

BY AUTHORITY

RESOLUTION NO. CR23-0158

COMMITTEE OF REFERENCE:

SERIES OF 2023

Land Use, Transportation & Infrastructure

A RESOLUTION

Granting a revocable permit to Uptown Trio LLC, to encroach into the right-of-way at 1702 North Humboldt Street and 1475 East 17th Avenue.

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

Section 1. The City and County of Denver ("City") hereby grants to Uptown Trio LLC, the owner of the Benefitted Property, and their successors and assigns ("Permittee"), a revocable permit to encroach into the right-of-way with new post and beam steel structures, and heaters ("Encroachment(s)") at 1702 North Humboldt Street and 1475 East 17th Avenue in the following described area ("Encroachment Area"):

PARCEL DESCRIPTION ROW NO. ROW 2022-ENCROACHMENT-0000018-001:

A PARCEL OF LAND BEING A PORTION OF RIGHT-OF-WAY OF E. 17TH AVENUE BETWEEN HUMBOLDT STREET AND FRANKLIN STREET LOCATED WITHIN THE SOUTHWEST QUARTER SECTION 35, TOWNSHIP 3 SOUTH, RANGE 68 WEST OF THE 6TH PRINCIPAL MERIDIAN, CITY AND COUNTY OF DENVER, STATE OF COLORADO, MORE PARTICULARLY DESCRIBED AS FOLLOWS;

BASIS OF BEARINGS: A 20.5 FOOT RANGE LINE IN HUMBOLDT STREET BETWEEN 17TH AVENUE AND 18TH AVENUE IS ASSUMED TO BEAR NORTH 00°01 '35" EAST, A DISTANCE OF 582.37 FEET BETWEEN A 2.5" ALUMINUM CAP STAMPED "LS 9489" IN A RANGE BOX FOUND AT THE INTERSECTION OF 17TH AVENUE AND HUMBOLDT STREET AND A 2" ALUMINUM CAP STAMPED "PLS 34579" IN A RANGE BOX FOUND AT THE INTERSECTION OF 18TH AVENUE AND HUMBOLDT STREET.

COMMENCING AT SAID RANGE POINT AT THE INTERSECTION OF E. 17TH AVENUE AND HUMBOLDT STREET;

THENCE NORTH 65°43'11" EAST A DISTANCE OF 65.29 FEET TO A POINT BEING THE SOUTHWEST CORNER OF LOT 20, BLOCK 13, PARK AVENUE ADDITION TO DENVER;

THENCE ALONG THE SOUTH LINE OF SAID LOT 20, BLOCK 13, SOUTH 89°51'06" EAST A DISTANCE OF 74.98 FEET TO A POINT ON SAID SOUTH LINE OF LOT 20, BLOCK 13, BEING THE POINT OF BEGINNING;

THENCE CONTINUING ALONG SAID SOUTH LINE OF LOT 20, BLOCK 13, SOUTH 89°51'06" EAST A DISTANCE OF 44.97 FEET TO A POINT ON SAID SOUTH LINE OF LOT 20, BLOCK 13;

THENCE DEPARTING SAID SOUTH LINE OF LOT 20, BLOCK 13, SOUTH 00°08'54" WEST A DISTANCE OF 5.70 FEET;

1 THENCE SOUTH 89°59 '12" WEST A DISTANCE OF 3.68 FEET;
2 THENCE SOUTH 00°01 '02" EAST A DISTANCE OF 10.34 FEET;
3 THENCE SOUTH 89°59'16" WEST A DISTANCE OF 39.06 FEET;
4 THENCE NORTH 07°50'31" WEST A DISTANCE OF 16.32 FEET TO A POINT ON SAID SOUTH
5 LINE OF LOT 20, BLOCK 13, AND THE POINT OF BEGINNING;
6 CONTAINING ±668 SQUARE FEET OR ±0.015 ACRES
7 and

8 **PARCEL DESCRIPTION ROW NO. ROW 2022-ENCROACHMENT-0000018-002:**

9 A PARCEL OF LAND BEING A PORTION OF RIGHT OF WAY OF HUMBOLDT STREET
10 BETWEEN 17TH AVENUE AND 18TH AVENUE LOCATED WITHIN THE SOUTHWEST
11 QUARTER SECTION 35, TOWNSHIP 3 SOUTH, RANGE 68 WEST OF THE 6TH PRINCIPAL
12 MERIDIAN, CITY AND COUNTY OF DENVER, STATE OF COLORADO, MORE PARTICULARLY
13 DESCRIBED AS FOLLOWS;

14 BASIS OF BEARINGS: A 20.5 FOOT RANGE LINE IN HUMBOLDT STREET BETWEEN 17TH
15 AVENUE AND 18TH AVENUE IS ASSUMED TO BEAR NORTH 00°01 '35" EAST, A DISTANCE
16 OF 582.37 FEET BETWEEN A 2.5" ALUMINUM CAP STAMPED "LS 9489" IN A RANGE BOX
17 FOUND AT THE INTERSECTION OF 17TH AVENUE AND HUMBOLDT STREET AND A 2"
18 ALUMINUM CAP STAMPED "PLS 34579" IN A RANGE BOX FOUND AT THE INTERSECTION
19 OF 18TH AVENUE AND HUMBOLDT STREET.

20 COMMENCING AT SAID RANGE POINT AT THE INTERSECTION OF 17TH AVENUE AND
21 HUMBOLDT STREET, A FOUND 2.5" ALUMINUM CAP STAMPED LS 9489;

22 THENCE NORTH 65°43'11" EAST A DISTANCE OF 65.29 FEET TO A POINT BEING THE
23 SOUTHWEST CORNER OF LOT 20, BLOCK 13, PARK AVENUE ADDITION TO DENVER;

24 THENCE ALONG THE WEST LINE OF SAID LOT 20, BLOCK 13, NORTH 00°01 '35" EAST A
25 DISTANCE OF 60.54 FEET TO A POINT ON THE WEST LINE OF LOT 21, BLOCK 13, BEING
26 THE POINT OF BEGINNING;

27 THENCE DEPARTING SAID WEST LINE OF LOT 21, BLOCK 13, NORTH 89°39'47" WEST A
28 DISTANCE OF 13.23 FEET;

29 THENCE NORTH 00°48'43" EAST A DISTANCE OF 29.64 FEET;

30 THENCE SOUTH 89°24'41" EAST A DISTANCE OF 12.82 FEET TO A POINT BEING THE
31 NORTHWEST CORNER OF LOT 22, BLOCK 13;

32 THENCE ALONG SAID WEST LINE OF LOT 22, BLOCK 13, SOUTH 00°01 '35" WEST A
33 DISTANCE OF 29.58 FEET TO THE POINT OF BEGINNING.

34 CONTAINING ±386 SQUARE FEET OR ±0.0088 ACRES

1 and benefitting the following described parcel of property ("Benefitted Property"):

2 A PARCEL OF LAND SITUATED IN BLOCK 13, PARK AVENUE ADDITION TO DENVER, THE
3 SOUTHWEST QUARTER OF SECTION 35, TOWNSHIP 3 SOUTH, RANGE 68 WEST OF THE
4 6TH PRINCIPAL MERIDIAN, CITY AND COUNTY OF DENVER, STATE OF COLORADO, AS
5 DESCRIBED IN SPECIAL WARRANTY DEED, RECEPTION NUMBER 2020004276, RECORDED
6 JANUARY 10, 2020:

7
8 LOTS 20, 21 AND 22, BLOCK 13, PARK AVENUE ADDITION, CITY AND COUNTY OF DENVER,
9 STATE OF COLORADO.

10 **Section 2.** The revocable permit ("Permit") granted by this Resolution is expressly granted
11 upon and subject to each and all of the following terms and conditions (terms not defined herein are
12 defined in the Rules and Regulations Governing Encroachments & Encumbrances in the Public Right
13 of Way):

14 (a) Permittee shall obtain a street occupancy permit, street cut permit, and/or ROW
15 construction permit from the City's Department of Transportation and Infrastructure ("DOTI") Permit
16 Operations through www.denvergov.org/dotipermits prior to commencing construction.

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

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

26 (d) Permittee is fully responsible for any and all damages incurred to facilities of Denver
27 Water and any other Utility Company, and/or drainage facilities for water and sewage of the City and
28 County of Denver due to activities authorized by the Permit. Should the relocation or replacement of
29 any drainage facilities for water and sewage of the City and County of Denver become necessary as
30 determined by the City's Executive Director of DOTI ("Executive Director"), in the Executive
31 Director's sole and absolute discretion, Permittee shall pay all cost and expense of the portion of the
32 water and/or sewer facilities affected by the Encroachment(s). The extent of the affected portion to
33 be replaced and relocated by Permittee shall be determined by the Executive Director. Any and all
34 replacement or repair of facilities of Denver Water and any other Utility Company, and/or drainage
35 facilities for water and sewage of the City and County of Denver attributed to the Permittee shall be

made by Denver Water, Utility Company, and/or the City and County of Denver at the sole expense of the Permittee. In the event the Permittee's facilities are damaged or destroyed due to Denver Water's, Utility Company's, or the City and County of Denver's repair, replacement and/or operation of its facilities, repairs will be made by Permittee at its sole expense. Permittee agrees to defend, indemnify and hold the City harmless and to repair or pay for the repair of any and all damages to said water, storm, sanitary sewer facilities or other Utility Company facilities, or those damages resulting from the failure of the water, storm, sanitary sewer facilities or other Utility Company facilities to properly function because of the Encroachment(s).

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

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

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

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

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

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

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

1 (l) During the existence of the Encroachment(s) and the Permit, Permittee, its successors
2 and assigns, at its expense, and without cost to the City, shall procure and maintain Commercial
3 General Liability insurance policy with a limit of not less than \$1,000,000 per occurrence. All
4 coverages are to be arranged on an occurrence basis and include coverage for those hazards
5 normally identified as X.C.U. during construction. The insurance coverage required herein
6 constitutes a minimum requirement and such enumeration shall in no way be deemed to limit or
7 lessen the liability of the Permittee, its successors or assigns, under the terms of this Permit. All
8 insurance coverage required herein shall be written in a form and by a company or companies
9 approved by the Risk Manager of the City and authorized to do business in the State of Colorado. A
10 certified copy of all such insurance policies shall be filed with the Executive Director, and each such
11 policy shall contain a statement therein or endorsement thereon that it will not be canceled or
12 materially changed without written notice, by registered mail, to the Executive Director at least thirty
13 (30) days prior to the effective date of the cancellation or material change. The City and County of
14 Denver, its Elected and Appointed Officials, Employees and Volunteers shall be included as
15 Additional Insured.

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

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

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

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

31 ii. Permittee's duty to defend and indemnify City shall arise at the time written notice
32 of the Claim is first provided to City regardless of whether claimant has filed suit on the Claim.
33 Permittee's duty to defend and indemnify City shall arise even if City is the only party sued by

claimant and/or claimant alleges that City's negligence or willful misconduct was the sole cause of claimant's damages.

iii. Permittee will defend any and all Claims which may be brought or threatened against City and will pay on behalf of City any expenses incurred by reason of such Claims including, but not limited to, court costs and attorney fees incurred in defending and investigating such Claims or seeking to enforce this indemnity obligation. Such payments on behalf of City shall be in addition to any other legal remedies available to City and shall not be considered City's exclusive remedy.

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

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

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

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

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

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

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

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

(v) Encroachment(s) attached to a building may require building and/or zoning permits

1 from the City's Department of Community Planning and Development.

2 (w) Encroachment(s) in the regulatory floodplain shall require a SUDP and comply with
3 Chapter 4 Floodplain Regulations of the "Storm Drainage Design and Technical Criteria", Chapter
4 12 Floodplain Management of the "DOTI Rules and Regulations Governing Sewerage Charges and
5 Fees and Management of Wastewater" and the City Floodplain Ordinance in DRMC Section 56-200
6 through 56-206. Above ground Encroachment(s) in a Floodway require a No-Rise Certification
7 sealed and signed by a Professional Engineer licensed in the State of Colorado. If there is any rise
8 in Base Flood Elevations, a Conditional Letter of Map Revision (CLOMR) and LOMR will be required.

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

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

20 COMMITTEE APPROVAL DATE: February 21, 2023 by Consent

21 MAYOR-COUNCIL DATE: February 28, 2023

22 PASSED BY THE COUNCIL: _____

23 _____ - PRESIDENT

24 ATTEST: _____ - CLERK AND RECORDER,
25 EX-OFFICIO CLERK OF THE
26 CITY AND COUNTY OF DENVER

27 PREPARED BY: Martin A. Plate, Assistant City Attorney DATE: March 2, 2023

28 Pursuant to section 13-9, D.R.M.C., this proposed resolution has been reviewed by the Office of the
29 City Attorney. We find no irregularity as to form and have no legal objection to the proposed
30 resolution. The proposed resolution is not submitted to the City Council for approval pursuant to
31 § 3.2.6 of the Charter.

32
33 Kerry Tipper, Denver City Attorney

34
35 BY: _____, Assistant City Attorney DATE: _____