

BY AUTHORITY

RESOLUTION NO. CR13-0259
SERIES OF 2013

COMMITTEE OF REFERENCE:
Land Use, Transportation & Infrastructure

A RESOLUTION

Granting a revocable permit BMC Steele Creek, LLC to encroach into the right-of-way with various items at North Steele Street at its intersection with East First Avenue.

NOW THEREFORE, BE IT RESOLVED BY THE COUNCIL OF THE CITY AND COUNTY OF DENVER:

Section 1. The City and County of Denver hereby grants to BMC Steele Creek, LLC and its successors and assigns (“Permittee”), a revocable permit to encroach into the right-of-way with cornices, projection over the alley with building overhang, projection over the right-of-way with balconies, bays, entrance canopies, pedestrian lighting, signage, retaining walls and decorative features (“Encroachments”) on North Steele Street at its intersection with East First Avenue in the following described area (“Encroachment Area”):

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1 **Section 2.** The revocable permit (“Permit”) granted by this Resolution is expressly granted
2 upon and subject to each and all of the following terms and conditions:

3 (a) Permittee shall obtain a street occupancy permit from Public Works Permit Operations
4 at 2000 West 3rd Avenue, 303-446-3759, prior to commencing construction.

5 (b) Permittee shall be responsible for obtaining all other permits and shall pay all costs that
6 are necessary for installation and construction of items permitted herein.

7 (c) If the Permittee intends to install any underground facilities in or near a public road,
8 street, alley, right-of-way or utility easement, the Permittee shall join the Statewide Notification
9 Association of Owners and Operators of Underground Facilities by contacting the Utility Notification
10 Center of Colorado, 12600 West Colfax Avenue, Suite B-310, Lakewood, Colorado 80215, at 303-
11 232-1991. Further, Permittee shall contact the Utility Notification Center at 1-800-922-1987 to locate
12 underground facilities prior to commencing any work under this permit.

13 (d) Permittee is fully responsible for any and all damages incurred to facilities of the Water
14 Department and/or drainage facilities for water and sewage of the City and County of Denver due to
15 activities authorized by the permit. Should the relocation or replacement of any drainage facilities for
16 water and sewage of the City and County of Denver become necessary as determined by the
17 Manager of Public Works, in the Manager's sole and absolute discretion, Permittee shall pay all cost
18 and expense of the portion of the sewer affected by the permitted structure. The extent of the
19 affected portion to be replaced or relocated by Permittee shall be determined by the Manager of
20 Public Works. Any and all replacement or repair of facilities of the Water Department and/or drainage
21 facilities for water and sewage of the City and County of Denver attributed to the Permittee shall be
22 made by the Water Department and/or the City and County of Denver at the sole expense of the
23 Permittee. In the event Permittee’s facilities are damaged or destroyed due to the Water
24 Department’s or the City and County of Denver’s repair, replacement and/or operation of its facilities,
25 repairs will be made by the Permittee at its sole expense. Permittee agrees to defend, indemnify and
26 save the City harmless and to repair or pay for the repair of any and all damages to said sanitary
27 sewer, or those damages resulting from the failure of the sewer to properly function as a result of the
28 permitted structure.

29 (e) Permittee shall comply with all requirements of affected utility companies and pay for all
30 costs of removal, relocation, replacement or rearrangement of utility company facilities. Existing
31 telephone facilities shall not be utilized, obstructed or disturbed.

32 (f) All construction in, under, on or over the Encroachment Area shall be accomplished in
33 accordance with the Building Code of the City and County of Denver. Plans and Specifications

1 governing the construction of the Encroachments shall be approved by the Manager of Public Works
2 and the Director of Building Inspection Division prior to construction. Upon completion, a reproducible
3 copy of the exact location and dimensions of the Encroachments shall be filed with the Manager of
4 Public Works.

5 (g) The sidewalk and street/alley over the Encroachment Area shall be capable of
6 withstanding an HS-20 loading in accordance with the latest AASHTO Specifications. The
7 installations within the Encroachment Area shall be constructed so that the paved section of the
8 street/alley can be widened without requiring additional structural modifications. The sidewalk shall
9 be constructed so that it can be removed and replaced without affecting structures within the
10 Encroachment Area.

11 (h) Permittee shall pay all costs of construction and maintenance of the Encroachments.
12 Upon revocation of the permit or upon abandonment, Permittee shall pay all costs of removing the
13 Encroachments from the Encroachment Area and return the Encroachment Area to its original
14 condition under the supervision of the City Engineer.

15 (i) Permittee shall remove and replace any and all street/alley paving, sidewalks, and curb
16 and gutter, both inside the Encroachment Area and in the rights-of-way adjacent thereto, that become
17 broken, damaged or unsightly during the course of construction. In the future, Permittee shall also
18 remove, replace or repair any street/alley paving, sidewalks, and curb and gutter that become broken
19 or damaged when, in the opinion of the City Engineer, the damage has been caused by the activity of
20 the Permittee within the Encroachment Area. All repair work shall be accomplished without cost to
21 the City and under the supervision of the City Engineer.

22 (j) The City reserves the right to make an inspection of the Encroachments contained
23 within the Encroachment Area. An annual fee, subject to change, of \$200.00 shall be assessed.

24 (k) This revocable permit shall not operate or be construed to abridge, limit or restrict the
25 City and County of Denver in exercising its right to make full use of the Encroachment Area and
26 adjacent rights-of-way as public thoroughfares nor shall it operate to restrict the utility companies in
27 exercising their rights to construct, remove, operate and maintain their facilities within the
28 Encroachment Area and adjacent rights-of-way.

29 (l) During the existence of the Encroachments and this permit, Permittee, its successors
30 and assigns, at its expense, and without cost to the City and County of Denver, shall procure and
31 maintain a single limit comprehensive general liability insurance policy with a limit of not less than
32 \$500,000.00. All coverages are to be arranged on an occurrence basis and include coverage for
33 those hazards normally identified as X.C.U. during construction. The insurance coverage required

1 herein constitutes a minimum requirement and such enumeration shall in no way be deemed to limit
2 or 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 County of Denver and authorized to do business in the
5 State of Colorado. A certified copy of all such insurance policies shall be filed with the Manager of
6 Public Works, and each such policy shall contain a statement therein or endorsement thereon that it
7 will not be canceled or materially changed without written notice, by registered mail, to the Manager of
8 Public Works at least thirty (30) days prior to the effective date of the cancellation or material change.

9 All such insurance policies shall be specifically endorsed to include all liability assumed by the
10 Permittee hereunder and shall name the City and County of Denver as an additional insured.

11 (m) Permittee shall comply with the provisions of Article IV (Prohibition of Discrimination in
12 Employment, Housing and Commercial Space, Public Accommodations, Educational Institutions and
13 Health and Welfare Services) of Chapter 28 (Human Rights) of the Revised Municipal Code of the
14 City and County of Denver. The failure to comply with any such provision shall be a proper basis for
15 revocation of this permit.

16 (n) The right to revoke this permit is expressly reserved to the City and County of Denver.

17 (o) Permittee shall agree to indemnify and always save the City and County of Denver
18 harmless from all costs, claims or damages arising, either directly or indirectly, out of the rights and
19 privileges granted by this permit.

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

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1 COMMITTEE APPROVAL DATE: April 18, 2013 [by consent]
2 MAYOR-COUNCIL DATE: April 23, 2013
3 PASSED BY THE COUNCIL: _____, 2013

4 _____ - PRESIDENT

5 ATTEST: _____ - CLERK AND RECORDER,
6 EX-OFFICIO CLERK OF THE
7 CITY AND COUNTY OF DENVER
8

9 PREPARED BY: Brent A. Eisen, Assistant City Attorney DATE: April 25, 2013

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11 Pursuant to section 13-12, D.R.M.C., this proposed resolution has been reviewed by the office of the
12 City Attorney. We find no irregularity as to form, and have no legal objection to the proposed
13 resolution. The proposed resolution is not submitted to the City Council for approval pursuant to §
14 3.2.6 of the Charter.

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16 Douglas J. Friednash, Denver City Attorney

17 BY: _____, Assistant City Attorney DATE: _____, 2013