

AMENDED AND RESTATED AGENT AGREEMENT

THIS AMENDED AND RESTATED AGENT AGREEMENT (this "Agent Agreement") is made effective as of the 11th day of March, 2010, by and among the **GENESEE COUNTY INDUSTRIAL DEVELOPMENT AGENCY d/b/a GENESEE COUNTY ECONOMIC DEVELOPMENT CENTER**, a public benefit corporation of the State of New York, having its offices at One Mill Street, Batavia, New York 14020 (the "Agency"), **PARC DARIEN LAKE, LLC**, a Florida limited liability company qualified and authorized to do business in New York State, with offices at 9993 Allegheny Road, Darien Center, New York 14040 ("PARC"), and **CNL INCOME DARIEN LAKE, LLC**, a Delaware limited liability company duly authorized to conduct business under the laws of the State of New York with offices at c/o CNL Lifestyle Properties Inc., 450 South Orange Avenue, 12th Floor, Orlando, Florida 32801 ("CNL" and together with PARC, the "Company").

WITNESSETH:

WHEREAS, the Agency was created by Chapter 565 of the Laws of 1970 of the State of New York pursuant to Title I of Article 18-A of the General Municipal Law of the State of New York (collectively, the "Act") as a body corporate and politic and as a public benefit corporation of the State of New York; and

WHEREAS, the Company has requested the Agency's assistance with a certain project (the "Project") consisting of (i) the acquisition or retention by the Agency of fee title to or a leasehold interest in a portion of certain parcels of land located at 9993 Allegheny Road in the Town of Darien, Genesee County, New York (the "Land"), and certain of the existing improvements located thereon comprising a portion of CNL's water park and related improvements (the "Existing Improvements"); (ii) the expansion and upgrading of the Existing Improvements to include, but not be limited to, new slides and other various upgrades and improvements (the "Improvements"); (iii) the acquisition by the Company in and around the Improvements of certain items of equipment and other tangible personal property (the "Equipment" and, collectively with the Land, the Existing Improvements and the Improvements, the "Facility"); and (iv) the leasing of the Facility by CNL to PARC; and

WHEREAS, by resolution adopted March 11, 2010 (the "Resolution"), the Agency authorized the Company to act as its agent for the acquisition, construction and equipping of the Facility subject to the Company entering into this Agent Agreement; and

WHEREAS, the Agency and PARC entered into that certain Agent Agreement made as of March 11, 2010, which sets forth their agreements with respect to the foregoing (the "Original Agent Agreement"); and

WHEREAS, the parties hereto acknowledge and agree that it was the intent of the parties that CNL be a party to the Original Agent Agreement and, accordingly, the parties hereto have agreed to amend and restate the Original Agent Agreement to reflect same.

NOW THEREFORE, in consideration of the covenants herein contained and other good

and valuable consideration the receipt and sufficiency of which are hereby acknowledged, it is mutually agreed as follows:

1. Scope of Agency. The Company hereby agrees to limit its activities as agent for the Agency under the authority of the Resolution to acts reasonably related to the undertaking of the Project. The right of the Company to act as agent of the Agency shall expire on **December 31, 2010**, unless extended as contemplated by the Resolution. The aggregate amount of work performed as agent for the Agency shall not exceed the amounts described in the Application of the Company in this matter. All contracts entered into as agent for the Agency shall include the following language:

"Except to the extent of bond proceeds (to the extent bonds are issued by Agency with respect to the Project), the Agency shall not be liable, either directly or indirectly or contingently, upon any such contract, agreement, invoice, bill or purchase order in any manner and to any extent whatsoever (including payment or performance obligations), and the Company shall be the sole party liable thereunder."

2. Representations and Covenants of CNL. CNL makes the following representations and covenants in order to induce the Agency to proceed with the Project:

(a) CNL is a limited liability company formed and existing under the laws of the State of Delaware and is authorized to conduct its business in the State of New York (the "State"), has the authority to enter into this Agent Agreement and has duly authorized the execution and delivery of this Agent Agreement.

(b) Neither the execution and delivery of this Agent Agreement, the consummation of the transactions contemplated hereby nor the fulfillment of or compliance with the provisions of this Agent Agreement will conflict with or result in a breach of any of the terms, conditions or provisions of any restriction or any agreement or instrument to which CNL is a party or by which it is bound, or will constitute a default under any of the foregoing, or result in the creation or imposition of any lien of any nature upon any of the property of CNL under the terms of any such instrument or agreement.

(c) The Project and the operation thereof will conform with all applicable zoning, planning, building and environmental laws and regulations of governmental authorities having jurisdiction over the Project, and CNL shall defend, indemnify and hold the Agency harmless from any liability or expenses resulting from any failure by CNL to comply with the provisions of this subsection (c).

(d) There is no action, suit, proceeding, inquiry or investigation, at law or in equity, before or by any court, public board or body pending or, to the knowledge of CNL, threatened against or affecting CNL, to which CNL is a party, and in which an adverse result would in any way diminish or adversely impact on CNL's ability to fulfill its obligations under this Agent Agreement.

(e) CNL covenants that the Facility will comply in all respects with all environmental laws and regulations, and, except in compliance with environmental laws and regulations, (i) that no pollutants, contaminants, solid wastes, or toxic or hazardous substances will be stored, treated, generated, disposed of, or allowed to exist on the Facility except in compliance with all material applicable laws, (ii) CNL will take all reasonable and prudent steps to prevent an unlawful release of hazardous substances onto the Facility or onto any other property, (iii) that no asbestos will be incorporated into or disposed of on the Facility, (iv) that no underground storage tanks will be located on the Facility, and (v) that no investigation, order, agreement, notice, demand or settlement with respect to any of the above is threatened, anticipated, or in existence. CNL, upon receiving any information or notice contrary to the representations contained in this Section, shall immediately notify the Agency in writing with full details regarding the same. CNL hereby releases the Agency from liability with respect to, and agrees to defend, indemnify, and hold harmless the Agency, its President/CEO, directors, members, officers, employees, agents, representatives, successors, and assigns from and against any and all claims, demands, damages, costs, orders, liabilities, penalties, and expenses (including reasonable attorneys' fees) related in any way to any violation of the covenants or failure to be accurate of the representations contained in this Section. In the event the Agency, in its reasonable discretion, deems it necessary to perform due diligence with respect to any of the above, or to have an environmental audit performed with respect to the Facility, CNL agrees to pay the expenses of same to the Agency upon demand, and agrees that upon failure to do so, its obligation for such expenses shall be deemed to be additional rent.

(f) Any personal property acquired by CNL in the name of the Agency shall be located in Genesee County, New York, except for temporary periods during ordinary use.

3. Representations and Covenants of PARC. PARC makes the following representations and covenants in order to induce the Agency to proceed with the Project:

(a) PARC is a limited liability company formed and existing under the laws of the State of Florida and is authorized to conduct its business in the State, has the authority to enter into this Agent Agreement and has duly authorized the execution and delivery of this Agent Agreement.

(b) Neither the execution and delivery of this Agent Agreement, the consummation of the transactions contemplated hereby nor the fulfillment of or compliance with the provisions of this Agent Agreement will conflict with or result in a breach of any of the terms, conditions or provisions of any restriction or any agreement or instrument to which PARC is a party or by which it is bound, or will constitute a default under any of the foregoing, or result in the creation or imposition of any lien of any nature upon any of the property of PARC under the terms of any such instrument or agreement.

(c) The Project and the operation thereof will conform with all applicable zoning, planning, building and environmental laws and regulations of governmental authorities having jurisdiction over the Project, and PARC shall defend, indemnify and hold the Agency harmless from any liability or expenses resulting from any failure by PARC to comply with the provisions of this subsection (c).

(d) There is no action, suit, proceeding, inquiry or investigation, at law or in equity, before or by any court, public board or body pending or, to the knowledge of PARC, threatened against or affecting PARC, to which PARC is a party, and in which an adverse result would in any way diminish or adversely impact on PARC's ability to fulfill its obligations under this Agent Agreement.

(e) PARC covenants that the Facility will comply in all respects with all environmental laws and regulations, and, except in compliance with environmental laws and regulations, (i) that no pollutants, contaminants, solid wastes, or toxic or hazardous substances will be stored, treated, generated, disposed of, or allowed to exist on the Facility except in compliance with all material applicable laws, (ii) PARC will take all reasonable and prudent steps to prevent an unlawful release of hazardous substances onto the Facility or onto any other property, (iii) that no asbestos will be incorporated into or disposed of on the Facility, (iv) that no underground storage tanks will be located on the Facility, and (v) that no investigation, order, agreement, notice, demand or settlement with respect to any of the above is threatened, anticipated, or in existence. PARC, upon receiving any information or notice contrary to the representations contained in this Section, shall immediately notify the Agency in writing with full details regarding the same. PARC hereby releases the Agency from liability with respect to, and agrees to defend, indemnify, and hold harmless the Agency, its President/CEO, directors, members, officers, employees, agents, representatives, successors, and assigns from and against any and all claims, demands, damages, costs, orders, liabilities, penalties, and expenses (including reasonable attorneys' fees) related in any way to any violation of the covenants or failure to be accurate of the representations contained in this Section. In the event the Agency, in its reasonable discretion, deems it necessary to perform due diligence with respect to any of the above, or to have an environmental audit performed with respect to the Facility, PARC agrees to pay the expenses of same to the Agency upon demand, and agrees that upon failure to do so, its obligation for such expenses shall be deemed to be additional rent.

(f) Any personal property acquired by PARC in the name of the Agency shall be located in Genesee County, New York, except for temporary periods during ordinary use.

4. Hold Harmless Provision. The Company, jointly and severally, hereby releases the Agency from, agrees that the Agency shall not be liable for, and agrees to indemnify, defend and hold the Agency and its President/CEO, directors, officers, members, employees, agents (except the Company), representatives, successors and assigns harmless from and against any and all (i) liability for loss or damage to property or injury to or death of any and all persons that may be occasioned by any cause whatsoever pertaining to the Facility or arising by reason of or in connection with the occupation or the use thereof or the presence on, in or about the Facility or breach by the Company of this Agent Agreement or (ii) liability arising from or expense incurred by the Agency's financing, acquiring, constructing, equipping, owning and leasing of the Facility, including without limiting the generality of the foregoing, all causes of action and reasonable attorneys' fees and any other expenses incurred in defending any suits or actions which may arise as a result of any of the foregoing. The foregoing indemnities shall apply notwithstanding the fault or negligence on the part of the Agency, or any of its members, directors, officers, agents (except the Company) or employees and irrespective of the breach of a

statutory obligation or the application of any rule of comparative or apportioned liability, except that such indemnities will not be applicable with respect to willful misconduct or gross negligence on the part of the Agency or any other person or entity to be indemnified.

5. Insurance Required. Effective as of the effective date hereof and until the Agency consents in writing to a termination, the Company shall maintain or cause to be maintained insurance against such risks and for such amounts as are customarily insured against businesses of like size and type paying, as the same become due and payable, all premiums in respect thereto, including, but not necessarily limited to:

(a) (i) Insurance against loss or damage by fire, lightning and other casualties, with a uniform standard extended coverage endorsement, such insurance to be in an amount not less than the full replacement value of the Project, exclusive of excavations and foundations, as determined by a recognized appraiser or insurer selected by the Company or (ii) as an alternative to the above requirements (including the requirement of periodic appraisal), the Company may insure the Project under a blanket insurance policy or policies covering not only the Project but other properties as well.

(b) Workers' compensation insurance, disability benefits insurance, and each other form of insurance which the Agency or the Company is required by law to provide, covering loss resulting from injury, sickness, disability or death of employees of the Company who are located at or assigned to the Project.

(c) Insurance against loss or losses from liabilities imposed by law or assumed in any written contract and arising from personal injury and death or damage to the property of others caused by any accident or occurrence, with limits of not less than \$1,000,000 per accident or occurrence on account of personal injury, including death resulting therefrom, and \$1,000,000 per accident or occurrence on account of damage to the property of others, excluding liability imposed upon the Company by any applicable workers' compensation law; and a blanket excess liability policy in the amount not less than \$3,000,000, protecting the Company against any loss or liability or damage for personal injury or property damage.

6. Additional Provisions Respecting Insurance. (a) **All insurance required by Section 5(a) hereof shall name the Agency as a named insured and all other insurance required by Section 5 hereof shall name the Agency as an additional insured.** All insurance shall be procured and maintained in financially sound and generally recognized responsible insurance companies selected by the Company and authorized to write such insurance in the State. Such insurance may be written with deductible amounts comparable to those on similar policies carried by other companies engaged in businesses similar in size, character and other respects to those in which the Company is engaged. All policies evidencing such insurance shall provide for (i) payment of the losses of the Company and the Agency as their respective interest may appear, and (ii) at least thirty (30) days' prior written notice of the cancellation thereof to the Company and the Agency.

(b) All such policies of insurance, or a certificate or certificates of the insurers that such insurance is in force and effect, shall be deposited with the Agency on the date hereof.

Prior to expiration of any such policy, the Company shall furnish the Agency with evidence that the policy has been renewed or replaced or is no longer required by this Agent Agreement.

7. This Agent Agreement may be executed in any number of counterparts each of which shall be deemed an original but which together shall constitute a single instrument.

8. All notices, claims and other communications hereunder shall be in writing and shall be deemed to be duly given if personally delivered or mailed first class, postage prepaid, as follows:

To the Agency: Genesee County Industrial Development Agency
d/b/a Genesee County Economic Development Center
One Mill Street
Batavia, New York 14020
Attn.: President/CEO

With a Copy to: Harris Beach PLLC
99 Garnsey Road
Pittsford, New York 14534
Attn.: Russell E. Gaenzle, Esq.

To PARC: PARC Darien Lake, LLC
P.O. Box 91
9993 Allegheny Road
Darien Center, New York 14040
Attn.: Randal H. Drew, President

With a Copy to: PARC Darien Lake, LLC
c/o PARC Management, LLC
7892 Baymeadows Way
Jacksonville, FL 32256
Attn: Mr. Randal H. Drew
Attn: Gwen H. Griggs, Esq.

To CNL: c/o CNL Lifestyle Properties. Inc.
450 South Orange Avenue, 12th Floor
Orlando. Florida 32801
Attn: Joseph. T. Johnson, Senior Vice President

With a Copy to: Jaeckle Fleischmann & Mugel, LLP
12 Fountain Plaza, Suite 800
Buffalo, New York 14202
Attn.: Nicole R. Tzetzto, Esq.

or at such other address as any party may from time to time furnish to the other party by notice given in accordance with the provisions of this Section. All notices shall be deemed given when

mailed or personally delivered in the manner provided in this Section.

9. This Agent Agreement shall be governed by, and all matters in connection herewith shall be construed and enforced in accordance with, the laws of the State applicable to agreements executed and to be wholly performed therein and the parties hereto hereby agree to submit to the personal jurisdiction of the federal or state courts located in Genesee County, New York.

10. The parties are contemplating that the Agency will negotiate and enter into a lease agreement ("Lease Agreement"), leaseback agreement (the "Leaseback Agreement") and payment-in-lieu-of-tax agreement ("PILOT Agreement") with CNL. CNL agrees not to take title to any real property as agent for the Agency until the Lease Agreement, Leaseback Agreement and PILOT Agreement have been executed and delivered. At any time prior to the execution of the Lease Agreement, Leaseback Agreement and PILOT Agreement, the Agency can transfer, to CNL, title to all assets acquired by CNL as agent for the Agency. Additionally, at any time prior to execution of the Lease Agreement, Leaseback Agreement and PILOT Agreement, CNL can demand that the Agency transfer title to CNL with respect to all assets acquired by CNL as agent for the Agency, provided all amounts owed the Agency have been paid current.

11. By executing this Agent Agreement, the Company covenants and agrees to pay all fees, costs and expenses incurred by the Agency for (1) legal services, including, but not limited to, those provided by the Agency's general counsel or transaction counsel, and (2) other consultants retained by the Agency in connection with the Project; with all such charges to be paid by the Company at the closing or, if the closing does not occur or is not applicable, within ten (10) business days of receipt of the Agency's invoices therefore. Company is entitled to receive a written estimate of fees and costs of the Agency's transaction counsel.

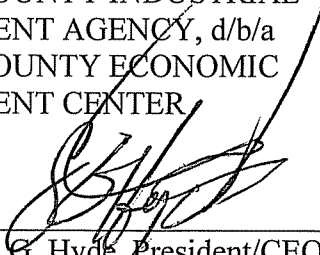
Company covenants and agrees that Company is liable for payment to the Agency of all charges referred to above, as well as all other actual costs and expenses incurred by the Agency in undertaking the Project notwithstanding the occurrence of any of (1) the applicant's withdrawal, abandonment, cancellation or failure to pursue the Project; (2) the inability of the Agency or Company to procure the services of one or more financial institutions to provide financing for the Project; or (3) Company's failure, for whatever reason, to undertake and/or successfully complete the Project.

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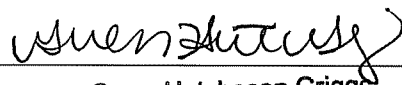
[Signature Page to Agent Agreement]

IN WITNESS WHEREOF, the parties hereto have entered into this Agent Agreement effective as of the day and year first above written.

GENESEE COUNTY INDUSTRIAL
DEVELOPMENT AGENCY, d/b/a
GENESEE COUNTY ECONOMIC
DEVELOPMENT CENTER

By: 
Steven G. Hyde, President/CEO

PARC DARIEN LAKE, LLC

By: 
Gwen Hutcheson Griggs
Chief Strategy Officer and General Counsel

CNL INCOME DARIEN LAKE LLC

BY: _____
Joseph T. Johnson Senior Vice President

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[Signature Page to Agent Agreement]

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GENESEE COUNTY ECONOMIC
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By: _____
Steven G. Hyde, President/CEO

PARC DARIEN LAKE, LLC

By: _____

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