

2011

**ENGINEER
AGREEMENT**

BETWEEN

**REALTY ADVISORY BOARD
ON LABOR RELATIONS,
INCORPORATED**

AND

**LOCAL 94-94A-94B
International Union of
Operating Engineers
AFL-CIO**

**Effective: January 1, 2011
To December 31, 2014**

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2011 ENGINEER AGREEMENT

This agreement is by and between the International Union of Operating Engineers, Local 94-94A-94B, AFL-CIO (hereinafter referred to as the “Union”), acting on behalf of its members and other employees for whom it is recognized as the collective bargaining agent as defined below, and the Realty Advisory Board on Labor Relations, Incorporated (hereinafter referred to as the “RAB”), acting on behalf of various owners of office and commercial buildings in the City of New York and authorized agents of such owners, who become signatory to this agreement (hereinafter severally referred to as “Employer”).

ARTICLE 1

Recognition and Union Security

1. This agreement shall be binding on each owner signatory to this agreement, as well as upon each agent of an owner who becomes signatory hereto as Employer.

2. The Union is recognized as the exclusive bargaining representative of all employees employed as engineers, mechanics, helpers (as well as chief engineers and assistant chief engineers in such buildings where these classifications are represented by the Union) and wherever the word “employee” appears herein, it shall refer to all such classifications of employee.

3. The Employer shall not enter into any agreement contracting for the performance of work and/or for the categories of work heretofore performed by employees covered by this agreement except within the provisions and limitations set forth below.

4. In the event that an Employer desires to contract for the service performed by members of this Union, or change contractors for such services, it shall do so in compliance with the following provisions:

(a) The Employer shall give advance written notice to the R.A.B. and the Union at least three (3) weeks prior to the effective date of its contracting for such services, and set forth the name and address of the contractor.

(b) As a condition of such contracting, the Employer shall require the contractor to become a party to this agreement and to file a sub-assent hereto with the Union through the RAB, and the contractor shall thereafter have all of the rights and obligations of the Employer hereunder. The Union has the right to reject such sub-assent where the contractor has habitually failed to comply with the obligations of the labor agreements with the Union covering other buildings in the industry or has failed to make proper and timely payments to the Union Welfare, Annuity, Sick Pay, Training and/or Pension Funds. The Union shall not arbitrarily refuse to

accept a sub-assent and the Employer may have such refusal reviewed by grievance and/or arbitration.

(c) The Employer agrees that its employees then engaged in the particular work which is contracted out shall become employees of the initial contractor or any successor contractor, and agrees to employ or re-employ those employees in the employ of the contractor at any time that such contracts are terminated or canceled. This provision shall not be construed to prevent termination of any employee's employment under other provisions of the agreement relating to illness, retirement, resignation, discharge or lay-offs; however, a contractor may not reduce force or change the work schedule without first obtaining written consent of the Union, which consent shall not be unreasonably withheld, and which shall be subject to grievance and/or arbitration.

(d) If a contractor fails to comply with all provisions of this agreement, the Employer shall be liable jointly and severally with the contractor for any and all damages sustained by the employees or by the Union as a result thereof, as well as for any unpaid Welfare, Sick Pay, Annuity, Training and/or Pension contributions; provided, however, that the Employer's liability shall commence when it receives written notice from the Union of the contractor's failure to so comply.

(e) To determine which employees employed by the Employer should be members of the Union under the terms of this agreement, and to ascertain the amounts payable to the Union Welfare, Annuity, Sick Pay, Training and/or Pension Funds, the Union and/or the Funds, independently or in coordination and cooperation, shall have the right to inspect and audit the contractor's social security and/or payroll records and all such records shall be made available to the Union and to the Funds upon request.

5. The Employer shall give written notice of vacancies in the staff to the Business Manager of the Union. If the Union is unable to supply a qualified person for such opening within five (5) business days of receipt of such notice, or if the Union waives its right to attempt to supply such a person or if there is an emergency need to fill the position immediately, then the Employer may hire a person. All employees must become members of the Union after the thirtieth (30) day following their employment; provided, however, that the requirement to become a member shall be waived if the Union refuses membership to such persons.

6. Upon the receipt by the Employer of a letter from the Union's Recording Corresponding Secretary requesting any employee's discharge because the employee has not met the requirements of Union membership under the Agreement, unless the Employer questions the propriety of so doing, the employee shall be discharged

within fifteen (15) days of said notice if prior thereto the employee does not take proper steps to meet said requirements. If the Employer questions the propriety of the discharge, he/she shall immediately submit the matter to grievance and if not thus settled, to arbitration for final determination. If it is finally settled or determined that the employee has not met said requirements, the employee shall be discharged within ten (10) days after written notice of the final determination has been given to the RAB and the Employer.

The Union will hold the Employer harmless from any liability arising from a discharge asked by the Union pursuant to this provision, provided the Employer has done nothing to cause or increase its own liability concerning removal of employees.

ARTICLE II

Wage, Hours and Working Conditions

1. Employees shall be paid in accordance with the scale of wages as set forth on the assent filed hereto.

Wage increase shall be granted as follows:

EFFECTIVE JANUARY 1, 2011:

ENGINEERS: Sixty six cents (\$.66) per hour, at which time the minimum wage for these employees shall be one thousand three hundred and thirty-nine dollars and twenty cents (\$1,339.20) per forty (40) hour week and thirty-

three dollars and forty-eight cents (\$33.48) per hour.

HELPERS: Fifty-one cents (\$.51) per hour, at which time the minimum wage for these employees shall be one thousand forty-two dollars and eighty cents (\$1,042.80) per forty (40) hour week and twenty-six dollars and seven cents (\$26.07) per hour.

OTHERS: Employees receiving pay scales other than the scale engineers or helpers shall be given percentage wage increases based on the following formula: $(2010 \text{ Rate} \times .0201)$ (Rounded to the nearest penny).

EFFECTIVE JANUARY 1, 2012:

ENGINEERS: Sixty seven cents (\$.67) per hour, at which time the minimum wage for these employees shall be one thousand three hundred and sixty-six dollars (\$1,366.00 per week) per forty (40) hour week and thirty-four dollars and fifteen cents (\$34.15) per hour.

HELPERS: Fifty-two cents (\$.52) per hour, at which time the minimum wage for these employees shall be one thousand sixty-three dollars and sixty cents (\$1,063.60) per forty (40) hour week and twenty-six dollars and fifty-nine cents (\$26.59) per hour.

OTHERS: Employees receiving pay scales other than the scale engineers or helpers shall be given wage increase based on the following formula:

(The Employees' 2011 Hourly Rate x .0200)
(Rounded to the nearest penny).

EFFECTIVE JANUARY 1, 2013:

ENGINEERS: One dollar and three cents (\$1.03) per hour, at which time the minimum wage for these employees shall be one thousand four hundred and seven dollars and twenty cents (\$1,407.20) per forty (40) hour week and thirty-five dollars and eighteen cents (\$35.18) per hour.

HELPERS: Eighty cents (\$.80) per hour, at which time the minimum wage for these employees shall be one thousand ninety-five dollars and sixty cents (\$1,095.60) per forty (40) hour week and twenty-seven dollars and thirty-nine cents (\$27.39) per hour.

OTHERS: Employees receiving pay scales other than the scale engineers or helpers shall be given wage increases based on the following formula: (The Employees' 2012 Hourly Rate x .0302) (Rounded to the nearest penny).

EFFECTIVE JANUARY 1, 2014:

ENGINEERS: One dollar and fifty-five cents (\$1.55) per hour, at which time the minimum wage for these employees shall be one thousand four hundred and sixty-nine dollars and twenty cents (\$1,469.20) per forty (40) hour week and thirty-six dollars and seventy-three cents (\$36.73) per hour.

HELPERS: One dollar and twenty-one cents (\$1.21) per hour, at which time the minimum wage for these employees shall be one thousand one hundred and forty-four dollars (\$1,144.00) per forty (40) hour week and twenty eight dollars and sixty cents (\$28.60) per hour.

OTHERS: Employees receiving pay scales other than the scale engineers or helpers shall be given wage increases based on the following formula: (The Employees' 2013 Hourly Rate x .0441) (Rounded to the nearest penny).

(a) Effective January 1, 2012, 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 2010 to November 2011 exceeds six and one-half percent (6.5%), then, in that event, an increase of ten cents (\$.10) per hour for each full one percent (1%) increase in the cost of living in excess of six and one half percent (6.5%) shall be granted effective for the first full work week commencing after January 1, 2012. In no event shall said increase pursuant to this provision exceed twenty cents (\$.20) per hour. In computing increases in the cost of living above six and one-half percent (6.5%) less than one-half of one percent (.5 %) shall be ignored and increases of one-half of one percent (.5%) or more shall be considered a full point. Any increases hereunder shall be added to the minimum.

(b) 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 six percent (6%), then, in that event, an increase of ten cents (\$.10) per hour for each full one percent (1%) increase in the cost of living in excess of six percent (6%) shall be granted effective for the first full work week commencing after January 1, 2013. In no event shall said increase pursuant to this provision exceed twenty cents (\$.20) per hour. In computing increases in the cost of living above six percent (6%), less than one-half of a percent (.5%) shall be ignored and increases of one-half of percent (.5%) or more shall be considered a full point. Any increases hereunder shall be added to the minimum.

(c) 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 six percent (6%) then, in that event, an increase of ten cents (\$.10) per hour for each full one percent (1%) increase in the cost of living in excess of six percent (6%) shall be granted effective for the first full work week commencing after January 1, 2014. In no event shall said increase pursuant to

this provision exceed twenty cents (\$.20) per hour. In computing increases in the cost of living above six percent (6%), less than one-half of a percent (.5%) shall be ignored and increases of one-half of a percent (.5%) or more shall be considered a full point. Any increases hereunder shall be added to the minimum.

2. (a) Each Employer agrees to deduct the Union's monthly dues, and all legal assessments from the pay of each employee from whom it received written authorization and will continue to make such deduction while the authorization remains in effect.

(b) Each Employer agrees to deduct voluntary political contributions based upon authorizations signed by the employees in accordance with applicable law.

(c) Such deductions will be made from the pay for the first full pay period worked by such employee following receipt of the authorization, and thereafter will be made the first payday each month, and forwarded to the Union not later than the twentieth day in each and every current month. Such deductions shall constitute trust funds while in the possession of the Employer.

(d) If an employee does not revoke the authorization at the end of a year following the date of the 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.

(e) The Employer agrees to use the lawful forms supplied by the Union for check-off. The Union agrees to indemnify and save such Employer and the RAB harmless from any liability incurred without fault on the part of the Employer by reason of such deduction.

3. It is the policy of the Employer to avoid excessive overtime. Where an employee believes he/she is required to work excessive overtime, the matter shall be submitted to grievance and arbitration. If it is alleged that the excessive overtime is a regular and continuing practice, such grievance may be submitted directly to arbitration.

4. An employee hired as a replacement or an addition to the force may be employed at the minimum rate for an engineer or helper set forth above, except that where an assent has established a rate for such classification higher than such minimum rate, the applicable assent rate shall continue to apply to such building.

5. Any employee required to replace a higher classified employee shall be paid at the rate of the higher classified employee, when and if the absent employee is not being paid by the Employer or the Sick Pay Fund.

6. (a) The standard work week shall be forty (40) hours per week, consisting of five (5) days of eight (8) hours each, and overtime shall

be paid at the rate of time and one half ($1\frac{1}{2}$ x) the regular straight time hourly rate for all hours worked in excess of eight (8) hours per day or in excess of forty (40) hours per week, whichever is greater. There shall be no split shifts.

(b) Employees required to work overtime shall be paid at least one (1) hour at the overtime rate except for employees working overtime due to absenteeism or lateness.

(c) Any employee who has worked eight (8) hours and is required to work at least four (4) hours of consecutive overtime before or after the eight (8) hours shall be paid a fifteen dollar (\$15.00) meal allowance.

(d) Every employee shall be entitled to two (2) consecutive days off in any seven (7) days. Any work performed on such days shall be considered overtime and paid for at the rate of time and one half ($1\frac{1}{2}$ x) the regular straight time hourly rate of pay.

(e) Saturday and Sunday shall be premium days and any work performed on those days shall be paid for at the rate of time and one half ($1\frac{1}{2}$ x) the regular straight time hourly rate of pay. The determination of whether a particular work shift falls on a premium day shall depend upon the building's practice now applicable to holiday work in that building.

(f) The weekly working hours for regular full-time employees shall include a thirty (30)

minute relief and lunch period. Such period, at the Employer's option, shall be taken on the premises at a scheduled time within two (2) hours of the middle of the shift and at such suitable place compatible with building needs as may be designated by the Employer. Where an employee works a shift of more than eight (8) hours in any day, all time beyond eight (8) hours shall be considered overtime and paid for at the rate of time and one half times (1½ x) the regular straight time hourly rate.

7. (a) No provision of this agreement shall be construed as to lower the weekly, daily or hourly wage of any employee. Where in any building, the employees of said building have presently in effect a practice of terms or conditions better than those provided for herein, applicable generally to the employees in the building covered by this agreement in respect to wages, hours, sick pay, vacations, holidays, premium pay for Saturday and/or Sunday work, relief and lunch periods, and group life insurance, such better conditions shall be continued in effect for all employees who may now, or during the term of this agreement, be employed in the said building, except that such continuance shall be required for group life insurance only for those persons in the employ of the Employer on the effective date this agreement is signed and except insofar as the provisions of Section 1 above, of this Article may apply. The Arbitrator is empowered to afford relief from the

obligations expressed in the preceding sentence on the ground that its enforcement would work an undue hardship, injustice or inequity upon the Employer.

(b) A change of schedules or duties shall not constitute a violation of this Section. However, every employee presently working a Monday through Friday work week (and if such employee leaves his job for any reason whatsoever, the person who fills his position) shall receive premium pay at time and one half times ($1\frac{1}{2} \times$) the regular straight time hourly rate for any work performed by him on a Saturday or Sunday. The Employer shall post a change of schedule at least ten (10) days in advance of the effective date thereof.

8. Any employee called into work by the Employer for any time not consecutive with his regular schedule shall be paid for at least four (4) hours of overtime.

9. The Employer may require, subject to existing law and without cost to the employee, that an employee's check be deposited electronically at the employee's designated bank or Employees may be paid by paycheck card. The Union shall be notified by the Employer of this arrangement.

10. The Union agrees to cooperate with the employer in transitioning all bargaining unit employees to a bi-weekly payroll cycle. The

Employer will make its best efforts to minimize withholding tax consequences to employees in accordance with applicable law.

11. Pay stubs and other compensation documents required to be distributed to employees that only are available on-line shall be in a format that can be downloaded, printed and shall be made available to the employees at the work site.

12. The RAB will encourage its members who are signatories to the Engineer Agreement to adopt a qualified transportation fringe benefit program (e.g. transit check) pursuant to which employees may pay certain qualified transportation costs on a pre-tax basis, to the extent permitted by law. In order to encourage the adoption of such programs, the RAB will issue an appropriate bulletin and/or arrange seminars for signatories to this agreement.

ARTICLE III

Right of Management

1. The Union recognizes the right of management to direct and control the policies of management subject to the obligations of this agreement.

2. It is agreed that the employees will cooperate with management within the obligations of this agreement to facilitate the efficient operation of the building.

3. If, through the grievance procedure or by decision of the Arbitrator, it shall be found that an

employee has been unjustly discharged, such employee shall be reinstated to his former position without loss of seniority or rank and shall suffer no reduction in salary, and in such event the Grievance Committee or the Arbitrator shall be empowered to determine whether, and to what extent, the employee shall be compensated by the Employer for time lost.

4. It is agreed that in the case of substantial or unreasonable reduction of force, the Union may invoke the grievance procedure on a claim that such reduction has created an unreasonable hardship on the remaining employees. In the event of failure of the Grievance Committee to resolve the issue, it may be submitted to arbitration.

5. The Employer shall not impose discipline on employees for events occurring more than thirty (30) days prior to the imposition of discipline unless the Grievance Committee or the Arbitrator find that the Employer did not and could not reasonably have known of the existence of said occurrence within thirty (30) days. This provision shall not be construed to preclude an Arbitrator from receiving evidence of past discipline at any proceeding under this agreement.

6. All written disciplinary warnings for absenteeism, tardiness or any other attendance issue shall be null and void two (2) years after the date on which they were issued, provided that the employee has not received any other discipline during that two (2) year period.

7. The Union will continue to cooperate with the employer on issues involving security and qualifications of employees. Any disputes under this provision shall be subject to grievance and arbitration.

8. The Union recognizes that many Employers covered by this Agreement provide a service of critical importance to a customer or customers. If a customer demands that an Employer remove an employee from further employment at a location, the Employer shall have the right to comply with such demand. However, unless the Employer has cause to discharge the employee, the Employer will place the employee in a job at another facility covered by Article 1, Sec. 1 of this Agreement without loss of seniority or reduction in pay or benefits, or terminate the employee and pay termination pay, in the amount of three months wages and benefit fund contributions, provided that the employee executes a general release in a form satisfactory to the Employer. Actions taken under this provision are subject to the grievance and arbitration procedure (Articles V and VI). The Union has the right to subpoena the customer to testify at the arbitration, and unless extraordinary circumstances are present, it is expected that the customer will appear at the hearing. The Arbitrator may order the employee to be reinstated to the building.

ARTICLE IV

No Strikes or Lockouts

1. During the term of this agreement, there shall be no stoppage of work, strike, lock out or picketing in respect to any signatory building, except as provided in Section 2 of this Article. In the event of a violation of this provision by any of the parties to this Agreement, such matter shall be submitted immediately to an Arbitrator for such actions as the Arbitrator deems necessary.

2. (a) If an award against the Employer by the Arbitrator for Welfare, Annuity, Sick Pay, Training or Pension Fund payment is not complied with within two (2) weeks after such award is sent by registered or certified mail to the Employer at his last known address, the Union may order a stoppage of work, strike or picketing in the building involved to enforce such award, and it may also thereby compel payment of lost wages to any employee engaged in such work stoppage or strike. Upon compliance with the Arbitrator's award and payment of lost wages, the stoppage of work or strike shall cease.

(b) The Union shall not be held liable for any violation of this Article where it appears that it has taken all reasonable steps to avoid and end any violation.

ARTICLE V

Grievance Procedure

1. Any grievance or dispute arising out of the interpretation, performance or applicability of any term or provision of this agreement shall be submitted to a Grievance Committee, in writing by the party complaining within thirty (30) days of occurrence unless the Committee or the Arbitrator finds that the complainant did not and could not reasonably have known of the existence of said occurrence within thirty (30) days.

2. The Grievance Committee shall consist of one (1) representative chosen by the Union and one (1) representative chosen by the Employer, it being agreed that no issue shall be submitted to arbitration, except as provided in Section 3 of this Article, Article II (3) or Article IV, until it has been processed by the Grievance Committee and that said Committee has failed to reach an adjustment.

3. (a) If the Committee fails to schedule a hearing of the issue within five (5) days after receipt of notice of the grievance the matter shall be immediately submitted to arbitration unless the parties otherwise agree. There shall be no unreasonable delay in the hearing of a grievance.

(b) In the event the grievance procedure is not completed within fourteen (14) calendar days after notice of the Union's request for grievance in discharge cases, the matter may be referred by either party to arbitration.

ARTICLE VI

Arbitration

1. In the event of failure of the Grievance Committee to determine an issue arising between the parties as to the interpretation, performance or applicability of any term or provision of this agreement, such issue shall be submitted to an Arbitrator.

2. (a) The parties agree to a panel of Arbitrators consisting of:

Robert Herzog, Howard Edelman,
Roger Maher, Randi Lowitt and
Ray Fleishman.

Arbitrators shall be appointed in rotation.

(b) Either of said arbitrators may be terminated by either party upon thirty (30) days notice to the other party. If all of the Arbitrators are so terminated and the parties are unable to agree upon substitute Arbitrators, pending matters shall be submitted to the New York State Employment Relations Board.

3. The Procedure herein outlined with respect to matters over which the Arbitrators have jurisdiction shall be the sole and exclusive method for the determination of all such issues, and the Arbitrator shall have the power to award appropriate remedies, the award of the Arbitrator being final and binding upon the parties, and the employee or employees involved; providing, however that nothing herein shall be construed to

forbid either party from resorting to court for relief from, or to enforce rights under, any arbitration award. In any proceeding to confirm the award of the Arbitrator, service may be made by registered or certified mail, within or without the State of New York, as the case may be.

4. Should either party fail to abide with 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 take such suit it shall be entitled, if it succeeds, to receive from the other party all expenses for counsel fees and court costs.

ARTICLE VII

Building Acquisition by Public Authority

Where a building is acquired by a public authority of any nature through condemnation, purchase or otherwise, the last owner shall guarantee the payment of accrued vacations due to the employees up to the date of transfer of title and termination pay to the same date. Termination Pay, in this provision, shall include wages and fringe benefits. It is understood that the Union will, however, seek to have such public authority assume the obligations for the payment of such accrued vacation and/or termination pay. If unsuccessful, and the last owner becomes liable for such payments, the amounts thereof shall be

liens upon any condemnation award or on any amount received by such last owner.

ARTICLE VIII

Saving Clause

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

Both parties agree to construe any provisions held to be contrary to law as closely to its bargained for purpose permissible by law and to agree on a revised draft of such provisions that as close as legally possible mirrors and/or achieves the purpose of such an invalidated or unenforceable provision. All disputes under the savings clause, including proposals for and the content of any substitute provision, are subject to grievance and arbitration (Articles V and VI).

ARTICLE IX

Complete Agreement

Except as the parties may otherwise mutually agree, and except as set forth below, it is agreed that during the lifetime of this agreement there shall be no demands for collective bargaining negotiations, as to any matter or issue not covered by the provisions of this agreement, or for the renegotiation of any of the provisions of this agreement.

ARTICLE X

Term of Agreement

1. This agreement shall continue in full force and effect up to and including December 31, 2014. The parties shall enter into direct negotiations looking toward a renewal agreement at least sixty (60) days before the expiration date.

2. If fifteen (15) days before the expiration of this agreement the parties shall not have been able to agree upon the terms of their new agreement, both parties will thereupon confer with the New York State Employment Relations Board for the purpose of conciliating their differences.

ARTICLE XI

Employer Fund Contributions

1. **Health and Benefits:** (a) Effective January 1, 2011, the Employer shall contribute six dollars and ninety cents (\$6.90) for each hour paid to an employee (except for sickness contributions and benefits) covered by this agreement to the Local 94-94A-94B Health and Benefit Fund for coverage of the employee and his/her dependent family with welfare benefits provided through said Fund.

(b) Effective January 1, 2012, the Employer shall contribute seven dollars and twenty cents (\$7.20) per hour for each hour paid to an employee (except for sickness contributions and benefits) covered by this agreement to the

Local 94-94A-94B Health and Benefit Fund for coverage of the employee and his/her dependent family with welfare benefits provided through said Fund.

(c) Effective January 1, 2013, the Employer shall contribute seven dollars and fifty cents (\$7.50) per hour for each hour paid to an employee (except for sickness contributions and benefits) covered by this agreement to the Local 94-94A-94B Health and Benefit Fund for coverage of the employee and his/her dependent family with welfare benefits provided through said Fund.

(d) Effective January 1, 2014, the Employer shall contribute seven dollars and eighty cents (\$7.80) per hour for each hour paid to an employee (except for sickness contributions and benefits) covered by this agreement to the Local 94-94A-94B Health and Benefit Fund for coverage of the employee and his/her dependent family with welfare benefits provided through said Fund.

(e) In addition, the parties shall recommend to the Trustees of the Local 94 Health and Benefit Funds that modifications be made to improve administration and the general financial condition of the Fund including, but not limited to:

- i. Mandatory use of generic drugs
- ii. Creation of a Dental PPO to replace the current Dental Indemnity Plan

- iii. Creation of a disease management program (including, but not limited to, diabetes)
- iv. Other cost saving measures

(f) If, as of January 1, 2012 or thereafter, the Trustees of the Health Fund find the payment provided herein insufficient to maintain the benefits then in existence based on the contribution rate, they may, provided benefits added during the term of the agreement, if any, were actuarially sound, in such emergency situations before the termination of this Agreement, adjust benefits to a level sustainable by the current negotiated contribution rate and/or require that additional monies be transferred from wages in the maximum amount of twenty percent (20%) (but in no event more than five cents (\$0.05) per hour) of the needed amount, with the Employer making the additional contribution of a maximum of eighty percent (80%) (but in no event more than twenty cents (\$0.20) per hour) of the needed amount (which in total cannot exceed twenty-five cents (\$0.25) per hour with the Employer and employee contributions combined), in order to fund the Health Fund at a sufficient level. The Trustees shall notify the bargaining parties how much money is needed within these parameters.

(g) The parties agree that if the recently passed healthcare reform legislation or any future governmental 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) 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 Health Fund or otherwise relating to the Health Fund, the parties shall meet as soon as practicable thereafter to discuss what actions are appropriate to eliminate any adverse impact that such payments, excise or other tax, penalty (including assessable payments), fee or other amount has on the Health Fund, its participants and the contributing Employers.

2. **Pension:** (a) Effective January 1, 2011, the Employer shall contribute three dollars and fifteen cents (\$3.15) per hour for each hour paid to an employee (except for sickness contributions and benefits) covered by this agreement to the Central Pension Fund of the International Union of Operating Engineers and Participating Employers for retirement benefits for the employee.

(b) Effective January 1, 2012, the Employer shall contribute three dollars and twenty-five cents (\$3.25) per hour for each hour paid to an employee (except for sickness contributions and benefits) covered by this agreement to the Central Pension Fund of the International Union of Operating Engineers and Participating Employers for retirement benefits for the employee.

(c) Effective January 1, 2013, the Employer shall contribute three dollars and thirty-five cents (\$3.35) per hour for each hour paid to an employee (except for sickness contributions and benefit) covered by this agreement to the Central Pension Fund of the International Union of Operating Engineers and Participating Employers for retirement benefits for the employee.

(d) Effective January 1, 2014, the Employer shall contribute three dollars and forty-five cents (\$3.45) per hour for each hour paid to an employee (except for sickness contributions and benefit) covered by this agreement to the Central Pension Fund of the International Union of Operating Engineers and Participating Employers for retirement benefits for the employee.

(e) To the extent that during the term of this Agreement, any contributing Employer becomes subject to the automatic employer surcharge under Section 432 of the Internal Revenue Code of 1986, as amended (“Code”) or any excise tax, penalty, fee or other amount relating to the funding of the Pension Fund including without limitation those under Section 4971(g) of the Code (collectively “Surcharge/Penalty Amounts”), then the parties agree to meet as soon as practicable thereafter to discuss what actions are appropriate to eliminate any adverse impact that such Surcharge/Penalty Amounts may have on the contributing Employers.

3. The above provisions relating to Health and Benefit and Pension contributions will not apply in cases where the Employer presently provides benefits determined by the Trustees of the Welfare or Pension Funds to be at least equivalent of those provided by such Funds. The discretion of the Trustees as to such equivalency shall not be arbitrable under this agreement.

4. **Annuity** (a) Effective January 1, 2011, the Employer shall contribute three dollars and forty cents (\$3.40) per hour for each hour paid to an employee (except for sick pay contributions and benefits) covered by this agreement to the Local 94-94A-94B Annuity Fund.

(b) Effective January 1, 2012, the Employer shall contribute three dollars and fifty cents (\$3.50) per hour for each hour paid to an employee (except for sick pay contributions and benefits) covered by this agreement to the Local 94-94A-94B Annuity Fund.

(c) Effective January 1, 2013, the Employer shall contribute three dollars and sixty cents (\$3.60) per hour for each hour paid to an employee (except for sick pay contributions and benefits) covered by this agreement to the Local 94-94A-94B Annuity Fund.

(d) Effective January 1, 2014, the Employer shall contribute three dollars and seventy cents (\$3.70) per hour for each hour paid to an employee (except for sick pay contributions

and benefits) covered by this agreement to the Local 94-94A-94B Annuity Fund.

5. The Employer shall continue to contribute to the Health Benefit, Annuity, Sick Pay and Training funds during the illness or injury of a regular full time employee who has been employed within the bargaining unit covered by this or a predecessor agreement on the basis of one (1) month's contribution for each year of service within the industry with a minimum of four hundred (400) hours and a maximum of eight hundred (800) hours contribution.

6. In the case of an illness or injury of a regular full time employee who has been employed within the bargaining unit covered by this or a predecessor agreement, the Employer shall contribute to the Central Pension Fund sufficient funds to ensure that the total year-end contributions are at least equivalent to one thousand (1000) hours contribution for said year, provided such contributions are permitted by the Central Pension Fund and under applicable law.

7. **Sick Pay:** (a) For employees who are paid for one hundred (100) hours or more during any calendar month, and who have been employed with substantial continuity for one (1) year or more in any building signatory to this agreement (whether a member of the R.A.B. or not), the Employer shall, effective January 1, 2011, contribute one dollar and twenty-five cents (\$1.25) per hour for engineers and ninety one cents (\$.91)

per hour for helpers for each hour paid during such calendar month.

Effective January 1, 2012, the Employer shall contribute one dollar and twenty-eight cents (\$1.28) per hour for engineers and ninety-three cents (\$.93) per hour for helpers for each hour paid during the calendar month.

Effective January 1, 2013, the Employer shall contribute one dollar and thirty-three cents (\$1.33) per hour for engineers and ninety-six cents (\$.96) per hour for helpers for each hour paid during the calendar month.

Effective January 1, 2014, the Employer shall contribute one dollar and forty cents (\$1.40) per hour for engineers and one dollar and two cents (\$1.02) per hour for helpers for each hour paid during the calendar month.

For employees in pay scales other than scale helpers or scale engineers the contribution rate for sick pay shall be computed on the following basis:

$(\text{Hourly Rate} \times 8 \text{ hours} \div 173-.30) = \text{Hourly Sick Pay Contribution}$

No contribution shall be made for employees who do not receive pay for at least one hundred (100) hours during any calendar month.

(b) An employee who is absent from work by reason of illness shall be entitled to draw eight (8) hours pay for each full day of work

absent from the job due to illness up to the number of paid hours credited to his/her account. Benefits from such fund shall be payable to the employee in accordance with the rules and regulations of the Fund.

(c) Employees with unused sick pay credit at the end of each calendar year may carry said credit forward to the following year.

(d) Sick pay contributions and benefits shall not be considered hours paid for the purposes of fringe benefit contributions.

(e) If an employee changes his/her employment during a calendar month, the Employer on whose payroll he/she is carried on the last day of the month shall be responsible to pay the sick pay contribution for that month to which the employee is entitled. Hours worked for all employers during that month shall be counted toward the required one hundred (100) hours. The responsibility of a current Employer for sick pay shall continue regardless of the number of times an employee with sufficient seniority changes jobs.

7. Training: (a) Effective January 1, 2011, the Employer shall contribute the amount of twenty-one cents (\$.21) per hour paid per employee (except for sick pay contributions and benefits) covered by this agreement to the Local 94-94A-94B Training Fund which shall be payable on the same schedule as Health Fund Contributions.

Effective January 1, 2013 the Employer will cease to contribute to the Local 94-94A-94B Training Fund.

(b) Employees newly hired in the industry shall be required to attend and participate in the Training Program. Such employees shall have a starting rate of pay of seventy percent (70%) of the then current Helper minimum rate. Such starting rate shall be increased by five percent (5%) for each six (6) months of employment, provided that such employee successfully continues in the Training Program, until such employee reaches the contract minimum rate.

(i.e.,) after six (6) months = seventy-five (75%) of helpers rate

after twelve (12) months = eighty percent (80%) of helpers rate

after eighteen (18) months = eight-five percent (85%) of helpers rate

after twenty four (24) months = ninety percent (90%) of helpers rate

after thirty (30) months = ninety-five (95%) of helpers rate

after thirty six (36) months = one hundred percent (100%) of helpers rate

The employee must present a certificate of satisfactory participation or completion of the Training Program in order to be eligible for each step increase.

An employee hired after January 1, 2011, shall attain a New York City certificate of qualification for refrigerating system operator within two years of completing the training program, and shall be available for any engineer position at any location and for any available shift with his Employer. Upon earning such certificate, the Employer will consider the employee for an engineer's position. In the event that no such position is available or provided, then the employee shall be paid a one-time payment of \$250 upon presentation of his/her certificate to the Employer.

(c) Any employee who leaves or is terminated from the Training Program shall be terminated by the Employer. Such employees shall not have recourse to the Grievance and Arbitration provisions of the contract with respect to such termination.

(d) The parties hereto and the Training Program shall establish criteria for admission to the program and criteria for advanced standing in the program. If employees are granted advanced standing, their wage rate shall reflect such advanced standing.

(e) The duration of the Training Program shall be set by the Trustees of the Training Fund, but shall not be less than thirty-six (36) months.

(f) There shall be an established procedure for a pre-employment physical examination

program for all newly hired employees. Such examination shall include but not be limited to urine and blood tests. The test results must be submitted to the Training Fund for evaluation as to the eligibility of an employee to participate in the Training Program. The RAB and the Union shall determine the methodology for such pre-employment physicals.

(g) Employees who are hired as summer helpers between the periods of April 15 through October 15 shall be paid seventy percent (70%) of the regular helper rate and shall not be entitled to any benefit fund contributions. If such summer helpers are continued beyond October 15 as regular employees, they shall receive benefit fund contributions as of October 15 and time credit toward the thirty-six (36) month start rate in paragraph (b), above, from the date of employment as a summer helper for that year.

8. Contributions to the Health and Benefit, Pension, Annuity, Training and Sick Pay Funds shall be made on a monthly basis and shall be paid by the end of the succeeding month. The Employer agrees to use the lawful forms supplied by the Fund.

9. If the Employer fails to make the required payments to any of the Funds, as set forth above, or fails to file required reports, 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 payments and reports, and in any such action or proceeding shall be entitled to receive interest at the rate of one and one-half percent (1.5%) per month and liquidated damages at the rate of one percent (1%) per month (total of two and one half percent (2.5%) per month) on unpaid contributions, except that interest only shall be charged for defaults of less than thirty (30) days, including any and all expenses of collection, such as counsel fees, arbitrator's costs, arbitration fees and court costs.

ARTICLE XII

General Clauses

1. **Disability Benefits Law:** (a) The Employer agrees to cover the employees under the New York State Disability Benefits Law on a non-contributory basis, whether or not such coverage is required by law.

(b) The Employer will cooperate with employees in the processing of their claims and any violation by the Employer, including but not limited to the posting of notices or furnishing of forms, shall be subject to grievance and arbitration.

2. **Unemployment Insurance Law:** The employer agrees to cover the Employees under the New York State Unemployment Insurance Law, whether or not such coverage is required by law.

3. Vacations: (a) Every employee employed with substantial continuity in any building signatory shall receive each year a vacation with pay as follows (where an Employer transfers an employee from another building and the employee agrees to such transfer, length of service for the purpose of vacation entitlement shall be measured as length of service with the Employer):

Employees who have worked for:

Six (6) months	three (3) days
One (1) year	ten (10) days
Five (5) years	fifteen (15) days
Fifteen (15) years	twenty (20) days
Twenty-one (21) years	twenty-one (21) days
Twenty-two (22) years	twenty-two (22) days
Twenty-three (23) years . . .	twenty-three (23) days
Twenty -four (24) years . . .	twenty-four (24) days
Twenty-five (25) years	twenty-five (25) days

(b) Length of employment for the purpose of the foregoing schedule shall be computed on the basis of the amount of vacation that an employee would be entitled to on September 15 of the year in which the vacation is given. Only actual working days shall count as part of the allowed vacation and regular days off and holidays falling during the employee's vacation period, the employee shall receive an additional day's pay therefore or, at the option of the Employer, an extra day off within ten (10) days immediately preceding or succeeding the employees' vacation period.

(c) Vacation wages shall be paid at the rate of pay in effect when the vacation is given and paid prior to the vacation period unless otherwise requested by the employee.

(d) Employees are entitled to actual vacations and no employee shall be required to accept money in lieu of his vacation.

(e) The vacation period shall be May 1, through April 30 each year.

(f) Employees shall be entitled to take vacation at any time during the year provided such vacation time is compatible with the proper operation of the building and no more than two (2) weeks may be taken between April 15 and October 15.

If an employee is to be denied a vacation during the April 15 and October 15 period because of lack of compatibility with the operation of the building, the Employer shall inform the employee and the Union no later than April 15 or two (2) weeks after the vacation request. Such denial shall be subject to grievance and arbitration.

(g) Choice of vacation periods shall be according to building seniority in the job classification.

(h) Any employee leaving his/her job for any reason shall be entitled to a vacation accrual allowance computed on his/her length of service as provided in the vacation schedule set

forth above based on the elapsed period from the previous September 16th (or from the date of employment if later employed) to the date of his/her leaving; provided, however, that any employee who has received a vacation during the previous year and who leaves his/her job after April 15th under circumstances which entitle him/her to vacation accrual rights, shall be entitled to full vacation accrual allowances instead of on the basis of the elapsed period from the previous September 16th.

Any employee who is employed more than six (6) months but less than one (1) year as of the date of termination shall receive three (3) days vacation pay, unless already taken.

(i) No employee who leaves his/her position of his/her own accord shall be entitled to his/her accrued vacation credit unless he/she gives two (2) week's termination notice to the Employer, in writing.

(j) The Employer will pay any accumulated unpaid vacation to the designated beneficiary or the estate of a deceased employee.

4. Transferring Employees: (a) An employee who has been employed with substantial continuity for one (1) year or more in any building signatory to this agreement (whether a member of the R.A.B. or not) will receive credit for one (1) year's service for the purpose of computing vacation pay eligibility in the event that

such employee changes his/her employment to a different building.

(b) An employee who has been employed with substantial continuity for five (5) years or more in any building signatory to this agreement (whether a member of the R.A.B. or not) will receive credit for five (5) years' service for the purpose of computing vacation pay eligibility in the event that such employee changes his/her employment to a different building, and shall be treated as having five (5) years service at the building for the purpose of determining future vacation entitlements. Provided, however that if an employee changes his/her job on or after April 15th, of any calendar year, with proper termination notice, the original Employer shall be responsible for the payment of a full year's vacation.

(c) An employee who has been employed with substantial continuity for one (1) year or more in any building signatory to this agreement (whether a member of the R.A.B or not) who changes employment to a different building, will receive credit for one (1) year's service for the purpose of determining eligibility for a medical check-up leave.

(d) For the purposes of this Article, "substantial continuity" shall mean less than one (1) month's break in continued service for each two (2) years of continued membership in the Union. This rule will be waived in the event of a

break in service caused by illness covered by Disability Benefits, accident covered under Workers Compensation Insurance, or provided the employee is receiving Unemployment Compensation.

5. Leave of Absence: (a) Once during the term of this agreement upon written application to the Employer and the Union, a regular full-time employee who has been employed in the building for five (5) years or more shall be granted a leave of absence not to exceed six (6) months, subject to an extension for a period not to exceed six (6) months, in case of bona fide illness or injury, whether or not covered by the New York State Workers Compensation Law. When such employee is physically and mentally able to resume work, he/she shall on one (1) week's prior written notice to the Employer, be then employed, with no loss of seniority.

(b) Once every five (5) years, upon six (6) weeks' written application to the Employer, a regular full-time employee who has been employed in the building for five (5) years or more shall be granted a leave of absence for personal reasons not to exceed two (2) months. Upon the employee's return to work, he/she shall be reemployed with no loss of seniority. Personal leave of absence shall not be used for the purpose of seeking or engaging in other employment and any employee so doing will be subject to termination.

(c) Any leave taken pursuant to any government regulation shall be deemed to be a leave under this Section, except in cases of demonstrable undue hardship.

6. **Holidays:** (a) The following is the schedule of holidays:

2011:

New Year's Day
(observed)
(Dec. 31, 2010)

Labor Day
(Sept. 5)

Memorial Day
(May 30)

Thanksgiving Day
(Nov. 24)

Independence Day
(July 4)

Christmas Day
(Dec. 26)

2012:

New Year's Day
(Jan. 2)

Labor Day
(Sep. 3)

Memorial Day
(May 28)

Thanksgiving Day
(Nov. 22)

Independence Day
(July 4)

Christmas Day
(Dec.25)

2013:

New Year's Day
(Jan. 1)

Labor Day
(Sept. 2)

Memorial Day
(May 27)

Thanksgiving Day
(Nov. 28)

Independence Day
(July 4)

Christmas Day
(Dec. 25)

2014:

New Year's Day
(Jan. 1)

Labor Day
(Sept. 1)

Memorial Day
(May 26)

Thanksgiving Day
(Nov. 27)

Independence Day
(July 4)

Christmas Day
(Dec. 25)

In addition, there shall be six (6) floating holidays per year. Said holiday may be taken by an employee upon ten (10) days' notice to the Employer provided that no more than one (1) employee per building takes off on a particular day as the floating holiday. In buildings employing more than twelve (12) members of Local 94-94A-94B, more than one (1) employee may take a floating holiday on a particular day provided that employee selections do not result in a reduction of Local 94-94A-94B employees below seventy-five percent (75%) of the normal work staff, by classification.

(b) Employees shall receive idle pay at their regular straight-time hourly rates for the normal eight (8) hour working day not worked. Any employee who is required to work on a holiday shall receive in addition to the idle pay above mentioned, premium pay at the rate of time and

one half ($1\frac{1}{2}$ x) his/her regular straight time hourly rate of pay for each hour worked, with a minimum of four (4) hours' premium pay. Any employee who is required to work on a holiday beyond eight (8) hours shall continue to receive the compensation above provided for holiday pay, namely idle pay at his/her regular straight-time hourly rate plus premium pay at time and one half ($1\frac{1}{2}$ x) the employees regular straight-time rate.

(c) Any regular full-time employee who shall be ill during the period in which a contract holiday falls shall be entitled to holiday pay or corresponding time off if the employee worked at least one (1) regular scheduled day during the employee's five (5) working days immediately preceding or succeeding the holiday.

(d) Any regular full-time employee whose regular day off, or one of whose regular days off falls on a holiday, shall receive an additional days' pay there-for, or at the option of the Employer, shall receive an extra work day off within ten (10) days immediately preceding or succeeding the holiday. If the employee receives an extra day off before the holiday and his/her employment is terminated for any reason whatever, he/she shall not be required to compensate the Employer for that day.

(e) Employees newly hired in the industry, during their first year of employment, shall

receive floating holidays based on an accrual of one (1) holiday for each three (3) months of employment and three (3) holidays in the last quarter of the calendar year.

(f) Employees with substantial continuity in the industry who change Employers will be paid for all accrued, unused floating holidays by their terminating Employer, based on the schedule in the preceding paragraph.

(g) The Employer on whose payroll an employee is on the last day of the calendar quarter shall be responsible for the payment of the accrued, unused floating holiday for such quarter.

(h) It is the intention of the parties that employees with substantial continuity in the industry shall receive six (6) floating holidays, but no more than six (6) floating holidays in each calendar year.

(i) Employees who have not used their floating holidays by the end of the calendar year shall be paid one (1) days' pay for each unused day at the rate in effect for the year in which the holiday was earned.

(j) Payment for unused floating holidays shall be made as soon as possible after December 31.

7. Election Day: Employees who are eligible to vote shall be permitted two (2) hours off to vote on Election Day if they are unable to vote

during non-working hours. Employees shall give legal notice of such intention and such hours are to be designated by the Employer, while the polls are open.

8. Family Death: A regular full-time employee with at least one (1) year of employment in the industry shall be granted bereavement leave following the death of his/her parent, brother, sister, spouse, child, father-in-law or mother-in-law, or grandparent and shall be paid his/her 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. Such leave shall be either the day of the funeral and the two (2) days immediately preceding the funeral, or the day of the funeral and the two (2) days immediately following the funeral, at the option of the employee.

9. Medical Check-Up: Every regular full-time employee employed in the industry for at least one (1) year shall be entitled, upon one (1) week's notice to the Employer, to take one (1) day off in each calendar year at straight time pay to visit a diagnostic clinic operated by the Welfare Fund under which the employee is covered or, if none, to visit such other clinic or physician of the employees' choice for reason of medical check-up. To receive payment for such day, the employee shall exhibit a signed statement from the clinic or physician. If the examining physician requires a follow-up visit, in writing, the employ-

ee shall be entitled to an additional day off at straight time rates.

10. **Reducing Force:** In reducing force, Employers are required, in addition to their accrued vacation credits and termination pay, if any, to give employees who have been employed for one (1) year at least two (2) weeks notice of lay-off or discharge, or in lieu thereof, an additional two (2) weeks pay. In addition, except for normal or routine reduction, the Union and the RAB shall be given at least one (1) week's advance written notice.

11. **Jury Duty:** An employee performing jury duty shall receive his/her full pay less jury duty compensation, not more than once in any two (2) year period.

12. **Termination Pay:** (a) In case of termination of employment because of the employee's physical or mental inability to perform his/her duties or from reduction of force, the employee shall receive, in addition to accrued vacation credits, termination pay according to the employee's years of service in the building on the following basis:

Employees with

Five (5) and less than

ten (10) years one (1) weeks' pay

Ten (10) and less than

twelve (12) years two (2) weeks' pay

Twelve (12) and less than
fifteen (15) years three (3) weeks' pay

Fifteen (15) and less than
seventeen (17) years six (6) weeks' pay

Seventeen (17) and less than
twenty (20) years seven (7) weeks' pay

Twenty (20) and less than
twenty five (25) years .. eight (8) weeks' pay

Twenty-five (25) years
or more ten (10) weeks' pay

(b) An employee who is physically or mentally unable to perform his/her duties may resign and receive the above termination pay provided the employee submits satisfactory evidence of such inability. In the event the Employer does not deem the evidence satisfactory, such question may be submitted to grievance and arbitration.

(c) The right to accept termination pay and resign where there has been a reduction in force shall be determined by seniority, i.e. in the event of a reduction of force, notice is to be posted in the engine room prior to the effective date. If no senior employee wishes to exercise his/her rights under this provision, the least senior employee or employees shall be terminated.

13. Change of Employer: In the event of a change of Employers in a building the RAB shall use its best efforts to have the succeeding

Employer join the RAB and become bound to the terms of this agreement.

The Employer shall, if possible, give the Union at least twenty (20) days advance notice of any change of Employer in the building.

In the event an Employer terminates an employee or employees as a direct result of the sale or transfer of a building and has not required the purchaser or transferee to hire the existing employees and continue the wages, terms and conditions in effect at the time of said sale or transfer, the terminated employee(s) shall receive from such terminating Employer severance pay in the amount of three (3) month's pay, along with Annuity Fund and Pension Fund contributions, in addition to any other accrued payments due under this Agreement. The terminating Employer shall also cover terminated employees under the Health Fund for up to three (3) months at forty (40) hours per week or until such employee obtains coverage from a new job, whichever is less. If the existing or new Employer places the displaced employee in a comparable position with the same or new Employer, Managing Agent or employing entity the foregoing obligations shall not apply.

14. Pyramiding: In no event shall there be any pyramiding of overtime pay, holiday pay or any other premium pay. Where more than one of the aforesaid overtime, holiday or other premium

pay are applicable, then compensation shall be computed on the basis giving the greater amount.

15. Trial Period: All newly hired employees in the industry shall have a sixty (60) day trial period.

16. Seniority: (a) The Employer agrees in principle that senior employees may pick their shifts provided it is practical or possible without impairing the efficiency of the work or the operation of the building.

(b) Choice of vacations shall be granted on the basis of seniority.

(c) For the purpose of lay-offs, decrease of the working force and recall to work of employees who have been laid off, consideration shall be given to the employee's length of service in the particular classification of work and to the employee's ability to perform the work involved. Where factors other than length of service are relatively equal, an employee with the greatest length of service shall be given preference.

17. Sanitary Arrangements: Adequate sanitary arrangements for employee shall be maintained in every building, and an individual locker and key thereto and rest room key, where rest room is provided, shall be furnished by the Employer for the use of every employee. Soap, towels and washing facilities shall be supplied by the Employer for all employees.

18. **Uniforms and Other Apparel:** Uniforms and/or overalls, where necessary for the job, shall be supplied and maintained by the Employer. In addition the Employer will pay to the employees within ten (10) days of receipt of proof of purchase of safety shoes that meet the American National Standards Institute Code Z-41, up to one hundred dollars (\$100.00) per year for such shoes. The Employer may require the employee to wear said work shoes after payment.

19. **First Aid Kit:** An adequate and complete first aid kit shall be supplied and maintained by the Employer in a place readily available to all Employees.

20. **Bulletin Board:** A bulletin board shall be furnished by the Employer for Union announcements and notices of meetings.

21. **Emergency Calls:** (a) When on emergency call, employees shall be reimbursed for all loss of personal effects on such call.

(b) Loss of personal effects on such call shall include losses while traveling to and from such emergency call in excess of insured losses.

22. **Union Insignia:** Employees may wear the Union insignia while on duty.

23. **Fire Safety Plan:** (a) Employees who serve as fire safety directors shall be paid the sum of fifteen dollars (\$15.00) per week in addition to

their normal wage for performing such duties and holding a certificate of qualification from the New York City Fire Department. If any employee currently performs such duty and receives a differential of more than fifteen dollars (\$15.00) per week, said employee shall continue to receive the higher amount. Employees who serve as fire safety directors shall do so on a voluntary basis and not as a condition of employment. The Union and the Employer shall cooperate in attempting to achieve the needs of the job site.

(b) Separate and independent from the provisions of subsection (a) above, in the sole and complete discretion of an Employer, for example if and when the law (including, without limitation the New York City Fire Code, or other applicable regulation) requires a New York City certificate of qualification for refrigerating system operator to be assigned as a Fire Safety/Emergency Action Safety Plan Director (“FSD/EAP”), the separate full time position of FSD/EAP shall be created under this Agreement, and shall be so recognized by the RAB and its member Employers. If an Employer chooses to fill the FSD/EAP position, the wages and benefits for FSD/EAP shall be set by the Employer, the RAB and the Union specific to the site and job. This new position is separate and apart from the engineering operations of the building. No Employer can require an employee to accept the FSD/EAP position, and the employee must do so on a voluntary basis, at

the time of hire to that position. In the event that this becomes a Local 94 position, the contract expiration date for this position shall be ninety (90) days after the expiration of this agreement.

24. Employment and Discrimination: (a) No employee shall be employed through fee charging agencies except where the Employer shall pay the full amount of the fee.

(b) 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, 42 U.S.C. § 1981, the Family and Medical Leave Act, the New York State Human Rights Law, the New York City Human Rights Code, or any other similar laws, rules or regulations. All claims alleging illegal discrimination under any of the above authorities shall be subject to the Agreement's grievance and arbitration procedure as the final, binding, sole and exclusive remedy for such violations, and employees covered by this Agreement shall not file suit or seek relief in any other forum. This provision shall apply to allegations arising out of events occurring before and/or after the effective date of this Agreement. Arbitrators shall apply applicable law as it would

be applied by the appropriate court in rendering decisions on discrimination claims.

25. Tools: All tools, uniforms or other apparel necessary for the job shall be furnished by the Employer.

Employees shall be responsible for the loss of any hand tools issued to them by the Employer, provided that the Employer provides a secured locker facility for the storage of such tools between use.

26. Hazardous Work: (a) Where a claim is made that work is hazardous, determination of the question shall be left to the Chief Engineer or Management Representative and Shop Steward of the building and, in the event they fail to agree, the matter shall be determined through the grievance and arbitration procedures. The Union and the RAB shall appoint an equal number of representatives, between six (6) and ten (10) in total, to a Labor Management Committee, which shall be known as the "Industrial Safety Committee."

(b) In accordance with the requirement of the Occupational Safety and Health Act of 1970, it shall be the exclusive responsibility of the Employer to insure the safety of its employees and compliance by them with any safety rules contained herein or established by the Employer. Nothing in this agreement will make the Union liable to any employees or to any other persons in the event that injury or accident occurs.

27. Legal Assistance: The Employer shall supply legal assistance where required to employees who are served with summons regarding building violations.

28. Family and Medical Leave Act: The parties agree to comply with the Family and Medical Leave Act to the extent required by law. Leaves under this Agreement and/or the Family and Medical Leave Act shall not pyramid.

29. Job Definitions: (a) Chief Engineer: To direct the operation of employees in the bargaining unit in the performance of their duties. This does not preclude the Chief Engineer from standing watch and performing manual duties consistent with the work performed by the employees under his direction.

(b) Assistant Chief Engineer: To assist the Chief Engineer in the performance of his/her duties.

(c) Engineer: Operating, maintaining and repairing heating, ventilating and air conditioning equipment and other equipment incidental to the operation of the building as directed by management.

(d) Mechanic: By training and experience possesses a certain amount of mechanical technical skill that enables him/her to function independently of an engineer more than fifty percent (50%) of his/her time.

(e) Helpers: Assist the engineer and/or mechanic in the performance of their duties, and perform tasks appropriate to his/her skill level outside the presence of an engineer/mechanic as directed by management and/or engineers/mechanics. The parties recognize that management's hiring and use of helpers is essential to the industry's successful future. The position of helper is designed to be a step on the path to becoming an engineer. Hence, after January 1, 2011, it is the parties' intent that the helper classification will not be available to newly hired helpers on a "career" basis, except on the mutual consent of the Employer and Union. Helpers: Assist the engineer and/or mechanic in the performance of their duties.

(f) Fire Safety/Emergency Action Safety Plan Director ("FSD/EAP") performs the duties and responsibilities as required by the applicable sections of the New York City Fire Code and/or other applicable laws or regulations, and any other related duties and responsibilities as directed by an Employer in its sole and complete discretion. The Employer shall hold the employee harmless for any non-compliance, except in cases of that employee's recklessness or gross negligence.

(g) The above classifications are intended to describe the existing practices in the industry.

30. Substance Abuse Testing: The Employer is permitted to test applicants and/or employees for substance abuse, in accordance with applicable law, at the time of hire or at the time a new Employer takes over the ownership/management of a building/facility. No applicant and/or employee may refuse to submit to the above described medically accepted substance abuse testing. If an applicant and/or employee refuses such testing or if the test result shows substance abuse, the Employer may terminate such employee. If such termination is submitted to arbitration and the arbitrator determines that there was a refusal or that a test showed substance abuse, the arbitrator may not modify the discharge penalty.

31. Security Background Checks: All applicants and/or employees shall be subject to security background checks at the time of hire or at the time a new Employer takes over the ownership/management of a building/facility. An applicant and/or employee shall cooperate with an Employer as necessary for obtaining security background checks. Any applicant and/or employee who refuses to cooperate shall be subject to termination. Applicants and/or employees who fail such security background checks shall be subject to termination.

For the purpose of this provision, just cause to terminate an applicant and/or 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, or future, 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.

ARTICLE XIII

Assents

The Union and the RAB will cooperate in facilitating the collection of assents and the Central Pension Fund Participating Agreements.

In witness whereof, the parties have hereto set their hands and seals.

INTERNATIONAL UNION OF
OPERATING ENGINEERS
LOCAL 94-94A-94B, AFL-CIO

By: Kuba J. Brown
President and Business Manager
Dated: January 3, 2011

REALTY ADVISORY BOARD ON
LABOR RELATIONS, INC.

By: Howard Rothschild
President
Dated: January 3, 2011

