

THIS INSTRUMENT PREPARED BY:

Roy K. Payne
Chief Assistant City Attorney
City of Orlando
400 S. Orange Avenue
Orlando, Florida 32801
(407) 246-2295

**STREET RIGHT-OF-WAY AND TRAIL ENCROACHMENT
AND REMOVAL AGREEMENT**

THIS AGREEMENT, made and entered into this _____ day of _____, 2015, by and among **CITY OF ORLANDO**, a Florida municipal corporation (hereinafter referred to as "CITY"), and **CRP II – MILLS PARK, LLC**, a Florida limited liability company, whose address is 102 W. Whiting Street, Suite 600, Tampa, Florida, 33602 (hereinafter referred to as "CRP II") and **MILLS PARK APARTMENTS, LLC**, a Florida limited liability company, whose address is c/o Heitman Capital Management, LLC, 191 North Wacker Drive, Suite 2500, Chicago, IL 60606 (hereinafter referred to as "MILLS PARK APARTMENTS" and together with CRP II, "OWNER").

RECITALS:

WHEREAS, CRP II is the owner of certain real property (the "CRP II Property") located within the corporate limits of the City of Orlando, Orange County, State of Florida and depicted as Lot 2, Mills Park, according to the Plat thereof as recorded in Plat Book 79, Pages 52 and 53, of the Public Records of Orange County, Florida (the "Plat"); and

WHEREAS, Mills Park Apartments is the owner of certain real property (the "Mills Park Apartments Property" and together with the CRP II Property, the "Owner's Property") located within the corporate limits of the City of Orlando, Orange County, State of Florida and depicted as Lot 1, Mills Park, according to the Plat; and

WHEREAS, CITY is the owner of certain real property located within the corporate limits of the City of Orlando, Orange County, State of Florida, commonly referred to as the Dinky Line Trail depicted as Lot 3, on the Plat and shown as Tract A on **Exhibit "C"** attached hereto and made a part hereof by reference (the "City Property"); and

WHEREAS, the Owner's Property is part of a project commonly known as Mills Park (the "Mills Park Project") as described in the Mills Park Master Plan, dated November 14, 2005, as amended, supplemented and/or restated from time to time (the "Mills Park Master Plan"); and

WHEREAS, Owner has constructed and desires to maintain a vehicular and pedestrian ingress and egress access (the "Driveway"), related landscape, walls, monuments, sidewalks and attendant improvements (the "Non-Driveway Improvements"), and Utilities (defined below; the Driveway, Non-Driveway Improvements and Utilities are referred to, collectively, as the "Project"), within, over, across, under and through a portion of the City Property and the street right-of-way of Haven Drive (the "City's Right-of-Way"). In addition to the above, the Project shall include, but not be limited to, the improvements described on **Exhibit "A"** attached hereto and made a part hereof by reference.

WHEREAS, CRP II, consistent with the City approved Mills Park Master Plan and the permits listed on **Exhibit "B"** and made a part hereof (the "**Permits**"), has completed construction of the Project and the City has inspected and approved the Project; and

WHEREAS, Owner has, therefore, requested that the CITY enter into this Agreement; and

WHEREAS, that certain Mills Virginia Bike Trail Agreement, dated November 30, 2005, recorded in Official Records Book 08373, Page 3798, Public Records of Orange County, Florida, as amended by that certain First Amendment To Mills Virginia Bike Trail Agreement, dated October 21, 2010, recorded in Official Records Book 10123, Page 6502, Public Records of Orange County, Florida and assigned to CRP II by that certain Assignment of Developer's Rights and Obligations under the Mills Virginia Bike Trail Agreement, dated April 26, 2011, recorded in Official Records Book 10205, Page 9150, Public Records of Orange County, Florida (collectively, as amended, the "Bike Trail Agreement"), requires CRP II to enter into a binding agreement providing for the encroachment of the Project into the City's Right-of-Way; and

WHEREAS, the Bike Trail Agreement provides CRP II with the right to install utilities within the City Property as described in the Bike Trail Agreement (the "Utilities"). For purposes of this Agreement Utilities shall mean and include but not be limited to electric, water, sewer, gas, telephone, communication, stormwater or other utility pipes, mains, lines, equipment or facilities as may be necessary to provide utility or other services which are necessary or desirable for the development, construction, use and operation of the Owner's Property consistent with the approved Mills Park Master Plan, the Permits; and Exhibit "B"; and

WHEREAS, this Agreement provides for removal of the Non-Driveway Improvements under certain conditions; and

WHEREAS, the Project will continue to be subject to all applicable provisions of the

Orlando City Code, any other applicable government regulation, and the Bike Trail Agreement.

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

1. Recitals. The foregoing Recitals are true and correct and incorporated into the substantive body of this Agreement.
2. Encroachment. The CITY hereby grants permission for the encroachment of the Project into the City's Right-of-Way, limited to the area described and shown in **Exhibit "C"**.
3. Release. OWNER hereby releases the CITY, its representatives, employees and elected officials from any and all damages, claims, or liability, with respect to the Project that may arise due to the CITY's operation and maintenance of the City's Right-of-Way.
4. Priority of City's Right-of Way. The Project shall not be operated or maintained in such a manner so as to interfere, in any way, with the CITY'S operation or maintenance of its right-of-way or any public or general utility improvements located thereon.
5. Project. In consideration for the CITY'S consent to construction and maintenance of the Project within the City's Right-of-Way, as described herein, CRP II agrees, at its sole cost and expense, to maintain, repair and operate the Project, consistent with reasonable engineering standards and all applicable laws, codes, and regulations.
6. No Waiver/No Vesting. This Agreement does not constitute a waiver of the CITY'S regulatory authority and the Owner's Property remains subject to all applicable laws, rules, codes and regulations. This Agreement does not operate to vest any interest or right whatsoever, except as provided in Paragraph 19 below.
7. Insurance. CRP II shall cause its contractor(s) and vendors that maintain the improvements of the Project within the City's Right of Way to possess and maintain, at all times , 1) worker's compensation insurance in the amount of the Florida Statutory Limit; 2) automobile liability insurance of at least \$1,000,000; and 3) general liability insurance in the amount of at least \$1,000,000, in order to protect the CITY and CRP II from any covered liability, claims, damages, losses or expenses arising from or out of in any way connected with construction or maintenance of the Project. CRP II and the CITY shall be listed as an additional insured on the automobile and general liability policies. CITY may request proof of such insurance at any time.

8. Certification. The CITY hereby certifies that the Project has been completed consistent with the permitted plans and any applicable laws, rules or regulations.
9. Indemnification. CRP II agrees that it shall indemnify, hold harmless and defend the CITY, its representatives, employees and elected and appointed officials from and against all claims, damages, loss and expenses of any sort including reasonable attorney's fees and costs including appeals, arising out of or resulting from any tort, intentional action, negligent act or omission of CRP II, its agents, subcontractors, or anyone for whose act or acts any of them may be liable, occurring in that portion of the City's Right-of-Way on, under or through which the Project is constructed resulting from the construction or maintenance of the Project.
10. Representatives Bound Hereby. This Agreement shall be recorded and shall be binding upon and shall inure to the benefit of the successors, heirs, executors, administrators, representatives, or assigns of the OWNER, and upon all persons acquiring an interest thereunder and shall be a restrictive covenant running with the Owner's Property.
11. Recording. CRP II will record this Agreement, at its expense, in the Public Records of Orange County, Florida, where it shall encumber the Owner's Property and City's Right-Of-Way. This restriction shall remain in effect until modified by the parties.
12. Controlling Laws.
 - a. This Agreement and the provisions contained herein shall be construed, controlled, and interpreted according to the laws of the State of Florida, and all duly adopted ordinances, regulations and policies of the CITY now in effect and those hereinafter adopted.
 - b. The location for settlement of any and all claims, controversies, disputes, arising out of or relating to any part of this Agreement, or any breach hereof, shall be in Orange County, Florida.
 - c. The parties to this Agreement agree to comply with all applicable federal, state, and local laws, ordinances, rules and regulations pertaining to the utilization of the property under this Agreement.
13. Miscellaneous.
 - a. This Agreement constitutes the entire Agreement between the parties with respect to the specific matters contained herein and supersedes all previous discussions,

understandings, and agreements. Any amendments to or waivers of the provisions herein shall be made by the parties in writing. No other agreements, oral or otherwise, regarding the subject matter of this Agreement shall be deemed to exist or to bind either party hereto.

- b. ~~If any sentence, phrase, paragraph, provision or portion of this Agreement is for any reason held invalid or unconstitutional by any court of competent jurisdiction, such portion shall be deemed an independent provision and such holding shall not affect the validity of the remaining portions hereto.~~

14. Legal Counsel. OWNER and the CITY acknowledge that they have had ample opportunity to seek and consult with independent legal counsel prior to executing this Agreement, and that OWNER and the City each represents and warrants that it has sought such independent legal advice and counsel.
15. Attorney's Fees. CRP II agrees that it shall be liable for reasonable attorney's fees incurred by CITY, if CITY is required to take any actions, through litigation or otherwise, to enforce this Agreement.
16. Negotiation. The parties to this Agreement acknowledge that all terms of this Agreement were negotiated at arm's length and that this Agreement and all documents executed in connection herewith were prepared and executed without undue influence exerted by any party or on any party. Further, this Agreement was drafted jointly by all parties, and no parties are entitled to the benefit of any rules of construction with respect to the interpretation of any terms, conditions or provisions of this Agreement in favor of or against any person or party who drafted this Agreement.
17. Termination of License and Removal of Encroachment. As limited by Section 18, below, the CITY retains the right to revoke this license with regard to the Non-Driveway Improvements only (specifically excluding the Driveway and the Utilities) at any time if (i) the Non-Driveway Improvements, including OWNER's use and CRP II's operation or maintenance thereof, unreasonably interfere with the City's utilization of the Right of Way; or (ii) the Non-Driveway Improvements are not maintained consistent with the terms of this Agreement and any applicable laws rules or regulations; or (iii) CRP II is otherwise in default under this Agreement, by notifying the OWNER in writing at the addresses listed in the initial paragraph of this Agreement (or at such other addresses which the OWNER has in

a writing delivered to the CITY). The notice shall describe the default and, if applicable, the actions necessary to cure same and shall be delivered by certified mail, return receipt requested or by overnight delivery that provides a receipt of delivery). CRP II shall have thirty (30) days from the receipt of the written notice to cure the default, failing which, this license shall terminate as to the Non-Driveway Improvements only and CRP II shall remove the Non-Driveway Improvements from the City's Right-of-Way. If CRP II fails to remove the Non-Driveway Improvements within thirty (30) days after the termination of this license, the CITY may remove same and charge the cost of removal to CRP II. Should CRP II fail to pay the costs of CITY's removal of the Non-Driveway Improvements within thirty (30) days after the CITY'S request, the CITY may file a lien against the CRP II Property to accrue interest at the statutory rate. Concurrently with notification to CRP II, as provided herein, CITY shall also notify any mortgagee(s) with an interest in the CRP II Property, of which the CITY has knowledge. Any such mortgagees shall have the opportunity, but not the obligation, to cure the default in the same manner as CRP II.

18. Driveway and Utilities. Notwithstanding anything to the contrary contained herein, OWNER shall be entitled to a permanent driveway access point, the Driveway, across the City's Right of Way, in the location described in **Exhibit "C,"** and to permanently maintain, use, operate, repair and replace the Driveway and Utilities within the City Property for the benefit of the Project. The Driveway and Utilities shall be constructed, operated and maintained consistent with all applicable codes, laws, rules and regulations, including standards described in the City's development approvals for the Owner's Property. The Project and Utilities shall be operated and maintained at all times, in such a manner as to not unreasonably interfere with the use of the City's Right of Way. CRP II agrees that it shall indemnify, hold harmless and defend the CITY, its representatives, employees and elected and appointed officials from and against all claims, damages, loss and expenses of any sort including reasonable attorney's fees and costs including appeals, arising out of or resulting from any tort, intentional action, negligent act or omission of the OWNER, its agents, subcontractors, or anyone for whose act or acts any of them may be liable, resulting from the operation or maintenance of the Driveway.
19. License. This Agreement constitutes a License and does not rise to the level of a real property interest in the property underlying the City's Right-of-Way.

20. Assignment. Notwithstanding anything contained herein to the contrary, OWNER may assign, convey and/or dedicate its obligations and responsibilities hereunder to a duly incorporated and funded mandatory property owners association ("POA"), if it shall be established. When and as such assignment, conveyance and/or dedication is accomplished, ~~all further duties, obligations, and liabilities of OWNER hereunder with respect to the~~ Project (except as to any duties, obligations, and liabilities which accrued or were incurred hereunder prior to the date of the assignment, conveyance and/or dedication) shall terminate automatically as of the date of such assignment, conveyance and/or dedication. Notwithstanding such automatic termination, each of the parties hereby covenants and agrees to promptly execute and deliver any documentation which is required to effect such assignment, conveyance and/or dedication and termination as may be reasonably required by the POA and/or OWNER. Any cost or expenses of any such assignment, conveyance and/or dedication shall be borne by OWNER.

21. Effective Date. The effective date of this Agreement is the date of its execution by the last person to execute it.

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

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SIGNATURES ON FOLLOWING PAGES

CITY OF ORLANDO

Attest:

Mayor / Mayor Pro Tem

Alana C. Brenner, City Clerk

STATE OF FLORIDA

COUNTY OF ORANGE

The foregoing instrument was acknowledged before me thisday of _____, 2015, by _____, and Alana C. Brenner, to me known as the Mayor/ Mayor Pro Tem and City Clerk respectively, of the City of Orlando, who acknowledged before me that they have executed the foregoing instrument for the purposes therein expressed, and that they were duly authorized to do so.

Notary Public: _____

Commission Expires: _____

APPROVED AS TO FORM AND

LEGALITY for the use and reliance of the

City of Orlando, Florida, only.

_____, 2015.

Chief Assistant City Attorney

SIGNATURES CONTINUE NEXT PAGE

TWO WITNESSES:

OWNER

CRP II - MILLS PARK, LLC, a Florida limited liability company

By: CRP II Partners, LLC, a Delaware limited liability company, its Manager

WITNESS: Kate Hill
Print Name: Kate Hill

WITNESS: Anthony C. H. H. H.
Print Name: Anthony C. H. H. H.

By: Peter H. Collins
Print Name: Peter H. Collins
Title: Manager

(CORPORATE SEAL)

STATE OF Florida
COUNTY OF Hillsborough

The forgoing instrument was acknowledged before me this 26 day of May 2015, by Peter H. Collins, as the manager of CRP II Partners, LLC, a Delaware limited liability company, as Manager of CRP II - MILLS PARK, LLC, a Florida limited liability company, on behalf of said company He She personally appeared before me, is personally known to me or has produced _____ as identification and who did (did not) take an oath.

(SEAL)

Sara L Delaney
Notary Public
Print Name: Sara L Delaney

Commission Expires: 6-5-17



TWO WITNESSES:

OWNER

Mills Park Apartments, LLC, a Florida
limited liability company

WITNESS: Mary Beth Constan
Print Name: Mary Beth Constan

WITNESS: Timothy D McMillin
Print Name: Timothy D McMillin

By: [Signature]
Print Name: Lauren D. Hogan
Title: Manager

(CORPORATE SEAL)

STATE OF Illinois
COUNTY OF Cook

The forgoing instrument was acknowledged before me this 1st day of June
2015, by Lauren D Hogan, as Manager of Mills Park Apartments,
LLC, a Florida limited liability company, on behalf of said company. He/She personally
appeared before me, is personally known to me or has produced
as identification and who did (did not) take an oath.

(SEAL)

[Signature]
Notary Public
Print Name: Jennifer Escobarete

Commission Expires: 1/27/2019

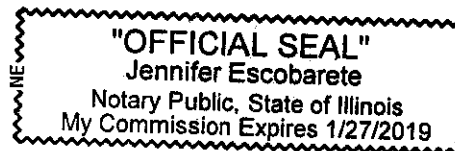


EXHIBIT A

IMPROVEMENTS:

Sanitary sewer gravity pipe mains

Sanitary manholes

Potable water main and associated valves

Potable water meters and RPZs

Potable water building service lines

Fire RPDA

Fire hydrants

FDC with fire sprinkler service lines

Fire sprinkler service lines

Electrical transformers

Underground electrical lines

Underground gas lines

Underground telecommunication lines

Landscape plantings

Irrigation system

Bike racks

Retaining walls

Sidewalk connections

Stairways

Pedestrian ramps

Bike Trail

Lighting

EXHIBIT B

CITY OF ORLANDO PERMITS:

ENG2012-00742

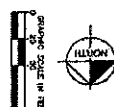
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THE GALLERY AT
MILLS PARK
PREPARED FOR
EBARTOLO DEVELOPMENT

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