

AGREEMENT

AGREEMENT made this 17th day of May, 2013 by and between the New York Hotel & Motel Trades Council, AFL-CIO ("Union") and Nevele Investors LLC, and any affiliated or related entity, on its own behalf and on behalf of any current or future owner, of the Project and employer of Employees, defined below, as well as their respective successors or assigns of the below described project (collectively "Employer").¹

WHEREAS, Employer is in the process of developing a project which will involve hotel, gaming, food & beverage, and related amenities and facilities in the State of New York ("Project");

WHEREAS, the parties wish to ensure that employees in the below described bargaining unit(s) have the opportunity to express their desire whether or not to be represented for purposes of collective bargaining in an atmosphere free from intimidation, restraint, coercion or discrimination; and

WHEREAS, the parties wish to resolve any disputes related to any organizing drive and representational issues amicably, without resort to litigation or proceedings before the National Labor Relations Board ("NLRB"), Courts, or other governmental agency; and

WHEREAS, the parties have exchanged good and valuable consideration the receipt of which is hereby acknowledged.

NOW THEREFORE, the parties agree as follows:

1. The bargaining unit(s) shall include all full and part-time employees at the project in the classifications or departments listed in Exhibit A, or any other departments or classifications performing similar work under another name, or any combination thereof sought by the Union ("Bargaining Unit"). The Bargaining Unit shall not include those employees specifically excluded in Exhibit A. The Bargaining Unit employees shall be referred to as "Employees".
2. The parties acknowledge and agree that the Bargaining Unit(s) described herein constitute an appropriate unit.
3. The parties mutually recognize that the National Labor Relations Act ("NLRA") guarantees employees the right to form or select any labor organization to act as

¹ The term "Employer" shall also include, but not be limited to, any person, firm, partnership, corporation, joint venture or other legal entity which substantially controls any Employer or is substantially under the control of: (a) any Employer entity; (b) one or more principal(s) of any Employer entity; or (c) a subsidiary or parent of any Employer entity.

Employer also agrees to ensure that any current or future operator, manager, concessionaire or subcontractor at the project employing Employees, defined below, will abide by and be bound by this Agreement at the project, defined below. Accordingly, as used in the body of this Agreement, the term "Employer" shall also include any such entity.

their exclusive representative for purposes of collective bargaining with their employer, or to refrain from such activity. Both the Union and Employer agree to respect the NLRA Section 7 rights of employees and neither party shall, or be required to, act in contravention of those rights.

4. Prior to the start of initial hiring, the Employer shall notify the Union of its intent to hire and the positions that it seeks to fill and the qualifications therefore. The Union may furnish applicants for the job vacancies specified by the Employer. The Union's selection of applicants for referral shall be on a non-discriminatory basis and shall not be based upon or in any way affected by membership in the Union or the Union's bylaws, rules, regulations, constitutional provisions, or any other aspects or obligation of Union membership policies or requirements, or upon personal characteristics of an applicant where discrimination based upon such characteristics is prohibited by law. Any interest demonstrated by an applicant in joining the Union shall not constitute grounds for discriminatory or disparate treatment nor adversely impact the applicant's ability to be hired by the Employer. The Employer shall be the sole judge of an applicant's suitability, competence and qualifications to perform the work of any job to be filled and shall not be precluded from interviewing or hiring applicants from any other source.
5. During organizing activity the Union shall not cause any disruption of work by the Employees or of operations, nor shall it cause or encourage any other entity to cause any picketing, strikes, slow downs, boycotts, demonstrations, rallies, handbilling, corporate campaigns, or other work stoppages at the Project or at any other Employer facility to the extent the activity arose exclusively as a result of a dispute at the Project and the Employer shall not lock out employees at the Project. Nothing herein shall prohibit the Union from taking any action against any Employer at any location other than the Project which arises as the result of a dispute with such Employer at any location other than the Project. This paragraph shall not apply to the adversely affected party in the event the other party fails to abide by any award or decision of the Arbitrator within three (3) business days after issuance. This paragraph shall not apply to the Union in the event the Employer recognizes any other labor organization as the representative of any Employees.
6. The Employer specifically agrees that its supervisory employees, its agents and/or representatives will not act or make any statement that will directly or indirectly imply the Employer's opinion as to whether or not the employees should unionize or support any union or as to the reputation of any union or any of its officers. The Union and its representatives will not coerce or threaten any Employee in an effort to obtain authorization cards.
7. The Union will begin its organization of the employees at any time upon notice to the Employer. The Union will be permitted to have its organizers or representatives enter the Project to meet with Employees during the Employees'

- non-working times (for example, before work, after work, and during shift changes, meals and breaks) in non-public areas of the Project (for example, meal rooms and locker room) and/or during such other periods and locations as the parties may mutually agree upon in writing. The Union will comply with appropriate, non-discriminatory security and regulatory requirements applicable to all employees when accessing the Project, provided such requirements may not be used to unreasonably deny or delay access.
8. Within seven (7) days following receipt of the above described written notice of intent to organize Employees, the Employer will furnish the Union with a complete list of such Employees including both full and part-time Employees, showing their job classifications and departments, work schedules, wage rates, benefits, and the home addresses and telephone numbers of all Employees. Thereafter, the Employer will promptly provide updated lists, upon request, to the Union for the duration of the organizing drive.
 9. The Arbitrator shall conduct card counts to determine whether the Union has obtained valid cards from a majority of the Employees in the Bargaining Unit(s) designating the Union as their representative for purposes of collective bargaining ("Cards") and to certify the results of such card count in accordance with the procedure set forth herein.
 10. At any time after the commencement date of the Union's organizing effort, the Union may request that a card count be conducted by the Arbitrator. The Union shall initiate that process by advising the Employer in writing ("Notification Letter") that it represents a majority of the full-time and part-time employees employed by the Employer in the Bargaining Unit sought by it. The date of the Union's Notification Letter shall be the date ("Notification Date") used for purposes of determining the composition of the list of the names and the Employees to be furnished by the Employer to the Arbitrator.
 11. At any time after the delivery of the Notification Letter by the Union to the Employer indicating its majority status, the Union shall notify the Arbitrator in writing that his services are requested for purposes of conducting a card count. The Union shall confirm to the Employer that the Arbitrator has retained jurisdiction of the card count proceeding. As soon as practicable thereafter, but in any event no later than seven (7) days after the date of the Union's written card count request made to the Arbitrator, the Union shall furnish to the Arbitrator the Cards it has obtained from the Employees, and the Employer shall furnish the Arbitrator the list containing the names, job classifications and social security numbers of Employees employed as of the date of the Union's Notification Letter (with a copy to the Union) together with copies of official employment documents containing the signatures of each of the Employees (e.g. Forms 1-9, Form W4 or similar documents).
 12. Within forty-eight (48) hours after his receipt of the documents described above,

the Arbitrator shall conduct a card count by checking the Cards against the list of Employees and by comparing the Employees' names and signatures appearing on the Cards to the names and signatures appearing on the employment documents supplied to the Arbitrator by the Employer. At the conclusion of the card count, the Arbitrator shall inform the parties of the results of his count and shall certify in writing that either the Union has or has not been selected by a majority of eligible Employees as their collective bargaining representative. Both the Employer and the Union agree to abide by the determinations made by the Arbitrator regarding any challenges either to the validity of the Cards, the eligibility of Employees, the appropriateness of the unit and/or to the majority status of the Union.

13. If, after the conduct of the card count(s), the Union fails to be certified by the Arbitrator as the majority representative of the eligible Employees, this Agreement shall be deemed to continue in full force and effect, unless it is otherwise terminated in writing by mutual agreement of the parties.
14. If the Union is certified as the majority representative, the Employer must recognize the Union and the Employer and the Union will promptly and expeditiously commence negotiations at a mutually agreeable time and place, for a collective bargaining agreement. In the event the parties are unable to promptly reach an agreement following certification by the Arbitrator, the parties agree that the Arbitrator may act as an interest arbitrator and resolve any disputes regarding the terms of the collective bargaining agreement.
15. The arbitrator referred to herein shall be the Office of the Impartial Chairperson ("Arbitrator") established in the Industry Wide Collective Bargaining Agreement ("IWA") between the Union and Hotel Association of New York City, Inc., who shall be guided by the rules of the IWA and the Office of the Impartial Chairperson to the extent consistent herewith.
16. Any costs incurred by the parties in instituting proceedings before the Arbitrator, or defending against same, shall be the responsibility of the respective party. Costs charged by the Arbitrator shall be shared and paid equally by the parties.
17. Any award or decision issued by the Arbitrator, written or otherwise, shall be final and binding upon the parties, and shall be enforceable in the United States District Court for the Southern District of New York.
18. All complaints, disputes or grievances arising between the parties hereto involving questions or interpretation or application of any clause of this Agreement or the matters discussed herein, or any acts, conduct or relations between the parties, directly or indirectly, which shall not have been adjusted by and between the parties involved shall be referred to the Arbitrator, and his/her decision shall be final and binding upon the parties hereto.

19. In addition to and without limiting any of the foregoing, the Employer and Union also agree that the Arbitrator shall be empowered to issue such remedial orders as are consistent with applicable NLRB standards or necessary to ensure the maintenance of the neutral environment and/or to penalize the Employer or the Union for violating their obligations hereunder or under the NLRA, including an order to bargain in accordance with applicable NLRB standards, or other injunctive relief, and/or monetary or punitive damages to either party.
20. With regard to this Agreement and any and all matters discussed herein, the parties knowingly and voluntarily waive the right to file any petitions, charges, objections, or complaints before any court or governmental agency, including, but not limited to, any petition, objection, or unfair labor practice charge before the Board, and agree that the Arbitrator shall be the exclusive forum in which to resolve any such dispute.
21. If any provision or portion of this Agreement is deemed invalid or unenforceable, it shall not affect the remainder of this Agreement and the parties shall promptly meet to negotiate substitute provisions, which effectuate the intent of the parties. Failing agreement the matter shall be submitted to the Arbitrator for final and binding resolution.
22. This Agreement shall be binding on the successor and assigns of the parties hereto, including, but not limited to, any concessionaire or subcontractor, or other entity which has or acquires an ownership, operational or management interest in the Project or to which the Employer sells, transfers, or assigns any right, title, or interest, in the Project (“Successor”). The parties acknowledge that failure to affirmatively bind any such Successor shall result in irreparable harm to the non-breaching party. The Employer shall cause any such Successor to execute a Successor & Assign Agreement identical to this Agreement prior to and as a condition of any transfer cognizable hereunder and provide a copy of such to the Union (replacing the corporate names in the preamble with the name of such Successor). Further, no provisions, terms, or obligations herein contained shall be affected, modified, altered or changed in any respect whatsoever by the consolidation, merger, sale, transfer, or assignment of any party hereto or affected, modified, altered or changed in any respect whatsoever by any change of any kind in the legal status, ownership, or management of any party hereto.
23. Unless mutually agreed to in writing by the parties, all terms of this Agreement, including, but not limited to, those relating to the provision of information, access and neutrality, shall continue uninterrupted until a collective bargaining agreement(s) covering all Employees employed by Employer is effective.
24. The parties hereto are fully authorized to enter into and execute this Agreement.

Agreed and Accepted:

Date: May 17, 2013



Union

Peter Ward

President

Authorized to sign

Employer

Michael Treanor

CEO

Authorized to sign

EXHIBIT A

Included: Hotel, Conference Center, Restaurant, Bar, Banquet, VLT, Casino, Slot Attendants, Cashiers (including booth and cage), Hard and Soft Count Employees, Change Persons, Carousel Attendants, Dealers, Hosts, Guest Service and Players' Club Representatives, Housekeeping, Cleaners, Front Service, PBX, Front Desk, Engineering, Maintenance, Reservations, Banquets, Room Service, Kitchen, Stewarding, Food and Beverage, Bar, Dining Room, Employee Cafeteria, Laundry, Valet, Parking, Coat Check, Shipping and Receiving, Business Center, Audio Visual, Health Club, Spa, Minibar, Security, and Concierge.

Excluded: Statutory supervisors, managers, and confidential employees.