

MEMORANDUM OF AGREEMENT

Whereas, SEIU Local 32BJ (“Union”) and the Realty Advisory Board on Labor Relations, Inc. (“RAB”), on behalf of its members (“Employers”) are parties to the 2020 RAB Commercial Building Agreement, the 2020 RAB Contractors Agreement, the 2018 Apartment Building Agreement, the 2018 Resident Managers and Superintendents Agreement, the 2018 Long Island Apartment Building Agreement, the 2021 Security Officers Agreement, and the 2021 RAB Window Cleaners Agreement (collectively, the “Agreements”);

Whereas, the COVID-19 pandemic has impacted building operations and building service workers throughout the City of New York and its surrounding counties;

Whereas, the parties desire to maintain the stable labor relations that have served them well during the COVID-19 pandemic, and ensure an effective and consistent response across the Industry;

Whereas the parties, both individually and collectively, fully and unequivocally encourage and support all individuals (including without limitation: employees, managers, tenants, etc.) to become vaccinated against COVID-19 vaccine;

Whereas on July 12, 2021, the parties entered into a Memorandum of Agreement regarding Employers’ collection of vaccination status information, COVID-19 testing and a committee process for negotiations with respect to mandate requests that were arising at some individual locations;

Whereas on September 30, 2021, the parties entered into a Memorandum of Agreement, addressing the continued impacts of COVID-19 on building service employees and the building service industry, including the processes, timeframes and terms under which Employers could implement policies requiring Employees to become fully vaccinated and/or require unvaccinated employees to regularly submit the results of PCR testing;

Whereas, since the September 30, 2021 Memorandum of Agreement, COVID-19 infections have increased in New York City and across the United States, due to, among other things, the Delta variant, and most recently the emergence of the Omicron variant;

Whereas on December 13, 2021, the New York City Commissioner of Health and Mental Hygiene issued an Order (the “December 13, 2021 Order”) requiring Employers that employ one or more workers in New York City or that maintain a workplace in New York City to require individuals who work in-person in New York City to become fully vaccinated and to provide proof of initial vaccination by December 27, 2021 and proof of a second vaccination dose, if the employee has received a two-shot vaccine, no later than 45 days after the first dose;

Whereas the December 13, 2021 Order also requires Employers in New York City that employ one or more workers in New York City or that maintain a workplace in New York City to comply with other aspects of the Order, including but not limited to (1) completing and posting the required certification of compliance; (2) maintaining records of employees’ proof of

vaccination, and (3) evaluating and documenting requests for reasonable accommodations in accordance with the Order and other applicable law.

Now, therefor, the RAB, on behalf of its members, and the Union agree to modify their prior Agreement dated September 30, 2021 regarding vaccination as follows to comply with the December 13, 2021 Order:

1. **Vaccination.** The parties both individually and collectively, fully and unequivocally affirm their support for Employees to be “fully vaccinated” (which shall be defined as receiving full vaccination of either both shots of two shot vaccination, or one shot for one shot vaccination that has been approved or authorized for use by the Food and Drug Administration or World Health Organization) and encourage and support all individuals be vaccinated against COVID-19. The parties further affirm their support for employees to receive booster shots in accordance with applicable public health guidance. They further agree to use best efforts to encourage and assist all Employees in becoming fully vaccinated against COVID-19.

2. **Education.** The RAB, the Employers and the Union shall continue to cooperate in joint education efforts along with the 32BJ Health Fund, to share information from accredited health care institutions, agencies or practitioners explaining the COVID-19 vaccine, why vaccination is useful and to answer concerns or questions concerning vaccination.

3. **Implementation of vaccination:**

- a. **Collection of Vaccination Status Information:** An Employer shall inform Employees in writing that it is requiring a vaccination mandate and shall request, if they have not already done so, that Employees provide the following information regarding their vaccination status within one week. All employees must comply within one week with these information requests.
 - i. Whether the Employee has been vaccinated and, if so, to provide proof of vaccination. The Employer shall maintain a copy of such proof separate from any other employee information.
 - ii. If the Employee has an appointment to receive either a first or second vaccination shot -- to provide a copy of the appointment notification.
 - iii. If the Employee is seeking a vaccination appointment -- to provide documentation of that request for an appointment or to request assistance in accessing a vaccination appointment.
 - iv. If the Employee is unwilling to be vaccinated -- to provide their reason for refusing vaccination, including whether they are not seeking a vaccination due to a religious belief or health condition protected respectively by Title VII of the Civil Rights Act, the Americans with

Disabilities Act and/or other applicable law. For Employees who may be seeking an accommodation due to a religious belief or health condition, the Employer shall advise Employees of the process and requirements for seeking such an accommodation.

- b. Upon collection of Employees' vaccination status information, and no sooner than two weeks after the Employer has requested that Employees provide their vaccination status, if the Employer intends to implement a vaccination requirement in compliance with the December 13, 2021 Order for all Employees (subject to accommodations provided for in Paragraph 3(a)(iv) above), the Employer shall provide written notice to all Employees of its vaccination policy, and the requirement to obtain the first dose of a two-shot vaccine, or the single dose vaccine, shall be no sooner than four weeks from the date of the written notice to the Employees, except that any such two-week or four-week waiting period shall not apply with respect to employees who work in person in New York City to the extent that such time frames contravene the December 13, 2021 Order, or subsequent applicable health orders modifying the December 13, 2021 Order. In accordance with the December 13, 2021 Order, employees who are not fully vaccinated by December 27, 2021, shall be required to provide their Employer with proof of initial vaccination by December 27, 2021, and proof of the second dose of a 2-shot vaccine no more than forty-five days from the date of the first vaccine.
- c. The parties strongly encourage all vaccinated individuals to obtain booster shots as they are approved by the F.D.A. and/or recommended by the C.D.C. and public health authorities. Any Employee who receives a booster shot shall be entitled to the paid time off in connection with the shot and any side effects in accordance with the parties' April 29, 2021 Memorandum of Agreement and this Agreement. As additional F.D.A. approvals for booster shots and public health recommendations regarding booster shots issue, the parties shall meet and confer regarding whether, and under what circumstances, booster shots may be required for previously vaccinated Employees.
- d. In accordance with Paragraph 5 below, upon Request of the Union, the Employer shall promptly provide the Union with information regarding Employees' vaccination status for representational purposes, and if requested by the Union shall provide periodic updates.
- e. An employee who is not vaccinated by the required dates set in accordance with Paragraph 3(b) above (and who is not eligible for an accommodation in accordance with Paragraph 3(a)(iv) above) may elect one of the following:
 - i. An unpaid leave of absence ("LOA") of up to four months and return to the employee's position within that time frame upon becoming fully

vaccinated (i.e. two weeks after the second dose of a two-shot vaccine or two weeks after the one dose vaccine) or;

- ii. Placement on a recall list through March 1, 2022 or six (6) months from the Employee's last day of work, whichever is later, for recall into the same or similar position at their building or worksite to the extent positions become available *and* either the Employee has become fully vaccinated or the vaccination requirement has been lifted at that building or location; an Employee who elects eligibility for recall rights under this subparagraph and who seeks recall to the building or worksite while the mandate remains in effect because they have become fully vaccinated shall be required to notify the Employer that they have become fully vaccinated and provide proof of vaccination before being eligible for recall to positions at the building or worksite, provided that:
- iii. If an unvaccinated employee does not elect either an LOA or placement on a recall list in accordance with (i) and (ii) above, the employee shall be separated from employment with a non-disciplinary termination. Such separation from employment shall not be deemed a voluntary quit nor a termination for misconduct.
- f. In the event that a resident manager or resident superintendent seeks a leave of absence or furlough in accordance with subparagraphs 3(i) or (ii) above and the Employer asserts that such a leave of absence is not feasible due to the coverage needs at the building, the Union and the Employer shall promptly meet to resolve the dispute, and if they are unable to do so, the dispute regarding the leave of absence request shall be submitted to arbitration before Arbitrators David Reilly or Gary Kendellen on an expedited basis. This means that the arbitration hearing shall be held within two (2) weeks after the parties have been unable to agree to a resolution.
- g. Prior to implementation of a vaccination mandate or, in lieu of a vaccination mandate, to the extent that such option does not contravene the December 13, 2021 Order, or subsequent applicable health orders modifying the December 13, 2021 Order the Employer may, upon one week written notice to the Union and to impacted Employees, require that all unvaccinated employees, other than those who are approved for accommodations in accordance with Paragraph 3(a) (iv) above, undergo PCR testing on non-work time up to two times per week and submit the test results to the Employer.

4. The extended recall rights provided for Paragraph 2 of the January 25, 2021 Memorandum of Agreement between the Union and the RAB, shall be extended from October 1, 2021 through March 1, 2022. With respect to those Employers who were subject to an additional extended recall obligations through December 31, 2021 in accordance with Paragraph 1(i) of the January 25, 2021 Memorandum of Agreement, such recall rights and obligations to the extent not already satisfied, shall be further extended through June 1,

2022. The rebid provided for in Paragraph 3 of the January 25, 2021 Memorandum of Agreement shall take place on April 1, 2022 and the restoration of the productivity standard provided for in Paragraph 4 of the January 25, 2021 Memorandum of Agreement shall take place effective March 1, 2022. In the event that an Employee asserts that they have not been offered recall in accordance with this Agreement and/or the underlying collective bargaining agreement, the Employer shall promptly investigate after being notified of the possible error and shall have thirty (30) days from such notice to correct any error in the recall process, before incurring back wage or benefits liability.

5. Proof of vaccination shall include a copy (e.g., photograph, pdf, or photocopy) of an individual's CDC "COVID-19 Vaccination Record Card;" an employee's Excelsior Pass/Excelsior Pass Plus; an employee's NYC COVID Safe App; CLEAR's Digital Vaccine Card or CLEAR Health Pass; or a record from the jurisdiction where the vaccine was administered, or from a healthcare provider or other approved immunizer who administered the vaccine, that provides the person's name, vaccine brand, and date of administration. The Employer shall keep these records and maintain them separate from the rest of the employees' personnel files and shall request that no other medical information be disclosed along with proof of the vaccine. The Employer shall not disclose to any third party whether any individual is vaccinated, but may disclose such information if it is de-identified and in the aggregate (i.e. 95% of its employees have been vaccinated), except that, upon the Union's request, the information shall be disclosed to the Union. Further, the Employer may advise third parties of its procedures with respect to vaccination and/or testing as set forth above. To the extent that an Employer is requiring that proof of vaccination be transmitted or uploaded electronically, the Employer shall provide assistance to Employees who may not have access to the necessary technology or who otherwise require technical assistance.

6. Employers shall continue to provide Employees with paid time off for the purposes of being vaccinated in accordance with the April 29, 2021 Memorandum of Agreement, and applicable law whichever is greater. In the event the employee experiences side effects from a vaccination shot or booster, the Employee shall receive an additional paid day off to recover from such side effects, provided that the Employee may be required to provide a medical note regarding such side effects.

7. Vaccination logistics and incentives for employers seeking to implement a vaccination or a requirement that unvaccinated employees be tested up to two times per week:

- a. The Employer, the Union and the Health Fund will provide employees with information, with updates, about where they can obtain a COVID-19 vaccine that is near the worksite. If vaccination is available only through registration via a website, the Employer agrees to provide employees with access to a computer to register upon an employee request.
- b. The Union and the Employer agree to provide information about how covered Employees may contact the 32BJ Health Fund for assistance registering for

vaccination, and how all Employees (including those who may not be covered by the Health Fund) may access vaccination appointments at no cost.

- c. The parties will cooperate in having vaccination vans or sites in and around work locations, to the extent such services are available.
- d. Employers may also implement regular COVID-19 testing requirements, beyond the testing provided for in Paragraph 3(f) above, at no cost to the employee and on work time.
- e. Employers may also implement other applicable safety requirements (e.g., masking, social distancing, etc.)
- f. No fully vaccinated employees shall be prohibited from wearing a mask or other appropriate personal protective equipment ("PPE").

8. In order to ensure the health and safety of all workers at the work place, the Employer shall provide the following so long as there is a Public Health Emergency as declared by the Secretary of Health and Human Services under Section 3917 of the Public Health Service Act, or state of emergency pursuant to the continuation of Presidential Proclamation 9994, where the President declared a national emergency due to the coronavirus disease (COVID-19) pandemic or any state of emergency related to COVID-19 as determined by New York City or New York State:

- a. **Masking.** The Employer shall provide appropriate masks, with nose wire, each workday to each employee. In the alternative, the Employer may provide daily disposable surgical masks to its employees, along with instructions on how to make them tight fitting. Employees are allowed to wear their own masks as long as they conform to the above. No employee will be prohibited from wearing a mask.
- b. **Hand Sanitation.** The Employer shall provide employees with hand sanitizer and shall ensure that employees have the opportunity to wash their hands.
- c. **Employee Facilities.** The Employer shall provide employees a private area for changing and taking breaks that provides sufficient space to allow employees to remain at least 6 feet apart.

9. The parties further agree that any dispute arising out of or relating to this Memorandum of Agreement, shall be resolved through the applicable grievance and arbitration processes of each of the applicable Agreements as the sole and exclusive process for resolution of such disputes. Any claim covered by their applicable collective bargaining

agreement brought by or on behalf any affected employee shall be processed through the applicable Agreement's dispute resolution procedures.

10. In the event that the Union, Employer, and the RAB have a specific agreement for a site(s) covering vaccinations then the specific agreement shall control.

11. In accordance with the parties' Memorandum of Agreement dated September 30, 2021, due to the ongoing impacts of the COVID-19 pandemic, the parties agree to extend the following agreements through March 1, 2022:

- a. The parties' Memorandum of Agreement dated March 22, 2020 regarding twelve (12) hour shifts;
- b. The parties' Memorandum of Agreement dated April 2, 2020 with respect to better terms and conditions;
- c. The parties' Memorandum of Agreement dated April 11, 2020 regarding the work of absentees and the payment of AB time;
- d. The parties' Memorandum of Agreement dated April 11, 2020 regarding participation in the N.Y.S. Shared Work Program, as modified on April 29, 2021 with respect to notice to the Union if/when an Employer will cease participation in the Shared Work Program;
- e. Paragraph 7 of the parties' Memorandum of Agreement dated April 29, 2021 regarding notice of a reduction at buildings covered by the Commercial Building Agreement or Contractors Agreement in the event that there is a diminution in work due to either a tenant move out or termination of a lease that occurs on less than one month notice;
- f. Paragraph 8 of the parties' Memorandum of Agreement dated April 29, 2021 regarding offers of temporary reassignments or redeployments to displaced employees.
- g. Paragraph 9 of the parties' Memorandum of Agreement dated April 29, 2021 regarding the use of temporary relief employees in the event of an unforeseen staffing shortage due to a COVID-19 quarantine or other COVID-19 related emergency that arises at buildings that are bound by an assent to the Apartment Building Agreement.

SEIU LOCAL 32BJ

REALTY ADVISORY BOARD ON LABOR
RELATIONS, INC.

By: 

By: 
Howard Rothschild, President

Date: 12/19/21

Date: 12/17/21