

1 **BY AUTHORITY**

2 RESOLUTION NO. CR22-1220
3 SERIES OF 2022

COMMITTEE OF REFERENCE:
Land Use, Transportation & Infrastructure

4 **A RESOLUTION**

5 **Granting a revocable permit to Mid-America Apartments, L.P., to encroach into**
6 **the right-of-way at 3865 East Cherry Creek North Drive.**

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 Mid-America
9 Apartments, L.P., successor by merger to Post Apartment Homes, L.P., the owner of the Benefitted
10 Property, and their successors and assigns ("Permittee"), a revocable permit to encroach into the
11 right-of-way with private storm and sanitary sewer pipes ("Encroachment(s)") at 3865 East Cherry
12 Creek North Drive in the following described area ("Encroachment Area"):

13 **PARCEL DESCRIPTION ROW NO. 2022-ENCROACHMENT-0000001-002:**

14 **PARCEL 1**

15
16 A PARCEL OF LAND BEING A PORTION OF CHERRY CREEK NORTH DRIVE AS DESCRIBED
17 BY ORDINANCE NUMBER 108, SERIES OF 1954, SITUATED IN THE NORTHEAST 1/4 OF
18 SECTION 13, TOWNSHIP 4 SOUTH, RANGE 68 WEST OF THE 6TH PRINCIPAL MERIDIAN,
19 CITY AND COUNTY OF DENVER, STATE OF COLORADO, MORE PARTICULARLY
20 DESCRIBED AS FOLLOWS;

21
22 **COMMENCING** AT THE NORTHEAST CORNER OF SAID SECTION 13, AS MONUMENTED BY
23 A 3-1/4" ALUMINUM CAP IN MONUMENT BOX STAMPED: CDOT/ PLS 11434;
24 THENCE SOUTH 34°15'46" WEST, A DISTANCE OF 1202.87 FEET TO THE NORTHEAST
25 RIGHT-OF-WAY LINE OF SAID CHERRY CREEK NORTH DRIVE AND THE **POINT OF**
26 **BEGINNING**;

27
28 THENCE SOUTH 43°10'10" EAST, ALONG SAID NORTHEAST RIGHT-OF-WAY LINE, A
29 DISTANCE OF 3.44 FEET;

30 THENCE NORTH 78°42'29" WEST, A DISTANCE OF 34.10 FEET;

31 THENCE NORTH 47°01'45" EAST, A DISTANCE OF 2.46 FEET;

32 THENCE SOUTH 78°42'29" EAST, A DISTANCE OF 29.86 FEET TO THE **POINT OF**
33 **BEGINNING**.

34
35 SAID PARCEL CONTAINS 64 SQUARE FEET, MORE OR LESS.

36
37 **PARCEL 2**

38
39 A PARCEL OF LAND BEING A PORTION OF CHERRY CREEK NORTH DRIVE AS DESCRIBED
40 BY ORDINANCE NUMBER 108, SERIES OF 1954 AND A PORTION OF CHERRY CREEK AS
41 DESCRIBED BY ORDINANCE NUMBER 3, SERIES OF 1954, SITUATED IN THE NORTHEAST

1 1/4 OF SECTION 13, TOWNSHIP 4 SOUTH, RANGE 68 WEST OF THE 6TH PRINCIPAL
2 MERIDIAN, CITY AND COUNTY OF DENVER, STATE OF COLORADO, MORE PARTICULARLY
3 DESCRIBED AS FOLLOWS;

4
5 **COMMENCING** AT THE NORTHEAST CORNER OF SAID SECTION 13, AS MONUMENTED BY
6 A 3-1/4" ALUMINUM CAP IN MONUMENT BOX STAMPED: CDOT/ PLS 11434;
7 THENCE SOUTH 31°13'48" WEST, A DISTANCE OF 1218.96 FEET TO THE NORTHEAST
8 RIGHT-OF-WAY LINE OF SAID CHERRY CREEK NORTH DRIVE AND THE **POINT OF**
9 **BEGINNING**;

10
11 THENCE SOUTH 12°57'34" WEST, A DISTANCE OF 5.09 FEET;
12 THENCE NORTH 77°02'26" WEST, A DISTANCE OF 7.00 FEET;
13 THENCE NORTH 12°57'34" EAST, A DISTANCE OF 2.50 FEET;
14 THENCE NORTH 77°02'26" WEST, A DISTANCE OF 219.97 FEET;
15 THENCE NORTH 12°57'34" EAST, A DISTANCE OF 2.00 FEET;
16 THENCE SOUTH 77°02'26" EAST, A DISTANCE OF 219.97 FEET;
17 THENCE NORTH 12°57'34" EAST, A DISTANCE OF 2.50 FEET;
18 THENCE SOUTH 77°02'26" EAST, A DISTANCE OF 4.16 FEET TO SAID NORTHEAST RIGHT-
19 OF-WAY LINE;
20 THENCE SOUTH 43°08'58" EAST ALONG SAID NORTHEAST RIGHT-OF-WAY LINE, A
21 DISTANCE OF 3.42 FEET TO THE **POINT OF BEGINNING**.

22
23 SAID PARCEL CONTAINS 486 SQUARE FEET OR 0.01 ACRES, MORE OR LESS.

24
25 BASIS OF BEARINGS: BEARINGS ARE BASED ON THE ASSUMPTION THAT THE EAST LINE
26 OF THE NORTHEAST QUARTER OF SECTION 13, TOWNSHIP 4 SOUTH, RANGE 68 WEST
27 OF THE 6TH PRINCIPAL MERIDIAN BEARS SOUTH 00°19'42" EAST WITH ALL BEARINGS
28 REFERENCED HEREIN RELATIVE THERETO. BOTH THE NORTHEAST CORNER AND EAST
29 QUARTER CORNER OF SAID SECTION ARE MONUMENTED BY A 3-1/4" ALUMINUM CAP IN
30 RANGE BOX STAMPED; CDOT, 1990, PLS 11434

31 and benefitting the following described parcel of property:

32 **PARCEL DESCRIPTION ROW NO. 2022-ENCROACHMENT-0000001-001:**

33 **LEGAL DESCRIPTION**

34
35 A PARCEL OF LAND LOCATED IN THE SOUTH 1/2 NORTHEAST 1/4 NORTHEAST 1/4 OF
36 SECTION 13, TOWNSHIP 4 SOUTH, RANGE 68 WEST OF THE 6TH P.M., IN THE CITY AND
37 COUNTY OF DENVER, STATE OF COLORADO, BEING MORE PARTICULARLY DESCRIBED
38 AS FOLLOWS, TO WIT:

39
40 BEGINNING AT THE POINT OF INTERSECTION OF THE NORTH LINE OF SAID SOUTH 1/2
41 NORTHEAST 1/4 NORTHEAST 1/4, WHICH IS THE SOUTH LINE OF DAKOTA AVENUE AND
42 THE NORTHEASTERLY LINE OF CHERRY CREEK NORTH DRIVE;
43 THENCE SOUTH 42°54' EAST ALONG THE NORTHEASTERLY LINE OF CHERRY CREEK
44 NORTH DRIVE, A DISTANCE OF 607.34 FEET TO A POINT 216.55 FEET NORTH OF THE
45 SOUTH LINE OF SAID SOUTH 1/2 NORTHEAST 1/4 NORTHEAST 1/4 AND MEASURED AT
46 RIGHT ANGLES THERETO, SAID POINT BEING THE TRUE POINT OF BEGINNING;

1 FROM SAID TRUE POINT OF BEGINNING, THENCE EAST PARALLEL WITH THE SOUTH LINE
2 OF SAID SOUTH 1/2 NORTHEAST 1/4 NORTHEAST 1/4, A DISTANCE OF 215.42 FEET TO A
3 POINT 360.0 FEET WEST OF THE EAST LINE OF SAID SOUTH 1/2 NORTHEAST 1/4
4 NORTHEAST 1/4;
5 THENCE NORTH, PARALLEL WITH THE EAST LINE OF SAID SOUTH 1/2 NORTHEAST 1/4
6 NORTHEAST 1/4 A DISTANCE OF 127.0 FEET;
7 THENCE WEST, PARALLEL WITH THE SOUTH LINE OF SAID SOUTH 1/2 NORTHEAST 1/4
8 NORTHEAST 1/4, A DISTANCE OF 333.4 FEET TO A POINT ON THE NORTHEASTERLY LINE
9 OF CHERRY CREEK NORTH DRIVE;
10 THENCE SOUTH 42°54' EAST ALONG THE NORTHEASTERLY LINE OF CHERRY CREEK
11 NORTH DRIVE, A DISTANCE OF 173.4 FEET, MORE OR LESS
12 TO THE TRUE POINT OF BEGINNING,
13
14 CITY AND COUNTY OF DENVER,
15 STATE OF COLORADO.

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

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

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

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

32 (d) Permittee is fully responsible for any and all damages incurred to facilities of Denver
33 Water and any other Utility Company, and/or drainage facilities for water and sewage of the City and
34 County of Denver due to activities authorized by the Permit. Should the relocation or replacement of
35 any drainage facilities for water and sewage of the City and County of Denver become necessary as
36 determined by the City’s Executive Director of DOTI (“Executive Director”), in the Executive
37 Director’s sole and absolute discretion, Permittee shall pay all cost and expense of the portion of the
38 water and/or sewer facilities affected by the Encroachment(s). The extent of the affected portion to

1 be replaced and relocated by Permittee shall be determined by the Executive Director. Any and all
2 replacement or repair of facilities of Denver Water and any other Utility Company, and/or drainage
3 facilities for water and sewage of the City and County of Denver attributed to the Permittee shall be
4 made by Denver Water, Utility Company, and/or the City and County of Denver at the sole expense
5 of the Permittee. In the event the Permittee's facilities are damaged or destroyed due to Denver
6 Water's, Utility Company's, or the City and County of Denver's repair, replacement and/or operation
7 of its facilities, repairs will be made by Permittee at its sole expense. Permittee agrees to defend,
8 indemnify and hold the City harmless and to repair or pay for the repair of any and all damages to
9 said water, storm, sanitary sewer facilities or other Utility Company facilities, or those damages
10 resulting from the failure of the water, storm, sanitary sewer facilities or other Utility Company
11 facilities to properly function because of the Encroachment(s).

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

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

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

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

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

27 (j) Permittee shall remove and replace any and all street/alley paving, Sidewalks,
28 Streetscapes, Amenity Zones, and curb and gutter, both inside the Encroachment Area and in the
29 rights-of-way adjacent thereto, that become broken, damaged or unsightly during, in the opinion of
30 DOTI, the course of construction or maintenance of the Encroachment(s). In the future, Permittee
31 shall also remove, replace or repair any street/alley paving, Sidewalks, and curb and gutter that
32 become broken or damaged when, in the opinion of DOTI, the damage has been caused by the
33 Encroachment(s) or the activity of the Permittee within the Encroachment Area. All repair work shall

1 be accomplished without cost to the City and under the supervision of DOTI.

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

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

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

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

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

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

1 ii. Permittee’s duty to defend and indemnify City shall arise at the time written notice
2 of the Claim is first provided to City regardless of whether claimant has filed suit on the Claim.
3 Permittee’s duty to defend and indemnify City shall arise even if City is the only party sued by
4 claimant and/or claimant alleges that City’s negligence or willful misconduct was the sole cause of
5 claimant’s damages.

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

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

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

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

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

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

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

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

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

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

5 (w) Encroachment(s) in the regulatory floodplain shall require a SUDP and comply with
6 Chapter 4 Floodplain Regulations of the “Storm Drainage Design and Technical Criteria”, Chapter
7 12 Floodplain Management of the “DOTI Rules and Regulations Governing Sewerage Charges and
8 Fees and Management of Wastewater” and the City Floodplain Ordinance in DRMC Section 56-200
9 through 56-206. Above ground Encroachment(s) in a Floodway require a No-Rise Certification
10 sealed and signed by a Professional Engineer licensed in the State of Colorado. If there is any rise
11 in Base Flood Elevations, a Conditional Letter of Map Revision (CLOMR) and LOMR will be required.

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

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

23 **[THE REMAINDER OF THIS PAGE INTENTIONALLY LEFT BLANK]**
24

1 COMMITTEE APPROVAL DATE: October 4, 2022 by Consent

2 MAYOR-COUNCIL DATE: October 11, 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: October 13, 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: Anshul Bagga, Assistant City Attorney DATE: Oct 13, 2022