

1 **BY AUTHORITY**

2 RESOLUTION NO. CR21-1110
3 SERIES OF 2021

COMMITTEE OF REFERENCE:
Land Use, Transportation & Infrastructure

4 **A RESOLUTION**

5 **Granting a revocable permit to BCSP Brighton Property LLC, to encroach into**
6 **the right-of-way near 3100 North Brighton Boulevard.**

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 BCSP Brighton Property
9 LLC, the owner of the Benefitted Property, and its successors and assigns (“Permittee”), a revocable
10 permit to encroach into the right-of-way with steps, accessible ramp and raised planters with a
11 footprint of 1100 square feet (“Encroachment(s)”) near 3100 North Brighton Boulevard in the
12 following described area (“Encroachment Area”):

13 **PARCEL DESCRIPTION ROW NO. 2021-ENCROACHMENT-0000062-001:**

14 LAND DESCRIPTION

15
16 A PARCEL OF LAND BEING A PORTION OF BRIGHTON BOULEVARD ADJACENT TO BLOCK
17 87, CASE AND EBERTS ADDITIONAL TO DENVER, LOCATED IN THE NORTHEAST
18 QUARTER OF SECTION 27, TOWNSHIP 3 SOUTH, RANGE 68 WEST OF THE 6TH PRINCIPAL
19 MERIDIAN, CITY AND COUNTY OF DENVER, STATE OF COLORADO, BEING MORE
20 PARTICULARLY DESCRIBED AS FOLLOWS:

21
22 COMMENCING AT THE NORTH QUARTER CORNER OF SAID SECTION 27 AS
23 MONUMENTED BY A 3-1/4” ALUMINUM CAP STAMPED PLS #33204, THENCE S50°39’59”E A
24 DISTANCE OF 1522.34 FEET TO A POINT FROM WHENCE THE WESTERLY MOST CORNER
25 OF SAID BLOCK 87 BEARS S19°04’42”W A DISTANCE OF 8.52 FEET; SAID POINT BEING
26 THE POINT OF BEGINNING;
27 THENCE N44°40’18”E A DISTANCE OF 284.35 FEET; THENCE S45°19’48”E A DISTANCE OF
28 2.00 FEET; THENCE S44°40’18”W A DISTANCE OF 111.76 FEET; THENCE S25°00’10”E A
29 DISTANCE OF 6.50 FEET; THENCE S44°40’18”W A DISTANCE OF 84.62 FEET; THENCE
30 N65°36’47”W A DISTANCE OF 6.50 FEET; THENCE S44°40’18”W A DISTANCE OF 83.46 FEET;
31 THENCE N45°19’42”W A DISTANCE OF 2.00 FEET TO THE POINT OF BEGINNING.

32
33 SAID PARCEL CONTAINS 1,098 SQUARE FEET (0.025 ACRES) MORE OR LESS.

34
35 ALL LINEAL DIMENSIONS ARE IN U.S. SURVEY FEET.

36
37 BASIS OF BEARINGS

38
39 BEARINGS ARE BASED ON THE NORTHERLY LINE OF THE NORTHEAST QUARTER OF
40 SECTION 27, TOWNSHIP 3 SOUTH, RANGE 68 WEST OF THE SIXTH PRINCIPAL MERIDIAN
41 ASSUME TO BEAR N89°39’37”E BEING MONUMENTED BY A FOUND 3-1/4” ALUMINUM CAP

1 PLS #33204 AT THE NORTH QUARTER CORNER AND A FOUND STONE WITH CUT "X" AT
2 THE NORTHEAST CORNER

3 and benefitting the following described parcel of property:

4 **PARCEL DESCRIPTION ROW NO. 2021-ENCROACHMENT-0000062-002:**

5 **LAND DESCRIPTION**

6 A PARCEL OF LAND LOCATED IN THE NORTHEAST QUARTER OF SECTION 27, TOWNSHIP
7 3 SOUTH, RANGE 68 WEST OF THE 6TH PRINCIPAL MERIDIAN, CITY AND COUNTY OF
8 DENVER, STATE OF COLORADO, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

9 COMMENCING AT THE INTERSECTION OF THE SOUTHEASTERLY RIGHT-OF-WAY LINE OF
10 THE 80 FOOT WIDE BRIGHTON BOULEVARD AND THE NORTHEASTERLY LINE OF 31ST
11 STREET, THENCE ALONG SAID NORTHEASTERLY RIGHT-OF-WAY LINE, S45°19'47"E A
12 DISTANCE OF 15.00 FEET TO THE POINT OF BEGINNING;

13 THENCE ALONG A LINE THAT IS 15' SOUTHEASTERLY OF THE SOUTHEASTERLY RIGHT-
14 OF-WAY LINE OF THE 80 FOOT WIDE BRIGHTON BOULEVARD, N44°40'13"E A DISTANCE
15 OF 303.98 FEET; THENCE S45°19'34"E A DISTANCE OF 331.00 FEET TO A POINT ON THE
16 SOUTHEASTERLY RIGHT-OF-WAY LINE OF VACATED WYNKOOP STREET; THENCE ALONG
17 SAID SOUTHEASTERLY RIGHT-OF-WAY LINE OF WYNKOOP STREET, S44°40'32"W A
18 DISTANCE OF 38.00 FEET; THENCE N45°19'34"W A DISTANCE OF 90.01 FEET; THENCE
19 S45°59'47"W A DISTANCE OF 200.29 FEET; THENCE S40°02'47"W A DISTANCE OF 65.96
20 FEET TO A POINT ON SAID NORTHEASTERLY RIGHT-OF-WAY LINE OF 31ST STREET;
21 THENCE ALONG SAID NORTHEASTERLY RIGHT-OF-WAY LINE OF 31ST STREET,
22 N45°19'34"W A DISTANCE OF 241.67 FEET TO THE POINT OF BEGINNING.

23 SAID PARCEL CONTAINS 76,112 SQUARE FEET (1.747 ACRES) MORE OR LESS.

24 ALL LINEAL DIMENSIONS ARE IN U.S. SURVEY FEET.

25 **BASIS OF BEARINGS**

26 BEARINGS ARE BASED ON THE NORTHERLY LINE OF THE NORTHEAST QUARTER OF
27 SECTION 27, TOWNSHIP 3 SOUTH, RANGE 68 WEST OF THE SIXTH PRINCIPAL MERIDIAN
28 ASSUME TO BEAR N89°39'37"E BEING MONUMENTED BY A FOUND 3-1/4" ALUMINUM CAP
29 PLS #33204 AT THE NORTH QUARTER CORNER AND A FOUND STONE WITH CUT "X" AT
30 THE NORTHEAST CORNER.

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

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

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

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

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

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

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

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

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

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

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

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

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

1 Additional Insured.

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

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

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

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

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

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

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

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

33 (p) Pursuant to Chapter 49 of the DRMC, DOTI is authorized to remove or to order the

1 removal of any article, vehicle, object or thing whatsoever encroaching into any street, alley,
2 Sidewalk, or other public way or place.

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

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

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

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

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

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

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

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

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

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

6 COMMITTEE APPROVAL DATE: September 28, 2021 by Consent

7 MAYOR-COUNCIL DATE: October 5, 2021

8 PASSED BY THE COUNCIL: _____

9 _____ - PRESIDENT

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

13 PREPARED BY: Martin A. Plate, Assistant City Attorney DATE: October 7, 2021

14 Pursuant to section 13-9, D.R.M.C., this proposed resolution has been reviewed by the Office of the
15 City Attorney. We find no irregularity as to form and have no legal objection to the proposed
16 resolution. The proposed resolution is not submitted to the City Council for approval pursuant to §
17 3.2.6 of the Charter.

18
19 Kristin M. Bronson, Denver City Attorney

20 BY: *Jonathan Griffin*, Assistant City Attorney DATE: Oct 7, 2021
21