File #: BL2021-682, **Version:** 1

An Ordinance authorizing Mill Creek Residential Trust, LLC to install, construct and maintain underground and aerial encroachments in the right-of-way located at 810 Division Street. (Proposal No. 2021M-005EN-001).

WHEREAS, Mill Creek Residential Trust, LLC plans to install, construct and maintain underground and aerial encroachments in the right-of-way of 810 Division Street, comprised of an overhead balcony, light poles, waste cans, bike racks, tree grates, tree irrigation and pipe bollards encroaching the public right-of-way on property located on 810 Division Street, under proposal No. 2021M-005EN-001; and,

WHEREAS, Mill Creek Residential Trust, LLC has agreed to indemnify and hold The Metropolitan Government of Nashville and Davidson County harmless of any and all claims for damages of every nature and kind resulting from or arising from the installation of said encroachments under proposal No. 2021M-005EN-001; and

NOW, THEREFORE, BE IT ENACTED BY THE COUNCIL OF THE METROPOLITAN GOVERNMENT OF NASHVILLE AND DAVIDSON COUNTY:

Section 1. That subject to the requirements, limitations and conditions contained herein and in the attached License Agreement, Mill Creek Residential Trust, LLC is hereby granted the privilege to construct and maintain said encroachments under proposal No. 2021M-005EN-001, in accordance with the plans which are on file in the office of the Director of Public Works, and which are more particularly described by lines, words and figures on the attached sketches which are attached to and made a part of this Ordinance.

Section 2. That the authority granted hereby for the construction, installation, operation, and maintenance of said encroachments under proposal No. 2021M-005EN-001 shall not be construed as a surrender by the Metropolitan Government of its rights or power to pass resolutions or ordinances regulating the use of its streets, or the right of the Metropolitan Government through its legislative body, in the interest of public necessity and convenience to order the relocation of said facilities at the expense Mill Creek Residential Trust, LLC.

Section 3. That plans and specifications for said encroachments under proposal No. 2021M-005EN-001 shall be submitted to the Director of Public Works of The Metropolitan Government of Nashville and Davidson County for approval before any work is begun; and all work, material, and other details of said installation shall be approved by the Director of Public Works prior to its use by Mill Creek Residential Trust, LLC.

Section 4. That construction and maintenance of said encroachments under proposal No. 2021M-005EN-001 shall be under the direction, supervision and control of the Director of Public Works, and its installation, when completed, must be approved by said Director.

Section 5. That this Ordinance confers upon Mill Creek Residential Trust, LLC a privilege and not a franchise, and the Mayor and the Metropolitan Council herein expressly reserve the right to repeal this ordinance, whenever, in their judgment, a repeal may be demanded by public welfare, and such repeal shall confer no liability on The Metropolitan Government of Nashville and Davidson County, its successors and assigns, by reason of said repeal. In the event of such repeal by Metropolitan Government, Mill Creek Residential Trust, LLC, its successors and assigns, shall remove said encroachments at their own expense.

Section 6. Mill Creek Residential Trust, LLC, its successors and assigns, shall pay all costs incident to the

construction, installation, operation and maintenance of said encroachments under proposal No. 2021M-005EN-001 and shall save and hold The Metropolitan Government of Nashville and Davidson County harmless from all suits, costs, claims, damages or judgments in any way connected with the construction, installation, operation and maintenance of said encroachments and shall not claim, set up or plead, as a defense, in the event of joint liability, with or without suit, that it and the Metropolitan Government were joint wrongdoers. Mill Creek Residential Trust, LLC, its successors and assigns, shall be responsible for the expense, if any, of repairing and returning the right-of-way to the condition, which it was in prior to the installation of said encroachments and for any street closure.

Section 7. That the authority granted to Mill Creek Residential Trust, LLC as herein described, shall not in any way interfere with the rights of the Metropolitan Government, its agents, servants, and/or contractors and utility companies, operating under franchise from the Metropolitan Government to enter, construct, operate, maintain, repair, rebuild, enlarge, and patrol its now existing or future utilities, including drainage facilities, together with their appurtenances, and to do any and all things necessary and incidental thereto.

Section 8. Mill Creek Residential Trust, LLC shall and is hereby required to furnish The Metropolitan Government of Nashville and Davidson County a certificate of public liability insurance, naming The Metropolitan Government as an insured party, of at least two million ($2,000,000) dollars aggregate, for the payment of any judgment had on any claim, of whatever nature, made for actions or causes of action arising out of, or connected with, the construction or installation of said encroachment. Said certificate of insurance shall be filed with the Metropolitan Clerk and the Department of Public Works prior to the granting of a permit, and the insurance required herein shall not be canceled without the insurance company or companies first giving thirty (30) days written notice to The Metropolitan Government of Nashville and Davidson County.

Section 9. That said construction shall be carefully guarded and protected, and shall be completed promptly, so as to cause the least inconvenience to the public. The acceptance by Mill Creek Residential Trust, LLC of all provisions of this Ordinance shall be determined by the beginning of work.

Section 10. The authority granted pursuant to this Ordinance shall not become effective until the certificate of insurance, as required in Section 8, has been posted with the Department of Public Works.

Section 11. This Ordinance shall take effect from and after its adoption, the welfare of The Metropolitan Government of Nashville and Davidson County requiring it.

Analysis

This ordinance authorizes Mill Creek Residential Trust, LLC to install and maintain underground and aerial encroachments in the right-of-way located at 810 Division Street. The encroachments will include an overhead balcony, light poles, waste cans, bike racks, tree grates, tree irrigation, and pipe bollards encroaching the public right-of-way. The applicant must indemnify the Metropolitan Government from all claims in connection with the construction and maintenance of the signs, and is required to post a certificate of public liability insurance in the amount of $2,000,000 with the Metropolitan Clerk naming the Metropolitan Government as an insured party.

This ordinance has been approved by the Planning Commission.