

BY AUTHORITY

RESOLUTION NO. CR22-0308
SERIES OF 2022

COMMITTEE OF REFERENCE:
Land Use, Transportation & Infrastructure

A RESOLUTION

Granting a revocable permit to Poplar Place, LLC, to encroach into the right-of-way for at grade stoops adjacent to ground level unit entry doors at 1401 North Poplar Street.

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

Section 1. The City and County of Denver (“City”) hereby grants to Poplar Place, LLC, the owner of the Benefitted Property, and its successors and assigns (“Permittee”), a revocable permit to encroach into the right-of-way with five (5) 4' by 6'6" at grade stoops adjacent to ground level unit entry doors (“Encroachment(s)”) at 1401 North Poplar Street in the following described area (“Encroachment Area”):

PARCEL DESCRIPTION ROW NO. 2021-ENCROACHMENT-0000135-002:

LAND DESCRIPTION:

PARCELS OF LAND LOCATED IN THE NORTHEAST ¼ OF SECTION 5, TOWNSHIP 4 SOUTH, RANGE 67 WEST OF THE 6TH P.M., MORE PARTICULARLY DESCRIBED AS FOLLOWS:

PARCEL 1:

COMMENCING AT THE SOUTHEAST CORNER OF LOT 19, BLOCK 26, MONTCLAIR RESUBDIVISION OF BLOCKS TWENTY-FIVE (25) AND TWENTY-SIX (26), AND SUBDIVISION OF BLOCK "A"; THENCE N00°14'01"W, 20.00 FEET TO THE POINT OF BEGINNING; THENCE N00°14'01"W, 6.56 FEET; THENCE N89°45'59"E, 4.00 FEET; THENCE S00°14'01"E, 6.56 FEET; THENCE S89°45'59"W, 4.00 FEET TO THE POINT OF BEGINNING, CITY AND COUNTY OF DENVER, STATE OF COLORADO.

THE ABOVE DESCRIBED PARCEL CONTAINS 26 SQUARE FEET OR 0.0006 ACRES MORE OR LESS.

PARCEL 2:

COMMENCING AT THE SOUTHEAST CORNER OF LOT 19, BLOCK 26, MONTCLAIR RESUBDIVISION OF BLOCKS TWENTY-FIVE (25) AND TWENTY-SIX (26), AND SUBDIVISION OF BLOCK "A"; THENCE N00°14'01"W, 48.76 FEET TO THE POINT OF BEGINNING; THENCE N00°14'01"W, 6.56 FEET; THENCE N89°45'59"E, 4.00 FEET; THENCE S00°14'01"E, 6.56 FEET; THENCE S89°45'59"W, 4.00 FEET TO THE POINT OF BEGINNING, CITY AND COUNTY OF DENVER, STATE OF COLORADO.

1 THE ABOVE DESCRIBED PARCEL CONTAINS 26 SQUARE FEET OR 0.0006 ACRES MORE
2 OR LESS.

3 PARCEL 3:

4
5 COMMENCING AT THE SOUTHEAST CORNER OF LOT 19, BLOCK 26, MONTCLAIR
6 RESUBDIVISION OF BLOCKS TWENTY-FIVE (25) AND TWENTY-SIX (26), AND SUBDIVISION
7 OF BLOCK "A"; THENCE N00°14'01"W, 60.69 FEET TO THE POINT OF BEGINNING; THENCE
8 N00°14'01"W, 6.56 FEET; THENCE N89°45'59"E, 4.00 FEET; THENCE S00°14'01"E, 6.56 FEET;
9 THENCE S89°59'45"W, 4.00 FEET TO THE POINT OF BEGINNING, CITY AND COUNTY OF
10 DENVER, STATE OF COLORADO.

11
12 THE ABOVE DESCRIBED PARCEL CONTAINS 26 SQUARE FEET OR 0.0006 ACRES MORE
13 OR LESS.

14
15 PARCEL 4:

16
17 COMMENCING AT THE NORTHEAST CORNER OF LOT 24, BLOCK 26, MONTCLAIR
18 RESUBDIVISION OF BLOCKS TWENTY-FIVE (25) AND TWENTY-SIX (26), AND SUBDIVISION
19 OF BLOCK "A"; THENCE S00°14'01"E, 53.62 FEET TO THE POINT OF BEGINNING; THENCE
20 N89°45'59"E, 4.00 FEET; THENCE S00°14'01"E, 6.56 FEET; THENCE S89°45'59"W, 4.00 FEET;
21 THENCE N00°14'01"W, 6.56 FEET TO THE POINT OF BEGINNING, CITY AND COUNTY OF
22 DENVER, STATE OF COLORADO.

23
24 THE ABOVE DESCRIBED PARCEL CONTAINS 26 SQUARE FEET OR 0.0006 ACRES MORE
25 OR LESS.

26
27 PARCEL 5:

28
29 COMMENCING AT THE NORTHEAST CORNER OF LOT 24, BLOCK 26, MONTCLAIR
30 RESUBDIVISION OF BLOCKS TWENTY-FIVE (25) AND TWENTY-SIX (26), AND SUBDIVISION
31 OF BLOCK "A"; THENCE S00°14'01"E, 40.38 FEET TO THE POINT OF BEGINNING; THENCE
32 N89°45'59"E, 4.00 FEET; THENCE S00°14'01"E, 6.56 FEET; THENCE S89°45'59"W, 4.00 FEET;
33 THENCE N00°14'01"W, 6.56 FEET TO THE POINT OF BEGINNING, CITY AND COUNTY OF
34 DENVER, STATE OF COLORADO.

35
36 THE ABOVE DESCRIBED PARCEL CONTAINS 26 SQUARE FEET OR 0.0006 ACRES MORE
37 OR LESS.

38
39 BASIS OF BEARINGS: AN ASSUMED BEARING OF N89°46'11"E BEING THE NORTH LINE OF
40 LOT 24, BLOCK 26, MONTCLAIR RESUBDIVISION OF BLOCKS TWENTY-FIVE (25) AND
41 TWENTY-SIX (26), AND SUBDIVISION OF BLOCK "A", BETWEEN TWO MONUMENTS 130.02
42 FEET APART. ONE MONUMENT BEING A NO. 5 REBAR WITH 2" DIAMETER ILLEGIBLE
43 ALLOY DISK AT THE NORTHWEST CORNER OF THE SUBJECT PROPERTY AND THE
44 OTHER BEING AN ALLOY DISK STAMPED PLS 38284 AT THE NORTHEAST CORNER OF
45 THE SUBJECT PROPERTY

46
47 and benefitting the following described parcel of property:

48

PARCEL DESCRIPTION ROW NO. 2021-ENCROACHMENT-0000135-001:

Zone Lot Description:

A TRACT OF LAND LOCATED IN THE NORTHEAST ¼ OF SECTION 5, TOWNSHIP 4 SOUTH, RANGE 67 WEST OF THE 6TH P.M., BEING LOTS 23, 24 AND A PORTION OF LOTS 19 TO 22, BLOCK TWENTY-SIX (26), MONTCLAIR RESUBDIVISION OF BLOCKS TWENTY-FIVE (25) AND TWENTY-SIX (26), AND SUBDIVISION OF BLOCK "A", CITY AND COUNTY OF DENVER, STATE OF COLORADO, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT THE NORTHEAST CORNER OF SAID LOT 24; THENCE S00° 14'01"E ALONG THE EAST LINE OF SAID LOT 24 AND SAID LINE EXTENDED, 148.04 FEET TO A POINT 2.00 FEET NORTH OF THE SOUTHEAST CORNER OF SAID LOT 19; THENCE S89°46'11"W ALONG A LINE 2.00 FEET NORTH OF AND PARALLEL TO THE SOUTH LINE OF SAID LOT 19, 105.00 FEET; THENCE N00°14'01"W, 98.03 FEET TO A POINT ON THE SOUTH LINE OF SAID LOT 23; THENCE S89°46'11"W ALONG THE SOUTH LINE OF SAID LOT 23, 25.03 FEET TO THE SOUTHWEST CORNER OF SAID LOT 23; THENCE N00°13'13"W ALONG THE WEST LINE OF SAID LOT 23 AND SAID LINE EXTENDED, 50.01 FEET TO THE NORTHWEST CORNER OF SAID LOT 24; THENCE N89°46'11"E ALONG THE NORTH LINE OF SAID LOT 24, 130.02 FEET TO THE POINT OF BEGINNING, CITY AND COUNTY OF DENVER, STATE OF COLORADO.

THE ABOVE DESCRIBED PARCEL CONTAINS 16,796 SQUARE FEET OR 0.3856 ACRES MORE OR LESS.

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 (terms not defined herein are defined in the Rules and Regulations Governing Encroachments & Encumbrances in the Public Right of Way):

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

(b) Permittee shall be responsible for obtaining all necessary permits and shall pay all costs 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, ROW 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 (Colorado 811) through <https://colorado811.org/> or at 303-232-1991, 16361 Table Mountain Pkwy, Golden, Colorado, 80403. Further, Permittee shall contact the Utility Notification Center (Colorado 811) at <https://colorado811.org/> or 303-232-1991 to request locates for existing underground facilities prior to commencing excavation.

(d) Permittee is fully responsible for any and all damages incurred to facilities of Denver

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

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

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

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

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

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

33 (j) Permittee shall remove and replace any and all street/alley paving, Sidewalks,

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1 immediately for mitigation. All trenching, excavation and grading activities within the Dripline of any
2 Public Tree must be pre-approved by the OCF. City permits are required for the planting or removal
3 of any Public Trees and can be obtained by emailing forestry@denvergov.org.

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

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

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

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

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

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

29
30 **REMAINDER OF PAGE INTENTIONALLY BLANK**

1 COMMITTEE APPROVAL DATE: March 22, 2022 by Consent

2 MAYOR-COUNCIL DATE: March 29, 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: March 31, 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: _____