer two weeks advance notice before taking a personal day.

13.3 Whenever any of these stated holidays shall fall on a Saturday or Sunday, it shall be observed on the following Monday or the preceding Friday depending upon when the building is closed.

13.4 Holiday pay shall be equal to an employee's regular straight time pay. An employee required to work on a holiday shall receive time and one half regular rate plus holiday pay. In order to be eligible to receive holiday pay, an employee must have worked at least one day in the week prior to the holiday.

13.5 Any regular employee whose regular day off, or one of whose regular days off, falls on a contract holiday, shall receive an additional day's pay therefore, or, at the option of the Employer, shall receive an extra day off with pay within a period of ten (10) days prior to or ten (10) days after said regular day off, provided that said extra day off is granted in conjunction with the employee's two regular days off so that the employee receives a minimum of three consecutive days off.

13.6 Any employee who is required to work on Election Day and who gives legal notice shall be allowed two (2) hours off, such hours to be designated by the Employer, while the polls are open. These two (2) hours shall be included in the eight (8) hour day for

which such employee receives his regular straight time pay, but shall not be considered as hours actually worked for purposes of premium pay.

13.7 All employees shall receive a personal day in each contract year. This personal day is in addition to the holidays listed above. Employees may select a personal day off on five (5) days notice to the Employer provided such selection does not result in a reduction of employees in the building below 75% of the normal work staff. Selections shall be made in accordance with seniority.

13.8 Every regular full time employee who has been employed in the building for one year or more shall be entitled, upon one week's notice to his Employer, to take one day off in each calendar year at straight time pay to visit the office of any one of the benefit funds for the purpose of conducting business at the benefit fund office. Such employee shall receive an additional one day off with pay to visit the benefit fund office if the office requires such a visit. To receive payment for such days, the employee shall exhibit a signed statement from the benefit fund office. In the event that an employee chooses to visit any one of the benefit fund offices after having used up his entitlement pursuant to this paragraph, he may use any of his sick days for that purpose.

#### **Article 14. The Workweek and Hours**

14.1 The workweek for full time employees shall consist of five consecutive days.

14.2 The work day for full time employees shall be eight hours with a one half hour unpaid lunch period as close to the middle of the shift as practical. There shall be no split shifts.

14.3 Any work performed in excess of eight hours in one day or forty hours in a week shall be paid at time and one half the employee's regular rate.

14.4 All work performed on a sixth consecutive day shall be paid for at time and one half the employee's regular rate.

14.5 All work performed on a seventh consecutive day shall be paid for at double the employee's regular rate.

14.6 The minimum regular schedule for employees shall be 4 hours per night.

14.7 Employees who work at more than one location shall have their hours combined, as required by law, in determining their overtime pay.

14.8 All wages, including overtime, shall be paid weekly in cash or check with an itemized statement of payroll deductions. If a regular payday falls on a holiday, employees shall be paid on the preceding day.

14.9 If an employee reports to work such employee shall receive the number of hours pay to which he would normally be entitled to that day unless work is unavailable because of an Act of God, such as fire, flood, blackout or meteorological event.

#### **Article 15. Work Assignment**

15.1 An employee assigned to a different job classification or transferred to a different job location which provides greater compensation shall be paid at either his regular rate of pay or the rate of pay in the new job classification or at the new location, whichever is higher.

15.2 Employees who are required to use their own vehicles to travel job to job shall be compensated at the rate established by the Internal Revenue Service.

### **Article 16. Uniforms**

16.1 The Employer shall continue the policy of providing uniforms where now in use. The uniforms shall be furnished without cost to the employees and the Employer will be required to provide for their maintenance. Upon termination of employment, employees shall return their uniforms to the Employer.

16.2 In the event an employee is required to remove snow he shall be furnished adequate clothing and equipment by the Employer at no cost.

### **Article 17. Termination Pay**

17.1 In case of termination of employment because of the employee's physical or mental inability to perform his duties or from reduction in force, the employee shall receive, in addition to accrued vacation, termination pay according to service in the building or with the Employer as follows:

Employee with Pay

5 years but less than ten years service - 1 week wages

10 years but less than 15 years service - 2 weeks wages

15 years but less than 19 years service - 3 weeks wages

19 years but less than 22 years service - 4 weeks wages

22 years or more of service - 5 weeks wages

An employee physically or mentally unable to perform his duties may resign and receive the above termination pay if he submits written certification from a physician of such inability at the time of termination.

17.2 The right to accept termination pay and resign where there has been a reduction in force shall be determined by seniority. Termination pay shall be offered to the most senior employee, then to the next most senior and so on until accepted. If no employee accepts the offer, the least senior employee of the Employer based upon company-wide seniority (within the geographic scope of this agreement) shall be terminated and shall receive applicable termination pay.

17.3 Weeks pay means the regular straight time pay at the time of termination. If the Employer offers part-time employment to the employee entitled to termination pay for the period of his full-time employment, and if he accepts such part-time employment, he shall be considered a new employee for all purposes. Any employee who accepts termination pay who is rehired in the same facility or with the same Employer shall be considered a new employee for all purposes.

17.4 For purposes of this section, sale or transfer of a building shall not be considered a termination of employment so long as the employee or employees are hired by the purchaser or transferee, in which case they shall retain their building seniority for all purposes.

17.5. The obligation to pay termination pay shall be borne by the last employer with whom an employee entitled to termination pay was employed.

### **Article 18. Bulletin Boards**

18.1 A bulletin board shall be furnished by the employer exclusively for union announcements and notices of meetings.

### **Article 19. Vacancies and Promotions**

19.1 The Employer shall post all vacancies. Preference in filling vacancies or newly created positions within the bargaining unit shall be given to employees already employed in a building based on building seniority, but skill, ability and qualifications shall also be considered. Part-time employees shall be given preference by seniority in bidding for open full-time positions.

### **Article 20. Recall**

20.1 Any employee who has been employed for one (1) year or more by the same Employer or in the same building and who is laid off, shall have the right of recall, provided that the period of layoff of such employee does not exceed six (6) months. Recall shall be in the reverse order of laid-off employees' departmental or job classification seniority (i.e., the most recently terminated employee in that department shall have the first right of recall). Recall rights apply to all vacant permanent positions and temporary positions if it is expected that the temporary position will last for a period of at least sixty (60) days.

20.2 The Employer shall notify by certified mail, return receipt requested, the last qualified laid-off employee at his last known address, of any job vacancy. The employee shall then be given seven (7) days from the date of mailing of the letter in which to express in person or by registered or certified mail his desire to accept the available job. In the event any employee does not accept recall, successive notice shall be sent to qualified employees until the list of qualified employees is exhausted. Upon reemployment, full seniority status, less period of layoff, shall be credited to the employee.

20.3 Any employee who received termination pay and is subsequently rehired shall keep his termination pay and for purpose of future termination pay shall receive the difference between what he has received and what he is entitled to if subsequently terminated at a future date. Any vacation monies paid shall be credited to the Employer against the current vacation entitled.

### **Article 21. Other Terms**

21.1 Employees shall be reimbursed for loss of personal property caused by fire or flood in the building.

21.2 Adequate sanitary arrangements shall be maintained in every building, and individual locker and key thereto and rest room key, where rest room is provided, and soap, towels and washing facilities shall be furnished by the Employer for all employees. The rest room and locker room shall be for the exclusive use of employees servicing and maintaining the building.

21.3 Employees shall not be held liable for any damage or breakage occasioned by them in the course of their employment or for damage or loss of equipment.

21.4 All references to the male gender shall be deemed to include the female gender.

21.5 Where extreme cold or hot weather causes hardship to the employees in the performance of their normal duties, the Union has the right to request the Employer to revise work schedules so as to give employees such advantage of retained heat or cold as may be compatible with the efficient operation of the building.

21.6 Where an Employer after receiving written notice from the Union that he is

delinquent with respect to either wage payments, health payments, pension payments, or dues or initiation fees, that Employer is to be given 30 days within which to correct any deficiency on his books. After the 30 day period, the Union may audit the books of that Employer. If the audit shows that the Employer has corrected any and all violations, then it shall not be regarded as "willful" and the audit shall be paid for by the Union. If on the other hand, the audit shows that the Employer has not corrected all violations, then it shall be regarded as "willful" and he shall be made to pay the costs of the audit and also pay the other items agreed upon as "damages" plus 15 % interest.

21.7 The Employer shall make every effort to consolidate jobs where it is feasible to do so in order that his employees will be covered by the Health Fund. If the Union finds that an employer has failed to effect a job consolidation requested by the Union, or that the Employer requires some other type of relief, such as additional time in which to effect the consolidation, the Employer may communicate with the Union in writing, setting forth his reasons in detail. The Union may then afford the Employer some or all of the requested relief by means of a written notice. If the Union rejects the Employer's request, it must do so in writing, and the Employer shall effect the requested consolidation within fifteen days after receipt of the Union's notice, or the Employer shall be required to make payments into the Health Fund which are sufficient to cover the employees in question, unless during the same period, the Employer submits the matter directly to the Contract Arbitrator. In such cases, the arbitrator shall take into consideration the following factors: (a) the primary purpose is to provide health coverage for the maximum number of employees under this Agreement and to prevent circumvention with respect to such coverage; (b)(1) Inability to do a job in more than a prescribed number of hours because of the conditions prevailing on the job, coupled with the fact that other work cannot be made available to the employee or because jobs are so isolated as to make it impracticable to consolidate; (2) Refusal of employees to work more than the assigned number of hours and inability of the Union to replace such employees with employees who are willing to work longer hours. If the Arbitrator should find that an Employer's refusal to consolidate was in willful violation of the criteria set forth, he may require payments into the Health, Pension and or Legal Funds on a retroactive basis.

21.8 The Employer shall not require, request or suggest that an employee or applicant for employment take a polygraph or any other form of lie detector test.

21.9 The regularly assigned Fire Safety Director, appointed by the Employer and certified by the Fire Department, shall be paid a lump sum bonus of \$500.00 per year on December 1 of each calendar year. If more than one person serves in the same position during the year, the bonus shall be prorated. The Employer shall have the right to designate the Fire Safety Director.

## **Article 22. Disability Benefits/Unemployment Insurance 13**

22.1 The Employer shall cover its employees so that they shall receive maximum weekly cash benefits provided under the New York State Disability Benefits Law on a noncontributory basis, and also under the New York State Unemployment Insurance Law, whether or not such coverages are mandatory.

22.2 Failure to so cover employees makes the Employer liable to an employee for all loss of benefits and insurance.

22.3 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.

22.4 If the employee informs the Employer he is requesting Workers' 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 days sick leave shall be paid to such employee (if he has that amount unused) unless he specifically requests in writing payment of additional available sick leave.

22.5 Any employee required to attend his Workers' Compensation hearing shall be paid for his regularly scheduled hours during such attendance.

22.6 Any cost incurred by the Union to enforce the provision of this article shall be borne by the Employer.

### **Article 23. Benefit Funds**

#### **A. Health Fund**

23.1. The Employer shall make contributions into the health trust fund known as the Building Service 32 BJ Health Fund to cover the employees covered by this Agreement and/or group life insurance coverage as provided below under such provisions, rules and regulations as may be determined by the Trustees of that fund, as provided in the Agreement and Declaration of Trust.

23.2 Employees who are on workers' compensation or who are receiving disability benefits or disability pension shall be covered by the Health Fund until they may be covered by Medicare or thirty (30) months from the date of disability, whichever is earlier.

23.3 For all employees for whom the employer is currently contributing to the Health Fund for the Suburban Preferred Health Plan of benefits, the Employer shall make monthly contributions to the Health Fund for the Tri-State Preferred Plan of benefits at the rates set forth below for each regular full-time employee, and \$24 per month for each regular part-time employee for life insurance payable when and how the Trustees of the Health Fund, as it may be amended, determine, to cover employees and their dependent families with health insurance as agreed by the collective bargaining parties, under such provisions, rules and regulations as may be determined by the Trustees. For purposes of this paragraph, full-time employees shall be defined as those employees regularly employed twenty-four (24) hours or more per week.

23.3.1 Until July 1, 2005, \$347.25

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23.3.2 Effective July 1, 2005, \$485

23.3.3 Effective July 1, 2006, \$539

23.3.4 Effective July 1, 2007, \$598

Notwithstanding the foregoing, contributions for part-time employees under this section shall cease when contributions on their behalf commence under section 23.4

23.4 For all other employees, the Employer shall make monthly contributions at the rates set forth below for each regular full-time employee (for

purposes of this paragraph, an employee regularly employed 27 and one-half hours or more per week) for the Tri-State Plan of benefits:

23.4.1 Until July 1, 2005, \$347.25

23.4.2 Effective July 1, 2005, \$435

23.4.3 Effective July 1, 2006, \$487

23.4.4 Effective July 1, 2007, \$544

The Employer shall make monthly contributions for each regular part-time employee, including part-time employees formerly covered under section 23.3, as follows:

23.4.5 Effective July 1, 2007, \$20

23.4.6 Effective December 1, 2007, \$40

Contributions under this section 23.4 commence after six months of employment. 23.5 Any employer who has a plan in effect prior to the effective date of this Agreement which provides health benefits the equivalent of, or better than, the benefits provided for herein, and the cost of which to the Employer is at least as great, may cover his employees under this existing plan or under this Fund. If the Trustees decide the existing plan does not provide equivalent benefits, but does provide health benefits superior to one or more types of health benefits under this Fund, the Employer may participate in the Fund wholly, or partially for hospitalization and/or surgical coverage, and make his payments to the Fund in the amount determined by the Trustees uniformly for all similarly participating Employers.

23.6 If during the term of this agreement, the Trustees of the Building Service 32BJ Health Fund 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.

## **B. Pension Fund**

23.7 The Building Service Suburban Pension Fund shall continue in force and effect in accordance with its provisions, which include the power of its Trustees to revise the amounts of the pension benefits and the conditions under which benefits will be paid, and to continue to cover such employees of other Employers in or connected with the industry for whom contributions are paid provided such coverage is in compliance with law and the Trust Agreement.

23.8 Employees unable to work and who are on disability benefits or workers compensation shall continue to accrue pension benefits during the periods of disability up to six (6) months or the period of disability, whichever is sooner.

23.9 The Employer shall continue at all locations at which it currently makes contributions (or where the Employer takes over an account where contributions are

already being made on the effective date of this agreement) to contribute the sum of \$54.00 per month for every regular employee as defined in the Plan, as it may be amended.

23.10 If the Employer has in effect a pension and retirement plan which has been determined by the Trustees to provide benefits equivalent or superior to those provided under the Building Service Suburban Pension, it may continue such plan provided it continues to provide retirement benefits equivalent or superior to the benefits that are provided under the Building Service Suburban Pension during the terms of this Agreement, and it shall be relieved of any obligation to make payments into the Fund. If the Employer has an existing plan, it shall not discontinue or reduce benefits without prior Trustee approval and shall remain obligated to the employees for whatever benefits they may be entitled. In no event shall the Trustees or the Union, 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 and the Union, shall be held harmless by an Employer against any action brought by anyone covered under such Employer's plan asserting a claim based upon anything done under this Article. Notice of the pendency of any such action shall be given the Employer who may defend the action on behalf of the indemnitee.

#### **C. Group Pre-Paid Legal Plan**

23.11. The Employer shall contribute \$223.60 per year for each regularly scheduled full and part-time employee to the Building Service Group Pre-Paid Legal Fund under the terms of the plan and payable as the Trustees determine.

#### **D. Training Fund 16**

23.12 The Employer shall contribute \$12.13 per month for each regularly scheduled full and part-time employee to the Thomas Shortman Training Fund under the terms of the Fund and payable as the Trustees determine, effective July 1, 2007, except that the Employer shall continue to make contributions at all locations where the obligation to contribute did not by its terms expire on December 31, 2004, or where the Employer takes over an account where contributions are being made.

#### **Article 24. Provisions Applicable to All Funds**

24.1 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, court costs, fees and interest.

Where a contributing Employer is regularly and consistently delinquent, the Trustees in their discretion may require such security as they deem necessary.

24.2 The Trustees of the Funds shall make such amendments to the Trust Agreement, and shall adopt such regulations, as may be required to conform to applicable law, and which shall in any case provide that employees whose work comes within the jurisdiction of the Union (which shall not be considered to include anyone in an

important managerial position) may only be covered for benefits if the building in which they are employed has a collective bargaining agreement with the Union. Any dispute about the Union's jurisdiction shall be settled by the Arbitrator if the parties cannot agree.

24.3 Except as provided in section 23.4, employees shall have a waiting period of three (3) months before becoming eligible to be participants in the Funds, and no contributions shall be made on behalf of the employees over the three-month period.

#### **Article 25. Wages**

25.1 Except as provided in section 25.3, the minimum hourly wage rate for employees shall be \$9.75.

25.2 Except as provided in section 25.3, employees shall receive the minimum hourly wage rate or the following annual increase, whichever results in a higher rate of pay:

25.2.1 Effective April 1, 2005, \$.25

25.2.2 Effective April 1, 2006, \$.20

25.2.3 Effective October 1, 2006, \$.15

25.2.4 Effective April 1, 2007, \$.20

25.2.5 Effective October 1, 2007, \$.20

25.3 All current locations of signatory employers that are Class A or B commercial office buildings 100,000 square feet or over (including contiguous groupings) which were not covered by the 2002 Long Island Contractors Agreement shall be covered by this Agreement no later than July 1, 2005. Economic terms and conditions for all such locations and for any newly organized locations may be set forth in Riders to this Agreement negotiated by the parties.

25.4 The minimum rate for handypersons shall be \$1.50 more an hour and for forepersons shall be \$1.00 more an hour than the minimum rates set forth above.

#### **Article 26. Successors, Assigns and Subcontracting**

26.1 The Employer shall not subcontract, transfer, lease or assign, in whole or in part, to any other person, firm, corporation, partnership, or non-unit workers, bargaining unit work presently performed or hereafter assigned to employees in the bargaining unit, except to the extent required by government regulations regarding minority or female owned enterprises, in which event the Employer shall ensure that such enterprises employ bargaining unit employees under the wages and benefits provided under this Agreement.

26.2 In the event the Employer sells or transfers all or any part of its business or accounts which are subject to this Agreement, the Employer shall require the acquiring employer to assume this Agreement.

26.3 To the extent permitted by law, this agreement shall be binding on any other entities that the Employer or its principals establishes or operates which perform work subject to this Agreement.

### **Article 27. Non-Discrimination**

27.1 There shall be no discrimination against any present or future employee by reason of race, creed, color, age, disability, national origin, sex, union membership, or any characteristic 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, 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 (Articles VII and VIII) as sole and exclusive remedy for violations. Arbitrators shall apply appropriate law in rendering decisions based upon claims of discrimination.

### **Article 28. Most Favored Nations**

28.1 If the Union agrees to different economic terms and conditions more favorable to the Employer at any location, those terms and conditions shall apply to any other Employer who takes over that location for the duration of the Union's agreement with the prior Employer. 18

28.2 In the event that the Union enters into a contract on or after December 1, 2007 within the geographic scope of 1.1. (except for buildings/facilities for which this Agreement authorizes rider agreements), whose economic terms or conditions are more favorable to such Employer than the terms contained in this agreement with respect to that building, the Employer shall be entitled to and may have the full benefit of any and all such more favorable terms for any of its similar buildings within the area defined in 1.1 upon notification to the Union. This clause shall not apply to contracts entered into before December 1, 2007 even if the terms of any such contracts extend beyond that date.

### **Article 29. Prior Better Terms and Conditions**

29.1 At any location where the Employer is currently maintaining terms and conditions that are more favorable to employees (or some of them) than those provided for in this Agreement for that location, those terms and conditions shall continue to apply to the affected employees unless the Union and the Employer otherwise provide.

### **Article 30. Picket Line/No Strike Clause**

30.1 No employee covered by this Agreement shall be required to pass lawful primary picket lines established in an authorized strike, including picket lines established by Local 32BJ pursuant to an authorized strike at another job location. The Employer may not permanently replace or discipline any employee who refuses to pass such a picket line.

30.2 There shall be no lockouts, and no strikes except that the Union may call a strike or work stoppage (a) after forty-eight hours notice where the Employer has violated Article 1 of this agreement, (b) where the Employer fails to comply with an Arbitrator's Award within three weeks after the Employer's receipt of the award, or (c) after forty-eight hours notice where the Employer has failed provide the Union with information or notices required by Article 5 above. In connection with (b), the Union may compel payment of lost wages to any employee for the period he engaged in such activity. Upon compliance with the award or judgment and payment of lost wages, such activity shall cease.

30.3 The Employer will not do the work of the striking employees if the Union is conducting an authorized strike.

30.4 The Employer shall provide staffing information to the Union upon its request for any job which it currently services within four (4) business days of the request. If such information is not provided, the Union shall have the right to engage in a work stoppage until such information is supplied. During the period of work stoppage the employees shall continue to receive their regular wages and benefits.

**Article 31. Complete Agreement**

31.1 This Agreement contains the entire agreement between the Union and the Employer and replaces any prior agreements between them.

**Article 32. Duration**

32.1 This Agreement shall be effective from January 1, 2005 until December 31, 2007.

32.2 Upon the expiration date of this Agreement as set forth above, this Agreement shall thereafter continue in full force and effect for an extended period until a successor agreement shall have been executed. During the extended period, all terms and conditions hereof shall be in effect subject to the provisions of this paragraph. During the extended period, the Employer shall negotiate for a successor agreement retroactive to the expiration date, and all benefits and improvements in such successor agreement shall be retroactive, if such agreement shall so provide. In the event the parties are unable to agree upon terms of a successor agreement, the Union upon three (3) days oral or written notice to the Employer, may engage in any stoppage, or strike without thereby terminating any other provision of this agreement, until the successor agreement is concluded.

SEIU Local 32BJ, AFL-CIO Employer \_\_\_\_\_

By: \_\_\_\_\_ By: \_\_\_\_\_

Dated: \_\_\_\_\_ Dated: \_\_\_\_\_

### **SIDE LETTER ON TRAINING FUND**

The Union and Employers shall establish a committee to work with the Training Fund to facilitate and enhance participation in the Training Fund of employees working on Long Island. The goal of the committee is to maximize participation by those employees and to recommend changes in the delivery of benefits to those employees to achieve that end.

### **SIDE LETTER ON WINDOW CLEANERS AND EXTERMINATORS**

The parties agree that they will meet to negotiate a Rider that addresses those unique and special terms and conditions of window cleaners and exterminators.

### **SIDE LETTER ON NATIONAL ENERGY POLICY**

The parties agree to abide by the terms of any mandatory national energy policy.

### **SIDE LETTER ON PART-TIME DRUG CARD**

Notwithstanding anything to the contrary in the 2005 Long Island Contractors Agreement, the Employer shall not have an obligation to commence contributions pursuant to sections 23.4.5 and 23.4.6 until the terms of the 2005 Long Island Contractor's Agreement, or any Rider thereto, are in force in 55% of the Class A or B commercial office buildings 100,000 square feet or over (including contiguous groupings) in Nassau and Suffolk counties.

Any dispute regarding the Union's demonstration shall be resolved through Article 4 of this Agreement.

### **SIDE LETTER ON FULL TIME WORK OPPORTUNITIES**

The Union and the Employer agree to establish a Joint Committee to discuss ways in which to increase the number of full-time workers employed in the industry.

### **SIDE LETTER ON CLASSIFICATIONS**

It is the parties' intention that "service employees" as used in the Agreement is intended to cover the classifications and employees covered under the 2005 RAB Contractors Agreement.

### **SIDE LETTER ON BETTER TERMS AND CONDITIONS**

The parties agree and understand that Article 29 does not require the Employer to maintain employee schedules that result in ongoing schedules that exceed 40 hours of work each week. In lieu of maintaining such schedules, the Employer may re-assign the regularly scheduled overtime to other unit employees who are currently scheduled less than 27 and one half hours a week.

The parties further agree and understand that nothing in Article 5 requires an Employer on taking over an account from a union signatory contractor to maintain the hours of an employee who is already employed by the employer at another location if doing so shall result in that employee being regularly scheduled for overtime. For example, if an employer already employs an employee at job-site A 40 hours a week and then takes over the work at job-site B from another employer where the employee also works 20 hours a week, the Employer shall not be required to retain the employee at both

locations. Rather, the Employer shall offer the employee the choice of which location he wishes to continue his employment and hours with the Employer. The employee will retain his overall Company seniority and his building seniority at the location at which he continues his employment. The Employer shall be required to fill the position vacated by the employee at the location at which the employee declined to continue employment.

#### **SIDE LETTER ON LOCATIONS NOT COVERED BY THE 2002 AGREEMENT**

With respect to current locations of signatory employers that were not covered by the 2002 Long Island Contractors' Agreement, the parties agree that if another labor organization seeks to organize the employees at any such location prior to July 1, 2005, then the Union may invoke Article 1 of the 2005 Long Island Contractors' Agreement and seek and obtain recognition. Before doing so, the Union shall provide the Employer with information supporting its belief that another labor organization is conducting an organizing campaign. In the event the Union shall seek and obtain recognition, the parties agree that they will negotiate regarding the terms and conditions that apply to those locations.

#### **SIDE LETTER ON CONNECTICUT**

1. The Employer agrees that it will recognize the Union as the exclusive bargaining representative of its employees within classifications defined in the Hartford Contractors' Agreement, at its locations or facilities within the State of Connecticut (outside the scope of the Fairfield Contractors' Agreement and the Hartford Contractors' Agreement), upon the Union's demonstration through authorization cards or petitions that a majority of the Employer's employees at any location or grouping of locations, at the Union's option, have designated the Union as their exclusive collective bargaining representative. The Employer shall have no obligation to recognize the Union under this memorandum of understanding prior to July 1, 2006.
2. Upon the Union's request, the Employer will provide the Union with the names, addresses, telephone numbers and work locations of its employees, within the scope of this memorandum of understanding, and shall update that information at reasonable intervals upon the Union's request.
3. The Employer will provide the Union with access to its work locations, subject to the customer's rules and requirements, and upon prior notice, to meet with employees on non-work time and in non-work areas, provided there is no interference with the conduct of the customer's business or with the performance of work.
4. The Employer will not take any action or make any statement in opposition to the selection by its employees of a collective bargaining agent, nor shall it state any preference or opposition to the Union as a bargaining agent for its employees.
5. Any disputes regarding the implementation of this memorandum of understanding shall be resolved under the grievance/arbitration procedure set forth in the Hartford Contractors' Agreement.



