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CITY OF WESTLAKE

RESOLUTION NO. 2023-09

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF WESTLAKE, FLORIDA, APPROVING AND AUTHORIZING THE PROPER CITY COUNCIL MEMBER TO EXECUTE THE NON-EXCLUSIVE PERMISSIVE USE AGREEMENT BETWEEN THE WESTLAKE RESIDENCES MASTER HOMEOWNERS' ASSOCIATION, INC. AND THE CITY OF WESTLAKE; PROVIDING FOR CONFLICTS; PROVIDING FOR SEVERABILITY; AND PROVIDING AN EFFECTIVE DATE.

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WHEREAS, the City Council deems it to be in the best interests of the City to approve and authorize the proper City Council Member to execute the Non-Exclusive Permissive Use Agreement between the Westlake Residences Master Homeowners Association, Inc. and the City of Westlake;

**NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF WESTLAKE, FLORIDA:**

**SECTION 1.** The foregoing "WHEREAS" clause is hereby ratified and confirmed by the City Council and incorporated herein by this reference.

**SECTION 2.** The City Council of the City of Westlake, Florida, hereby approves and authorizes the proper City Council Member to execute the Non-Exclusive Permissive Use Agreement between the Westlake Residences Master Homeowners Association, Inc. and the City of Westlake. A copy of the Agreement is attached hereto as Exhibit "A".

**SECTION 3.** All Resolutions or parts of Resolutions in conflict herewith, be and the same are repealed to the extend of such conflict.

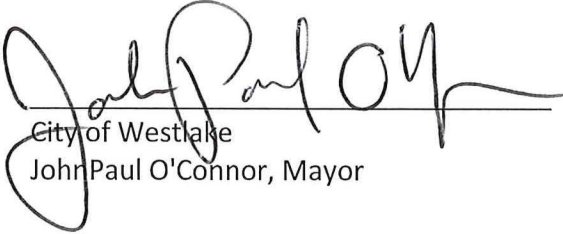
**SECTION 4. CONFLICTS.** All resolutions or parts of resolutions in conflict herewith are hereby repealed to the extent of such conflict.

**SECTION 5. SEVERABILITY.** If any clause, section, other part or application of this Resolution is held by any court of competent jurisdiction to be unconstitutional or invalid, in part or application, it shall not affect the validity of the remaining portions or applications of this Resolution.

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**SECTION 6. EFFECTIVE DATE.** This Resolution shall take effect immediately upon its passage and adoption.

**PASSED AND APPROVED** by City Council for the City of Westlake, on this 14<sup>th</sup> day of March 2023.

  
\_\_\_\_\_  
City of Westlake  
John Paul O'Connor, Mayor

  
\_\_\_\_\_  
Zoie Burgess, CMC, City Clerk

## NON-EXCLUSIVE PERMISSIVE USE AGREEMENT

THIS NON-EXCLUSIVE PERMISSIVE USE AGREEMENT (this “Agreement”) is made and entered into this 14<sup>th</sup> day of March, 2023 (the “Effective Date”) by and between WESTLAKE RESIDENCES MASTER HOMEOWNERS ASSOCIATION, INC. a Florida not-for-profit corporation (the “Association”), and THE CITY OF WESTLAKE, a Florida municipal corporation (the “City”, and together with the Association, the “Parties”).

### RECITALS

A. Association is the homeowners association responsible for the operation and management of the master planned residential community known as Westlake Residences (the “Community”) located in Westlake, Palm Beach County, Florida, and is responsible for the operation of the common areas of the Community pursuant to the Declaration of Restrictions, Covenants and Easements for Westlake Residences recorded in Official Records Book 29588, Page 766 of the Public Records of Palm Beach County, Florida, as amended (the “Declaration”).

B. The common areas of the Community include the Adventure Park Amenity Center which contains, among other facilities, the main Lodge building (the “Lodge” or the “Property”).

C. City desires to acquire a non-exclusive privilege and permission to use the Lodge, on a non-exclusive basis, solely for the Permitted Use (as defined below) as further described in this Agreement.

D. The Association has agreed to provide the City a non-exclusive right to use the Lodge upon the terms and conditions set forth in this Agreement.

NOW, THEREFORE, for and in consideration of the mutual covenants and agreements contained in this Agreement and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties agree as follows:

1. Incorporation of Recitals. The recitals set forth above are true and correct and are incorporated into and form a part of this Agreement.
2. Agreement as to Use. Association agrees, upon the terms and conditions contained in this Agreement, to allow the City to use the Lodge for Scheduled Meetings and Approved Meetings (as those terms are defined in Section 4 of this Agreement) for the Permitted Use (defined in Section 3 below). Association and the City understand and agree that this Agreement is not, and shall not be deemed to constitute, a lease of the Property. The right to use the Lodge as set forth in this Agreement (i) is a privilege to the non-exclusive use of the Property solely for the Permitted Use and does not give the City the right to use the Property for any other purpose or use whatsoever; and (ii) does not operate to confer on or vest in City any title, interest, or estate in the Lodge or other property. The City expressly acknowledges and agrees that this Agreement does not, and shall not be considered, construed or deemed to give the City exclusive use of the Lodge

or any other property and that the Lodge may be used at all times by the Association and any of its designees as provided in Section 11 of this Agreement.

3. Permitted Use. City shall use the Lodge strictly and solely for the purpose of holding City meetings or other City related or sponsored events including, without limitation, City Council meetings, City Council workshops, City committee meetings, City board meetings, City advisory board meetings, and City staff meetings for no more than 320 people (each a "**Meeting**" and collectively, the "**Permitted Use**"). The City may elect to use the Lodge as (i) a single event space utilizing the entirety of the Lodge, or (ii) one or more smaller rooms, which can be achieved by dividing the Lodge into a maximum of four (4) smaller rooms (the "**Configuration**"). City accepts the use of the Property in its present "AS-IS" "WHERE-IS" "WITH ALL FAULTS" condition, without any representation or warranty whatsoever by Association as to the condition or capability of the Property (including, without limitation, the warranty of fitness for a particular purpose) and without any obligation upon Association to make any contribution, provide any improvements or to assume the performance of any work in order to prepare the Property for use by City; provided, however, at the request of the City the Association shall be responsible for (i) room set up, including the Configuration, prior the City's use of the Lodge for a Permitted Use, and (ii) clean up after the City's use of the Lodge for a Permitted Use, subject to the City's obligations pursuant to Section 10.10 of this Agreement.

4. Use Time. At or prior to the Commencement Date and thereafter on an annual basis during the Term and no later than thirty (30) days prior to the end of the City's fiscal year, the City shall provide the Association in writing with its Meeting calendar for the following fiscal year (the "**Annual Meeting Calendar**"). The Annual Meeting Calendar shall include: (i) the dates and times of all scheduled Meetings for the fiscal year for which the City requires use of the Property (each a "**Use Time**"), (ii) the estimated number of attendees for each Meeting which shall in no event exceed three hundred and twenty (320) people, and (iii) the space requirements and Configuration needed for each Meeting (each such scheduled Meeting, a "**Scheduled Meeting**"). In the event that the City desires to use the Property for a Meeting at any time that was not included in the Annual Meeting Calendar, the City Manager or City Clerk shall submit a written request to the Association no later than five (5) business days prior to the proposed Meeting, which notice shall include the date, time, estimated number of attendees and space requirements needed for the Meeting ("**Meeting Request**"). Within one (1) business day after receiving the Meeting Request, the Association shall notify the City in writing ("**Meeting Request Response**") whether the Property is available on the date and time (the "**Meeting Time**") and as otherwise indicated in the Meeting Request. If the Property is available at the Meeting Time and as otherwise indicated in the Meeting Request ("**Approved Meeting**"), the City shall notify the Association in writing of its preferred Configuration at least thirty-six (36) hours prior to the Approved Meeting.

5. Use Fee. The City shall pay to Association, in return for the granting of the right to use the Lodge, a fee in the total sum of either \$1,000.00 for use of the entire facility or \$500.00 for use of a portion of the facility for each Scheduled Meeting and Approved Meeting (the "**Use Fee**"). In addition to the Use Fee, the City shall also pay to Association any applicable sales, use, or other taxes that may be due with respect to the payment of the Use Fee.

6. Payment of the Use Fee. The City shall pay the Use Fee no later than thirty-six (36) hours prior to each Scheduled Meeting and Approved Meeting. In the event a Scheduled Meeting or Approved Meeting is cancelled less than thirty-six (36) hours prior its scheduled Use Time, the Use Fee shall be non-refundable. In the event the City fails to pay the Use Fee at least thirty-six (36) hours prior to Meeting, the Association may grant privileges to third parties to use the Property during such Use Time, and the City shall not have the right to use the Property for such Meeting unless and until the Use Fee is paid prior to the time of the Meeting, provided the Association has not granted privileges to a third party to use the Property during such time.

7. Term. Subject to the terms and provisions of this Agreement, City is permitted to use the Property during the Permitted Times solely for the Permitted Use for a term ("**Term**") of five (5) years commencing on March 14, 2028 (the "**Commencement Date**") and ending on the date that is five (5) years after the Commencement Date (the "**Initial Term**"), unless extended or earlier terminated in accordance with the terms of this Agreement; the Initial Term and any Extension of this Agreement as provided in Section 8 below is referred to as the "**Term**".

8. Extension Option. The City shall have the right to extend the Initial Term for one (1) additional term of five (5) years (the "**Extension**"), with the Extension commencing upon the expiration of the Initial Term. The City shall give Association written notice of the exercise of the Extension at least ninety (90) days before the expiration of the Initial Term. All the terms, covenants and conditions of this Agreement shall continue in full force and effect during the Extension, except that the Fees for the Extension shall increase by ten percent (10%).

9. Termination. This Agreement may be terminated at any time and for any reason whatsoever by the Association or the City by providing the other party with not less than One Hundred Eighty (180) days' prior written notice unless a shorter time is agreed upon by the Parties.

10. Use of the Lodge. The City's use of the Property is subject to compliance with the following covenants, conditions and restrictions:

10.1 The City's use of the Lodge shall at all times be in full compliance with all applicable federal, state and local laws, ordinances and regulations.

10.2 The City's use of the Lodge shall at all times be subject to and in full compliance with the Declaration and any rules and regulations promulgated by the Association. The City agrees to strictly comply with all terms, covenants, rules and regulations set forth in the Declaration including, without limitation, Section 9 of the Declaration.

10.3 The City shall exercise reasonable care in its use of the Lodge and shall not do or permit anything to be done in or about the Lodge, nor bring nor keep anything within the Lodge, which will in any way affect or raise the premiums for the insurance held by Association, or which shall in any way conflict with any statute, ordinance, rule, regulation, order, law or other requirement (collectively the "**Laws**") affecting the occupancy and use of the Lodge, which is now, or may hereafter be, enacted or promulgated by any public authority.

10.4 The City shall not make any alterations, additions, improvements or installations in or about the Lodge without the prior written consent of the Association, which consent may be withheld in the Association's sole and absolute discretion.

10.5 City covenants not to commit waste on or damage to the Property, nor to engage in any illegal or nuisance activities on the Property, and City will use due care to prevent others from doing so.

10.6 City shall use the Property solely for the Permitted Use. City shall not use the Property nor permit the Property to be used for any purpose other than the Permitted Use.

10.7 The privilege granted to the City under this Agreement shall be exercised only on the Property and upon no other property.

10.8 All persons attending a Scheduled Meeting or Approved Meeting shall use parking spaces designated for the Property and shall not park in driveways or other locations not specifically designated for parking. All persons attending a Scheduled Meeting or Approved Meeting must enter the Property through the main entrance. In the event the city is using vendors or service providers for any Meeting, all such vendors and service providers must use the service entrance.

10.9 The City and all persons attending an Event shall conduct themselves in a manner that will not disrupt the Community or constitute a breach of the peace.

10.10 Association shall provide, at no additional cost, electricity, cable television, internet and Wi-Fi. In addition, Association shall provide room set-up and clean-up to the extent requested by the City; provided, however, the City shall vacate the Property at the end of each Meeting in a neat, clean condition, free from refuse and garbage, and in good repair and condition.

10.11 The City shall be responsible, at the City's expense, for the cost of any repairs for any damages to the Property caused by the City's use of the Property.

11. Non-Exclusive Use of the City. Association reserves for itself, its members, agents, successors and assigns all rights of ownership in the Property, and all other uses of the Property which do not prevent City's use of the Property for the Permitted Use. Nothing contained in this Agreement shall be construed as limiting Association from having the full use, access and enjoyment of the Property, except only as to the rights granted to the City by the terms of this Agreement, and nothing contained in this Agreement shall be construed or interpreted as granting anything to the City other than the use of the Property as specifically provided in this Agreement. The City understands, acknowledges and agrees that Association may grant licenses and privileges to third parties to use the Property during the Term. This Section shall survive termination or expiration of this Agreement.

12. Default and Remedies. If either party violates or fails to perform or comply with any obligation, covenant or condition of this Agreement, that violation or failure shall be a default

under this Agreement. In such event, the non-defaulting party shall provide written notice to the defaulting party of the nature of the default including a ten (10) day period for curing such default. If the default is not cured within such ten (10) day period, the non-defaulting party may terminate this Agreement immediately upon notice to the defaulting party and pursue any and all remedies available at law or in equity including, without limitation, recovery of all damages, losses, expenses, fees and costs incurred or which it may incur by reason of the default (including, without limitation, reasonable attorneys' fees and paraprofessional fees and costs, whether suit or proceeding is brought, pretrial, and at all levels of proceedings, including appeals). Upon any termination, on account of a default by City, Association shall be entitled to retain all Use Fees previously paid to Association, without thereby waiving any claim for further damages,

13. Loss. In no event whatsoever shall Association be responsible or liable for any theft, damage, injury or loss to persons or property of City or any of its employees, agents, contractors, suppliers or invitees. The City acknowledges that the use of the Property is at its sole risk and expense. The City assumes all risk of injury, death or damage to City and its employees, agents, contractors, suppliers and invitees arising or resulting, directly or indirectly, from the use of the Property, and the Association assumes no responsible for the safety of persons using the Property or any goods, personal property or other items brought into or left in the Property by the City, its employees, agents or invitees, all of which shall be at the City's sole risk. This provision shall survive termination of this Agreement.

14. Relationship of the Parties. This Agreement shall in no way be construed as a license, lease, partnership agreement or joint venture, nor shall this Agreement be construed in any manner so as to create an employer/employee relationship between the parties or to give the City the rights of a tenant or licensee. Nothing contained in this Agreement shall be deemed or construed as creating any leasehold or other possessory interest or any other right, title or interest in the Lodge or any part thereof. The City does not have, nor will it, or any of its employees, agents, contractors, suppliers or representatives, hold themselves out as having any right, power or authority to create any contract or obligation, either express or implied, on behalf of, in the name of, or binding upon the Association.

15. Responsibility for Acts. The City is a political subdivision as defined in Chapter 768.28, Florida Statutes. Each party hereto agrees to be fully responsible for the acts and omissions of its agents or employees to the fullest extent permitted by law. Nothing herein is intended to serve as a waiver of sovereign immunity by the City nor shall anything included herein be construed as consent to be sued by third parties in any matter arising out of this Agreement or any other contract.

16. Notices. All notices, requests, consents, demands and other communications required of either party under this Agreement shall be in writing and shall be (as elected by the party giving such notice) deemed to have been given at the time when personally delivered, mailed via registered mail, return receipt requested, sent by nationally recognized overnight courier service, or sent by electronic transmission (i.e. e-mail), addressed as follows:

If to the Association: Westlake Residences Master Homeowners Association, Inc.  
Attn: John Carter  
16604 Town Center Parkway North  
Westlake, FL 33470  
E-mail: jfcarter@mintousa.com  
Telephone: (943) 973-4490

If to the City: City of Westlake  
Kenneth Cassel, City Manager  
4001 Seminole Pratt Whitney Road  
Westlake, FL 33470  
E-mail: kcassel@westlakegov.com  
Telephone: (561) 530-5880

or to such other address as such party may have fixed by notice; provided, however, that any notice of change of address shall be effective only upon receipt.

17. Assignment. The privilege granted to the City in this Agreement is a non-exclusive, personal, revocable and unassignable privilege to use the Lodge solely for the Permitted Use as provided in this Agreement. The City shall have no right to transfer (by operation of law or otherwise), assign, mortgage, pledge or in any manner encumber its interest in this Agreement. Any attempted assignment shall be wholly void and totally ineffective for all purposes.

18. Choice of Law. This Agreement shall be governed by the laws of the State of Florida. The Parties irrevocably and unconditionally consent to personal jurisdiction and venue in Palm Beach County, Florida, in any action concerning a dispute between the Parties relating to this Agreement.

19. Entire Understanding. This Agreement sets forth the entire agreement and understanding between the Parties as to the matters contained herein, and merges and supersedes all prior discussions, agreements, and understandings of every kind and nature among them, and there are no covenants, promises, agreements, conditions, or understandings, either oral or written, between the Parties other than as expressly set forth in this Agreement.

20. Headings. The headings in this Agreement are for convenience and reference only and are not included in any way to define or limit the scope or content of this Agreement or to, in any way, affect its provisions.

21. Waiver of Jury Trial. ASSOCIATION AND CITY ACKNOWLEDGE THAT THIS AGREEMENT IS A SOPHISTICATED LEGAL DOCUMENT. ACCORDINGLY, JUSTICE WILL BEST BE SERVED IF ISSUES REGARDING THIS AGREEMENT ARE HEARD BY A JUDGE IN A COURT PROCEEDING, AND NOT A JURY. ASSOCIATION AND CITY AGREE THAT ANY CLAIM, DEMAND, ACTION, OR CAUSE OF ACTION, WITH RESPECT TO ANY ACTION, PROCEEDING, CLAIM, COUNTERCLAIM, OR CROSSCLAIM, WHETHER IN CONTRACT AND/OR IN TORT (REGARDLESS IF THE



TORT ACTION IS PRESENTLY RECOGNIZED OR NOT), INCLUDING, BUT NOT LIMITED TO, THOSE FOR PERSONAL INJURIES, PAIN, SUFFERING AND WRONGFUL DEATH, BASED ON, ARISING OUT OF, IN CONNECTION WITH OR IN ANY WAY RELATED TO THIS AGREEMENT, THE DOCUMENTS (INCLUDING, WITHOUT LIMITATION, ANY DECLARATION), ANY COURSE OF CONDUCT, COURSE OF DEALING, VERBAL OR WRITTEN STATEMENT, VALIDATION, PROTECTION, ENFORCEMENT ACTION OR OMISSION OF ANY PARTY SHALL BE HEARD BY A JUDGE IN A COURT PROCEEDING AND NOT A JURY. The provisions of this paragraph shall survive the expiration or termination of this Agreement.

22. Attorneys' Fees. In the event it becomes necessary for either party to initiate litigation or incur other costs for the purpose of enforcing any of its rights under this Agreement or for the purpose of seeking damages for any breach of this Agreement, then in addition to any and all other remedies that may be granted, the prevailing party shall be entitled to recover from the other party reasonable attorneys' fees, paraprofessional fees and costs, pretrial, at trial and at all levels of proceedings, including appeals, and all other costs incurred by it in connection with such enforcement efforts, including any costs incurred in engaging collection agencies or other third parties. This provision shall survive termination or expiration of this Agreement.

23. Severability. This Agreement will be binding to the fullest extent permitted by law upon the Parties and their successors and assigns. If any provision of this Agreement is held to be invalid or unenforceable, it shall not affect the validity or enforceability of any other provision of this Agreement which shall remain in full force and effect.

24. Amendment of Agreement. This Agreement may not be altered, changed, modified or amended except by instrument in writing, signed by both the City and Association.

25. Recordation. Neither this Agreement nor any memorandum of this Agreement shall be recorded in the Public Records of Palm Beach County or elsewhere.

26. No Waiver. No waiver of any provision of this Agreement shall be deemed to constitute or imply a future or a further waiver of any other provision set forth in this Agreement.

[REMAINDER OF THIS PAGE INTENTIONALLY LEFT BLANK. ADDITIONAL TEXT AND SIGNATURES APPEAR ON FOLLOWING PAGE.]

27. Counterparts. This Agreement may be executed in any number of counterparts, each of which shall be considered an original and a complete set of which taken together shall constitute one and the same Agreement. The parties agree and intend that a signature by electronic transmission (i.e. e-mail) of a “.pdf” data file shall bind the party so signing with the same effect as though the signature was original.

IN WITNESS WHEREOF, Association and City have executed this Agreement as of the Effective Date.

**ASSOCIATION:**


**WESTLAKE RESIDENCES  
HOMEOWNERS ASSOCIATION, INC.,**  
a Florida not-for-profit corporation



By: \_\_\_\_\_  
Name: John F. Carter  
Title: President

**CITY:**

**CITY OF WESTLAKE, FLORIDA,** a Florida  
municipal corporation

  
Name: Kenneth G. Cusset  
Title: City Manager

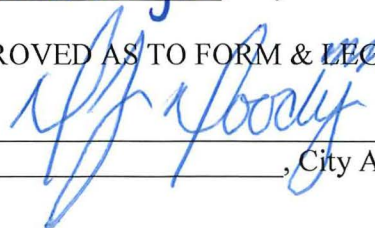
By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

ATTEST:

  
\_\_\_\_\_  
Zoie Burgess, City Clerk

Date: 3/14/2023

APPROVED AS TO FORM & LEGALITY

  
\_\_\_\_\_  
, City Attorney