

K# 9438



AGREEMENT

Between

WALDORF-ASTORIA MANAGEMENT,
LLC, AS OPERATOR OF THE
ARIZONA BILTMORE

And

THE INTERNATIONAL UNION OF
OPERATING ENGINEERS LOCAL NO.
428,
AFL-CIO

Term: March 16, 2016 - March 16, 2019

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WALDORF-ASTORIA MANAGEMENT, LLC AS OPERATOR
OF THE ARIZONA BILTMORE

And

THE INTERNATIONAL UNION OF
OPERATING ENGINEERS LOCAL NO. 428,
AFL-CIO

AGREEMENT

This will confirm the agreement reached between the International Union of Operating Engineers, Local Union No. 428, AFL-CIO and Waldorf-Astoria Management, LLC as operator of the Arizona Biltmore, to continue the language of the Labor Agreement dated November 15, 2012 – November 15, 2015, except as provided in the parties' Memorandum of Settlement, and conclude negotiations. The Labor Agreement is as follows:

**ARTICLE I
RECOGNITION**

The Employer recognizes the Union as the sole and exclusive bargaining agency for all Maintenance Engineers and Apprentices employed in the plant covered by this Agreement.

**ARTICLE II
EMPLOYER-EMPLOYEE RELATIONS**

The Union pledges itself to promote the mutual interest of the Employer, and to continue the present amicable relations between the Employer and employees, and uphold the standards of the Employer, which includes a desire for a safe work place.

**ARTICLE III
NO STRIKE / NO LOCKOUT**

A. Under no circumstances will the Union or employees engage in, instigate, cause, permit, encourage or take part in any strike, unfair labor practice strike, sympathy strike, jurisdictional dispute, work stoppage, picket, curtailment of work, reduction of production, or interference of any kind with the operations of the Employer.

B. The Union or employees will not recognize any picket lines established by other crafts for any reason, including any type of grievance, jurisdictional dispute, contract expiration, substandard wages or recognition purposes.

C. If the Employer elects to pursue any remedies it may have as a result of a Breach by the Union of this Article in any court of competent jurisdiction, the court and not the arbitrator shall determine the breach, damages, and other appropriate relief, including attorneys fees.

D. The employer agrees that it will not engage in a lock-out.

ARTICLE IV GRIEVANCE / ARBITRATION

The provisions of this Article shall be the exclusive method to be followed by the Union and the employees in the adjustment or settlement of all grievances and disputes regarding the interpretation or application of this Agreement. The Employer cannot file grievances.

A. Time Limitations. Any grievance not brought to the attention of the Employer within fifteen (15) working days after it occurs shall be deemed abandoned and waived, this preventing an accumulation of grievances.

B. Processing of Grievances. Grievances shall be processed in the following manner:

STEP 1: The grievance shall first be taken up between the employee involved and his immediate supervisor. It is the intention of the Union and the Employer that every reasonable effort be made to settle grievances at this level.

STEP 2: If no satisfactory settlement is reached under STEP 1 within three (3) working days, then the grievance shall be reduced to writing by the Union or the employee on forms supplied by the Union and shall be investigated and discussed by the Business Representative of the Union and a designated representative of the Employer.

STEP 3: If no satisfactory settlement is reached under STEP 2 within three (3) working days, then the Union may submit such written grievance to a designated representative of the Employer for his final determination, and if not submitted to said person within such time, the grievance shall be deemed waived and abandoned. If the Union and the Employer's representatives fail to reach a settlement of such grievance within ten (10) days of the date it is submitted, or within such additional time period as they may jointly agree on in writing, then the Union may request in writing that the grievance be submitted to binding arbitration unless it involves a matter specifically withdrawn from arbitration by virtue of the provisions of this Agreement. Any request for arbitration must be made within thirty (30) days, of the occurrence, giving rise to the grievance or the grievance shall be deemed abandoned and waived.

- (a) Within ten (10) days after receipt of the request for arbitration, the Employer's representative and the Union's representative shall request a list of seven (7) Arizona arbitrators from the Federal Mediation and Conciliation Service and the parties shall select therefrom one (1) arbitrator by alternately deleting names from the list until a last name remains, the parties drawing lots to determine who shall be entitled to the first list deletion. The ten (10) day time limit period referred to above may be extended by mutual agreement of the parties in writing.
- (b) The arbitrator selected in accordance with the above procedure shall decide the dispute and his decision shall be final and binding on the Employer, the Union and the employee(s), provided the arbitrator shall only have authority to decide if the Employer violated the express terms of this Agreement and he shall have no authority to add to, subtract from, supplement or modify this Agreement in any way or to rule on any matter except while this Agreement is in full force and effect between the parties. The arbitrator shall have no power to establish wage rates on new or changed jobs or any existing job or to change any wage rate. He shall have no power to substitute his discretion in cases where the Employer has retained discretion or has been given discretion by this Agreement. In the event a case is appealed to an arbitrator and he finds that he has no power to rule on such case, the matters shall be referred back to the parties without decision or recommendation on the merits of the case.
- (c) The company, in no event, shall be required to pay back wages for more than fifteen (15) days prior to the date a written grievance is filed.
- (d) The arbitrator shall not be empowered and shall have no jurisdiction to base his award on any alleged custom, practice or understanding which occurred prior to the effective date of this Agreement. The arbitrator must base his award on the contract.
- (e) The arbitrator shall not be empowered to hear more than one (1) grievance at any time unless it involves identical facts or unless the parties have otherwise agreed in writing prior to the proceeding.
- (f) The arbitrator's decision or award shall be based solely on the evidence presented to the arbitrator by the respective parties or their counsel in the presence of each other, and the arguments presented in the written briefs of the parties. The arbitrator's decision shall be final and binding upon employer, the union and employees.
- (g) The fees and expenses of the arbitrator shall be borne equally by the parties.

(h) The burden of proof in any case before the arbitrator shall be on the Union or the employee(s), except cases involving discipline or discharge not alleging statutory violations. If the issue is discipline or discharge without just cause, the burden is on the Employer.

(i) In cases involving discrimination, employment tort, violations of public policy or statutes, the employee shall use the arbitration policies herein or the company's ADR policy after exhaustion of the grievance procedure herein.

**ARTICLE V
CLASSIFICATION – RATES OF PAY – HOURS OF WORK**

A. The following hourly rate schedule will apply:

	<u>3/16/16</u>	<u>3/16/17</u>	<u>3/16/18</u>
	(\$0.50)	(\$0.40)	(\$0.40)
Lead Engineer	\$21.83	\$22.23	\$22.63
Operating Engineer	\$18.07	\$18.47	\$18.87
Maintenance II	\$16.19	\$16.59	\$16.99
Maintenance I	\$14.93	\$15.33	\$15.73

The Company rates are minimums, which permit the Company to pay individuals above those rates. The parties acknowledge that a number of incumbent bargaining unit employees are being paid more than the minimum hourly rates set forth here in Article V. Those employees shall not have their wage rates reduced for so long as they hold bargaining unit positions within the Company, and they will receive the annual wage increase indicated herein. It is agreed that the Union supports the company's ability to pay above the minimum classifications rates listed in Article V.A.

B. WORK WEEK: Each employee's work week shall consist of five (5) consecutive days with two (2) days off if work is available for that employee.

C. WORK DAY: Each employee's work-day shall consist of eight (8) continuous hours per day, exclusive of meals. The Employer may schedule four (4) ten (10) hour days, as a work week provided said days are consecutive.

D. OVERTIME: All hours worked in excess of forty (40) hours in any work week shall be paid for at the overtime rate of pay. There shall be no pyramiding of overtime pay.

E. OVERTIME PAY: It is understood and agreed that overtime is to be avoided whenever possible. Pay for overtime shall be figured on the basis of time and one-half (1 ½).

F. RECALL PAY: In the event an employee is called back for work from home outside of his regular shift, he shall be paid a minimum of three (3) hours at the applicable rate. The employee may be required to work the three (3) hours.

G. WORK SCHEDULE: Seventy-two (72) hours notice shall be given in the event of a change of shift or schedule unless an emergency exists.

H. SHIFT DIFFERENTIAL: Employees working the third (3rd) shift shall receive a premium of fifty cents (\$0.50) for each hour worked.

ARTICLE VI PROBATIONARY PERIOD

Employees shall be on probation during the first ninety (90) days of their employment and may be subject to discharge during this period without recourse or resort to the grievance procedure. Said probationary period may be extended by mutual agreement of the Union and the Employer in writing.

ARTICLE VII SENIORITY

A. Seniority shall be applicable as a factor, along with skill, ability, qualifications, work record, experience and physical fitness only in layoffs, recalls, shift and vacation preference. The Employer retains sole discretion to determine skill, ability, qualifications, work record, experience and physical fitness. When layoffs are required, temporary employees shall be laid off first, next probationary employees and next other employees in accordance with their seniority, skill, ability, qualifications, work record, experience and physical fitness.

B. If a senior employee is laid off and declines a recall, such failure to take such offered work shall result in loss of seniority and termination.

C. Notices of recall shall be sent by certified or registered mail, or telegram to the employee's last known address as shown on the Employer's records. The recall notice shall state the time and date on which the employee is to report back to work. The recalled employees shall be given seven (7) calendar days' notice to report to work. For periods not exceeding six (6) weeks in any calendar year, the percentages involving not more than thirty (30) percent of the employees in the unit on a yearly average, the Employer, without regard to seniority, may recall any employees, which in its discretion, are necessary to prepare for resumption of full production.

D. Employees shall lose their seniority and it will otherwise be terminated for the following reasons:

- (1) If the employee quits;
- (2) If the employee is discharged and the discharge is not reversed through the grievance procedures;
- (3) If the employee fails to return to work within seven (7) days after the issuance of the Employer's notice of recall by registered or certified mail or telegram to the last known address of such employee as shown in the Company records;
- (4) If the employee is absent from work for forty-eight (48) hours without advising the Employer and giving reasons satisfactory to the Employer for such absence;
- (5) If the employee overstays a leave of absence;
- (6) If the employee gives a false reason for a leave of absence or engages in other employment during such leave;
- (7) If a full settlement with the employee has been made for total disability;
- (8) If the employee is retired;
- (9) If the employee is laid off for a continuous period of six (6) months;
- (10) If the employee knowingly falsifies pertinent information on his application for employment.

D. Seniority shall date from the date the employee becomes a regular employee, which shall be in both the case of a newly hired employee and a rehired employee, when the employee completes the probationary period set forth in Article VI, above.

ARTICLE VIII MANAGEMENT RIGHTS

A. The Union recognizes and agrees that, except as specifically limited by the express provisions of the Agreement, the employer maintains sole and exclusive right to manage its business in such a manner, as the Employer shall determine to be in its best interest. The Employer's right to manage its business includes, but is not limited to, the

right to hire, promote, demote, transfer, assign overtime, assign and direct employees. The Employer may subcontract consistent with its prior conduct.

B. Any of the rights and powers the company had before entering into this Agreement are retained by the employer except as specifically abridged or modified by the express written Agreement with the Union as to the particular subjects.

C. Notwithstanding the limitations expressed in this Article, further negotiations may occur during the term of this Agreement with the consent of both parties in writing, and if such negotiations do occur and result in an agreement, such agreement shall be reduced to writing and shall be binding upon the parties hereto for any term agreed to by the parties.

D. No work, operation of any equipment or machinery or use of any equipment, machinery or tools is or may become the exclusive right or jurisdiction of any employee or classification of employees represented by the Union. Nothing herein shall interfere with the Employer's obligation to accommodate under the Americans with Disabilities Act (ADA).

E. In no event shall any subject matter specified herein be subject to the grievance and arbitration provision except as specifically set forth elsewhere in this Agreement. The Employer has the right to require employees to obey orders even though deemed by such employee or employees or the Union to be in violation of the contract or law unless and until it is established that such order or orders are in violation of the law or the contract according to the procedure provided herein.

ARTICLE IX PENSIONS

Effective March 16, 2016; the Employer agrees to pay into the Central Pension Fund of the International Union of Operating Engineers and Participating Employers, the sum of up to one dollar and ninety-five cents (\$1.95) per hour worked. Thereafter on March 16, 2017, the Employer agrees to increase this sum up to two dollars and ten cents (\$2.10) per hour worked; and on March 16, 2018, agrees to increase the sum up to two dollars and twenty-five cents (\$2.25).

ARTICLE X HEALTH AND WELFARE AND APPRENTICE PROGRAM SIDE LETTERS

A. The Employer will continue to make available the same health care plan(s) to bargaining unit employees as that made available to other hotel employees until such time as a change may be mutually agreed upon by and between both parties.

The parties agree that prior to each annual open enrollment period during the term of this agreement, the Union may submit to the Hotel for consideration an alternate Health Care plan. If the parties subsequently agree to modify the existing plans offered by the Hotel

prior to any open enrollment period, the terms of such participation will be memorialized as an attachment to the collective bargaining agreement.

B. The parties agree in their support for an apprentice program related to improving the skills and education of bargaining unit employees working in the Hotel industry and prior to each anniversary date of this contract, the Union may submit to the Hotel for consideration a proposal to enter into an apprenticeship partnership with the Union. If the parties subsequently agree to modify the existing Agreement, the terms of such agreement will be memorialized as an attachment to the collective bargaining agreement.

ARTICLE XI EQUAL OPPORTUNITY

The policy of the Company is to apply the provisions of the Agreement to all employees without regard to age, sex, race, color, religious creed, national origin, Veteran status or disability. In accordance with the policy noted above, any reference in this contract or other incorporated documents to the masculine gender is understood to also mean the feminine gender.

ARTICLE X11 GENERAL PROVISIONS

A. MEALS: All employees covered by this Agreement shall be furnished one (1) meal per each day worked.

B. ZIPPER CLAUSE: It is the intent of the parties that the provisions of this Agreement will supersede all prior agreements and understandings, oral or written, expressed or implied, between such parties and shall govern their entire relationship and shall be the sole source of any and all rights or claims which may be asserted in arbitration hereunder or otherwise. The Union for the life of this Agreement hereby waives any rights to request to negotiate or to bargain with respect to any matters contained in this Agreement. The parties agree to incorporate the Associates Handbook with the exception of the 401(K). Where specific contract language conflicts with said Handbook, the contract shall control.

C. UNIFORMS: Employees shall be furnished uniforms and may have same laundered by the employer. Uniform use shall be limited to work at the Employer.

D: "The Hotel agrees to meet with the Union at least sixty (60) days in advance to discuss any changes to the current practice of providing one (1) free meal and free parking to employees covered by this Agreement."

E. UNION DUES CHECK OFF:

The Employer agrees to deduct from the pay of all employees covered by this agreement the dues, initiation fees and /or assessments of the Local Union having jurisdiction over

such employees and agrees to remit to the said Local Union all such deductions prior to the end of the month for which the deduction is made. Where laws require written authorization by the employee, the same is to be furnished in the form required. The Local Union shall certify to the Employer in writing each month a list of its members working for the Employer who have furnished to the Employer the required authorization, together with the itemized statement of dues initiation fees (full or installment) or assessments owed to be deducted for such month from the pay of such members, and the Employer shall deduct such amount within two (2) weeks following receipt of the statement of certification of the member and remit to the Local Union in one lump sum. Check off shall be on a weekly, monthly or quarterly basis at the option of the Union.

When the Employer actually makes a deduction for dues, initiation fees and /or assessments, in accordance with the statement received from an appropriate Local Union, he shall remit same no later than 30 days from the date such deduction was made. All monies required to be checked off shall become the property of the Union at the time that such check off is required to be made.

No such authorization shall be recognized if in violation of state or federal law. No deduction shall be made which is prohibited by applicable law.

The Union shall defend, indemnify and save the Company harmless against any claim or liability arising out of the administration of the check off provisions of this Agreement.

ARTICLE X111 STEWARDS

A steward shall be a working employee, appointed by the Union, who shall, in addition to his work, be permitted to perform his Union duties. The Union agrees that

Such duties shall be performed as expeditiously as possible and the Company agrees to allow the steward a reasonable amount of time for the performance of such duties. The Union shall notify the Company of the appointment of each steward. In no event shall the Company discriminate against a steward or lay him off or discharge him on account of any action taken by him in the proper performance of his Union duties.

ARTICLE X1V ASSIGNABILITY

This Agreement shall be binding upon the successors and assigns of the parties hereto.

**ARTICLE XV
PAID TIME OFF (PTO)**

The Paid Time Off (PTO) plan will be the same plan enjoyed by other employees of the Hotel and bargaining unit members will be subject to the plan's procedures for taking paid time off. Paid Time Off for full-time employees will be earned as follows:

<u>Length of Service per year</u>	<u>PTO Days</u>	<u>PTO Hours per year</u>	<u>Maximum PTO Hours</u>	<u>Accumulation Factor</u>
0 – 1 Year	13	104	156	0.066667
2 – 4 Year (year 2 begins on the 13 th month of employment)	19	152	228	0.073077
5 – 9 Year (year 5 begins on the 49 th month of employment)	25	200	300	0.096154
10 – 15 Year (year 10 begins on the 109 th month of employment)	29	232	346	0.111538
16+ Years (year 16 begins on the 181 st month of employment)	30	240	360	0.115385

The days and hours expressed above assume the employee is full-time working 40 hours a week during the year.

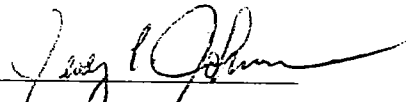
ARTICLE XVI
TERM - TERMINATION AND RENEWAL

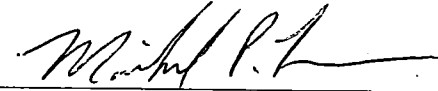
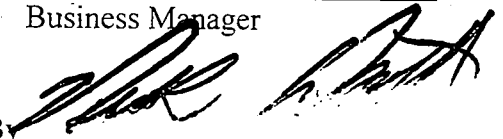
This Agreement shall be effective as of March 16, 2016, as described herein and shall remain in effect until March 16, 2019, remaining in force thereafter for yearly periods unless at least sixty (60) days notice by either party shall be given to the other party, in writing, prior to March 16, 2019, of its desire to terminate or amend this Agreement, in which case this Agreement shall be terminated on March 16, 2019, unless prior thereto the parties shall, by written agreement, extend or amend the same.

IN WITNESS WHEREOF, this Agreement has been executed this _____ day of _____, 2016.

WALDORF-ASTORIA MANAGEMENT,
LLC, AS OPERATOR OF THE
ARIZONA BILTMORE

INTERNATIONAL UNION OF
OPERATING ENGINEERS
LOCAL NO. 428, AFL-CIO

By 
Title: Dir of Human Resources

By 
Business Manager
By 
President

WALDORF-ASTORIA MANAGEMENT, LLC as Operator of
THE ARIZONA BILTMORE

and

INTERNATIONAL UNION OF OPERATING ENGINEERS
LOCAL NO. 428, AFL-CIO

1. The parties agree to continue the language of the current Agreement dated November 15, 2012 – November 15, 2015, for a three year period beginning on the date of ratification of this Memorandum of Settlement.

2. The Employer will increase its contributions to the Central Pension Fund of the International Union of Operating Engineers and Participating Employers by \$.15 in the first year, \$.15 in the second year, and \$.15 in the third year following ratification of this Memorandum of Settlement.

3. The Employer will provide the following increases to the hourly rates for all bargaining unit employees, including those who are being paid rates above those provided in Article V.A of the Agreement:

	Year 1	Year 2	Year 3
Lead Engineer	\$.50	\$.40	\$.40
Operating Engineer	\$.50	\$.40	\$.40
Maintenance II	\$.50	\$.40	\$.40
Maintenance I	\$.50	\$.40	\$.40

4. Lump sum payment to bargaining unit employees of \$.50 per hour worked since November 15, 2015, will be paid within 30 days following ratification.

Dated March 10, 2016