APPLICATION

FOR ENCROACHMENTS & ENCUMBRANCES IN THE PUBLIC RIGHT-OF-WAY

An Encroachment Permit is required prior to placing privately-owned improvements ("Encroachment" or "Encumbrance") in the public Right-of-Way (ROW). Only Encroachment Permit Applications in accordance with Rules and Regulations and Permit Entrance Requirements for Encroachments in the Public Right-of-Way will be considered by the Department of Transportation & Infrastructure (DOTI). **It is the City's sole discretion whether to grant an Encroachment Permit based on any facts the City feels are relevant. Approval is not guaranteed.**

To apply, complete this application and submit together with required application materials in accordance with the Permit Entrance Requirements to DOTI.ER@denvergov.org. Please type or print clearly. If necessary, attach additional sheets to fully answer any of the following sections. Incomplete applications packages will not be accepted. Questions on this application or the process can be sent to DOTI.ER@denvergov.org.

☐ **Check if this application is for Tier Determination only**. *If checked, the project will not be submitted for full review until confirmation, and remaining submittal requirements, are received by owner.*

ADJACENT PROPERTY OWNER:

The adjacent property owner or Authorized Special District will be the Encroachment Owner and Permittee and is the responsible party for the Encroachment in accordance with the Rules and Regulations, including all fees and annual billing.

Company Name: DEN38Hpartners, LLC
Contact Name: Ryan Snyder
Property Address: 3198 Blake St, #222, Denver, CO 80205
Billing Address: 3198 Blake St, #222, Denver, CO 80205
Phone: 720-573-6391 Email: rsnyder@continentalrealtygroup.com

PRIMARY CONTACT:

☐ *Check if the same as Adjacent Property Owner*

Company Name: Kimley-Horn and Associates
Contact Name: Meaghan McGee
Address: 6200 S Syracuse Way, #300, Greenwood Village, CO 80111
Phone: 303-228-2322 Email: meaghan.mcgee@kimley-horn.com

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ENCROACHMENT INFORMATION:

Project Name:	38th and Huron
Adjacent Property Address:	805 W 38th Avenue
Coordinates (Lat/Long):	39.46 degrees N 104.59 degrees W
Encroachment Area, in SF:	1677 SF

Is this project associated with a LAND DEVELOPMENT REVIEW?

Yes ■ *No* ☐ *If 'Yes', provide Project Master, Site Plan and/or Concept Development Project Numbers:*

2020-PM-0000591

Is the proposed encroachment located in Future Right-of-Way?

Finalizing permit and/or processing resolution for the Encroachment will not occur until the ROW dedication is finalized.

Yes ☐ *No* ■ *If 'Yes', provide ROW Dedication Project Number:*

Location Description: *(e.g. Located on the South side of 23rd Ave, twenty (20) feet from face of curb, and ten (10) feet west of pavement on Private Drive.)*

Located on the west side of Galapago Street, between 38th Avenue and 39th Avenue, adjacent to the zone lot line.

Description of Encroachment:

Describe the proposed encroachment, including the type and quantity of objects.

This encroachment consists of three raised planters along Galapago Street at the north side of the project and a set of tiered planters along Galapago Street at the south side of the project. The raised planters are generally in an L-shape, protruding from the building and then running parallel to it. They provide grade separation from the accessible landing in front of the retail space as well as seat walls. The tiered planters are two offset planters on top of each other at the southeast corner of the project and adjacent to the stairs up to the residential lobby. This feature provides a grade separation from the landing in front of the residential lobby to the public sidewalk below. Both the tiered planters and raised planters are permanent concrete structures with soil and plantings. See landscape plans for additional details. These encroachments are provided in an area where there are minimal impacts to the public right-of-way. They are set back between 14 and 18 feet from the adjacent flowline, providing space for an 8-foot tree lawn, 5-foot walk and transition space prior to the right-of-way encroachment.

Reason for Private Improvements in the Public ROW:

Private improvements should be located on private property. Only in cases where there are physical constraints that preclude the placement of private improvements on private property that an encroachment may be considered within the right-of-way. Make your case as to why this is a good use of the public right-of-way.

The raised planters at the north of the site activate the entry to the retail space by creating a soft frontage with a large landing and built-in outdoor seating along the seat wall. This feature also provides necessary grade separation from the adjacent sidewalk. Due to the significant slope in Galapago Street (4%), the raised planters maintain a landing in front of the retail entry, accessible access between the building FFE and sidewalk, and provide appropriate stormwater drainage away from the building to storm inlets in the right-of-way. The tiered planters to the south, similarly, provide a necessary grade separation. Due to the existing grade difference between the project site and the adjacent 38th Avenue, access to the residential lobby requires a staircase from Galapago Street (accessible entry is provided further north). The tiered planters are proposed adjacent to the proposed staircase and maintain the grade change from the building to the adjacent sidewalk. This both improved the aesthetics of this frontage as well as safety for pedestrians by softening the significant grade change in this area.

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ATTESTATION:

By submitting this permit application and signing below, I understand and agree to the following:

1. That I am the property owner adjacent to the Encroachment Area, or the authorized representative of a Special District, that is responsible for the placement, maintenance, repair, replacement, removal, site restoration, ownership, or is otherwise responsible for the Encroachment in accordance with the Rules & Regulations for Encroachments and Encumbrances in the Public Right-of-Way.
2. That it is the City's sole discretion to classify the Tier of an Encroachment and whether to grant an Encroachment Permit based on any facts the City feels are relevant. The issuance of an Encroachment Permit confers no rights to the Right-of-Way, the Encroachment Permit is revocable and DOTI can order the removal of the Encroachment and restoration of the Encroachment Area for any reason the City feels relevant.
3. Permittee agrees to defend, indemnify, reimburse and hold harmless the City, its appointed and elected officials, agents and employees for, from and against all liabilities, claims, judgments, suits or demands for damages to persons or property arising out of, resulting from, or relating to an Encroachment Permit and the Encroachment ("Claims"). This indemnity shall be interpreted in the broadest possible manner to indemnify City for any acts or omissions of Permittee or its subcontractors either passive or active, irrespective of fault, including City's negligence whether active or passive.
4. Permittee's duty to defend and indemnify City shall arise at the time written notice of the Claim is first provided to City regardless of whether claimant has filed suit on the Claim. Permittee's duty to defend and indemnify City shall arise even if City is the only party sued by claimant and/or claimant alleges that City's negligence or willful misconduct was the sole cause of claimant's damages.
5. Permittee will defend any and all Claims which may be brought or threatened against City and will pay on behalf of City any expenses incurred by reason of such Claims including, but not limited to, court costs and attorney fees incurred in defending and investigating such Claims or seeking to enforce this indemnity obligation. Such payments on behalf of City shall be in addition to any other legal remedies available to City and shall not be considered City's exclusive remedy.
6. Insurance coverage requirements specified in an Encroachment Permit shall in no way lessen or limit the liability of Permittee under the terms of this indemnification obligation. Permittee shall obtain, at its own expense, any additional insurance that it deems necessary for the City's protection.
7. This defense and indemnification obligation shall survive the expiration or termination of any issued Encroachment Permit.
8. Permittee is fully responsible for all costs to install, maintain, repair, replace, remove, and restore the Encroachment Area, including annual City Encroachment Permit Fees. A lien will be placed on the Permittee's property for failure to remove a revoked or abandoned Encroachment for cost incurred by CCD to remove the Encroachment and restore the Encroachment Area on behalf of the Permittee.
9. Indemnity and Insurance for Tier I and Tier II Encroachments: Pursuant to and not superseding any General Terms and Conditions, as a condition for placement of a Tier I or Tier II Encroachment, the Owner of such Tier I or Tier II Encroachment shall hold CCD harmless from all loss or damage to persons or property on account of injury arising from the construction, repair, or maintenance of the Tier I or Tier II Encroachment. Obtain and Maintain a Commercial General Liability insurance policy with limits of $1,000,000 for each occurrence, $1,000,000 for each personal and advertising injury claim, $2,000,000 products and completed operations aggregate, and $2,000,000 policy aggregate. The City and County of Denver, its Elected and Appointed Officials, Employees and Volunteers shall be included as Additional Insured.
10. Indemnity and Insurance for Tier III Encroachments: Pursuant to and not superseding any General Terms and Conditions, as a condition for placement of a Tier III Encroachment, the Owner of such Tier III Encroachment shall hold CCD harmless from all loss or damage to persons or property on account of injury arising from the construction, repair, or maintenance of the Tier III Encroachment. Obtain and Maintain a Commercial General Liability insurance policy with limits of $1,000,000 for each occurrence, $1,000,000 for each personal and advertising injury claim, $2,000,000 products and completed operations aggregate, and $5,000,000 policy aggregate. A combination of primary and excess coverage may be used to meet the aggregate limit. The City and County of Denver, its Elected and Appointed Officials, Employees and Volunteers shall be included as Additional Insured.

ADJACENT PROPERTY OWNER SIGNATURE: _____ Digitally signed by David W. Snyder Date: 2023.06.19 11:38:31 -06'00' **DATE:** _____

PRINT NAME: _____ **TITLE:** _____

COMPANY: _____