

**FIFTH AMENDMENT OF CONCESSION
AGREEMENT FOR WAKEBOARD PARK**

This **FIFTH AMENDMENT OF CONCESSION AGREEMENT FOR WAKEBOARD PARK** ("**Fifth Amendment**") is entered into among **THE TOWN OF LITTLE ELM, TEXAS**, a Texas home-rule municipality ("Town"), whose address for the purposes of this Fifth Amendment is 100 W. Eldorado Parkway, Little Elm, Texas 75068; **LITTLE ELM ECONOMIC DEVELOPMENT CORPORATION**, a Texas non-profit corporation ("**LEEDC**"), whose address for the purposes of this Fifth Amendment is 100 W. Eldorado Parkway, Little Elm, Texas 75068; and **AMERICA'S CABLE PARK GROUP, LLC**, a Texas limited liability company ("**Cable Park**"), whose address for the purposes of this Fifth Amendment is 280 East Eldorado Parkway, Little Elm, Texas 75068.

RECITALS

WHEREAS, the Town, the LEEDC and Cable Park entered into that certain document entitled "**CONCESSION/LEASE/DEVELOPMENT AGREEMENT FOR WAKEBOARD PARK**" ("**Wakeboard Park Agreement**"), effective **February 13, 2014**; and

WHEREAS, the Wakeboard Park Agreement replaced and supplanted certain portions of the Lease/Development/Concession Agreement entered into among the Town, Cable Park, and the LEEDC on October 22, 2012, and as amended on January 15, 2013, April 16, 2013, and May 7, 2013; and

WHEREAS, on or about **February 1, 2016**, the Town, the LEEDC and Cable Park entered into a **FIRST AMENDMENT OF CONCESSION AGREEMENT FOR WAKEBOARD PARK** ("**First Amendment**") regarding the timing of the payment of rent, the entity to whom the rent shall be paid, and the identification of whom notice shall be given; and

WHEREAS, on or about **March 6, 2017**, the Town, the LEEDC and Cable Park entered into a **SECOND AMENDMENT OF CONCESSION AGREEMENT FOR WAKEBOARD PARK** ("**Second Amendment**") regarding landscape and irrigation obligations; and

WHEREAS, on or about **February 19, 2019**, the Town, the LEEDC and Cable Park entered into a **THIRD AMENDMENT OF CONCESSION AGREEMENT FOR WAKEBOARD PARK** ("**Third Amendment**") regarding the cost of water for the irrigation meter and the cost of landscape maintenance; and

WHEREAS, on or about **May 19, 2020**, the Town, the LEEDC and Cable Park entered into a **FOURTH AMENDMENT OF CONCESSION AGREEMENT FOR WAKEBOARD PARK** ("**Fourth Amendment**") to address the timing of the payment of rent by waiving certain rent payments; and

WHEREAS, the parties now desire to enter into this Fifth Amendment to address the Town assuming the obligations of landscaping and pond and irrigation obligations.

NOW, THEREFORE, in consideration of the mutual covenants and agreements contained herein and for other good and valuable consideration, the receipt and sufficiency of which are hereby mutually acknowledged, and subject to the terms, provisions and conditions of this Fifth Amendment, and each in consideration of the duties, covenants and obligations of the other hereunder, the Town, the LEEDC and Cable Park do hereby agree that the Wakeboard Park Agreement (as amended by the First Amendment, Second Amendment, Third Amendment, and Fourth Amendment) shall be amended as follows:

SECTION 1. FINDINGS INCORPORATED.

The foregoing recitals are hereby incorporated into the body of this Fifth Amendment and shall be considered part of the mutual covenants, consideration and promises that bind the parties.

SECTION 2. AMENDMENT TO WAKEBOARD PARK AGREEMENT.

- (a) **Amendment to Wakeboard Park Agreement.** That Section 7.1 of the Wakeboard Park Agreement is hereby amended to read as follows:

“7.1 The Town covenants that the Premises are served by water, sewer, electrical and gas utilities. Cable Park covenants and agrees to pay all charges incurred for water, sewer, electrical and gas services used in the Premises, if any. Notwithstanding the foregoing, for the time period beginning when the Third Amendment is effective until September 30, 2021, the Town agrees that it will pay the water bill for the irrigation meter to the pond. Beginning on the Effective Date of the Fifth Amendment and through December 31, 2025, the Town will resume all obligations to pay the water bill for the irrigation meter to the pond. Any prior obligations owed to the Town is waived as it relates to water bill.”

- (b) **Amendment to Wakeboard Park Agreement.** That Section 7.2 of the Wakeboard Park Agreement is hereby amended to read as follows:

“7.2 Should the Town, at its sole discretion, engage a third-party landscape maintenance company (“Landscape Company”) to maintain Beard Park, which is a park owned and operated by the Town and in which the Town Premises is located, Cable Park agrees to pay for 1/3rd of the annual costs incurred by the Town to the Landscape Company. The area to be included within the scope of the landscape maintenance contract is set forth in ***Exhibit C*** attached to the Wakeboard Park Agreement (as amended by the First Amendment). The Town retains sole discretion in the selection of the Landscape Company and the terms and conditions under which the Landscape Company may operate and perform its assigned tasks. Notwithstanding the foregoing, for the time period beginning when the Third Amendment is effective and through December 31, 2025, the Town agrees that it will maintain (or cause to be maintained through the Landscape Company) the landscaping of the Premises at the Town’s sole cost. Any prior obligations owed to the Town is waived as it relates to landscaping for the irrigation pond.”

SECTION 3. MISCELLANEOUS PROVISIONS.

The following miscellaneous provisions are a part of this Fifth Amendment.

- (a) **Agreement and Amendment.** All of the terms, conditions, and obligations of the Agreement, and any amendments remain in full force and effect except where specifically modified by this Fifth Amendment.
- (b) **Amendments.** This Fifth Amendment constitutes the entire understanding and agreement of the parties as to the matters set forth in this Fifth Amendment. No alteration of or amendment to this Fifth Amendment shall be effective unless given in writing and signed by the party or parties sought to be charged or bound by the alteration or amendment.
- (c) **Applicable Law and Venue.** This Fifth Amendment shall be governed by and construed in accordance with the laws of the State of Texas, and all obligations of the parties created hereunder are performable in Denton County, Texas. Venue for any action arising under this Fifth Amendment shall lie in the state district courts of Denton County, Texas.
- (d) **Assignment.** This Fifth Amendment may not be assigned without the express written consent of the other party, which shall not be unreasonably withheld.
- (e) **Binding Obligation.** This Fifth Amendment shall become a binding obligation on the signatories upon execution by all signatories hereto. Town warrants and represents that the individual executing this Fifth Amendment on behalf of Town has full authority to execute this Fifth Amendment and bind the Town to the same. LEEDC warrants and represents that the individual executing this Fifth Amendment on behalf of LEEDC has full authority to execute this Fifth Amendment and bind the LEEDC to the same. The Cable Park warrants and represents that the individual executing this Fifth Amendment on Cable Park's behalf has full authority to execute this Fifth Amendment and bind the Cable Park to the same.
- (f) **Caption Headings.** Caption headings in this Fifth Amendment are for convenience purposes only and are not to be used to interpret or define the provisions of the Fifth Amendment.
- (g) **Counterparts.** This Fifth Amendment may be executed in one or more counterparts, each of which shall be deemed an original and all of which shall constitute one and the same document.
- (h) **Effective Date.** The effective date (the "Effective Date") of this Fifth Amendment shall be the date of the latter to execute this Fifth Amendment by the Cable Park, the LEEDC, and the Town.
- (i) **Severability.** The provisions of this Fifth Amendment are severable. If any paragraph, section, subdivision, sentence, clause, or phrase of this Fifth Amendment is for any reason held by a court of competent jurisdiction to be contrary to law or contrary to any rule or regulation have the force and effect of the law, the remaining portions of the Fifth

Amendment shall be enforced as if the invalid provision had never been included.

- (j) **Time is of the Essence.** Time is of the essence in the performance of this Fifth Amendment.

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IN WITNESS WHEREOF, the parties have signed below as of the day and year first above written.

TOWN:

TOWN OF LITTLE ELM, TEXAS,
a Texas home-rule municipality

By: _____
Curtis Cornelious, Mayor

ATTEST:

Caitlan Biggs, Town Secretary

APPROVED AS TO FORM:

Robert F. Brown, Town Attorney

LEEDC:

**LITTLE ELM ECONOMIC
DEVELOPMENT CORPORATION**
A Texas non-profit corporation

By: _____
Ken Eaken, President

Date: _____

CABLE PARK:

AMERICA'S CABLE PARK GROUP, LLC

A Texas limited liability company

CS
Printed Name: Chad Lacerte
Title: Owner
Date: 9-13-23

STATE OF TEXAS

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COUNTY OF Denton

This instrument was acknowledged before me on the 13 day of September, 2023,
by Chad Lacerte, owner of Americas Cable, LLC, a Texas
limited liability company, on behalf of said Texas company. Park

Jennifer Diane Eusse
Notary Public, State of Texas

