

Temporary Use Agreement

This Temporary Use Agreement (“Agreement”) is made by and between Minto PBLH, LLC, a Florida limited liability company (“Minto”), and the City of Westlake, a municipal corporation of the state of Florida (“Westlake”). Minto and Westlake may be referred to individually herein as a “party” and collectively as “the parties.”

WHEREAS, Minto owns that certain real property (the “Property”) described in Exhibit “A” attached hereto, which is hereby incorporated herein as if fully set forth; and

WHEREAS, Westlake desires to use the Property on a temporary basis to provide parking and other uses specified below for an event titled “Fourthfest” taking place on July 4, 2023 (the “Event”); and

WHEREAS, Minto desires to permit Westlake to use the Property for parking related to the Event, subject to the terms and conditions set forth in this Agreement;

NOW, THEREFORE, for the mutual covenant and matters set forth herein, the sufficiency of which both parties hereby acknowledge, the parties hereby agree as follows:

1. **Incorporation.** The recitations set forth above are incorporated herein.
2. **Use.** Minto agrees to allow Westlake, vendors authorized by Westlake, Westlake’s guests and invitees, and members of the public (collectively, “Westlake Parties”) to enter onto and use the Property for the following purposes associated with the Event:
 - a. Parking associated with the Event;
 - b. Staging of a concert venue, including the installation of a temporary stage, on the portion of the Property located east of Seminole Pratt Whitney Road; and
 - c. Staging of an area for launching fireworks on a portion of the Property located on the west side of Seminole Pratt Whitney Road, specifically identified on Exhibit A as “Pod G.”
3. **Limitations.** This Agreement only permits Westlake Parties to use the Property for the purposes specified in Section 2, above. This Agreement shall not be construed to permit any other use of the Property and shall not be construed to permit use of any other real property owned or controlled by Minto. Further, this Agreement only permits Westlake to use the Property between the hours of 12:01 am on July 4, 2023 and 11:59 pm on July 4, 2023, except as otherwise may be agreed to in writing by both parties for purposes of set-up, take-down, and clean up related to the Event.
4. **As Is; Use Restrictions.** Westlake certifies that it has inspected the Property and accepts the Property “as is” for use in the Property’s existing condition. Westlake shall not make or permit any improvements, alterations, or modifications to the Property; shall not commit or allow to be committed any waste upon the Property or any nuisance or other act or thing which may result in damage or depreciation of the value of the Property; shall not allow any vehicle transporting or holding hazardous waste or hazardous material to park on the Property; shall comply with all

applicable state, local, and federal laws, rules, and regulations; and shall ensure the Property is returned to Minto in the same condition the Property was in prior to the Event, including removing all trash and debris.

5. **Indemnification.** To the extent permitted by law, Westlake shall indemnify, save, and hold harmless Minto, its officers, employees, agents, and representatives from any liability, claim, demand, suit, loss, cost, expense or damage which may be asserted, claimed, or recovered against or from Minto, its officers, employees, agents, or representatives, by reason of any property or other damages or personal injury, including death, sustained by any person whomsoever, which damage is incidental to, occurs as a result of, arises out of, or is otherwise related to the use of the Property for the Event, including the negligent or wrongful conduct or the faulty equipment (including equipment installation and removal) of the Westlake Parties or Westlake's employees, agents, partners, principals, or subcontractors. This paragraph shall not be construed to require Westlake to indemnify Minto for Minto's own negligence, or intentional acts of Minto, its officers, employees, agents, and representatives. In the event Minto, its officers, employees, agents, or representatives, shall be made a party to litigation associated with the use of the Property for the Event, Westlake shall also pay all costs and attorneys' fees incurred by Minto in connection with such litigation and any appeals thereon. This section shall not be construed to waive Westlake's sovereign immunity under Florida law.

6. **Waiver.** The parties agree Minto will not be responsible for any property or other damages or personal injury sustained by Westlake, Westlake Parties, or others using the Property for the Event, from any cause whatsoever related to Westlake's use of the Property, whether such damage or injury occurs before, during, or after the use of the Property. Westlake hereby forever waives, discharges, and releases Minto, its officers, employees, agents, and representatives, to the fullest extent the law allows, from any liability for any damage or injury sustained by Westlake, Westlake Parties, or others using the Property for the Event. This section shall not be construed to waive Westlake's sovereign immunity under Florida law.

7. **Insurance.** Westlake shall obtain all insurance ("City Insurance") required by this Section 7 and further described in Exhibit "B" attached hereto, which is hereby incorporated herein as if fully set forth. Westlake shall provide proof of the City Insurance to Minto at least 4 days prior to the Event. The City Insurance must remain in force for so long as is necessary to cover any occurrence relating to, resulting from, or arising out of the Event or this Agreement and shall list Minto as an additional insured party for all insurance. Westlake shall require any contractors, consultants, subcontractors, or subconsultants associated with the Event to procure separate insurance that meets the requirements set forth herein for City Insurance, or the commercial equivalent of the City Insurance, and provide proof thereof to Minto at least 4 days prior to the Event. Any legal requirement that limits the ability of Westlake to obtain insurance that meets the requirements of this Agreement does not relieve the contractors, consultants, subcontractors, or subconsultants associated with the Event from obtaining insurance that meets all requirements of this Section 7 and Exhibit "B" or the commercial equivalent thereof.

8. **Health and Safety.** Westlake will take proper health and safety precautions to protect its employees, officials, contractors, guests, invitees, agents, and representatives, including the Westlake Parties, that enter onto the Property for the Event from all injury and all property or other damages.

9. **Effective Date and Termination.** This Agreement becomes effective at the date and time the last party executes this Agreement (the "Effective Date"). This Agreement shall automatically terminate at 12:01 pm on July 5, 2023.

10. **No Transfer.** Westlake will not subcontract, assign, or otherwise transfer this Agreement to any individual, group, agency, government, non-profit or profit corporation, or other entity. This provision shall not prohibit the general public and Westlake's contractors from use of the Property for the Event, subject to the limitations herein.

11. **Electronic Signatures.** The parties agree that the electronic signature of a party to this Agreement shall be as valid as an original signature of such party and shall be effective to bind such party to this Agreement.

12. **Survival.** The provisions of this Agreement regarding indemnification, waiver, insurance, and legal expenses shall survive termination of this Agreement and remain in full force and effect.

13. **Public Records.**

13.1 The City of Westlake is a public agency subject to Chapter 119, Florida Statutes. Minto shall comply with Florida's Public Records Law. Specifically, Minto shall:

13.1.1 Keep and maintain public records required by Westlake to perform under this Agreement;

13.1.2 Upon request from Westlake's custodian of public records, provide Westlake with a copy of the requested records or allow the records to be inspected or copied within a reasonable time at a cost that does not exceed the cost provided in Chapter 119, Florida Statutes, or as otherwise provided by law;

13.1.3 Ensure that public records that are exempt or that are confidential and exempt from public record disclosure requirements are not disclosed except as authorized by law for the duration of the Agreement term and, following completion of the Agreement, Minto shall destroy all copies of such confidential and exempt records remaining in its possession after Minto transfers the records in its possession to Westlake; and

13.1.4 Upon completion of the Agreement, Minto shall transfer to Westlake, at no cost to Westlake, all public records in Minto's possession. All records stored electronically by Minto must be provided to Westlake, upon request from Westlake's custodian of public records, in a format that is compatible with the information technology systems of Westlake.

13.2 The failure of Minto to comply with the provisions set forth in this Article shall constitute a default and breach of this Agreement, for which, Westlake may terminate the Agreement in accordance with the terms herein.

IF MINTO HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO MINTO'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS AGREEMENT, CONTACT THE CUSTODIAN OF PUBLIC RECORDS AT:

**CITY CLERK
4001 SEMINOLE PRATT WHITNEY ROAD
WESTLAKE, FL 33470
(561) 790-1742
zburgess@westlakegov.com**

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the date set forth below.

Westlake:

Minto:

Printed Name: _____

Printed Name: John F. Carter

Title: _____

Title: Senior Vice President

Date: _____

Date: _____

WITNESS:

WITNESS:

Printed Name: _____

Printed Name: _____

EXHIBIT A
Legal Description

Exhibit B

Insurance Requirements

The following coverage, terms and limits are minimum requirements (the “**City Insurance**”) to be provided by Westlake which must remain in force for so long as is necessary to cover any occurrence relating to, resulting from, or arising out of the Event or this Agreement: