

Prepared By and Return To:
Roy K. Payne, Esq.
Chief Assistant City Attorney
City of Orlando
400 S. Orange Avenue
Orlando, FL 32801
407.246.3495

RIGHT-OF-WAY ENCROACHMENT AGREEMENT

THIS RIGHT-OF-WAY ENCROACHMENT AGREEMENT (“Agreement”) is made and entered into this ____ day of _____, 2016 (the “**Effective Date**”) by and between **CRESTVIEW CONDOMINIUMS OF ORLANDO CONDOMINIUM ASSOCIATION, INC.**, a Florida corporation, (“**CRESTVIEW**”), and **THE CITY OF ORLANDO**, a Florida municipal corporation (“**CITY**”). (**CRESTVIEW** and **CITY** are sometimes together referred to herein as the “**Parties**”, and separately as the “**Party**”).

RECITALS:

WHEREAS, CRESTVIEW is the owner of certain real property located at 7101, 7109, 7123, and 7151 Yacht Basin Avenue, Orlando, FL, 32835 ("Crestview Property"), and more particularly described as follows:

CRESTVIEW CONDO PHASES 1, 2, 3 and 4, 5238/2199 COMMON AREA,
ORANGE COUNTY, FLORIDA

VETTER PARK 30/40 LOT 1 (LESS COMM AT THE NW COR OF THE SE1/4 OF
SEC 02-23-28 TH S00-27-24E 776.50 FT TO POB TH S85-27-24E 164 FT S53-04-
31E 183.69 FT S06-57-24E 20 FT N83-02-36E 100 FT S06-57-24E 20 FT S83-02-
36W 100 FT S06-57-24E 10 FT S25-32-36W 72 FT S83-32-36W 203 FT S77-57-16W
52.62 FT S89-32-36W 30 FT N00-27-24W 272 FT TO POB) & (LESS CRESTVIEW
CONDOMINIUM 5238/2199), ORANGE COUNTY, FLORIDA

02-23-28-1826-01-001
02-23-28-1826-02-001
02-23-28-1826-03-001
02-23-28-1826-04-001
02-23-28-8879-00-010

WHEREAS, Crestview Property is located adjacent to certain **CITY** right-of-way known as Yacht Basin Avenue as recorded in Plat Book Y, Page 79, Vetter Isles, Public Records of Orange County, Florida.

WHEREAS, CRESTVIEW desires to install and maintain a permanent electronic gate, pedestrian gate, fence, associated utilities and improvements, ("Improvements"), upon the EAST 240 FEET OF YACHT BASIN AVENUE AS RECORDED IN PLAT BOOK Y, PAGE 79, VETERR ISLES, PUBLIC RECORDS OF ORANGE COUNTY, FLORIDA ("Right-of-Way"), as depicted in the attached **Exhibit "A"**; and

WHEREAS, installation and location of the Improvements upon the Right-of-Way is for the purpose of securing access to the dumpster intended for the exclusive use of the residents of the Crestview Property and **CITY** will permit said installation and location provided that **CRESTVIEW** maintains the Improvements; and

WHEREAS, CRESTVIEW is required to enter into this Agreement in order to allow the Improvements to encroach into the Right-of-Way in compliance with Section 61.203 of the **CITY's** Land Development Code.

NOW, THEREFORE, for and in consideration of the mutual covenants and agreements herein set forth and other good and valuable consideration, the receipt, adequacy and sufficiency of which are hereby expressly acknowledged, the Parties hereto agree as follows:

1. Preamble Incorporated. The foregoing recitals are true and correct and are incorporated herein as part of this Agreement.

2. Encroachment. The **CITY** hereby grants permission for **CRESTVIEW** to install and maintain the Improvements upon the Right-of-Way, provided that **CRESTVIEW** obtains the prior, written consent of the **CITY**, and any applicable permits. If **CRESTVIEW's** installation of the Improvements or use of the Right-of-Way damages or interferes with any of the **CITY's** existing utilities located within the Right-of-Way, then **CRESTVIEW** shall reimburse the **CITY** for the cost of repairing such damage or interference.

3. Reservation of Rights. The **CITY** reserves the right to utilize and enter the Right-of-Way for the location, installation, maintenance, and repair of any utilities located or to be located upon and under the Right-of-Way.

4. Release. Crestview hereby releases the **CITY**, its representatives, employees and elected officials from any and all damages, claims, or liability that may arise under this Agreement, including though not exclusively the **CITY's** use of its right-of-way and the operation, maintenance, repair and installation of any infrastructure located within its right-of-way, now or in the future.

5. Priority of Right-of-Way. The Improvements shall not be operated or maintained in such a manner so as to interfere, in any way, with the **CITY'S** operation and maintenance of its right-of-way and any infrastructure located within its right-of-way now or in the future.

6. Submittals by CRESTVIEW. Prior to the installation of the Improvements, **CRESTVIEW** shall submit two (2) sets of plans to the **CITY**. The plans, including the type, height and location of the Improvements in the right-of-way, shall be reviewed and approved in writing by the **CITY** prior to installation. In addition, **CRESTVIEW** is responsible for the design of the Improvements. Prior to **CRESTVIEW's** submittal of a permit application to the **CITY** for construction of the Improvements, **CRESTVIEW** shall obtain approval of the design from the **CITY's** Streets and Stormwater Division, which approval is in addition to the **CITY's** review of the permit application for the Improvements. The design of the Improvements shall be consistent with this Agreement, reasonable engineering standards and applicable laws, rules and regulations. In particular, the Improvements must be designed and constructed north of the northern entryway to the Crestview Property and the pedestrian gate, which is solely for access to the dumpster located within the right-of-way, will be designed and constructed as close to the existing enclosure wall at the Crestview Property as possible.

7. Existing Utilities. The location, installation, maintenance and repair of the Improvements shall not interfere with any existing utilities located within, upon or under the right-of-way, including though not exclusively, stormwater facilities.

8. Maintenance and Repair. **CRESTVIEW** shall maintain the Improvements at its sole cost and expense, in good condition, including general maintenance and repair, during the term of this Agreement. **CRESTVIEW** shall also maintain the right-of-way at its sole cost and expense, in good condition, including

general maintenance and repair, during the term of this Agreement. If **CRESTVIEW** fails to maintain the Improvements and/or the right-of-way as provided herein, **CITY** may give **CRESTVIEW** notice of same and **CRESTVIEW** shall conduct the necessary remedial action within thirty (30) days of said notice, failing which **CITY** may conduct the remedial action and invoice **CRESTVIEW** for the costs incurred. **CRESTVIEW** shall pay the invoice within thirty (30) days of receipt.

9. Termination of Agreement and Removal of Improvements. The **CITY**, at its sole discretion, shall have the right to terminate this Agreement at any time and for any reason, and require **CRESTVIEW** to remove the Improvements, or any portion thereof at **CRESTVIEW**'s sole cost and expense. **CRESTVIEW** shall remove the Improvements and restore the right-of-way to its prior condition within sixty (60) days of **CRESTVIEW**'s receipt of written notice from the **CITY** terminating this Agreement.

10. No Waiver/No Vesting. This Agreement does not constitute a waiver of the **CITY**'s regulatory authority and the **CRESTVIEW** Property and the Improvement remain subject to all applicable laws, rules, codes and regulations. This Agreement does not operate to vest any interest or right whatsoever.

11. Insurance. **CRESTVIEW** shall possess and maintain, at all times during the term of this Agreement and construction, operation and maintenance of the Improvements, general liability insurance in the amount of One Million Dollars (\$1,000,000.00), to protect the **CITY** from liability, claims, damages, losses or expenses arising from or out of, and in any way connected with, this Agreement, including though not exclusively, the construction, operation and maintenance of the Improvements. **CITY** shall be listed as an additional insured on the liability policy and proof of said insurance shall be submitted to **CITY** prior to execution of this Agreement and within ten (10) days of the **CITY**'s request during the term of this Agreement. This provision shall survive termination of this Agreement to the extent necessary to cover the **CITY** from liability, claims, damages, losses or expenses arising from activities occurring prior to said termination.

12. Indemnification. **CRESTVIEW** 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 this Agreement and any tort, intentional action, negligent act or omission of **CRESTVIEW**, their tenants, agents, subcontractors, or anyone for whose act or acts any of them may be liable, relating to the encroachment of the Improvements (and Fence, if applicable) into the Right-of-Way.

13. Recording. **CRESTVIEW** will record this Agreement, at its expense, in the Public Records of Orange County, Florida, where it shall be a covenant running with the land and encumber the Property.

14. 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. **CRESTVIEW** shall comply with all applicable federal, state, and local laws, ordinances, rules and regulations pertaining to the installation, maintenance, and repair of the Improvements in the right-of-way.

15. Entire Agreement. 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.

16. Severability. 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.

17. Legal Counsel. **CRESTVIEW** acknowledges that they have had ample opportunity to seek and consult with independent legal counsel prior to executing this Agreement, and **CRESTVIEW** represents and warrants that they have sought such independent legal advice and counsel or have knowingly and voluntarily waived such right.

18. Attorney's Fees. **CRESTVIEW** agrees that they 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.

19. 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.

20. License. This Agreement constitutes a License and does not rise to the level of a real property interest in the right-of-way.

21. Effective Date. The effective date of this Agreement to be executed as of the day and year set forth below.

IN WITNESS WHEREOF, the Parties have caused this Agreement to be executed as of the day and year set forth below.

Signed, sealed and delivered
in the presence of:

**CRESTVIEW CONDOMINIUMS OF
ORLANDO CONDOMINIUM
ASSOCIATION, INC.**

Print Name: _____

By: _____
Kathryn Bartoo
As Vice President

Print Name: _____

**STATE OF FLORIDA
COUNTY OF ORANGE**

The foregoing instrument was acknowledged before me this ____ day of _____, 2016,
by Kathryn Bartoo, as Vice President of **CRESTVIEW CONDOMINIUMS OF ORLANDO**

CONDOMINIUM ASSOCIATION, INC., on behalf of said company. She is personally known to me.

Print Name: _____
Notary Public, State of Florida
Commission No.: _____
My Commission Expires: _____

ATTEST:

CITY OF ORLANDO, FLORIDA, a
municipal corporation, organized and
existing under the laws of the State of Florida

By: _____
Amy T. Iennaco, Interim City Clerk

By: _____
Mayor / Mayor Pro Tem

Date: _____

STATE OF FLORIDA
COUNTY OF ORANGE

The foregoing was acknowledged before me this ___ day of _____, 2016
by _____, Mayor Pro Tem and _____, City Clerk, who is
personally known to me who did (did not) take an oath.

Name
Notary Public
Serial Number: _____
My Commission Expires: _____

APPROVED AS TO FORM AND
LEGALITY for the use and reliance of
the City of Orlando, Florida, only.

_____, 2016.

Chief Assistant City Attorney
Orlando, Florida