

1 **BY AUTHORITY**

2 RESOLUTION NO. CR24-1833
3 SERIES OF 2025

COMMITTEE OF REFERENCE:
Land Use, Transportation & Infrastructure

4 **A RESOLUTION**

5 **Granting a revocable permit to 776 Investments, LLC, to encroach into the right-**
6 **of-way at 2020 West Barberrry Place.**

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 776 Investments, LLC,
9 the Owner of the Benefitted Property, their successors and assigns (“Permittee”), a revocable permit
10 to encroach into the right-of-way with two (2) existing steel staircases and one (1) new staircase
11 (“Encroachment(s)”), at 2020 West Barberrry Place in the following described area (“Encroachment
12 Area”):

13 **PARCEL DESCRIPTION ROW NO. 2024-ENCROACHMENT-0000110-002:**

14 A TRACT OF LAND BEING A PORTION OF LOTS 3 THROUGH 6, BLOCK 3, MILLESON'S
15 ADDITION TO DENVER, LOCATED IN THE SOUTHWEST QUARTER OF SECTION 4, TOWNSHIP
16 4 SOUTH, RANGE 68 WEST OF THE SIXTH PRINCIPAL MERIDIAN, CITY AND COUNTY OF
17 DENVER, STATE OF COLORADO, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

18
19 PARCEL 1:

20 COMMENCING AT THE RANGE POINT IN THE INTERSECTION OF WEST BARBERRY PLACE
21 AND TEJON STREET MONUMENTED BY A FOUND AXLE IN RANGE BOX, THENCE SOUTH
22 67°46'22" WEST 92.40 FEET TO THE NORTH LINE OF SAID BLOCK 3 AND THE POINT OF
23 BEGINNING;

24
25 THENCE SOUTH 00°05'00" EAST 5.00 FEET;
26 THENCE SOUTH 89°55'00" WEST 11.92 FEET;
27 THENCE NORTH 00°05'00" WEST 5.00 FEET TO SAID NORTH LINE;
28 THENCE ON SAID NORTH LINE, NORTH 89°55'00" EAST 11.92 FEET TO THE POINT OF
29 BEGINNING.

30
31 CONTAINING 60 SQUARE FEET OR 0.001 ACRE OF LAND.

32
33 AND

34
35 PARCEL 2:

36 COMMENCING AT THE RANGE POINT IN THE INTERSECTION OF WEST BARBERRY PLACE
37 AND TEJON STREET MONUMENTED BY A FOUND AXLE IN RANGE BOX, THENCE SOUTH
38 71°40'52" WEST 111.30 FEET TO THE NORTH LINE OF SAID BLOCK 3 AND THE POINT OF
39 BEGINNING;

1 THENCE SOUTH 00°05'00" EAST 4.17 FEET;
2 THENCE SOUTH 89°55'00" WEST 12.17 FEET;
3 THENCE NORTH 00°05'00" WEST 4.17 FEET TO SAID NORTH LINE;
4 THENCE ON SAID NORTH LINE, NORTH 89°55'00" EAST 12.17 FEET TO THE POINT OF
5 BEGINNING.

6
7 CONTAINING 51 SQUARE FEET OR 0.001 ACRE OF LAND.

8
9 AND

10
11 PARCEL 3:
12 COMMENCING AT THE RANGE POINT IN THE INTERSECTION OF WEST BARBERRY PLACE
13 AND TEJON STREET MONUMENTED BY A FOUND AXLE IN RANGE BOX, THENCE SOUTH
14 75°19'30" WEST 140.91 FEET TO THE POINT OF BEGINNING;

15
16 THENCE SOUTH 00°05'00" EAST 3.46 FEET;
17 THENCE SOUTH 89°56'17" WEST 10.21 FEET;
18 THENCE NORTH 00°14'07" EAST 4.13 FEET THE NORTH LINE OF SAID BLOCK 3;
19 THENCE ON SAID NORTH LINE, NORTH 89°55'00" EAST 5.68 FEET;
20 THENCE DEPARTING SAID NORTH LINE, SOUTH 00°05'00" EAST 0.67 FEET;
21 THENCE SOUTH 89°58'46" EAST 4.50 FEET TO THE POINT OF BEGINNING.

22
23 CONTAINING 39 SQUARE FEET OR 0.001 ACRE OF LAND.

24
25 BEARINGS ARE BASED ON THE 25.0' RANGE LINE IN TEJON STREET, BETWEEN WEST
26 BARBERRY PLACE AND 8TH AVENUE. SAID LINE BEARS NORTH 00°00'33" EAST, AND IS
27 MONUMENTED AT THE SOUTH END BY A FOUND NO. 8 REBAR WITHOUT CAP IN RANGE
28 BOX AND IS MONUMENTED AT THE NORTH END BY A FOUND AXLE IN RANGE BOX WITH ALL
29 BEARINGS CONTAINED HEREON RELATIVE HERETO

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

31 **PARCEL DESCRIPTION ROW NO. 2024-ENCROACHMENT-0000110-001:**

32 LOTS 1 THRU 9, INCLUSIVE, BLOCK 3, MILLESON'S ADDITION TO DENVER, CITY AND
33 COUNTY OF DENVER, STATE OF COLORADO

34
35 **Section 2.** The revocable permit ("Permit") granted by this Resolution is expressly granted
36 upon and subject to each and all of the following terms and conditions (terms not defined herein are
37 defined in the Rules and Regulations Governing Encroachments & Encumbrances in the Public Right
38 of Way):

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

42 (b) Permittee shall be responsible for obtaining all necessary permits and shall pay all

1 costs for installation and construction of items permitted herein.

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

9 (d) Permittee is fully responsible for any and all damages incurred to facilities of Denver
10 Water and any other Utility Company, and/or drainage facilities for water and sewage of the City and
11 County of Denver due to activities authorized by the Permit. Should the relocation or replacement of
12 any drainage facilities for water and sewage of the City and County of Denver become necessary as
13 determined by the City's Executive Director of DOTI ("Executive Director"), in the Executive
14 Director's sole and absolute discretion, Permittee shall pay all cost and expense of the portion of the
15 water and/or sewer facilities affected by the Encroachment(s). The extent of the affected portion to
16 be replaced and relocated by Permittee shall be determined by the Executive Director. Any and all
17 replacement or repair of facilities of Denver Water and any other Utility Company, and/or drainage
18 facilities for water and sewage of the City and County of Denver attributed to the Permittee shall be
19 made by Denver Water, Utility Company, and/or the City and County of Denver at the sole expense
20 of the Permittee. In the event the Permittee's facilities are damaged or destroyed due to Denver
21 Water's, Utility Company's, or the City and County of Denver's repair, replacement and/or operation
22 of its facilities, repairs will be made by Permittee at its sole expense. Permittee agrees to defend,
23 indemnify and hold the City harmless and to repair or pay for the repair of any and all damages to
24 said water, storm, sanitary sewer facilities or other Utility Company facilities, or those damages
25 resulting from the failure of the water, storm, sanitary sewer facilities or other Utility Company
26 facilities to properly function because of the Encroachment(s).

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

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

33 (g) Permittee shall observe and comply with all Federal, State and local laws, regulations,

1 ordinances, and public safety requests regarding the use of the Encroachment Area.

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

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

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

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

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

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

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

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

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

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

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

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

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

32 (p) Pursuant to Chapter 49 of the DRMC, DOTI is authorized to remove or to order the
33 removal of any article, vehicle, object or thing whatsoever encroaching into any street, alley,

1 Sidewalk, or other public way or place.

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

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

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

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

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

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

20 (w) Encroachment(s) in the regulatory floodplain shall require a SUDP and comply with
21 Chapter 4 Floodplain Regulations of the "Storm Drainage Design and Technical Criteria", Chapter
22 12 Floodplain Management of the "DOTI Rules and Regulations Governing Sewerage Charges and
23 Fees and Management of Wastewater" and the City Floodplain Ordinance in DRMC Section 56-200
24 through 56-206. Above ground Encroachment(s) in a Floodway require a No-Rise Certification
25 sealed and signed by a Professional Engineer licensed in the State of Colorado. If there is any rise
26 in Base Flood Elevations, a Conditional Letter of Map Revision (CLOMR) and LOMR will be required.

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

30 **Section 3.** That the Permit hereby granted shall be revocable at any time that the Council
31 of the City and County of Denver shall determine that the public convenience and necessity or the
32 public health, safety or general welfare require such revocation, and the right to revoke the same is
33 hereby expressly reserved to the City; provided however, at a reasonable time prior to City Council

1 action upon such revocation or proposed revocation, opportunity shall be afforded to Permittee, its
2 successors and assigns, to be present at a hearing to be conducted by the City Council upon such
3 matters and thereat to present its views and opinions thereof and to present for consideration action
4 or actions alternative to the revocation of such Permit.

5 COMMITTEE APPROVAL DATE: December 24, 2024 by Consent

6 MAYOR-COUNCIL DATE: December 31, 2024 by Consent

7 PASSED BY THE COUNCIL: January 6, 2025

8 *Diana Romero Campbell* _____ - PRESIDENT
Diana Romero Campbell (Jan 7, 2025 10:58 MST)

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

12 PREPARED BY: Martin A. Plate, Assistant City Attorney DATE: January 2, 2025

13 Pursuant to section 13-9, 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.

17
18 Kerry Tipper, Denver City Attorney

19
20 BY: *Anukul Bagga*, Assistant City Attorney DATE: Dec 31, 2024