

1 **BY AUTHORITY**

2 RESOLUTION NO. CR22-0708
3 SERIES OF 2022

COMMITTEE OF REFERENCE:
Land Use, Transportation & Infrastructure

4 **A RESOLUTION**

5 **Granting a revocable permit to RAR2 - 444 East 19th, LLC, to encroach into the**
6 **right-of-way at 494 East 19th Avenue.**

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 RAR2 - 444 East 19th,
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 ("Encroachment(s)")
11 located along the southwest corner of East 19th Avenue and North Pennsylvania Street at 494 East
12 19th Avenue in the following described area ("Encroachment Area"):

13 **PARCEL DESCRIPTION ROW NO. 2021-ENCROACHMENT-0000106-002:**

14 A PARCEL OF LAND BEING A PORTION OF THE 80 FOOT RIGHTS OF WAY OF NORTH
15 PENNSYLVANIA STREET AND EAST 19TH AVENUE, AND SITUATED IN THE SOUTHEAST 1/4
16 OF SECTION 34, TOWNSHIP 3 SOUTH, RANGE 68 WEST OF THE 6TH PRINCIPAL
17 MERIDIAN, CITY AND COUNTY OF DENVER, STATE OF COLORADO BEING MORE
18 PARTICULARLY DESCRIBED AS FOLLOWS:

19 COMMENCING AT A RANGE POINT IN THE INTERSECTION OF NORTH PENNSYLVANIA
20 STREET AND EAST 19TH AVENUE, BEING A FOUND 3" BRASS CAP, FLUSH IN CONCRETE,
21 FROM WHENCE A RANGE POINT IN THE INTERSECTION OF NORTH PENNSYLVANIA
22 STREET AND EAST 19TH AVENUE, BEING A FOUND 2" ALUMINUM CAP IN RANGE BOX,
23 BEARS SOUTH 00°13'29" EAST, A DISTANCE OF 479.91 FEET, WITH ALL BEARINGS HEREIN
24 RELATIVE THERETO:

25 THENCE SOUTH 47°46'41" WEST, A DISTANCE OF 85.36 FEET TO THE POINT OF
26 BEGINNING;

27 THENCE NORTH 89°18'38" EAST, A DISTANCE OF 39.77 FEET;

28 THENCE 11.41 FEET ALONG A CURVE TO THE RIGHT, WITH A RADIUS OF 7.20 FEET, A
29 DELTA OF 90°46'48", AND A CHORD WHICH BEARS SOUTH 45°17'58" EAST, A DISTANCE OF
30 10.25 FEET;

31 THENCE SOUTH 00°05'26" WEST, A DISTANCE OF 23.24 FEET;

32 THENCE SOUTH 89°47'33" WEST, A DISTANCE OF 3.46 FEET TO THE EAST LINE OF BLOCK
33 263, CLEMENTS ADDITION TO THE CITY OF DENVER;

34 THENCE NORTH 00°13'29" WEST ALONG THE EAST LINE OF SAID BLOCK 263, A DISTANCE
35 OF 27.29 FEET TO THE NORTHEAST CORNER OF SAID BLOCK 263;

36 THENCE SOUTH 89°49'21" WEST ALONG THE NORTH LINE OF SAID BLOCK 263, A
37 DISTANCE OF 43.44 FEET;

38 THENCE NORTH 00°15'03" WEST, A DISTANCE OF 2.83 FEET TO THE POINT OF
39 BEGINNING;

1 CONTAINING: 228 SQUARE FEET, 0.005 ACRES OF LAND, MORE OR LESS
2 and benefitting the following described parcel of property:

3 **PARCEL DESCRIPTION ROW NO. 2021-ENCROACHMENT-0000106-001:**

4 Parcel I:

5 Lots 1 through 32, Block 263,
6 CLEMENT'S ADDITION TO THE CITY OF DENVER,
7 TOGETHER WITH all of the 16-foot wide alley located within Block 263, vacated by Ordinance No.
8 17, Series of 2012,
9 recorded January 13, 2012, at Reception Number 2012004937,
10 City and County of Denver,
11 State of Colorado.

12 Parcel II:

13 The beneficial rights created by Revocable Permit, disclosed by Resolution No. CR12-0480, Series
14 of 2012, recorded
15 October 8, 2012, at Reception Number 2012136896.

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

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

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

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

32 (d) Permittee is fully responsible for any and all damages incurred to facilities of Denver
33 Water and any other Utility Company, and/or drainage facilities for water and sewage of the City and

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

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

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

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

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

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

32 (j) Permittee shall remove and replace any and all street/alley paving, Sidewalks,
33 Streetscapes, Amenity Zones, and curb and gutter, both inside the Encroachment Area and in the

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

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

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

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

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

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

33 i. Permittee agrees to defend, indemnify, reimburse and hold harmless City, its

1 appointed and elected officials, agents and employees for, from and against all liabilities, claims,
2 judgments, suits or demands for damages to persons or property arising out of, resulting from, or
3 relating to this Permit and the Encroachment(s) (“Claims”). This indemnity shall be interpreted in the
4 broadest possible manner to indemnify City for any acts or omissions of Permittee or its agents either
5 passive or active, irrespective of fault, including City’s negligence whether active or passive.

6 ii. Permittee’s duty to defend and indemnify City shall arise at the time written notice
7 of the Claim is first provided to City regardless of whether claimant has filed suit on the Claim.
8 Permittee’s duty to defend and indemnify City shall arise even if City is the only party sued by
9 claimant and/or claimant alleges that City’s negligence or willful misconduct was the sole cause of
10 claimant’s damages.

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

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

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

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

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

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

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

1 Public Tree must be pre-approved by the OCF. City permits are required for the planting or removal
2 of any Public Trees and can be obtained by emailing forestry@denvergov.org.

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

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

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

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

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

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 BLANK**

1 COMMITTEE APPROVAL DATE: June 14, 2022 by Consent

2 MAYOR-COUNCIL DATE: June 21, 2022

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: June 23, 2022

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 Kristin M. Bronson, Denver City Attorney

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