

1 **BY AUTHORITY**

2 RESOLUTION NO. CR17-1139  
3 SERIES OF 2017

COMMITTEE OF REFERENCE:  
Land Use, Transportation & Infrastructure

4 **A RESOLUTION**

5 **Granting a revocable permit to Second Avenue Development Partners, LLC, to**  
6 **encroach into the right-of-way at 2727 East 2nd 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 Second Avenue  
9 Development Partners, LLC and its successors and assigns ("Permittee"), a revocable permit to  
10 encroach into the right-of-way with an underground parking garage, an ADA accessible ramp and a  
11 set of stairs and railings ("Encroachments") at 2727 East 2nd Avenue in the following described area  
12 ("Encroachment Area"):

13 **PARCEL DESCRIPTION ROW NO. 2017-ENCROACHMENT-0000016-001:**

14 TWO PARCELS OF LAND WITHIN THE DETROIT STREET RIGHT-OF-WAY AND THE 2ND  
15 AVENUE RIGHT-OF-WAY ABUTTING THE EASTERLY AND SOUTHERLY LINES OF PLOT 10,  
16 BLOCK 61, HARMANS SUBDIVISION LOCATED IN THE NORTHWEST QUARTER OF SECTION  
17 12, TOWNSHIP 4 SOUTH, RANGE 68 WEST OF THE SIXTH PRINCIPAL MERIDIAN, CITY AND  
18 COUNTY OF DENVER, STATE OF COLORADO, BEING MORE PARTICULARLY DESCRIBED AS  
19 FOLLOWS:

20  
21 **PARCEL A**

22  
23 **BEGINNING** AT THE SOUTHEAST CORNER OF SAID PLOT 10;  
24 THENCE ALONG SAID EASTERLY LINE, N00°00'43"W A DISTANCE OF 97.44 FEET;  
25 THENCE N89°59'17"E A DISTANCE OF 10.00 FEET; T  
26 THENCE S00°00'43"E A DISTANCE OF 97.44 FEET;  
27 THENCE N89°59'17"W A DISTANCE OF 10.00 FEET TO THE **POINT OF BEGINNING**;

28  
29 SAID PARCEL CONTAINS 0.022 ACRES, 974 SQUARE FEET, MORE OF LESS.

30  
31 TOGETHER WITH:

32  
33 **PARCEL B**

34  
35 COMMENCING AT THE SOUTHEAST CORNER OF SAID PLOT 10; THENCE ALONG SAID  
36 SOUTHERLY LINE N89°54'36"W, A DISTANCE OF 1.60 FEET TO THE **POINT OF BEGINNING**;  
37 THENCE S00°05'24"W A DISTANCE OF 18.00 FEET;  
38 THENCE N89°54'36"W A DISTANCE OF 120.89 FEET;  
39 THENCE N00°05'24"E A DISTANCE OF 18.00 FEET TO THE SOUTHEAST CORNER OF THAT  
40 PROPERTY CONVEYED BY WARRANTY DEED TO THE CITY AND COUNTY OF DENVER,

1 RECORDED ON THE 1ST OF MAY, 2017, AT RECEPTION NUMBER 2017056932 IN THE CITY  
2 AND COUNTY OF DENVER CLERK AND RECORDER'S OFFICE;  
3 THENCE ALONG SAID SOUTHERLY LINE, S89°54'36"E A DISTANCE OF 120.89 FEET TO THE  
4 POINT OF BEGINNING.

5  
6 SAID PARCEL CONTAINS 0.050 ACRES, 2,176 SQUARE FEET, MORE OF LESS.

7  
8 BASIS OF BEARING: BEARINGS ARE BASED ON THE NORTH-SOUTH 20' RANGE LINE IN  
9 CLAYTON STREET BETWEEN EAST 2ND AVE AND EAST 3RD AVENUE, BEARING  
10 N00°00'00"E AND BEING MONUMENTED BY A FOUND PIN AND 1.5" PLASTIC CAP IN RANGE  
11 BOX AT THE INTERSECTION OF EAST 2ND AVENUE AND CLAYTON STREET AND A FOUND  
12 CROSS CUT IN STONE IN RANGE BOX AT THE INTERSECTION OF EAST 3RD AVENUE AND  
13 CLAYTON STREET.  
14

15 **Section 2.** The revocable permit ("Permit") granted by this Resolution is expressly granted  
16 upon and subject to each and all of the following terms and conditions:

17 (a) Permittee shall obtain a street occupancy permit from City's Public Works Permit  
18 Operations at 2000 West 3<sup>rd</sup> Avenue, 303-446-3759, prior to commencing construction.

19 (b) Permittee shall be responsible for obtaining all other permits and shall pay all costs  
20 that are necessary for installation and construction of items permitted herein.

21 (c) If the Permittee intends to install any underground facilities in or near a public road,  
22 street, alley, right-of-way or utility easement, the Permittee shall join the Statewide Notification  
23 Association of Owners and Operators of Underground Facilities by contacting the Utility Notification  
24 Center of Colorado, 12600 West Colfax Avenue, Suite B-310, Lakewood, Colorado 80215, at 303-  
25 232-1991. Further, Permittee shall contact the Utility Notification Center at 1-800-922-1987 to locate  
26 underground facilities prior to commencing any work under this Permit.

27 (d) Permittee is fully responsible for any and all damages incurred to facilities of the Water  
28 Department and/or drainage facilities for water and sewage of the City due to activities authorized  
29 by the Permit. Should the relocation or replacement of any drainage facilities for water and sewage  
30 of the City become necessary as determined by the City's Executive Director of Public Works  
31 ("Executive Director"), in the Executive Director's sole and absolute discretion, Permittee shall pay  
32 all cost and expense of the portion of the sewer affected by the permitted structure. The extent of  
33 the affected portion to be replaced or relocated by Permittee shall be determined by the Executive  
34 Director. Any and all replacement or repair of facilities of the Denver Water and/or drainage facilities  
35 for water and sewage of the City attributed to the Permittee shall be made by the Denver Water  
36 and/or the City at the sole expense of the Permittee. In the event Permittee's facilities are damaged  
37 or destroyed due to the Denver Water or the City's repair, replacement and/or operation of its

1 facilities, repairs will be made by the Permittee at its sole expense. Permittee agrees to defend,  
2 indemnify and save the City harmless and to repair or pay for the repair of any and all damages to  
3 said sanitary sewer, or those damages resulting from the failure of the sewer to properly function as  
4 a result of the permitted structure.

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

8 (f) All construction in, under, on or over the Encroachment Area shall be accomplished in  
9 accordance with the Building Code of the City. Plans and specifications governing the construction  
10 of the Encroachments shall be approved by the Executive Director and the Director of Building  
11 Inspection Division prior to construction. Upon completion, a reproducible copy of the exact location  
12 and dimensions of the Encroachments shall be filed with the Executive Director.

13 (g) The sidewalk and street/alley over the Encroachment Area shall be capable of  
14 withstanding an HS-20 loading in accordance with the latest AASHTO Specifications. The  
15 installations within the Encroachment Area shall be constructed so that the paved section of the  
16 street/alley can be widened without requiring additional structural modifications. The sidewalk shall  
17 be constructed so that it can be removed and replaced without affecting structures within the  
18 Encroachment Area.

19 (h) Permittee shall pay all costs of construction and maintenance of the Encroachments.  
20 Upon revocation of the permit or upon abandonment, Permittee shall pay all costs of removing the  
21 Encroachments from the Encroachment Area and return the Encroachment Area to its original  
22 condition under the supervision of the City Engineer.

23 (i) Permittee shall remove and replace any and all street/alley paving, sidewalks, and curb  
24 and gutter, both inside the Encroachment Area and in the rights-of-way adjacent thereto, that  
25 become broken, damaged or unsightly during the course of construction. In the future, Permittee  
26 shall also remove, replace or repair any street/alley paving, sidewalks, and curb and gutter that  
27 become broken or damaged when, in the opinion of the City Engineer, the damage has been caused  
28 by the activity of the Permittee within the Encroachment Area. All repair work shall be accomplished  
29 without cost to the City and under the supervision of the City Engineer.

30 (j) The City reserves the right to make an inspection of the Encroachments contained  
31 within the Encroachment Area. An annual fee, subject to change, of \$200.00 shall be assessed.

32 (k) This revocable Permit shall not operate or be construed to abridge, limit or restrict the  
33 City in exercising its right to make full use of the Encroachment Area and adjacent rights-of-way as

1 public thoroughfares nor shall it operate to restrict the utility companies in exercising their rights to  
2 construct, remove, operate and maintain their facilities within the Encroachment Area and adjacent  
3 rights-of-way.

4 (l) During the existence of the Encroachments and this Permit, Permittee, its successors  
5 and assigns, at its expense, and without cost to the City, shall procure and maintain a single limit  
6 comprehensive general liability insurance policy with a limit of not less than \$500,000.00. All  
7 coverages are to be arranged on an occurrence basis and include coverage for those hazards  
8 normally identified as X.C.U. during construction. The insurance coverage required herein  
9 constitutes a minimum requirement and such enumeration shall in no way be deemed to limit or  
10 lessen the liability of the Permittee, its successors or assigns, under the terms of this Permit. All  
11 insurance coverage required herein shall be written in a form and by a company or companies  
12 approved by the Risk Manager of the City and authorized to do business in the State of Colorado.  
13 A certified copy of all such insurance policies shall be filed with the Executive Director, and each  
14 such policy shall contain a statement therein or endorsement thereon that it will not be canceled or  
15 materially changed without written notice, by registered mail, to the Executive Director at least thirty  
16 (30) days prior to the effective date of the cancellation or material change. All such insurance policies  
17 shall be specifically endorsed to include all liability assumed by the Permittee hereunder and shall  
18 name the City as an additional insured.

19 (m) Permittee shall comply with the provisions of Article IV (Prohibition of Discrimination in  
20 Employment, Housing and Commercial Space, Public Accommodations, Educational Institutions  
21 and Health and Welfare Services) of Chapter 28 (Human Rights) of the Revised Municipal Code of  
22 the City and County of Denver. The failure to comply with any such provision shall be a proper basis  
23 for revocation of this Permit.

24 (n) The right to revoke this Permit is expressly reserved to the City.

25 (o) Permittee shall agree to indemnify and always save the City harmless from all costs,  
26 claims or damages arising, either directly or indirectly, out of the rights and privileges granted by this  
27 Permit.

28 **Section 3.** That the Permit hereby granted shall be revocable at any time that the Council  
29 of the City and County of Denver shall determine that the public convenience and necessity or the  
30 public health, safety or general welfare require such revocation, and the right to revoke the same is  
31 hereby expressly reserved to the City; provided however, at a reasonable time prior to City Council  
32 action upon such revocation or proposed revocation, opportunity shall be afforded to Permittee, its  
33 successors and assigns, to be present at a hearing to be conducted by the City Council upon such

1 matters and thereat to present its views and opinions thereof and to present for consideration action  
2 or actions alternative to the revocation of such Permit.

3 COMMITTEE APPROVAL DATE: October 17, 2017 by Consent

4 MAYOR-COUNCIL DATE: October 24, 2017

5 PASSED BY THE COUNCIL: \_\_\_\_\_

6 \_\_\_\_\_ - PRESIDENT

7 ATTEST: \_\_\_\_\_ - CLERK AND RECORDER,  
8 EX-OFFICIO CLERK OF THE  
9 CITY AND COUNTY OF DENVER

10 PREPARED BY: Brent A. Eisen, Assistant City Attorney DATE: October 26, 2017

11 Pursuant to section 13-12, D.R.M.C., this proposed resolution has been reviewed by the Office of  
12 the City Attorney. We find no irregularity as to form, and have no legal objection to the proposed  
13 resolution. The proposed resolution is not submitted to the City Council for approval pursuant to §  
14 3.2.6 of the Charter.

15  
16 Kristin M. Bronson, Denver City Attorney

17  
18 BY: \_\_\_\_\_, Assistant City Attorney DATE: \_\_\_\_\_