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2 **BY AUTHORITY**

3 RESOLUTION NO. CR22-1211  
4 SERIES OF 2022

COMMITTEE OF REFERENCE:  
Land Use, Transportation & Infrastructure

5 **A RESOLUTION**

6 **Granting a revocable permit to RPAI Chestnut, LP, to encroach into the right-of-**  
7 **way at 2099 Chestnut Place.**

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

9 **Section 1.** The City and County of Denver (“City”) hereby grants to RPAI Chestnut, LP, its  
10 successors and assigns (“Permittee”), a revocable permit to encroach into the right-of-way with a  
11 building overhang of levels 2-8, protruding a maximum distance of 4.65 feet for a length of  
12 approximately 100 feet along the east facade of the building (“Encroachment(s)”) located at 2099  
13 Chestnut Place in the following described area (“Encroachment Area”):

14 **PARCEL DESCRIPTION ROW NO. 2022-ENCROACHMENT-0000054-002:**

15 **LAND DESCRIPTION**

16 A PARCEL OF LAND BEING A PORTION OF DIVISION STREET RIGHT-OF-WAY LOCATED IN  
17 THE SOUTHEAST QUARTER OF SECTION 28, TOWNSHIP 3 SOUTH, RANGE 68 WEST OF  
18 THE SIXTH PRINCIPAL MERIDIAN, CITY AND COUNTY OF DENVER, STATE OF COLORADO  
19 BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

20 COMMENCING AT THE INTERSECTION OF THE 28 FOOT RANGE LINE IN INCA STREET  
21 AND THE 20 FOOT RANGE LINE IN WEST 29<sup>TH</sup> AVENUE; THENCE S10°59'29"E A DISTANCE  
22 OF 40.71 FEET TO A POINT ON THE WESTERLY RIGHT-OF-WAY LINE OF DIVISION STREET  
23 EXTENDED, SAID POINT BEING THE POINT OF BEGINNING;

24 THENCE N89°44'10"E A DISTANCE OF 4.13 FEET;

25 THENCE S14°44'40"E A DISTANCE OF 99.33 FEET TO A POINT ON THE NORTHWESTERLY  
26 RIGHT-OF-WAY LINE OF CHESTNUT PLACE EXTENDED;

27 THENCE ALONG SAID NORTHWESTERLY RIGHT-OF-WAY OF CHESTNUT PLACE  
28 EXTENDED, S44°30'17"W A DISTANCE OF 4.65 FEET TO A POINT ON THE WESTERLY  
29 RIGHT-OF-WAY LINE OF DIVISION STREET;

30 THENCE ALONG SAID WESTERLY RIGHT-OF-WAY LINE OF DIVISION STREET AND ITS  
31 EXTENSION THEREOF, N14°44'40"W A DISTANCE OF 102.74 FEET TO THE POINT OF  
32 BEGINNING.

33 SAID PARCEL CONTAINS 0.009 ACRES OR 404 SQUARE FEET MORE OR LESS.

34 ALL LINEAR DIMENSIONS ARE IN U.S. SURVEY FEET.

1 BASIS OF BEARINGS

2 BEARINGS ARE BASED ON THE 20' RANGE LINE IN WEST 29TH AVENUE ASSUMED TO  
3 BEAR N89°44'10"E BEING MONUMENTED BY A FOUND #8 REBAR IN RANGE BOX AT THE  
4 INTERSECTION OF 28' RANGE LINE IN INCA STREET AND THE 20' RANGE LINE OF WEST  
5 29TH AVENUE AND A FOUND 2-1/2" ALUMINUM CAP PLS # ILLEGIBLE AT THE  
6 INTERSECTION OF THE 10' RANGE LINE IN HURON STREET AND 20' RANGE LINE IN WEST  
7 29<sup>TH</sup> AVENUE.

8 and benefitting the following described parcel of property:

9 PARCEL DESCRIPTION ROW NO. 2022-ENCROACHMENT-0000054-001

10 PARCEL I:

11 A parcel of land No. TK 2278-09-03A REV.1 of the City and County of Denver, State of Colorado,  
12 Regional Transportation District No. 32-UT-101, being a portion of Lots 10 through 15, and a  
13 portion of the South 20 feet of vacated 29th Avenue, Block 6, HOYT & ROBINSON'S ADDITION  
14 TO DENVER per the plat which is on file with the Clerk and Recorder's Office, recorded in Book 1  
15 at Page 26A on March 11, 1875, in the records of the City and County of Denver, situated in the  
16 Southeast 1/4 of the Southeast 1/4 of Section 28, Township 3 South, Range 68 West of the 6th  
17 Principal Meridian, City and County of Denver, State of Colorado, said parcel being more  
18 particularly described as follows:

19

20 Beginning at the Northeast corner of said Lot 15;

21 Thence along the Easterly line of said Lot the following two (2) courses:

22

23 1. Thence South 14°20'10" East, a distance of 82.12 feet;

24 2. Thence South 44°50'58" West, a distance of 43.82 feet;

25

26 Thence North 45°10'45" West a distance of 185.51 feet to the North line of said South 20.00 feet of  
27 vacated 29th Avenue per Ordinance No. 207, Series of 1960, recorded August 8, 1960 in Book  
28 8549 at Page 361, records of said City and County;

29 Thence South 89°56'31" East, along said North line, a distance of 122.17 feet;

30 Thence South 00°03'29" West, a distance of 20.00 feet to the North line of said Block;

31 Thence South 89°56'31" East, along the North line of said Block, a distance of 20.00 feet to the  
32 Point of Beginning,

33

34 Basis of Bearings: South 68°44'39" East along the line from GPS Point No. 25-1 (a 3 1/4 "  
35 aluminum cap in a range box), to Control Point No. 101 (an alloy cap set on a No. 5 rebar), as  
36 depicted on Colorado Division of Highways Right of Way Plan Federal and Project No. IR-25-  
37 2(198) prepared by McClanahan Surveying Inc.,

38

39 City and County of Denver,

40 State of Colorado.

41

42 PARCEL II:

43 The South 1/2 of the South 1/2 of that parcel of land vacated by Ordinance No. 355, Series of  
44 2000, recorded May 12, 2000 at Reception No. 2000067344, said vacated parcel being described  
45 as:

1 A parcel of land being a part of the West 29th Avenue adjacent to Block 8, HOYT AND  
2 ROBINSON'S ADDITION TO DENVER and being a part of the NE 1/4 of the SE 1/4 of Section 28,  
3 Township 3 South, Range 68 West of the 6<sup>th</sup> Principal Meridian, City and County of Denver, State  
4 of Colorado, being more particularly described as follows:

5  
6 Beginning at the Southeast corner of said Block 8, which point is the point of intersection on the  
7 West right-of-way line of Inca Street and the North right-of-way line of West 29th Avenue, from  
8 which point the SE corner of the NE 1/4 of the SE 1/4 of said Section 28 bears South 84°07'14"  
9 East, 423.96 feet;  
10 Thence South 00°08'30" East, a distance of 60.22 feet to a point on the South right-of way line of  
11 West 29th Avenue;  
12 Thence North 89°56'31" West along said South right-of-way line, a distance of 101.48 feet;  
13 Thence departing said South right-of-way line North 28°59'41" West, a distance of 77.21 feet to the  
14 Southwest corner of Lot 1, said Block 8, which point is on the North right-of-way line of West 29th  
15 Avenue;  
16 Thence North 89°57'27" East along the South line of said Block 8 and along said North right-of-  
17 way line, a distance of 149.92 feet, more or less, to the Point of Beginning,  
18  
19 City and County of Denver,  
20 State of Colorado.

21  
22 PARCELS I AND II ARE ALSO DESCRIBED AS:  
23 A parcel of land being a portion of vacated West 29th Avenue as stated in the Ordinance 355-2000  
24 recorded at Reception No. 2000067344 in the records of the Denver County Clerk and Recorder,  
25 located in the Southeast 1/4 of the Southeast 1/4 of Section 28, Township 3 South, Range 68 West  
26 of the 6th Principal Meridian, being more particularly described as follows:

27  
28 BASIS OF BEARINGS: The Southerly line of Ordinance 355-2000 recorded at Reception No.  
29 2000067344, being assumed to bear North 89°56'31" East.  
30  
31 Beginning at the Southwesterly corner of Ordinance 355-2000 recorded at Reception No.  
32 2000067344;  
33 Thence on the Westerly line of said Ordinance, North 38°52'28" West a distance of 19.38 feet;  
34 Thence departing said Westerly line, South 89°53'10" East a distance of 113.61 feet, to a point on  
35 the Easterly line of said Ordinance;  
36 Thence on said Easterly line, South 00°01'17" East a distance of 14.97 feet, to the Southeasterly  
37 corner of said Ordinance;  
38 Thence on the Southerly line of said Ordinance, North 89°56'31" West a distance of 101.46 feet, to  
39 the Point of Beginning,  
40 City and County of Denver,  
41 State of Colorado.

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

- 46 (a) Permittee shall obtain a street occupancy permit, street cut permit, and/or ROW

1 construction permit from the City’s Department of Transportation and Infrastructure (“DOTI”) Permit  
2 Operations through [www.denvergov.org/dotipermits](http://www.denvergov.org/dotipermits) prior to commencing construction.

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

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

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

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

33 (f) All construction in, under, on or over the Encroachment Area shall be accomplished in

1 accordance with the Building Code and City and County of Denver Department of Transportation &  
2 Infrastructure Transportation Standards and Details for the Engineering Division.

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

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

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

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

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

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

1 (30) days prior to the effective date of the cancellation or material change. The City and County of  
2 Denver, its Elected and Appointed Officials, Employees and Volunteers shall be included as  
3 Additional Insured.

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

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

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

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

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

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

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

33 v. This defense and indemnification obligation shall survive the expiration or

1 termination of this Permit.

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

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

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

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

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

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

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

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

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

