

1 **BY AUTHORITY**

2 RESOLUTION NO. CR23-0298
3 SERIES OF 2023

COMMITTEE OF REFERENCE:
Land Use, Transportation & Infrastructure

4 **A RESOLUTION**

5 **Granting a revocable permit to 38th & Holly LLLP, to encroach into the right-of-**
6 **way at 3800 North Holly Street and 5909 East 38th 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 38th & Holly LLLP, the
9 owner of the Benefitted Property, and their successors and assigns (“Permittee”), a revocable permit
10 to encroach into the right-of-way with approximately 362 linear feet of private sanitary main with two
11 manholes, and approximately 183 linear feet of private storm main with two manholes and two inlets
12 (“Encroachment(s)”) at 3800 North Holly Street and 5909 East 38th Avenue in the following
13 described area (“Encroachment Area”):

14 **PARCEL DESCRIPTION ROW NO. 2022-ENCROACHMENT-0000089-001:**

15 A PARCEL OF LAND BEING A PORTION OF NORTH IVY STREET, LOCATED IN THE
16 SOUTHWEST QUARTER OF SECTION 20, TOWNSHIP 3 SOUTH, RANGE 67 WEST OF THE
17 SIXTH PRINCIPAL MERIDIAN, CITY AND COUNTY OF DENVER, STATE OF COLORADO,
18 BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

19 **BASIS OF BEARINGS:** THE 20 FOOT RANGE LINE LOCATED IN 38TH AVENUE BETWEEN
20 HOLLY STREET AND KEARNEY STREET IS ASSUMED TO BEAR NORTH 89°42'44" EAST,
21 BASED ON THE CITY AND COUNTY OF DENVER LOCAL PROJECTION COORDINATE
22 SYSTEM, AS MONUMENTED ON THE WEST BY AN AXLE 1.1 FEET BELOW THE SURFACE
23 IN A RANGE BOX AND ON THE EAST BY AN AXLE 1 FOOT BELOW THE SURFACE IN A
24 RANGE BOX;

25 **COMMENCING** AT THE WEST END OF THE 20 FOOT RANGE LINE OF 38TH AVENUE
26 LOCATED AT THE INTERSECTION OF HOLLY STREET AND 38TH AVENUE;

27 THENCE SOUTH 87°37'29" EAST, A DISTANCE OF 630.35 FEET TO THE **POINT OF**
28 **BEGINNING**;

29 THENCE NORTH 00°17'11" WEST, A DISTANCE OF 127.38 FEET;

30 THENCE SOUTH 89°43'05" WEST, A DISTANCE OF 20.42 FEET TO THE WEST RIGHT-OF-
31 WAY LINE OF SAID NORTH IVY STREET;

32 THENCE NORTH 00°01'27" WEST, ALONG SAID WEST RIGHT-OF-WAY, A DISTANCE OF
33 10.00 FEET;

1 THENCE NORTH 89°43'05" EAST, A DISTANCE OF 20.37 FEET;
2 THENCE NORTH 00°17'11" WEST, A DISTANCE OF 135.99 FEET;
3 THENCE SOUTH 89°43'05" WEST, A DISTANCE OF 19.75 FEET TO SAID WEST RIGHT-OF-
4 WAY;
5 THENCE NORTH 00°01'27" WEST ALONG SAID WEST RIGHT-OF-WAY, A DISTANCE OF
6 10.00 FEET;
7 THENCE NORTH 89°43'05" EAST, A DISTANCE OF 19.70 FEET;
8 THENCE NORTH 00°17'11" WEST, A DISTANCE OF 13.74 FEET;
9 THENCE SOUTH 89°43'05" WEST, A DISTANCE OF 11.79 FEET;
10 THENCE NORTH 00°11'55" WEST, A DISTANCE OF 10.00 FEET;
11 THENCE NORTH 89°27'29" EAST, A DISTANCE OF 11.77 FEET;
12 THENCE NORTH 00°17'11" WEST, A DISTANCE OF 64.59 FEET;
13 THENCE NORTH 90°00'00" EAST, A DISTANCE OF 10.00 FEET;
14 THENCE SOUTH 00°17'11" EAST, A DISTANCE OF 64.60 FEET;
15 THENCE NORTH 89°43'05" EAST, A DISTANCE OF 26.56 FEET;
16 THENCE SOUTH 00°11'53" EAST, A DISTANCE OF 10.00 FEET;
17 THENCE SOUTH 89°43'05" WEST, A DISTANCE OF 16.54 FEET;
18 THENCE SOUTH 00°17'16" EAST, A DISTANCE OF 13.74 FEET;
19 THENCE NORTH 89°43'05" EAST, A DISTANCE OF 24.30 FEET TO THE EAST RIGHT-OF-WAY
20 LINE OF SAID NORTH IVY STREET;
21 THENCE SOUTH 00°01'27" EAST, ALONG SAID EAST RIGHT-OF-WAY, A DISTANCE OF 10.00
22 FEET;
23 THENCE SOUTH 89°43'05" WEST, A DISTANCE OF 34.25 FEET;
24 THENCE SOUTH 00°17'11" EAST, A DISTANCE OF 135.99 FEET;
25 THENCE NORTH 89°43'05" EAST, A DISTANCE OF 33.63 FEET TO SAID EAST RIGHT-OF-
26 WAY;
27 THENCE SOUTH 00°01'27" EAST, ALONG SAID EAST RIGHT-OF-WAY, A DISTANCE OF 10.00
28 FEET;
29 THENCE SOUTH 89°43'05" WEST, A DISTANCE OF 33.59 FEET;

1 THENCE SOUTH 00°17'11" EAST, A DISTANCE OF 127.43 FEET;
2 THENCE NORTH 90°00'00" WEST, A DISTANCE OF 10.00 FEET TO THE **POINT OF**
3 **BEGINNING**;
4 CONTAINING A CALCULATED AREA OF 5,319 SQUARE FEET OR 0.1221 ACRES, MORE OR
5 LESS
6 and benefitting the following described parcel of property ("Benefitted Property"):
7 A PARCEL OF LAND BEING A PORTION OF TRACT 8, MILE-HI INDUSTRIAL DISTRICT,
8 LOCATED IN THE SOUTHWEST QUARTER OF SECTION 20, TOWNSHIP 3 SOUTH, RANGE 67
9 WEST OF THE SIXTH PRINCIPAL MERIDIAN, ACCORDING TO THE PLAT THEREOF
10 RECORDED NOVEMBER 15, 1954, IN BOOK 22 AT PAGE 21, IN THE CITY AND COUNTY OF
11 DENVER'S CLERK AND RECORDER OFFICE, CITY AND COUNTY OF DENVER,
12 STATE OF COLORADO, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:
13 BASIS OF BEARINGS: THE 20 FOOT RANGE LINE LOCATED IN 38TH AVENUE BETWEEN
14 HOLLY STREET AND KEARNEY STREET IS ASSUMED TO BEAR NORTH 89°42'44" EAST,
15 BASED ON THE CITY AND COUNTY OF DENVER LOCAL PROJECTION COORDINATE
16 SYSTEM, AS MONUMENTED ON THE WEST BY AN AXLE 1.1 FEET BELOW THE SURFACE IN
17 A RANGE BOX AND ON THE EAST BY AN AXLE 1 FOOT BELOW THE SURFACE IN A RANGE
18 BOX;
19 COMMENCING AT THE WEST END OF THE 20 FOOT RANGE LINE OF 38TH AVENUE
20 LOCATED AT THE INTERSECTION OF HOLLY STREET AND 38TH AVENUE;
21 THENCE NORTH 44°50'39" EAST, A DISTANCE OF 31.18 FEET TO THE INTERSECTION OF
22 THE EASTERLY RIGHT-OF-WAY OF HOLLY STREET AND THE NORTHERLY RIGHT-OF-WAY
23 OF 38TH AVENUE, BEING THE POINT OF BEGINNING;
24 THENCE NORTH 00°01'27" WEST, ALONG SAID EASTERLY RIGHT-OF-WAY OF HOLLY
25 STREET, A DISTANCE OF 258.11 FEET TO A POINT ON THE NORTHERLY BOUNDARY OF
26 THAT PROPERTY DESCRIBED IN SPECIAL WARRANTY DEED RECORDED AT RECEPTION
27 NO 2021236798 IN SAID RECORDS;
28 THENCE DEPARTING SAID EASTERLY RIGHT-OF-WAY AND ALONG SAID NORTHERLY
29 RIGHT-OF-WAY THE FOLLOWING THREE (3) COURSES:
30 1) NORTH 89°42'49" EAST, A DISTANCE OF 310.14 FEET;
31 2) NORTH 00°01'27" WEST, A DISTANCE OF 80.00 FEET;
32 3) NORTH 89°42'49" EAST, A DISTANCE OF 276.66 FEET TO THE WESTERLY RIGHT-OF-WAY
33 OF IVY STREET;
34 THENCE SOUTH 00°01'27" EAST, ALONG SAID WESTERLY RIGHT-OF-WAY OF IVY STREET,
35 A DISTANCE OF 338.09 FEET TO SAID NORTHERLY RIGHT-OF-WAY OF 38TH AVENUE;
36 THENCE SOUTH 89°42'44" WEST, ALONG SAID NORTHERLY RIGHT-OF-WAY, A DISTANCE
37 OF 586.80 FEET TO THE POINT OF BEGINNING;

1 CONTAINING A CALCULATED AREA OF 173,583 SQUARE FEET OR 3.9849 ACRES, MORE OR
2 LESS.

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

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

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

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

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

1 said water, storm, sanitary sewer facilities or other Utility Company facilities, or those damages
2 resulting from the failure of the water, storm, sanitary sewer facilities or other Utility Company
3 facilities to properly function because of the Encroachment(s).

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

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

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

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

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

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

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

29 (l) During the existence of the Encroachment(s) and the Permit, Permittee, its successors
30 and assigns, at its expense, and without cost to the City, shall procure and maintain Commercial
31 General Liability insurance policy with a limit of not less than \$1,000,000 per occurrence. All
32 coverages are to be arranged on an occurrence basis and include coverage for those hazards
33 normally identified as X.C.U. during construction. The insurance coverage required herein

1 constitutes a minimum requirement and such enumeration shall in no way be deemed to limit or
2 lessen the liability of the Permittee, its successors or assigns, under the terms of this Permit. All
3 insurance coverage required herein shall be written in a form and by a company or companies
4 approved by the Risk Manager of the City and authorized to do business in the State of Colorado. A
5 certified copy of all such insurance policies shall be filed with the Executive Director, and each such
6 policy shall contain a statement therein or endorsement thereon that it will not be canceled or
7 materially changed without written notice, by registered mail, to the Executive Director at least thirty
8 (30) days prior to the effective date of the cancellation or material change. The City and County of
9 Denver, its Elected and Appointed Officials, Employees and Volunteers shall be included as
10 Additional Insured.

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

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

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

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

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

31 iii. Permittee will defend any and all Claims which may be brought or threatened
32 against City and will pay on behalf of City any expenses incurred by reason of such Claims including,
33 but not limited to, court costs and attorney fees incurred in defending and investigating such Claims

1 or seeking to enforce this indemnity obligation. Such payments on behalf of City shall be in addition
2 to any other legal remedies available to City and shall not be considered City's exclusive remedy.

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

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

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

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

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

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

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

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

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

30 (w) Encroachment(s) in the regulatory floodplain shall require a SUDP and comply with
31 Chapter 4 Floodplain Regulations of the "Storm Drainage Design and Technical Criteria", Chapter
32 12 Floodplain Management of the "DOTI Rules and Regulations Governing Sewerage Charges and
33 Fees and Management of Wastewater" and the City Floodplain Ordinance in DRMC Section 56-200

1 through 56-206. Above ground Encroachment(s) in a Floodway require a No-Rise Certification
2 sealed and signed by a Professional Engineer licensed in the State of Colorado. If there is any rise
3 in Base Flood Elevations, a Conditional Letter of Map Revision (CLOMR) and LOMR will be required.

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

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

15

16 COMMITTEE APPROVAL DATE: March 21, 2023 by Consent

17 MAYOR-COUNCIL DATE: March 28, 2023 by Consent

18 PASSED BY THE COUNCIL: _____

19 _____ - PRESIDENT

20 ATTEST: _____ - CLERK AND RECORDER,
21 EX-OFFICIO CLERK OF THE
22 CITY AND COUNTY OF DENVER

23 PREPARED BY: Martin A. Plate, Assistant City Attorney DATE: March 30, 2023

24 Pursuant to section 13-9, D.R.M.C., this proposed resolution has been reviewed by the Office of the
25 City Attorney. We find no irregularity as to form and have no legal objection to the proposed
26 resolution. The proposed resolution is not submitted to the City Council for approval pursuant to
27 § 3.2.6 of the Charter.

28
29 Kerry Tipper, Denver City Attorney

30
31 BY: _____, Assistant City Attorney DATE: _____