

1 **BY AUTHORITY**

2 RESOLUTION NO. CR23-0848
3 SERIES OF 2023

COMMITTEE OF REFERENCE:
Land Use, Transportation & Infrastructure

4 **A RESOLUTION**

5 **Granting a revocable permit to AES Apartments Venture, L.L.C., to encroach into**
6 **the right-of-way at 2121 South Broadway.**

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 AES Apartments
9 Venture, L.L.C. its successors and assigns ("Permittee"), a revocable permit to encroach into the
10 right-of-way with two new concrete foundations for flood barriers that will be utilized to protect the
11 building's transformers in the event of a flood ("Encroachment(s)") at 2121 South Broadway in the
12 following described area ("Encroachment Area"):

13 **PARCEL DESCRIPTION ROW NO. 2023-ENCROACHMENT-0000005-002:**

14 TWO (2) PARCELS OF LAND BEING A PORTION OF S. ACOMA STREET, MORE
15 PARTICULARLY BEING A PART OF THAT SPECIAL WARRANTY DEED RECORDED AT
16 RECEPTION NO. 2021121182 IN THE RECORDS OF THE CITY AND COUNTY OF DENVER
17 CLERK AND RECORDER'S OFFICE, LOCATED IN THE NORTHWEST QUARTER (NW1/4) OF
18 SECTION 27, TOWNSHIP 4 SOUTH, RANGE 68 WEST OF THE SIXTH PRINCIPAL MERIDIAN,
19 CITY AND COUNTY OF DENVER, STATE OF COLORADO, BEING MORE PARTICULARLY
20 DESCRIBED AS FOLLOWS:

21
22 **BASIS OF BEARINGS:** THE 20 FOOT RANGE LINE LOCATED IN S. ACOMA STREET
23 BETWEEN W. EVANS AVENUE AND W. WARREN AVENUE IS ASSUMED TO BEAR NORTH
24 00°15'38" WEST AND BEING MONUMENTED AT THE SOUTH END BY AN AXLE IN A RANGE
25 BOX, AND AT THE NORTH END BY A 2.5" ALUMINUM CAP STAMPED "PLS 38035" IN
26 CONCRETE.

27
28 **PARCEL 1**

29 **COMMENCING** AT THE INTERSECTION OF THE 20 FOOT RANGE LINE IN W. WARREN
30 AVENUE WITH SAID 20 FOOT RANGE LINE IN S. ACOMA STREET; THENCE NORTH
31 60°59'41" EAST, A DISTANCE OF 50.18 FEET TO THE SOUTHEAST CORNER OF PARCEL 2
32 OF SAID SPECIAL WARRANTY DEED, BEING THE EASTERLY RIGHT-OF-WAY OF SAID S.
33 ACOMA STREET; THENCE NORTH 00°15'38" WEST, ALONG SAID EASTERLY LINE OF SAID
34 PARCEL 2 AND THE EASTERLY RIGHT-OF-WAY S. ACOMA STREET, A DISTANCE OF 166.08
35 FEET TO THE **POINT OF BEGINNING;**

36
37 THENCE DEPARTING SAID EASTERLY LINES, NORTH 89°44'22" WEST, A DISTANCE OF
38 1.63 FEET;
39 THENCE NORTH 00°15'38" WEST, A DISTANCE OF 21.76 FEET;
40 THENCE NORTH 89°44'22" EAST, A DISTANCE OF 1.63 FEET TO SAID EASTERLY LINES;

1 THENCE SOUTH 00°15'38" EAST, ALONG SAID EASTERLY LINES, A DISTANCE OF 21.76
2 FEET TO THE **POINT OF BEGINNING**.

3
4 CONTAINING A CALCULATED AREA OF 35 SQUARE FEET OR 0.0008 ACRES, MORE OR
5 LESS.

6
7 TOGETHER WITH

8
9 **PARCEL 2**
10 **COMMENCING** AT THE INTERSECTION OF THE 20 FOOT RANGE LINE IN W. WARREN
11 AVENUE WITH SAID 20 FOOT RANGE LINE IN S. ACOMA STREET; THENCE NORTH
12 60°59'41" EAST, A DISTANCE OF 50.18 FEET TO THE SOUTHEAST CORNER OF PARCEL 2
13 OF SAID SPECIAL WARRANTY DEED, BEING THE EASTERLY RIGHT-OF-WAY OF SAID S.
14 ACOMA STREET; THENCE NORTH 00°15'38" WEST, ALONG SAID THE EASTERLY LINE OF
15 SAID PARCEL 2 AND THE EASTERLY RIGHT-OF-WAY S. ACOMA STREET, A DISTANCE OF
16 347.90 FEET TO THE **POINT OF BEGINNING**;

17
18 THENCE DEPARTING SAID EASTERLY LINES, SOUTH 89°44'22" WEST, A DISTANCE OF 1.59
19 FEET;
20 THENCE NORTH 00°15'38" WEST, A DISTANCE OF 23.74 FEET;
21 THENCE NORTH 89°44'22" EAST, A DISTANCE OF 1.59 FEET TO SAID EASTERLY LINES;
22 THENCE SOUTH 00°15'38" EAST, ALONG SAID EASTERLY LINES, A DISTANCE OF 23.74
23 FEET TO THE **POINT OF BEGINNING**.

24
25 CONTAINING A CALCULATED AREA OF 38 SQUARE FEET OR 0.0009 ACRES, MORE OR
26 LESS

27 and benefitting the following described parcel of property ("Benefitted Property"):

28 Part of Block 9, Rosedale, together with the vacated alley as vacated by Ordinance No. 370, series
29 of 1991 recorded July 3, 1991 at Reception No. 1991060774, located in the Northwest Quarter of
30 Section 27, Township 4 South, Range 68 West of the Sixth Principal Meridian, City and County of
31 Denver, State of Colorado, being more particularly described as follows:

32
33 Commencing at the intersection of the 20 foot range line along W. Warren Avenue with the 20 foot
34 range line along S. Broadway and considering said S. Broadway range line to bear North 00°15'45"
35 West, with all bearings contained herein being relative thereto;

36
37 Thence North 00°15'45" West, along said S. Broadway range line, a distance of 24.00 feet;

38
39 Thence South 89°33'54" West, a distance of 20.00 feet to the intersection of the easterly line of said
40 Block 9 with a line 4.00 feet North of and parallel with the southerly line of said Block 9, and the Point
41 of Beginning;

42
43 Thence continuing South 89°33'54" West, along said parallel line, a distance of 262.02 feet to a line
44 4.00 feet East of and parallel with the westerly line of said Block 9;

45
46 Thence North 00°15'38" West, along last said parallel line, a distance of 535.87 feet to the southerly
47 right-of-way line described in rule and order recorded February 11, 2011 at Reception No.

1 2011016186, in the office of the City and County of Denver Clerk and Recorder;

2

3 Thence along said southerly right-of-way line for the following seven (7) courses:

- 4 1) North 44°45'17" East, a distance of 4.31 feet;
- 5 2) North 88°42'35" East, a distance of 50.68 feet;
- 6 3) North 87°16'40" East, a distance of 75.35 feet;
- 7 4) North 87°15'21" East, a distance of 113.10 feet;
- 8 5) South 45°15'45" East, a distance of 9.91 feet;
- 9 6) South 00°15'45" East, a distance of 44.24 feet;
- 10 7) North 89°34'30" East, a distance of 5.79 feet;

11

12 Thence South 00°15'45" East, a distance of 67.76 feet;

13 Thence South 05°10'55" East, a distance of 84.07 feet to said easterly line of block 9;

14

15 Thence South 00°15'45" East, along said easterly line, a distance of 344.41 feet to the Point of
16 Beginning;

17

18 Containing a calculated area of 140,753 square feet or 3.2312 acres, more or less.

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

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

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

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

35 (d) Permittee is fully responsible for any and all damages incurred to facilities of Denver
36 Water and any other Utility Company, and/or drainage facilities for water and sewage of the City and
37 County of Denver due to activities authorized by the Permit. Should the relocation or replacement of
38 any drainage facilities for water and sewage of the City and County of Denver become necessary as
39 determined by the City's Executive Director of DOTI ("Executive Director"), in the Executive

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

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

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

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

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

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

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

1 become broken or damaged when, in the opinion of DOTI, the damage has been caused by the
2 Encroachment(s) or the activity of the Permittee within the Encroachment Area. All repair work shall
3 be accomplished without cost to the City and under the supervision of DOTI.

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

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

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

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

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

30 i. Permittee agrees to defend, indemnify, reimburse and hold harmless City, its
31 appointed and elected officials, agents and employees for, from and against all liabilities, claims,
32 judgments, suits or demands for damages to persons or property arising out of, resulting from, or
33 relating to this Permit and the Encroachment(s) ("Claims"). This indemnity shall be interpreted in the

1 broadest possible manner to indemnify City for any acts or omissions of Permittee or its agents either
2 passive or active, irrespective of fault, including City's negligence whether active or passive.

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

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

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

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

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

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

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

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

33 (t) All disturbances associated with construction of the Encroachment(s) shall be

1 managed as required by City standards for erosion control which may require standard notes or
2 CASDP permitting depending on location and scope of project.

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

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

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

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

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

25 **[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]**

1 COMMITTEE APPROVAL DATE: June 27, 2023 by Consent

2 MAYOR-COUNCIL DATE: July 4, 2023 by Consent

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: July 6, 2023

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 Kerry Tipper, Denver City Attorney

15
16 BY: _____, Assistant City Attorney DATE: _____