

ASSIGNMENT, CONSENT TO ASSIGNMENT AND ASSUMPTION OF
WATERPARK GROUND LEASE AND OPERATING AGREEMENT

THIS ASSIGNMENT, CONSENT TO ASSIGNMENT AND ASSUMPTION OF WATERPARK GROUND LEASE AND OPERATING AGREEMENT ("**Agreement**"), made and entered into this ____ day of _____, 2014 ("**Assignment Effective Date**") by and among MANSFIELD FAMILY ENTERTAINMENT, LLC, a Missouri Limited Liability Company (the "**Assignor**"), and CLP MANSFIELD TX WATERPARK TRS CORP., a Delaware corporation (the "**Assignee**"), and the CITY OF MANSFIELD, TEXAS, a Texas home-rule municipality (the "**City**").

WITNESSETH:

WHEREAS, Assignor and City are parties to a Waterpark Ground Lease and Operating Agreement dated the 20th day of November, 2007, as amended by Amendment Number 1 to Water Park Ground Lease and Operating Agreement entered into on or about November 20, 2007, Addendum to Water Park Ground Lease and Operating Agreement dated October 27, 2009, Amendment Number 2 to Water Park Ground Lease and Operating Agreement entered into on or about December 22, 2011, Amendment to Amendment Number 2 to Water Park Ground Lease and Operating Agreement entered into on or about February 21, 2012, and Amendment Number 3 to Ground Lease and Operating Agreement dated March 9, 2012, as evidenced by that certain Memorandum of Ground Lease dated November 19, 2007 and recorded under cc# D207415960, Real Property Records of Tarrant County, Texas (collectively, the "**Lease**"), whereby the City has leased to Assignor certain real property located in Tarrant County, Texas, more specifically described on Exhibit "A" attached hereto and incorporated herein by this reference (the "**Leased Premises**"). Any capitalized term used, but not specifically defined herein, shall have the meaning given to such term in the Lease; and

WHEREAS, under the terms of the Lease, City must consent to any assignment by Assignor; and

WHEREAS, (i) Assignor desires to assign all of its right, title and interest in and to the Lease to Assignee, and (ii) Assignee desires to assume all obligations and liabilities of Assignor under the Lease and to, simultaneously therewith, sublease its interest in the Lease to Assignor, or an Affiliate thereof (the "**Sublessee**"), pursuant to a Sublease Agreement between Assignee, as sublessor, and Sublessee, as sublessee (the "**Sublease**").

NOW, THEREFORE, for and in consideration of the foregoing, the mutual covenants herein contained and other good and valuable consideration, the receipt, adequacy and sufficiency of which is hereby acknowledged by the parties by their execution hereof, the parties hereto agree as follows:

1. **Assignment.** Assignor hereby assigns to Assignee all of Assignor's right, title and interest, in, under and to the Lease.

2. Assumption. Assignee hereby assumes and agrees to keep, observe and perform, all of the covenants, terms and conditions required to be kept, observed and performed by Assignor as "MFE" pursuant to the Lease first arising from and after the Assignment Effective Date. Assignor is not relieved of any liabilities or obligations accruing prior to the date of this Agreement or not fully assumed by the Assignee. Further, Assignee acknowledges and agrees that nothing in the Sublease will alter or change Assignee's obligations to comply with the Lease.

3. Indemnification. Assignor hereby agrees to indemnify Assignee against, and hold Assignee harmless from, any and all cost, liability, loss, damage or expense, including, without limitation, reasonable attorneys' fees, first arising or accruing prior to the date hereof in connection with Assignor's performance or observance of, or the failure to perform or observe, any agreement or obligation of Assignor arising under the Lease. Assignee hereby agrees to indemnify Assignor against, and hold Assignor harmless from, any and all cost, liability, loss, damage or expense, including, without limitation, reasonable attorneys' fees, arising or accruing as of or subsequent to the date hereof in connection with Assignee's performance or observation of, or failure to perform or observe any agreement or obligation under the Lease hereby assumed by Assignee.

4. City Consent. City, by the execution hereof, consents to (i) the assignment of Assignor's interest in the Lease to Assignee as provided for herein, and (ii) the sublease of Assignee's interest in the Lease to Sublessee pursuant to the Sublease. Furthermore, City agrees that, from and after the Assignment Effective Date, (a) it shall recognize and treat Assignee as the tenant, "MFE," under the Lease, (b) all obligations owed by City to Assignor under the Lease shall now run to Assignee, and (c) all obligations and liabilities owed to City by Assignor will be the responsibility of Assignee to the extent arising from and after the Assignment Effective Date. Any future assignment (other than the assignment to Assignee contemplated hereby) or sublease (other than the Sublease) will require the prior written consent of City. In addition, City certifies to Assignee that City's address for notices and payment of rent is:

The City of Mansfield
Attn: City Manager
1200 E. Broad St.
Mansfield, Texas 76063

5. Binding Effect and Benefits. This Agreement shall be binding upon, and shall inure to the benefit of, the parties hereto and their respective lenders, successors and assigns.

6. Further Assurances. Each party hereto agrees to execute and deliver any further instruments and documents as the other party may reasonably request in order to fully effectuate the purpose and intent of this Agreement.

7. Representations.

(a) Assignor represents that it holds all right, title and interest of "MFE," the tenant, under the Lease and Assignor has the right to convey the same to Assignee;

(b) City and Assignor each represent that the Lease is in full force and effect and has not been amended or modified by City and Assignor except as indicated above. The Rent Commencement Date was May 28, 2009 and the Initial Term expires on May 28, 2049;

(c) City and Assignor each represent that it has not entered into any agreements of any nature (either written or oral) regarding the Leased Premises except the Lease and those certain Construction Agreements between City and Assignor dated April 13, 2007 and February 24, 2012 (the "**Construction Agreements**"). City and Assignor each represent that Assignor satisfied its obligation to expend at least \$1,000,000 for Capital Improvements to the Water Park within the first seven (7) years of the Initial Term in accordance with the terms of the Lease and the Construction Agreements. City hereby acknowledges and agrees that Assignor satisfied all construction and construction-funding obligations pursuant to the terms of the Lease and the Construction Agreements and that all obligations with respect to or relating to the Leased Premises arising out of the Construction Agreements have been satisfied in full. City and Assignor each represent that the City is the owner of all Waterpark Improvements and Capital Improvements;

(d) City and Assignor each represent that to the best of its knowledge, there is no present default on the part of City or Assignor, and, there is no condition existing that could, given the passage of time or the giving of notice, ripen into a default thereunder; and

(e) City and Assignor each represent that no Rent due under the Lease has been paid in advance.

8. Waiver of ROFR. Pursuant to Section 18.3 of the Lease, the City has a right of first refusal (the "**ROFR**") with respect to the proposed assignment by Assignor of its interest as "MFE" and as the tenant under the Lease. The City has elected not to exercise the ROFR with respect to such assignment by Assignor to Assignee and hereby waives the ROFR with respect to such assignment. City does not waive its ROFR with respect to any future assignment.

9. Notices. Pursuant to Section 16 of the Lease, notices to be provided to "MFE" under the Lease shall be addressed as follows and shall be provided in accordance with the terms of the Lease:

To Assignee at:

c/o CNL Lifestyle Properties, Inc.
450 South Orange Avenue, 14th Floor
Orlando, Florida 32801
Attention: Joseph T. Johnson, Chief Financial Officer and Senior Vice President;
and Tracey B. Bracco, Vice President and Assistant General Counsel

With a copy to:

Lowndes Drosdick Doster Kantor & Reed, P.A.
215 North Eola Drive
Post Office Box 2809
Orlando, Florida 32802
Attention: William T. Dymond, Esquire

To Sublessee at:

Mr. David J. Busch
President, Hawaiian Falls
3100 Premier Drive, Suite 200
Las Colinas, TX 75063

With a copy to:

Brad I. Pearson, Esq
DeSimone Pearson, LC
4324 Belleview, Suite 100
Kansas City, Missouri 64111

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IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the day and year first above written.

“ASSIGNOR”

MANSFIELD FAMILY ENTERTAINMENT, LLC, a
Missouri Limited Liability Company

By: _____

David J. Busch, President

Executed: _____

STATE OF _____
COUNTY OF _____

The foregoing instrument was acknowledged before me this ____ day of _____, 2014, by _____, the President of Mansfield Family Entertainment, LLC, a Missouri limited liability company, on behalf of such limited liability company. He/she is personally known to me or has produced _____ as identification.

Notary Public

Name:

Commission No.:

My Commission Expires:

(SEAL)

“ASSIGNEE”

CLP MANSFIELD TX WATERPARK TRS CORP., a
Delaware corporation

By: _____
Name: _____
Title: _____

STATE OF FLORIDA
COUNTY OF ORANGE

The foregoing instrument was acknowledged before me this ____ day of _____,
2014, by _____, as _____ of CLP MANSFIELD TX
WATERPARK TRS CORP., a Delaware corporation, on behalf of such corporation. He/she
personally known to me or has produced _____ as identification.

(NOTARY SEAL)

Notary Public Signature

(Name typed, printed or stamped)

“CITY”

CITY OF MANSFIELD, TEXAS, a Texas home-rule
municipality

By: _____
Name: _____
Title: _____

STATE OF TEXAS
COUNTY OF TARRANT

The foregoing instrument was acknowledged before me this ____ day of _____,
2014, by _____, as _____ of the City of Mansfield, Texas, a Texas
home-rule municipality, on behalf of such municipality. He/she is personally known to me or
has produced _____ as identification.

Notary Public
Name:
Commission No.:
My Commission Expires:

(SEAL)

EXHIBIT A

PREMISES

BEING 8.742 acres of land located in Lot 3R, Block 1, BIG LEAGUE DREAMS ADDITION, to the City of Mansfield, Tarrant County, Texas, according to the plat recorded in Cabinet A, Slide 12186 of the Plat Records of Tarrant County, Texas. Said 8.742 acres of land being more particularly described by metes and bounds, as follows:

BEGINNING at a 1/2" iron rod set at the North corner of said Lot 3R, Block 1, BIG LEAGUE DREAMS ADDITION, and said POINT OF BEGINNING also being the intersection of the Southwest right-of-way line of Heritage Parkway South, and the Southeast right-of-way line of State Highway No. 360;

THENCE SOUTHEASTERLY 162.15 feet, along the Southwest right-of-way line of said Heritage Parkway South and the Northeast boundary line of said Lot 3R, with a curve to the right, having a radius of 1401.82 feet, a central angle of 06° 37' 39", and a chord bearing S 42° 14' 41" E 162.06 feet, to a point;

THENCE S 57° 47' 24" W 54.82 feet, severing said Lot 3R, to a point in the proposed West edge of a retaining wall;

THENCE along the West edge of said proposed retaining wall, as follows:

1. S 32° 12' 36" E 61.49 feet, to a point at the beginning of a curve to the right;
2. SOUTHWESTERLY 44.30 feet, along said curve to the right, having a radius of 38.67 feet, a central angle 65° 38' 25", and a chord bearing S 00° 36' 37" W 41.92 feet, to a point at the end of said curve;
3. S 33° 25' 50" W 43.58 feet, to a point at the beginning of a curve to the left;
4. SOUTHWESTERLY 26.43 feet, along said curve to the left, having a radius of 56.33 feet, a central angle of 26° 25' 53", and a chord bearing S 19° 59' 23" W 26.19 feet, to a point at the end of said curve;
5. S 06° 32' 56" W 64.41 feet, to a point;
6. S 14° 51' 18" E 28.76 feet, to a point;
7. S 27° 10' 57" E 24.02 feet, to a point at the beginning of a curve to the left;
8. EASTERLY 69.26 feet, along said curve to the left, having a radius of 31.33 feet, a central angle of 126° 39' 16", and a chord bearing N 89° 29' 26" E 56.00 feet, to a point at the end of said curve;
9. N 26° 09' 48" E 26.48 feet, to a point;
10. N 30° 22' 15" E 54.58 feet, to a point at the beginning of a curve to the right;

11. NORTHEASTERLY 46.07 feet, along the said curve to the right, having a radius of 28.67 feet, a central angle of $92^{\circ} 05' 03''$, and a chord bearing $N 76^{\circ} 24' 47'' E 41.27$ feet, to a point at the end of said curve;
12. $S 69^{\circ} 55' 49'' E 60.17$ feet, to a 1/2" iron rod set at the most Easterly corner of said Lot 3R, and the North corner of Lot 4R, Block 1, BIG LEAGUE DREAMS ADDITION, to the City of Mansfield, according to the plat recorded in Cabinet A, Slide 12186 of the Plat Records of Tarrant County, Texas, and lying in the Southwest right-of-way line of aforesaid Heritage Parkway South;

THENCE $S 60^{\circ} 40' 52'' W 195.78$ feet, along the Northwest boundary line of said Lot 4R, Block 1, and the Southeast boundary line of said Lot 3R, Block 1, to a 1/2" iron rod set;

THENCE $S 09^{\circ} 40' 25'' W 352.01$ feet, along the Southeast boundary line of said Lot 3R, Block 1, and the Northwest boundary line of said Lot 4R, Block 1, to a point in the proposed North edge of a sidewalk;

THENCE along the North edge of said proposed sidewalk, as follows:

1. NORTHWESTERLY 92.73 feet, along a curve to the right, having a radius of 963.86 feet, a central angle of $05^{\circ} 30' 44''$, and a chord bearing $N 66^{\circ} 44' 24'' W 92.69$ feet, to a point at the end of said curve;
2. $N 62^{\circ} 47' 31'' W 41.27$ feet, to a point at the beginning of a curve to the left;
3. NORTHWESTERLY 67.91 feet, along said curve to the left, having a radius of 230.50 feet, a central angle of $16^{\circ} 52' 51''$, and a chord bearing $N 68^{\circ} 59' 00'' W 67.67$ feet, to a point;
4. NORTHWESTERLY 2.69 along a curve to the right, having a radius of 3.50 feet, a central angle of $43^{\circ} 58' 36''$, and a chord bearing $N 55^{\circ} 26' 07'' W 2.62$ feet, to a point at the end of said curve;
5. $N 33^{\circ} 26' 49'' W 7.98$ feet, to a point at the beginning of a curve to the left;
6. NORTHWESTERLY 14.10 feet, along said curve to the left, having a radius of 16.50 feet, a central angle of $48^{\circ} 57' 32''$, and a chord bearing $N 57^{\circ} 55' 35'' W 13.67$ feet, to the point at the end of curve, and the beginning of another curve to the left;
7. NORTHWESTERLY 59.16 feet, along said curve to the left, having a radius of 242.50 feet, a central angle of $13^{\circ} 58' 40''$, and a chord bearing $N 89^{\circ} 23' 41'' W 59.01$ feet, to a point at the end of said curve;
8. $S 83^{\circ} 83' 36'' 59'' W 73.43$ feet, to a point at the beginning of a curve to the left;
9. SOUTHWESTERLY 12.96 feet, along said curve to the left, having a radius of 16.50 feet, a central angle of $45^{\circ} 00' 00''$, and a chord bearing $S 61^{\circ} 06' 59'' W 12.63$ feet, to a point at the end of said curve;
10. $S 38^{\circ} 36' 59'' W 8.69$ feet, to a point at the beginning of a curve to the right;

11. SOUTHWESTERLY 2.75 feet, along said curve to the right, having a radius of 3.50 feet, a central angle of $44^{\circ} 59' 31''$, and a chord bearing $S 61^{\circ} 06' 59'' W$ 2.68 feet, to a point at the end of said curve;
12. $S 83^{\circ} 36' 59'' W$ 347.88 feet, to a point;
13. $S 06^{\circ} 23' 01'' E$ 40.00 feet, to a point;

THENCE $S 83^{\circ} 36' 59'' W$ 121.77 feet, to a point in the West boundary line of said Lot 3R, and the Southeast right-of-way line of aforesaid State Highway No. 360;

THENCE along the Northwest boundary line of said Lot 3R, and the Southeast right-of-way line of said State Highway No. 360, as follows:

1. NORTHEASTERLY 400.64 feet, along a curve to the right, having a radius of 924.93 feet, a central angle of $24^{\circ} 49' 05''$, and a chord bearing $N 33^{\circ} 19' 51'' E$ 397.51 feet, to a 1/2" iron rod set at the location of a formerly located Texas Department of Transportation right-of-way monument;
2. $N 51^{\circ} 53' 14'' E$ 180.15 feet, to a 1/2" iron rod set at the location of a formerly located Texas Department of Transportation right-of-way monument;
3. $N 46^{\circ} 03' 02'' E$ 99.61 feet, to a 1/2" iron rod set at the location of a formerly located Texas Department of Transportation right-of-way monument;
4. $N 34^{\circ} 25' 08'' E$ 51.17 feet, to a 1/2" iron rod set at the location of a formerly located Texas Department of Transportation right-of-way monument;
5. $N 45^{\circ} 33' 53'' E$ 75.06 feet, to a Texas Department of Transportation right-of-way monument found at the beginning of a curve to the left;
6. NORTHEASTERLY 234.55 feet, along said curve to the left, having a radius of 994.93 feet, a central angle of $13^{\circ} 30' 26''$, and a chord bearing $N 39^{\circ} 00' 37'' E$ 234.01 feet, to Texas Department of Transportation right-of-way monument found;
7. $N 82^{\circ} 29' 09'' E$ 113.88 feet, to a Texas Department of Transportation right-of-way monument found;
8. $N 25^{\circ} 05' 50'' E$ 15.89 feet, to THE POINT OF BEGINNING, containing 8.742 acres (380,783 square feet) of land.