

BY AUTHORITY

RESOLUTION NO. CR13-0292
SERIES OF 2013

COMMITTEE OF REFERENCE:
Land Use, Transportation & Infrastructure

A RESOLUTION

Granting a revocable permit to Observatory Park, LLC to encroach into the right-of-way at 2360 East Evans Avenue.

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

Section 1. The City and County of Denver hereby grants to Observatory Park, LLC and its successors and assigns (“Permittee”), a revocable permit to encroach into the right-of-way with one identification ground sign; two projecting signs; and three open steel frame overhead projecting structures (“Encroachments”) at 2360 East Evans Avenue in the following described area (“Encroachment Area”):

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PARCEL DESCRIPTION ROW 2008-0480-07-001

SIX (6) PARCELS OF LAND, FOR RIGHT OF WAY ENCROACHMENT PURPOSES LOCATED IN THE RIGHT OF WAY OF EVANS AVE. AND S. UNIVERSITY BLVD. ADJACENT TO BLOCK 36 OF UNIVERSITY PARK AMENDED MAP, BEING A PORTION OF THE NORTHWEST QUARTER OF SECTION 25, TOWNSHIP 4 SOUTH, RANGE 68 WEST OF THE SIXTH PRINCIPAL MERIDIAN, CITY AND COUNTY OF DENVER, STATE OF COLORADO.

BASIS OF BEARINGS: THE WEST LINE OF BLOCK 36 OF THE UNIVERSITY PARK AMENDED MAP IS ASSUMED TO BEAR S 00°03'58" E.

DESCRIPTION NUMBER 1

COMMENCING AT THE NORTHWEST CORNER OF SAID BLOCK 36:

THENCE S 00°03'58" E ALONG SAID WEST LINE A DISTANCE OF 91.25 FEET TO THE POINT OF BEGINNING;

THENCE S 00°03'58" E CONTINUING ALONG SAID WEST LINE A DISTANCE OF 21.33 FEET;

THENCE S 89°56'02" W A DISTANCE OF 5.67 FEET TO A LINE PARALLEL TO AND 5.67 FEET WEST OF SAID WEST LINE OF BLOCK 36;

THENCE N 00°03'58" W ON SAID LINE A DISTANCE OF 21.33 FEET;

THENCE N 89°56'02" E A DISTANCE OF 5.67 FEET TO THE POINT OF BEGINNING;

SAID DESCRIBED PARCEL OF LAND CONTAINS 120.9 SQ. FT., MORE OR LESS.

DESCRIPTION NUMBER 2

COMMENCING AT THE NORTHWEST CORNER OF SAID BLOCK 36:

THENCE S 00°03'58" E ALONG SAID WEST LINE A DISTANCE OF 115.00 FEET;

THENCE S 89°56'02" W A DISTANCE OF 11.25 FEET TO THE POINT OF BEGINNING;

THENCE S 89°56'02" W A DISTANCE OF 8.00 FEET;

THENCE N 00°03'58" W A DISTANCE OF 4.00 FEET;

THENCE N 89°56'02" E A DISTANCE OF 8.00 FEET;

THENCE S 00°03'58" E A DISTANCE OF 4.00 FEET TO THE POINT OF BEGINNING;

SAID DESCRIBED PARCEL OF LAND CONTAINS 32.0 SQ. FT., MORE OR LESS.

DESCRIPTION NUMBER 3

COMMENCING AT THE NORTHWEST CORNER OF SAID BLOCK 36:

THENCE S 00°03'58" E ALONG SAID WEST LINE A DISTANCE OF 197.85 FEET TO THE POINT OF BEGINNING;

THENCE S 00°03'58" E CONTINUING ALONG SAID WEST LINE A DISTANCE OF 7.50 FEET;

THENCE S 89°56'02" W A DISTANCE OF 5.75 FEET TO A LINE PARALLEL TO AND 5.75' WEST OF SAID WEST LINE OF BLOCK 36;

THENCE N 00°03'58" W ON SAID LINE A DISTANCE OF 7.50 FEET;

THENCE N 89°56'02" E A DISTANCE OF 5.75' FEET TO THE **POINT OF BEGINNING**;

SAID DESCRIBED PARCEL OF LAND CONTAINS 43.1 SQ. FT., MORE OR LESS.

DESCRIPTION NUMBER 4

COMMENCING AT THE NORTHWEST CORNER OF SAID BLOCK 36:

THENCE S 00°03'58" E ALONG SAID WEST LINE A DISTANCE OF 219.00 FEET TO THE **POINT OF BEGINNING**;

THENCE S 00°03'58" E CONTINUING ALONG SAID WEST LINE A DISTANCE OF 42.00 FEET;

THENCE S 89°56'02" W A DISTANCE OF 4.25 FEET TO A LINE PARALLEL TO AND 4.25 FEET WEST OF SAID WEST LINE OF BLOCK 36;

THENCE N 00°03'58" W ON SAID LINE A DISTANCE OF 42.00 FEET;

THENCE N 89°56'02" E A DISTANCE OF 4.25 FEET TO THE **POINT OF BEGINNING**;

SAID DESCRIBED PARCEL OF LAND CONTAINS 178.5 SQ. FT., MORE OR LESS.

DESCRIPTION NUMBER 5

COMMENCING AT THE NORTHWEST CORNER OF SAID BLOCK 36:

THENCE N 89°54'10" E ALONG THE NORTH LINE OF SAID BLOCK 36, A DISTANCE OF 145.75 FEET TO THE **POINT OF BEGINNING**;

THENCE N 00°05'50" W A DISTANCE OF 2.50 FEET TO A LINE PARALLEL TO AND 2.50 FEET NORTH OF SAID NORTH LINE OF BLOCK 36;

THENCE N 89°54'10" E ON SAID LINE A DISTANCE OF 3.25 FEET;

THENCE S 00°05'50" E A DISTANCE OF 2.50 FEET TO THE NORTH LINE OF SAID BLOCK 36;

THENCE S 89°54'10" W ALONG SAID NORTH LINE A DISTANCE OF 3.25 FEET TO THE **POINT OF BEGINNING**;

SAID DESCRIBED PARCEL OF LAND CONTAINS 8.1 SQ. FT., MORE OR LESS.

DESCRIPTION NUMBER 6

COMMENCING AT THE NORTHWEST CORNER OF SAID BLOCK 36:

THENCE N 89°54'10" E ALONG THE NORTH LINE OF SAID BLOCK 36, A DISTANCE OF 150.00 FEET TO THE WEST LINE OF THE 20 FOOT ALLEY;

THENCE S 00°04'47" E ALONG SAID WEST LINE OF ALLEY, A DISTANCE OF 220.50 FEET TO THE **POINT OF BEGINNING**;

THENCE N 89°55'13" E A DISTANCE OF 3.00 FEET TO A LINE PARALLEL TO AND 3.00 FEET EAST OF SAID WEST LINE OF ALLEY;

THENCE S 00°04'47" E ON SAID LINE A DISTANCE OF 3.00 FEET;

THENCE S 89°55'13" W A DISTANCE OF 3.00 FEET TO THE WEST LINE OF SAID ALLEY;

THENCE N 00°04'47" W ALONG SAID WEST LINE A DISTANCE OF 3.00 FEET TO THE POINT OF BEGINNING;

SAID DESCRIBED PARCEL OF LAND CONTAINS 9.0 SQ. FT., MORE OR LESS.

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

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

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

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

(d) Permittee is fully responsible for any and all damages incurred to facilities of the Water Department and/or drainage facilities for water and sewage of the City and County of Denver due to activities authorized by the permit. Should the relocation or replacement of any drainage facilities for water and sewage of the City and County of Denver become necessary as determined by the Manager of Public Works, in the Manager's sole and absolute discretion, Permittee shall pay all cost and expense of the portion of the sewer affected by the permitted structure. The extent of the affected portion to be replaced or relocated by Permittee shall be determined by the Manager of Public Works. Any and all replacement or repair of facilities of the Water Department and/or drainage facilities for water and sewage of the City and County of Denver attributed to the Permittee shall be made by the Water Department and/or the City and County of Denver at the sole expense of the Permittee. In the event Permittee's facilities are damaged or destroyed due to the Water Department's or the City and County of Denver's repair, replacement and/or operation of its facilities, repairs will be made by the Permittee at its sole expense. Permittee agrees to defend, indemnify and save the City harmless and to repair or pay for the repair of any and all damages to said sanitary

1 sewer, or those damages resulting from the failure of the sewer to properly function as a result of the
2 permitted structure.

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

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

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

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

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

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

31 (k) This revocable permit shall not operate or be construed to abridge, limit or restrict the
32 City and County of Denver in exercising its right to make full use of the Encroachment Area and
33 adjacent rights-of-way as public thoroughfares nor shall it operate to restrict the utility companies in

1 exercising their rights to construct, remove, operate and maintain their facilities within the
2 Encroachment Area and adjacent rights-of-way.

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

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

23 (n) The right to revoke this permit is expressly reserved to the City and County of Denver.

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

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

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

3 COMMITTEE APPROVAL DATE: May 2, 2013 [by consent]

4 MAYOR-COUNCIL DATE: May 7, 2013

5 PASSED BY THE COUNCIL: _____, 2013

6 _____ - PRESIDENT

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

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11 PREPARED BY: Brent A. Eisen, Assistant City Attorney DATE: May 9, 2013

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13 Pursuant to section 13-12, D.R.M.C., this proposed resolution has been reviewed by the office of the
14 City Attorney. We find no irregularity as to form, and have no legal objection to the proposed
15 resolution. The proposed resolution is not submitted to the City Council for approval pursuant to §
16 3.2.6 of the Charter.

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18 Douglas J. Friednash, Denver City Attorney

19 BY: _____, Assistant City Attorney DATE: _____, 2013