

1 BY AUTHORITY

2 RESOLUTION NO. 11-0046
3 SERIES OF 2011

COMMITTEE OF REFERENCE:
Land Use, Transportation & Infrastructure

4 A RESOLUTION

5 **Granting a revocable permit to Blackbird, LLC to encroach into the right-of-way**
6 **with a patio area including railing and awning, and to make certain improvements**
7 **to the tree lawn at 700 Colorado Blvd.**

8
9 **BE IT RESOLVED BY THE COUNCIL OF THE CITY AND COUNTY OF DENVER:**

10 **Section 1.** The City and County of Denver hereby grants to Blackbird, LLC and its
11 successors and assigns (“Permittee”), a revocable permit to encroach into the right-of-way with a
12 patio area including railing and awning, and to narrow, xeriscape, and plant trees in the tree lawn at
13 700 Colorado Blvd., (“Encroachments”) in the following described area (“Encroachment Area”):

*BEING A PORTION OF THE RIGHT-OF-WAY OF 7TH AVENUE, SITUATE IN THE SW1/4 OF SECTION 6, T.4.S., R.57.W. OF THE SIXTH
P.M., CITY & COUNTY OF DENVER, STATE OF COLORADO, MORE PARTICULARLY DESCRIBED AS FOLLOWS:*

*COMMENCING AT THE SOUTHWEST CORNER OF LOT 24, BLOCK 1, SKINNER BROTHER'S SUBDIVISION, THENCE N89°51'34"E, ALONG THE
NORTH RIGHT-OF-WAY LINE OF 7TH AVENUE, A DISTANCE OF 10.31 FEET TO THE NORTHWEST CORNER OF THE MAJOR
ENCUMBRANCE AREA, BEING THE POINT OF BEGINNING; THENCE N89°51'34"E, CONTINUING ALONG SAID RIGHT-OF-WAY LINE, A
DISTANCE OF 43.00 FEET; THENCE S00°04'01"E, ALONG A LINE 43.00 FEET EAST OF & PARALLEL WITH THE WEST LINE OF THE
STRUCTURE AT 700 COLORADO BOULEVARD, A DISTANCE OF 4.93 FEET, THENCE S89°55'59"W, ALONG A LINE 10.00 FEET SOUTH OF
& PARALLEL WITH THE SOUTH LINE OF SAID STRUCTURE, A DISTANCE OF 43.00 FEET; THENCE N00°04'01"W, ALONG THE WESTERLY
LINE EXTENDED OF SAID STRUCTURE, A DISTANCE OF 4.88 FEET TO A POINT ON THE NORTHERLY RIGHT-OF-WAY LINE OF 7TH
AVENUE, SAID POINT ALSO BEING POINT OF BEGINNING, CONTAINING AN AREA OF 211 SQUARE FEET.*

14
15 **Section 2.** The revocable permit (“Permit”) granted by this resolution is expressly granted
16 upon and subject to each and all of the following terms and conditions:

17 (a) Permittee shall obtain a street occupancy permit from Public Works Permit Operations at
18 2000 West 3rd Avenue, 303-446-3759, prior to commencing construction.

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

21 (c) If the Permittee intends to install any underground facilities in or near a public road,
22 street, alley, right-of-way or utility easement, the Permittee shall join the Statewide Notification
23 Association of Owners and Operators of Underground Facilities by contacting the Utility Notification
24 Center of Colorado, 12600 West Colfax Avenue, Suite B-310, Lakewood, Colorado 80215, at 303-
25 232-1991. Further, Permittee shall contact the Utility Notification Center at 1-800-922-1987 to locate
26 underground facilities prior to commencing any work under this permit.

27 (d) Permittee is fully responsible for any and all damages incurred to facilities of the Water
28 Department and/or drainage facilities for water and sewage of the City and County of Denver due to

1 activities authorized by the permit. Should the relocation or replacement of any drainage facilities for
2 water and sewage of the City and County of Denver become necessary as determined by the
3 Manager of Public Works, in the Manager's sole and absolute discretion, Permittee shall pay all cost
4 and expense of the portion of the sewer affected by the permitted structure. The extent of the affected
5 portion to be replaced or relocated by Permittee shall be determined by the Manager of Public Works.

6 Any and all replacement or repair of facilities of the Water Department and/or drainage facilities for
7 water and sewage of the City and County of Denver attributed to the Permittee shall be made by the
8 Water Department and/or the City and County of Denver at the sole expense of the Permittee. In the
9 event Permittee's facilities are damaged or destroyed due to the Water Department's or the City and
10 County of Denver's repair, replacement and/or operation of its facilities, repairs will be made by the
11 Permittee at its sole expense. Permittee agrees to defend, indemnify and save the City harmless and
12 to repair or pay for the repair of any and all damages to said sanitary sewer, or those damages
13 resulting from the failure of the sewer to properly function as a result of the permitted structure.

14 (e) Permittee shall comply with all requirements of affected utility companies and pay for all
15 costs of removal, relocation, replacement or rearrangement of utility company facilities. Existing
16 telephone 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 of the City and County of Denver. Plans and Specifications
19 governing the construction of the Encroachments shall be approved by the Manager of Public Works
20 and the Director of Building Inspection Division prior to construction. Upon completion, a reproducible
21 copy of the exact location and dimensions of the Encroachments shall be filed with the Manager of
22 Public Works.

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

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

33 (i) Permittee shall remove and replace any and all street/alley paving, sidewalks, and curb
34 and gutter, both inside the Encroachment Area and in the rights-of-way adjacent thereto, that become

1 broken, damaged or unsightly during the course of construction. In the future, Permittee shall also
2 remove, replace or repair any street/alley paving, sidewalks, and curb and gutter that become broken
3 or damaged when, in the opinion of the City Engineer, the damage has been caused by the activity of
4 the Permittee within the Encroachment Area. All repair work shall be accomplished without cost to the
5 City and under the supervision of the City Engineer.

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

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

13 (l) During the existence of the Encroachments and this permit, Permittee, its successors
14 and assigns, at its expense, and without cost to the City and County of Denver, shall procure and
15 maintain a single limit comprehensive general liability insurance policy with a limit of not less than
16 \$500,000.00. All coverages are to be arranged on an occurrence basis and include coverage for
17 those hazards normally identified as X.C.U. during construction. The insurance coverage required
18 herein constitutes a minimum requirement and such enumeration shall in no way be deemed to limit or
19 lessen the liability of the Permittee, its successors or assigns, under the terms of this permit. All
20 insurance coverage required herein shall be written in a form and by a company or companies
21 approved by the Risk Manager of the City and County of Denver and authorized to do business in the
22 State of Colorado. A certified copy of all such insurance policies shall be filed with the Manager of
23 Public Works, and each such policy shall contain a statement therein or endorsement thereon that it
24 will not be canceled or materially changed without written notice, by registered mail, to the Manager of
25 Public Works at least thirty (30) days prior to the effective date of the cancellation or material change.
26 All such insurance policies shall be specifically endorsed to include all liability assumed by the
27 Permittee hereunder and shall name the City and County of Denver as an additional insured.

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

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

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

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

12 COMMITTEE APPROVAL DATE: January 20, 2011 by consent.

13 MAYOR-COUNCIL DATE: January 25, 2011

14 PASSED BY THE COUNCIL: _____, 2011

15 _____ - PRESIDENT

16 ATTEST: _____ - CLERK AND RECORDER,
17 EX-OFFICIO CLERK OF THE
18 CITY AND COUNTY OF DENVER

19 PREPARED BY: KAREN A. AVILES, Assistant City Attorney DATE: January 26, 2011

20 Pursuant to section 13-12, D.R.M.C., this proposed resolution has been reviewed by the office of the
21 City Attorney. We find no irregularity as to form, and have no legal objection to the proposed
22 resolution. The proposed resolution is not submitted to the City Council for approval pursuant to §
23 3.2.6 of the Charter.

24 David R. Fine, City Attorney

25 BY: _____, Assistant City Attorney DATE: _____, 2011