

1 **BY AUTHORITY**

2 RESOLUTION NO. CR23-0081
3 SERIES OF 2023

COMMITTEE OF REFERENCE:
Land Use, Transportation & Infrastructure

4 **A RESOLUTION**

5 **Granting a revocable permit to Corleone Import Export, LLC, to encroach into**
6 **the right-of-way at 2262 Larimer Street.**

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 Corleone Import Export,
9 LLC, the owner of the Benefitted Property, and their successors and assigns (“Permittee”), a
10 revocable permit to encroach into the right-of-way with an enclosed patio with a footprint of 350
11 square feet (“Encroachment(s)”) at 2262 Larimer Street in the following described area
12 (“Encroachment Area”):

13 **PARCEL DESCRIPTION ROW NO. 2019-ENCROACHMENT-0000313-002:**

14 A PARCEL OF LAND SITUATED IN THE SOUTHWEST QUARTER OF SECTION 27, T.3S,
15 R.68W, 6TH P.M., CITY AND COUNTY OF DENVER, STATE OF COLORADO, BEING A
16 PORTION OF THE RIGHT-OF-WAY OF PARK AVENUE, BETWEEN LARIMER AND
17 LAWRENCE STREETS, ADJACENT TO LOT 1, BLOCK 62, EAST DENVER, ALSO KNOWN AS
18 STECK’S ADDITION, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

19
20 **COMMENCING** AT RANGE POINT AT THE INTERSECTION OF PARK AVENUE AND LARIMER
21 STREET;

22 THENCE SOUTH 29°54’49” EAST, A DISTANCE OF 75.06 FEET TO THE SOUTHWESTERLY
23 RIGHT-OF-WAY OF SAID PARK AVENUE AND BEING 12.33 FEET SOUTHEASTERLY FROM
24 THE NORTH CORNER OF SAID BLOCK 62, SAME BEING THE **POINT OF BEGINNING**;

25
26 THENCE DEPARTING SAID SOUTHWESTERLY RIGHT-OF-WAY OF PARK AVENUE, NORTH
27 44°37’56” EAST, A DISTANCE OF 7.00 FEET;

28 THENCE ALONG A LINE 7.00 FEET NORTHEASTERLY OF AND PARALLEL WITH SAID
29 SOUTHWESTERLY RIGHT-OF-WAY OF PARK AVENUE, SOUTH 45°22’04” EAST, A
30 DISTANCE OF 50.00 FEET;

31 THENCE SOUTH 44°37’56” WEST, A DISTANCE OF 7.00 FEET TO A POINT ON SAID
32 SOUTHWESTERLY RIGHT-OF-WAY OF PARK AVENUE;

33 THENCE ALONG SAID SOUTHWESTERLY RIGHT-OF-WAY OF PARK AVENUE, NORTH
34 45°22’04” WEST, A DISTANCE OF 50.00 FEET TO THE **POINT OF BEGINNING**.

35
36 SAID PARCEL CONTAINS 350 SQUARE FEET OR 0.008 ACRE, MORE OR LESS.

37
38 BEARINGS ARE BASED ON THE 20-FOOT RANGE LINE IN LARIMER STREET, BETWEEN
39 PARK AVENUE AND 22ND STREET. SAID LINE IS ASSUMED TO BEAR SOUTH 44°35’07”
40 EAST, MONUMENTED AT NORTHEAST END BY A 1-14” BRASS CAP (ILLEGIBLE) IN RANGE

1 BOX AND AT THE SOUTHWEST END BY ACCESSORY MONUMENTS. ALL LINEAL
2 DIMENSIONS ARE IN U.S. SURVEY FEET

3
4 and benefitting the following described parcel of property (“Benefitted Property”):

5 Lot 1,
6 Block 62,
7 EAST DENVER (that portion commonly known as Stecks Addition),
8
9 City and County of Denver,
10 State of Colorado.

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

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

19 (b) Permittee shall be responsible for obtaining all necessary permits and shall pay all
20 costs 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, ROW or utility easement, the Permittee shall join the Statewide Notification Association
23 of Owners and Operators of Underground Facilities by contacting the Utility Notification Center of
24 Colorado (Colorado 811) through <https://colorado811.org/> or at 303-232-1991, 16361 Table
25 Mountain Pkwy, Golden, Colorado, 80403. Further, Permittee shall contact the Utility Notification
26 Center (Colorado 811) at <https://colorado811.org/> or 303-232-1991 to request locates for existing
27 underground facilities prior to commencing excavation.

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

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

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

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

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

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

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

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

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

1 Encroachment Area.

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

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

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

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

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

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

1 Permittee's duty to defend and indemnify City shall arise even if City is the only party sued by
2 claimant and/or claimant alleges that City's negligence or willful misconduct was the sole cause of
3 claimant's damages.

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

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

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

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

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

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

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

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

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

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

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

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

13 Special Condition:

14 (y) In addition to the requirement herein to comply with all laws, the Permittee must comply
15 with City accessibility criteria ensuring minimum pedestrian access route (PAR) width is provided
16 adjacent to the patio and exclusive of the tree grates if the Permittee physically changes the
17 Encroachment(s) or replaces it with something new at any point in the future. Minimum PAR width
18 will be in accordance with current City rules and regulations, and standards at the time of proposed
19 changes to the Encroachment(s) and will be equal to or greater than 5 feet.

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

28 **[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]**

1 COMMITTEE APPROVAL DATE: January 31, 2023 by Consent

2 MAYOR-COUNCIL DATE: February 7, 2023

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: Martin A. Plate, Assistant City Attorney DATE: February 9, 2023

9 Pursuant to section 13-9, D.R.M.C., this proposed resolution has been reviewed by the Office of the
10 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
14 Kerry Tipper, Denver City Attorney

15
16 BY: _____, Assistant City Attorney DATE: _____