

1 **BY AUTHORITY**

2 RESOLUTION NO. CR23-1735  
3 SERIES OF 2023

COMMITTEE OF REFERENCE:  
Land Use, Transportation & Infrastructure

4 **A RESOLUTION**

5 **Granting a revocable permit to Enger Properties, L.L.L.P., to encroach into the**  
6 **right-of-way at 3300 West 32nd Avenue.**

7 **BE IT RESOLVED BY THE COUNCIL OF THE CITY AND COUNTY OF DENVER:**

8 **Section 1.** The City and County of Denver (“City”) hereby grants to Enger Properties,  
9 L.L.L.P., their successors and assigns (“Permittee”), a revocable permit to encroach into the right-  
10 of-way with an enclosed patio and heaters (“Encroachment(s)”) at 3300 West 32nd Avenue in the  
11 following described area (“Encroachment Area”):

12 **PARCEL DESCRIPTION ROW NO. 2022-ENCROACHMENT-0000034-001:**

13 A PORTION OF IRVING STREET RIGHT-OF-WAY ACCORDING TO THE PLAT OF KOUNTZE  
14 HEIGHTS, CITY AND COUNTY OF DENVER, LOCATED IN SECTION 29, TOWNSHIP 3 SOUTH,  
15 RANGE 68 WEST OF THE 6TH PRINCIPAL MERIDIAN, BEING MORE PARTICULARLY  
16 DESCRIBED AS FOLLOWS:

17 CONSIDERING THE EAST LINE OF BLOCK 1, KOUNTZE HEIGHTS AS BEARING SOUTH  
18 00°00’00” EAST WITH ALL BEARINGS CONTAINED HEREIN RELATIVE THERETO;

19 COMMENCING AT THE NORTHEAST CORNER OF SAID BLOCK 1; THENCE SOUTH 00°00’00”  
20 EAST ALONG THE EAST LINE OF BLOCK 1 A DISTANCE OF 13.54 FEET TO A POINT 0.50  
21 FEET NORTH OF AN EXISTING MASONRY WALL, THE POINT OF BEGINNING; THENCE  
22 SOUTH 89°54’23” EAST PARALLEL WITH SAID WALL A DISTANCE OF 9.13 FEET TO A POINT  
23 0.50 FEET EAST OF AN EXISTING MASONRY WALL; THENCE SOUTH 00°08’58” WEST  
24 PARALLEL WITH SAID WALL A DISTANCE OF 28.70 FEET TO A POINT 0.50 FEET SOUTH OF  
25 AN EXISTING MASONRY WALL; THENCE SOUTH 89°49’53” WEST PARALLEL WITH SAID  
26 WALL A DISTANCE OF 9.06 FEET TO THE EAST LINE OF SAID BLOCK 1; THENCE NORTH  
27 00°00’00” EAST ALONG THE EAST LINE OF BLOCK 1 A DISTANCE OF 28.74 FEET TO THE  
28 POINT OF BEGINNING,

29 CONTAINING 261 SQUARE FEET OR 0.006 ACRES MORE OR LESS

30 and benefitting the following described parcel of property (“Benefitted Property”):

31 **PARCEL 1:**  
32 THE SOUTH 30 FEET OF LOTS 1 TO 4, INCLUSIVE, BLOCK 1, KOUNTZE HEIGHTS, CITY AND  
33 COUNTY OF DENVER, STATE OF COLORADO

34  
35 **PARCEL 2:**

1 THE NORTH 96 FEET OF LOTS 1 TO 4 INCLUSIVE, BLOCK 1, KOUNTZE HEIGHTS, CITY AND  
2 COUNTY OF DENVER, STATE OF COLORADO

3  
4 **Section 2.** The revocable permit (“Permit”) granted by this Resolution is expressly granted  
5 upon and subject to each and all of the following terms and conditions (terms not defined herein are  
6 defined in the Rules and Regulations Governing Encroachments & Encumbrances in the Public Right  
7 of Way):

8 (a) Permittee shall obtain a street occupancy permit, street cut permit, and/or ROW  
9 construction permit from the City’s Department of Transportation and Infrastructure (“DOTI”) Permit  
10 Operations through [www.denvergov.org/dotipermits](http://www.denvergov.org/dotipermits) prior to commencing construction.

11 (b) Permittee shall be responsible for obtaining all necessary permits and shall pay all  
12 costs for installation and construction of items permitted herein.

13 (c) If the Permittee intends to install any underground facilities in or near a Public road,  
14 street, alley, ROW or utility easement, the Permittee shall join the Statewide Notification Association  
15 of Owners and Operators of Underground Facilities by contacting the Utility Notification Center of  
16 Colorado (Colorado 811) through <https://colorado811.org/> or at 303-232-1991, 16361 Table  
17 Mountain Pkwy, Golden, Colorado, 80403. Further, Permittee shall contact the Utility Notification  
18 Center (Colorado 811) at <https://colorado811.org/> or 303-232-1991 to request locates for existing  
19 underground facilities prior to commencing excavation.

20 (d) Permittee is fully responsible for any and all damages incurred to facilities of Denver  
21 Water and any other Utility Company, and/or drainage facilities for water and sewage of the City and  
22 County of Denver due to activities authorized by the Permit. Should the relocation or replacement of  
23 any drainage facilities for water and sewage of the City and County of Denver become necessary as  
24 determined by the City’s Executive Director of DOTI (“Executive Director”), in the Executive  
25 Director’s sole and absolute discretion, Permittee shall pay all cost and expense of the portion of the  
26 water and/or sewer facilities affected by the Encroachment(s). The extent of the affected portion to  
27 be replaced and relocated by Permittee shall be determined by the Executive Director. Any and all  
28 replacement or repair of facilities of Denver Water and any other Utility Company, and/or drainage  
29 facilities for water and sewage of the City and County of Denver attributed to the Permittee shall be  
30 made by Denver Water, Utility Company, and/or the City and County of Denver at the sole expense  
31 of the Permittee. In the event the Permittee’s facilities are damaged or destroyed due to Denver  
32 Water’s, Utility Company’s, or the City and County of Denver’s repair, replacement and/or operation  
33 of its facilities, repairs will be made by Permittee at its sole expense. Permittee agrees to defend,  
34 indemnify and hold the City harmless and to repair or pay for the repair of any and all damages to

1 said water, storm, sanitary sewer facilities or other Utility Company facilities, or those damages  
2 resulting from the failure of the water, storm, sanitary sewer facilities or other Utility Company  
3 facilities to properly function because of the Encroachment(s).

4 (e) Permittee shall comply with all requirements of affected Utility Companies and pay for  
5 all costs of removal, relocation, replacement or rearrangement of Utility Company facilities. Existing  
6 utility facilities shall not be utilized, obstructed or disturbed.

7 (f) All construction in, under, on or over the Encroachment Area shall be accomplished in  
8 accordance with the Building Code and City and County of Denver Department of Transportation &  
9 Infrastructure Transportation Standards and Details for the Engineering Division.

10 (g) Permittee shall observe and comply with all Federal, State and local laws, regulations,  
11 ordinances, and public safety requests regarding the use of the Encroachment Area.

12 (h) Plans and Specifications governing the construction of the Encroachment(s) shall be  
13 approved by DOTI prior to construction.

14 (i) Permittee shall pay all costs of construction and maintenance of the Encroachment(s).  
15 Upon revocation of the Permit or upon abandonment, Permittee shall pay all costs of removing the  
16 Encroachment(s) from the Encroachment Area and restore the Encroachment Area to a condition in  
17 accordance with City and County of Denver Department of Transportation & Infrastructure  
18 Transportation Standards and Details for the Engineering Division under the supervision of DOTI.

19 (j) Permittee shall remove and replace any and all street/alley paving, Sidewalks,  
20 Streetscapes, Amenity Zones, and curb and gutter, both inside the Encroachment Area and in the  
21 rights-of-way adjacent thereto, that become broken, damaged or unsightly during, in the opinion of  
22 DOTI, the course of construction or maintenance of the Encroachment(s). In the future, Permittee  
23 shall also remove, replace or repair any street/alley paving, Sidewalks, and curb and gutter that  
24 become broken or damaged when, in the opinion of DOTI, the damage has been caused by the  
25 Encroachment(s) or the activity of the Permittee within the Encroachment Area. All repair work shall  
26 be accomplished without cost to the City and under the supervision of DOTI.

27 (k) The City reserves the right to make an inspection of the Encroachment(s) and the  
28 Encroachment Area.

29 (l) During the existence of the Encroachment(s) and the Permit, Permittee, its successors  
30 and assigns, at its expense, and without cost to the City, shall procure and maintain Commercial  
31 General Liability insurance policy with a limit of not less than \$1,000,000 per occurrence. All  
32 coverages are to be arranged on an occurrence basis and include coverage for those hazards  
33 normally identified as X.C.U. during construction. The insurance coverage required herein

1 constitutes a minimum requirement and such enumeration shall in no way be deemed to limit or  
2 lessen the liability of the Permittee, its successors or assigns, under the terms of this Permit. All  
3 insurance coverage required herein shall be written in a form and by a company or companies  
4 approved by the Risk Manager of the City and authorized to do business in the State of Colorado. A  
5 certified copy of all such insurance policies shall be filed with the Executive Director, and each such  
6 policy shall contain a statement therein or endorsement thereon that it will not be canceled or  
7 materially changed without written notice, by registered mail, to the Executive Director at least thirty  
8 (30) days prior to the effective date of the cancellation or material change. The City and County of  
9 Denver, its Elected and Appointed Officials, Employees and Volunteers shall be included as  
10 Additional Insured.

11 (m) In addition to the requirement herein to comply with all laws, Permittee shall comply  
12 with the provisions of Article IV (Prohibition of Discrimination in Employment, Housing and  
13 Commercial Space, Public Accommodations, Educational Institutions and Health and Welfare  
14 Services) of Chapter 28 (Human Rights) of the DRMC. The failure to comply with any such provision  
15 shall be a proper basis for revocation of the Encroachment(s).

16 (n) The right to revoke the Permit at any time for any reason and require the removal of  
17 the Encroachment(s) is expressly reserved to the City.

18 (o) By Permittee's use of this Permit and the Encroachment Area, Permittee agrees to the  
19 following:

20 i. Permittee agrees to defend, indemnify, reimburse and hold harmless City, its  
21 appointed and elected officials, agents and employees for, from and against all liabilities, claims,  
22 judgments, suits or demands for damages to persons or property arising out of, resulting from, or  
23 relating to this Permit and the Encroachment(s) ("Claims"). This indemnity shall be interpreted in the  
24 broadest possible manner to indemnify City for any acts or omissions of Permittee or its agents either  
25 passive or active, irrespective of fault, including City's negligence whether active or passive.

26 ii. Permittee's duty to defend and indemnify City shall arise at the time written notice  
27 of the Claim is first provided to City regardless of whether claimant has filed suit on the Claim.  
28 Permittee's duty to defend and indemnify City shall arise even if City is the only party sued by  
29 claimant and/or claimant alleges that City's negligence or willful misconduct was the sole cause of  
30 claimant's damages.

31 iii. Permittee will defend any and all Claims which may be brought or threatened  
32 against City and will pay on behalf of City any expenses incurred by reason of such Claims including,  
33 but not limited to, court costs and attorney fees incurred in defending and investigating such Claims

1 or seeking to enforce this indemnity obligation. Such payments on behalf of City shall be in addition  
2 to any other legal remedies available to City and shall not be considered City's exclusive remedy.

3 iv. Insurance coverage requirements specified in this Encroachment Permit shall in no  
4 way lessen or limit the liability of Permittee under the terms of this indemnification obligation.  
5 Permittee shall obtain, at its own expense, any additional insurance that it deems necessary for the  
6 City's protection.

7 v. This defense and indemnification obligation shall survive the expiration or  
8 termination of this Permit.

9 (p) Pursuant to Chapter 49 of the DRMC, DOTI is authorized to remove or to order the  
10 removal of any article, vehicle, object or thing whatsoever encroaching into any street, alley,  
11 Sidewalk, or other public way or place.

12 (q) No third party, person or agency, except for an authorized Special District, may place  
13 the Encroachment(s) in front of a property without written permission of the adjacent property owner.

14 (r) Permittee's use of the ROW for placement of the Encroachment(s) does not create a  
15 property right or ownership interest of any kind in the Encroachment Area to the Permittee.

16 (s) All Encroachment(s) in Amenity Zones containing existing Public Trees and/or with the  
17 potential to impact tree roots or tree canopy must be pre-approved by the Office of the City Forester  
18 (OCF), by contacting them at [forestry@denvergov.org](mailto:forestry@denvergov.org) or 720-913-0651. Encroachment(s) cannot  
19 be attached to or damage any Public Tree, and any damage shall be reported to the OCF  
20 immediately for mitigation. All trenching, excavation and grading activities within the Dripline of any  
21 Public Tree must be pre-approved by the OCF. City permits are required for the planting or removal  
22 of any Public Trees and can be obtained by emailing [forestry@denvergov.org](mailto:forestry@denvergov.org).

23 (t) All disturbances associated with construction of the Encroachment(s) shall be  
24 managed as required by City standards for erosion control which may require standard notes or  
25 CASDP permitting depending on location and scope of project.

26 (u) Encroachment(s) proposed adjacent to a designated park or within a dedicated  
27 parkway shall require the City's Department of Parks and Recreation approval prior to installation.

28 (v) Encroachment(s) attached to a building may require building and/or zoning permits  
29 from the City's Department of Community Planning and Development.

30 (w) Encroachment(s) in the regulatory floodplain shall require a SUDP and comply with  
31 Chapter 4 Floodplain Regulations of the "Storm Drainage Design and Technical Criteria", Chapter  
32 12 Floodplain Management of the "DOTI Rules and Regulations Governing Sewerage Charges and  
33 Fees and Management of Wastewater" and the City Floodplain Ordinance in DRMC Section 56-200

1 through 56-206. Above ground Encroachment(s) in a Floodway require a No-Rise Certification  
2 sealed and signed by a Professional Engineer licensed in the State of Colorado. If there is any rise  
3 in Base Flood Elevations, a Conditional Letter of Map Revision (CLOMR) and LOMR will be required.

4 (x) Only clean soil may be brought onto an Encroachment Area. Verification of soil quality  
5 must be provided if requested. Material removed from an Encroachment Area must be properly  
6 disposed and is the responsibility of the Permittee.

7 **Section 3.** That the Permit hereby granted shall be revocable at any time that the Council  
8 of the City and County of Denver shall determine that the public convenience and necessity or the  
9 public health, safety or general welfare require such revocation, and the right to revoke the same is  
10 hereby expressly reserved to the City; provided however, at a reasonable time prior to City Council  
11 action upon such revocation or proposed revocation, opportunity shall be afforded to Permittee, its  
12 successors and assigns, to be present at a hearing to be conducted by the City Council upon such  
13 matters and thereat to present its views and opinions thereof and to present for consideration action  
14 or actions alternative to the revocation of such Permit.

15  
16 COMMITTEE APPROVAL DATE: November 14, 2023 by Consent

17 MAYOR-COUNCIL DATE: November 21, 2023 by Consent

18 PASSED BY THE COUNCIL: \_\_\_\_\_

19 \_\_\_\_\_ - PRESIDENT

20 ATTEST: \_\_\_\_\_ - CLERK AND RECORDER,  
21 EX-OFFICIO CLERK OF THE  
22 CITY AND COUNTY OF DENVER

23 PREPARED BY: Martin A. Plate, Assistant City Attorney DATE: November 22, 2023

24 Pursuant to section 13-9, D.R.M.C., this proposed resolution has been reviewed by the Office of the  
25 City Attorney. We find no irregularity as to form and have no legal objection to the proposed  
26 resolution. The proposed resolution is not submitted to the City Council for approval pursuant to  
27 § 3.2.6 of the Charter.

28  
29 Kerry Tipper, Denver City Attorney

30  
31 BY: \_\_\_\_\_, Assistant City Attorney DATE: \_\_\_\_\_