

1 **BY AUTHORITY**

2 RESOLUTION NO. CR21-0826
3 SERIES OF 2021

COMMITTEE OF REFERENCE:
Land Use, Transportation & Infrastructure

4 **A RESOLUTION**

5 **Granting a revocable permit to AvalonBay Communities, Inc., to encroach into**
6 **the right-of-way at 650 North Sherman Street.**

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 AvalonBay
9 Communities, Inc. with authorization from 650 North Sherman, LLC, 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 a three-foot high metal picket fence, eight patios and thirteen surface-mounted
12 concrete planters (“Encroachment(s)”) at 650 North Sherman Street in the following described area
13 (“Encroachment Area”):

14 **PARCEL DESCRIPTION ROW NO. 2021-ENCROACHMENT-0000036-001:**

15 A PARCEL OF LAND BEING A PORTION OF SHERMAN STREET, SITUATED IN THE
16 SOUTHEAST QUARTER OF SECTION 3, TOWNSHIP 4 SOUTH, RANGE 68 WEST OF THE
17 6TH PRINCIPAL MERIDIAN, CITY AND COUNTY OF DENVER, STATE OF COLORADO, MORE
18 PARTICULARLY DESCRIBED AS FOLLOWS:

19
20 **COMMENCING** AT THE NORTHWEST CORNER OF LOT 4, BLOCK 25, ARLINGTON HEIGHTS
21 ADDITION TO DENVER;
22 THENCE SOUTH 00°01’52” WEST ALONG THE WEST LINE OF SAID LOT 4 AND ALSO BEING
23 THE EAST LINE OF SAID SHERMAN STREET, A DISTANCE OF 10.64 FEET TO THE **POINT**
24 **OF BEGINNING**;

25
26 THENCE SOUTH 00°01’52” WEST CONTINUING ALONG THE EAST LINE OF SAID SHERMAN
27 STREET, A DISTANCE OF 114.62 FEET;
28 THENCE NORTH 89°58’08” WEST, A DISTANCE OF 9.00 FEET;
29 THENCE NORTH 00°01’52” EAST ALONG A LINE BEING PARALLEL WITH THE WEST LINE OF
30 SAID BLOCK 25 AND THE EAST LINE OF SAID SHERMAN STREET, A DISTANCE OF 114.62
31 FEET;
32 THENCE SOUTH 89°58’08” EAST, A DISTANCE OF 9.00 FEET TO THE **POINT OF BEGINNING**;

33
34 SAID PARCEL CONTAINS 1,032 SQUARE FEET OR 0.02 ACRES, MORE OR LESS.

35
36 **BASIS OF BEARINGS:** BEARINGS ARE BASED ON THE WEST LINE OF BLOCK 25,
37 ARLINGTON HEIGHTS ADDITION TO DENVER TO BEAR SOUTH 00°01’52" WEST.
38
39

1 and benefitting the following described parcel of property (“Benefitted Property”):

2 LOTS 4 THROUGH 11, INCLUSIVE, BLOCK 25, ARLINGTON HEIGHTS ADDITION TO DENVER,
3 CITY AND COUNTY OF DENVER, STATE OF COLORADO
4

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

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

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

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

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

1 indemnify and hold the City harmless and to repair or pay for the repair of any and all damages to
2 said water, storm, sanitary sewer facilities or other Utility Company facilities, or those damages
3 resulting from the failure of the water, storm, sanitary sewer facilities or other Utility Company
4 facilities to properly function because of the Encroachment(s).

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

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

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

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

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

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

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

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

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

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

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

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

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

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

32 iii. Permittee will defend any and all Claims which may be brought or threatened
33 against City and will pay on behalf of City any expenses incurred by reason of such Claims including,

1 but not limited to, court costs and attorney fees incurred in defending and investigating such Claims
2 or seeking to enforce this indemnity obligation. Such payments on behalf of City shall be in addition
3 to any other legal remedies available to City and shall not be considered City’s exclusive remedy.

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

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

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

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

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

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

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

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

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

31 (w) Encroachment(s) in the regulatory floodplain shall require a SUDP and comply with
32 Chapter 4 Floodplain Regulations of the “Storm Drainage Design and Technical Criteria”, Chapter
33 12 Floodplain Management of the “DOTI Rules and Regulations Governing Sewerage Charges and

1 Fees and Management of Wastewater” and the City Floodplain Ordinance in DRMC Section 56-200
2 through 56-206. Above ground Encroachment(s) in a Floodway require a No-Rise Certification
3 sealed and signed by a Professional Engineer licensed in the State of Colorado. If there is any rise
4 in Base Flood Elevations, a Conditional Letter of Map Revision (CLOMR) and LOMR will be required.

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

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

16 COMMITTEE APPROVAL DATE: July 27, 2021 by Consent

17 MAYOR-COUNCIL DATE: August 3, 2021

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: August 5, 2021

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 Kristin M. Bronson, Denver City Attorney

30 BY: , Assistant City Attorney DATE: Aug 4, 2021
31