

1 **BY AUTHORITY**

2 RESOLUTION NO. CR16-0935
3 SERIES OF 2016

COMMITTEE OF REFERENCE:
Land Use, Transportation & Infrastructure

4 **A RESOLUTION**

5 **Granting a revocable permit to 17th Avenue Development Group, LLC to**
6 **encroach into the right-of-way at 1200 East 17th Avenue.**

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

9
10 **Section 1.** The City and County of Denver ("City") hereby grants to 17th Avenue
11 Development Group, LLC, and its successors and assigns ("Permittee"), a revocable permit to
12 encroach into the right-of-way with two (2) patios. One patio is 8.46'x50.15', partially sunken, and
13 on the corner of Marion Street; the second patio is 4.94x52.69', partially raised, and on the corner
14 of East 17th Avenue and Lafayette Street ("Encroachments") at 1200 East 17th Avenue in the
15 following described area ("Encroachment Area"):

16 **PARCEL DESCRIPTION ROW NO. 2016-ENCROACHMENT-0000042-001:**

17 TWO PARCELS OF LAND ADJOINING BLOCK 26, PARK AVENUE ADDITION TO DENVER, RECORDED IN BOOK 2, PAGE 66, OF THE
18 OFFICIAL ARAPAHOE COUNTY RECORDS, SAID PARCELS BEING SITUATED IN THE SOUTHWEST QUARTER OF SECTION 35,
19 TOWNSHIP 3 SOUTH, RANGE 68 WEST OF THE 6th PRINCIPAL MERIDIAN, CITY AND COUNTY OF DENVER, STATE OF COLORADO,
20 MORE PARTICULARLY DESCRIBED AS FOLLOWS:

21
22 **PARCEL A:**

23 COMMENCING AT THE RANGE POINT LOCATED AT THE INTERSECTION OF MARION STREET AND 17TH AVENUE ALSO BEING THE
24 INTERSECTION OF A 27.50' RANGE LINE RUNNING EAST/ WEST AND A 21.00' RANGE LINE RUNNING NORTH/ SOUTH;
25 THENCE SOUTH 38°24'28" EAST, A DISTANCE OF 94.41 FEET TO A POINT ON THE WEST LINE OF LOT 38, BLOCK 26, OF SAID PARK
26 AVENUE ADDITION TO DENVER, SAID POINT ALSO BEING THE POINT OF BEGINNING;
27 THENCE SOUTH 00°16'12" WEST COINCIDENT WITH THE WEST LINE OF LOTS 38 AND 37 OF SAID BLOCK, A DISTANCE OF 58.62
28 FEET;
29 THENCE NORTH 44°43'08" WEST, A DISTANCE OF 11.98 FEET;
30 THENCE NORTH 00°16'12" EAST, A DISTANCE OF 50.15 FEET;
31 THENCE SOUTH 89°43'48" EAST, A DISTANCE OF 8.47 FEET TO THE POINT OF BEGINNING.

32
33 SAID PARCEL CONTAINS 461 SQUARE FEET, MORE OR LESS.

34
35 **PARCEL B:**

36 COMMENCING AT THE RANGE POINT LOCATED AT THE INTERSECTION OF MARION STREET AND 17TH AVENUE ALSO BEING THE
37 INTERSECTION OF A 27.50' RANGE LINE RUNNING EAST/ WEST AND A 21.00' RANGE LINE RUNNING NORTH/ SOUTH;
38 THENCE SOUTH 76°57'38" EAST, A DISTANCE OF 333.39 FEET TO A POINT ON THE EAST LINE OF LOT 1, BLOCK 26, OF SAID PARK
39 AVENUE ADDITION TO DENVER, SAID POINT ALSO BEING THE POINT OF BEGINNING;
40 THENCE SOUTH 89°42'01" EAST, A DISTANCE OF 4.94 FEET;
41 THENCE SOUTH 00°17'59" WEST, A DISTANCE OF 52.69 FEET;
42 THENCE NORTH 89°42'01" WEST, A DISTANCE OF 4.94 FEET TO A POINT ON THE EAST LINE OF LOT 2, OF SAID BLOCK;
43 THENCE NORTH 00°17'59" EAST COINCIDENT WITH THE EAST LINE OF SAID LOTS 1 AND 2, A DISTANCE OF 52.69 FEET TO THE
44 POINT OF BEGINNING.
45

1 SAID PARCEL CONTAINS 260 SQUARE FEET, MORE OR LESS.
2

3 BASIS OF BEARINGS: BEARINGS ARE BASED ON THE ASSUMPTION THAT THE (27.5') RANGE LINE COINCIDENT WITH SEVENTEENTH
4 AVENUE REFERENCED IN PARK AVENUE ADDITION TO DENVER, RECORDED IN BOOK 2, PAGE 66, OF THE OFFICIAL ARAPAHOE
5 COUNTY RECORDS, BEARS SOUTH 89°35'41" EAST. WEST END OF SAID LINE IS LOCATED AT THE INTERSECTION OF MARION
6 STREET & 17TH AVENUE AS MONUMENTED WITH A 1" AXLE IN MONUMENT BOX, EAST END OF SAID LINE IS LOCATED AT THE
7 INTERSECTION OF LAFAYETTE STREET AND SEVENTEENTH AVENUE AS MONUMENTED WITH A 1" AXLE IN MONUMENT BOX.

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

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

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

14 (c) If the Permittee intends to install any underground facilities in or near a public road,
15 street, alley, right-of-way or utility easement, the Permittee shall join the Statewide Notification
16 Association of Owners and Operators of Underground Facilities by contacting the Utility Notification
17 Center of Colorado, 12600 West Colfax Avenue, Suite B-310, Lakewood, Colorado 80215, at 303-
18 232-1991. Further, Permittee shall contact the Utility Notification Center at 1-800-922-1987 to
19 locate underground facilities prior to commencing any work under this Permit.

20 (d) Permittee is fully responsible for any and all damages incurred to facilities of the Water
21 Department and/or drainage facilities for water and sewage of the City due to activities authorized
22 by the Permit. Should the relocation or replacement of any drainage facilities for water and sewage
23 of the City become necessary as determined by the City's Executive Director of Public Works
24 ("Executive Director"), in the Executive Director's sole and absolute discretion, Permittee shall pay
25 all cost and expense of the portion of the sewer affected by the permitted structure. The extent of
26 the affected portion to be replaced or relocated by Permittee shall be determined by the Executive
27 Director. Any and all replacement or repair of facilities of the Denver Water and/or drainage facilities
28 for water and sewage of the City attributed to the Permittee shall be made by the Denver Water
29 and/or the City at the sole expense of the Permittee. In the event Permittee's facilities are damaged
30 or destroyed due to the Denver Water or the City's repair, replacement and/or operation of its
31 facilities, repairs will be made by the Permittee at its sole expense. Permittee agrees to defend,
32 indemnify and save the City harmless and to repair or pay for the repair of any and all damages to
33 said sanitary sewer, or those damages resulting from the failure of the sewer to properly function
34 as a result of the permitted structure.

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

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

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

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

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

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

28 (k) This revocable Permit shall not operate or be construed to abridge, limit or restrict the
29 City in exercising its right to make full use of the Encroachment Area and adjacent rights-of-way as
30 public thoroughfares nor shall it operate to restrict the utility companies in exercising their rights to
31 construct, remove, operate and maintain their facilities within the Encroachment Area and adjacent
32 rights-of-way.

1 (l) During the existence of the Encroachments and this Permit, Permittee, its successors
2 and assigns, at its expense, and without cost to the City, shall procure and maintain a single limit
3 comprehensive general liability insurance policy with a limit of not less than \$500,000.00. 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.
10 A certified copy of all such insurance policies shall be filed with the Executive Director, and each
11 such 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. All such insurance
14 policies shall be specifically endorsed to include all liability assumed by the Permittee hereunder
15 and shall name the City as an additional insured.

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

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

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

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

33

1 COMMITTEE APPROVAL DATE: October 13, 2016, by consent

2 MAYOR-COUNCIL DATE: October 18, 2016

3 PASSED BY THE COUNCIL: _____

4 _____ - PRESIDENT

5 ATTEST: _____ - CLERK AND RECORDER,
6 EX-OFFICIO CLERK OF THE
7 CITY AND COUNTY OF DENVER

8 PREPARED BY: Brent A. Eisen, Assistant City Attorney DATE: October 20, 2016

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

13 Kristin M. Bronson, City Attorney for the City and County of Denver

14 BY: _____, Assistant City Attorney DATE: _____