

**REQUEST FOR RESOLUTION FOR TIER III ENCROACHMENT PERMIT**

**TO:** Caroline Martin, City Attorney's Office

**FROM:** Matt Bryner  
Director, Right of Way Services

**ROW NO.:** 2019-ENCROACHMENT-0000321

**DATE:** April 7, 2020

**SUBJECT:** Request for a Resolution granting a revocable permit, subject to certain terms and conditions, to Chestnut Island, LLC., their successors and assigns, to encroach into the right-of-way with a 53.33' long x 6.5' wide raised patio walkway with a max height of 4'- 7 1/2", including railings, stairs and accessible ramp along 35th Street at 3500 Chestnut Place.

**It is requested that the above subject item be placed on the next available Mayor Council Agenda.**

This office has investigated the request from Emily Felton of Kimley-Horn dated October 9, 2019, on behalf of Chestnut Island, LLC. c/o Edee Anesi for the granting of the above-subject permit.

This matter has been checked by this office and has been coordinated with Asset Management; Comcast Corporation; Division of Disability Rights; Councilperson CdeBaca; CPD: Building & Construction Services, Planning Services, and Zoning & Development Review; Denver Water Board; Fire Department; Metro Wastewater Reclamation District; Office of Emergency Management; Office of Telecommunications; Parks and Recreation; DOTI: City Engineer, DES Construction Engineering, DES Engineering, DES Survey, IPP Infrastructure Engineering, and Street Maintenance; CenturyLink Corporation; Regional Transportation District; and Xcel Energy, all of whom have returned our questionnaires indicating their agreement.

As a result of the investigations, it has been determined that there is no objection to the granting of the revocable permit.

Therefore, you are requested to initiate Council action for the granting of a revocable permit, subject to certain terms and conditions, to Chestnut Island, LLC., their successors and assigns, to encroach with a 53.33' long x 6.5' wide raised patio walkway with a max height of 4'- 7 1/2", including railings, stairs and accessible ramp along 35th Street at 3500 Chestnut Place.

**INSERT PARCEL DESCRIPTION ROW 2019-ENCROACHMENT-0000321-001 HERE****STANDARD PROVISIONS**

The revocable permit ("Permit") granted by this resolution is expressly granted upon and subject to each and all of the following terms and conditions:

City and County of Denver Department of Transportation & Infrastructure  
Right-of-Way Services / Engineering & Regulatory  
201 W Colfax Ave, Dept 507 | Denver, CO 80202  
[www.denvergov.org/doti](http://www.denvergov.org/doti)  
Phone: 720-865-3003

- (a) Permittee shall obtain a street occupancy permit from DOTI Permit Operations at 2000 West 3<sup>rd</sup> Avenue, 303.446.3759, and prior to commencing construction.
- (b) Permittee shall be responsible for obtaining all other permits and shall pay all costs that are necessary for installation and construction of items permitted herein.
- (c) If the Permittee intends to install any underground facilities in or near a public road, street, alley, right-of-way or utility easement, the Permittee shall join the Statewide Notification Association of Owners and Operators of Underground Facilities by contacting the Utility Notification Center of Colorado, 16361 Table Mountain Pkwy, Golden, Colorado, 80403 at 303.232.1991. Further, Permittee shall contact the Utility Notification Center, at 811 to locate underground facilities prior to commencing any work under this permit.
- (d) Permittee is fully responsible for any and all damages incurred to facilities of the Water Department and/or drainage facilities for water and sewage of the City and County of Denver due to activities authorized by the permit. Should the relocation or replacement of any drainage facilities for water and sewage of the City and County of Denver become necessary as determined by the Manager of DOTI, in the Manager's sole and absolute discretion, Permittee shall pay all cost and expense of the portion of the sewer affected by the permitted structure. The extent of the affected portion to be replaced and relocated by Permittee shall be determined by the Manager of DOTI. Any and all replacement or repair of facilities of the Water Department and/or drainage facilities for water and sewage of the City and County of Denver attributed to the Permittee shall be made by the Water Department and/or the City and County of Denver at the sole expense of the Permittee. In the event Permittee's facilities are damaged or destroyed due to the Water Department's or the City and County of Denver's repair, replacement and/or operation of its facilities, repairs will be made by Permittee at its sole expense. Permittee agrees to defend, indemnify and save the City harmless and to repair or pay for the repair of any and all damages to said sanitary sewer, or those damages resulting from the failure of the sewer to properly function as a result of the permitted structure.
- (e) Permittee shall comply with all requirements of affected utility companies and pay for all costs of removal, relocation, replacement or rearrangement of utility company facilities. Existing telephone facilities shall not be utilized, obstructed or disturbed.
- (f) All construction in, under, on or over the Encroachment Area shall be accomplished in accordance with the Building Code of the City and County of Denver. Plans and Specifications governing the construction of the Encroachments shall be approved by the Manager of DOTI and the Director of the Building Inspection Division prior to construction. Upon completion, a reproducible copy of the exact location and dimensions of the Encroachments shall be filed with the Manager of Public Works.

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- (g) The sidewalk and street/alley over the Encroachment Area shall be capable of withstanding an HS-20 loading in accordance with the latest AASHTO Specifications. The installations within the Encroachment Area shall be constructed so that the paved section of the street/alley can be widened without requiring additional structural modifications. The sidewalk shall be constructed so that it can be removed and replaced without affecting structures within the Encroachment Area.
- (h) Permittee shall pay all costs of construction and maintenance of the Encroachment. Upon revocation of the permit or upon abandonment, Permittee shall pay all costs of removing the Encroachment from the Encroachment Area, and return the Encroachment Area to its original condition under the supervision of the City Engineer.
- (i) Permittee shall remove and replace any and all street/alley paving, sidewalks, and curb and gutter, both inside the Encroachment Area and in the rights-of-way adjacent thereto, that become broken, damaged or unsightly during the course of construction. In the future, Permittee shall also remove, replace or repair any street/alley paving, sidewalks, and curb and gutter that become broken or damaged when, in the opinion of the City Engineer, the damage has been caused by the activity of the Permittee within the Encroachment Area. All repair work shall be accomplished without cost to the City and under the supervision of the City Engineer.
- (j) The City reserves the right to make an inspection of the Encroachments contained within the Encroachment Area. An annual fee, subject to change, of \$200.00 shall be assessed.
- (k) This revocable permit shall not operate or be construed to abridge, limit or restrict the City and County of Denver in exercising its right to make full use of the Encroachment Area and adjacent rights-of-way as public thoroughfares nor shall it operate to restrict the utility companies in exercising their rights to construct, remove, operate and maintain their facilities within the Encroachment Area and adjacent rights-of-way.
- (l) During the existence of the Encroachments and this permit, Permittee, its successors and assigns, at its expense, and without cost to the City and County of Denver, shall procure and maintain a single limit comprehensive general liability insurance policy with a limit of not less than \$500,000.00. All coverage's are to be arranged on an occurrence basis and include coverage for those hazards normally identified as X.C.U. during construction. The insurance coverage required herein constitutes a minimum requirement and such enumeration shall in no way be deemed to limit or lessen the liability of the Permittee, its successors or assigns, under the terms of this permit. All insurance coverage required herein shall be written in a form and by a company or companies approved by the Risk Manager of the City and County of Denver and authorized to do business in the State of Colorado. A certified copy of all such insurance

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policies shall be filed with the Manager of DOTI, and each such policy shall contain a statement therein or endorsement thereon that it will not be canceled or materially changed without written notice, by registered mail, to the Manager of DOTI at least thirty (30) days prior to the effective date of the cancellation or material change. All such insurance policies shall be specifically endorsed to include all liability assumed by the Permittee hereunder and shall name the City and County of Denver as an additional insured.

- (m) Permittee shall comply with the provisions of Article IV (Prohibition of Discrimination in Employment, Housing and Commercial Space, Public Accommodations, Educational Institutions and Health and Welfare Services) of Chapter 28 (Human Rights) of the Revised Municipal Code of the City and County of Denver. The failure to comply with any such provision shall be a proper basis for revocation of this permit.
- (n) The right to revoke this permit is expressly reserved to the City and County of Denver.
- (o) Permittee shall agree to indemnify and always save the City and County of Denver harmless from all costs, claims or damages arising, either directly or indirectly, out of the rights and privileges granted by this permit.

**SPECIAL CONDITIONS FOR THIS PERMIT**

- (p) None

A map of the area is attached hereto.

MB: dp

cc: Asset Management, Steve Wirth  
City Council Office, Zach Rothmier  
Councilperson and Aides  
Department of Law, Bradley Beck  
Department of Law, Deanne Durfee  
Department of Law, Maureen McGuire  
Department of Law, Martin Plate  
Department of Law, Caroline Martin  
DOTI, Alba Castro  
DOTI, Jason Gallardo  
Project File

Property Owner:  
Edee Anesi  
Chestnut Island, LLC.  
1700 East 17<sup>th</sup> Avenue  
Denver, Colorado 80218

Agent:  
Emily Felton  
Kimley-Horn  
1125 17<sup>th</sup> St  
Suite 1400  
Denver, Colorado 80202

**ORDINANCE/RESOLUTION REQUEST**

Please email requests to Jason Gallardo

at [Jason.Gallardo@denvergov.org](mailto:Jason.Gallardo@denvergov.org) by **12:00pm on Monday**. Contact her with questions.

Date of Request: April 7, 2020

Please mark one:  Bill Request or  Resolution Request

**1. Type of Request:**

- Contract/Grant Agreement     Intergovernmental Agreement (IGA)     Rezoning/Text Amendment
- Dedication/Vacation     Appropriation/Supplemental     DRMC Change
- Other: Encroachment

**2. Title:** (Start with *approves, amends, dedicates*, etc., include name of company or contractor and indicate the type of request: grant acceptance, contract execution, contract amendment, municipal code change, supplemental request, etc.)

Request for a Resolution granting a revocable permit, subject to certain terms and conditions, to Chestnut Island, LLC., their successors and assigns, to encroach into the right-of-way with a 53.33' long x 6.5' wide raised patio walkway with a max height of 4'- 7 1/2", including railings, stairs and accessible ramp along 35th Street at 3500 Chestnut Place.

**3. Requesting Agency:** Department of Transportation and Infrastructure, Engineering and Regulatory

**4. Contact Person:**

Contact person with knowledge of proposed ordinance/resolution	Contact person to present item at Mayor-Council and Council
Name: Devin Price	Name: Jason Gallardo
Email: <a href="mailto:devin.price@denvergov.org">devin.price@denvergov.org</a>	Email: <a href="mailto:Jason.Gallardo@denvergov.org">Jason.Gallardo@denvergov.org</a>

**5. General description or background of proposed request. Attach executive summary if more space needed:**

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**6. City Attorney assigned to this request (if applicable):** Martin Plate

**7. City Council District:** Councilwoman CdeBaca, District 9

**8. \*\*For all contracts, fill out and submit accompanying Key Contract Terms worksheet\*\***

*To be completed by Mayor's Legislative Team:*

Resolution/Bill Number: \_\_\_\_\_

Date Entered: \_\_\_\_\_

## Key Contract Terms

Type of Contract: (e.g. Professional Services > \$500K; IGA/Grant Agreement, Sale or Lease of Real Property):

Vendor/Contractor Name:

Contract control number:

Location:

Is this a new contract?  Yes  No Is this an Amendment?  Yes  No If yes, how many? \_\_\_\_\_

Contract Term/Duration (for amended contracts, include existing term dates and amended dates):

Contract Amount (indicate existing amount, amended amount and new contract total):

<i>Current Contract Amount</i> (A)	<i>Additional Funds</i> (B)	<i>Total Contract Amount</i> (A+B)

<i>Current Contract Term</i>	<i>Added Time</i>	<i>New Ending Date</i>

Scope of work:

Was this contractor selected by competitive process?

If not, why not?

Has this contractor provided these services to the City before?  Yes  No

Source of funds:

Is this contract subject to:  W/MBE  DBE  SBE  XO101  ACDBE  N/A

WBE/MBE/DBE commitments (construction, design, Airport concession contracts):

Who are the subcontractors to this contract?

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*To be completed by Mayor's Legislative Team:*

Resolution/Bill Number: \_\_\_\_\_

Date Entered: \_\_\_\_\_



# TIER III ENCROACHMENT EXECUTIVE SUMMARY

**What is an Encroachment:** A privately owned improvement that is located in, or project over or under the public Right-of-Way.

**Project Title:** 2019-ENCROACHMENT-0000321 - Tier III Elevated Concrete Walkway at 3500 Chestnut Pl

**Business name:** Chestnut Island, LLC.

**Description of Encroachment:** Request for a Resolution granting a revocable permit, subject to certain terms and conditions, to Chestnut Island, LLC., their successors and assigns, to encroach into the right-of-way with a 53.33' long x 6.5' wide raised patio walkway with a max height of 4'- 7 1/2", including railings, stairs and accessible ramp along 35th Street at 3500 Chestnut Place.

**Explanation of why the Public Right of Way must be utilized for a private improvement:** The existing ROW slopes in the requested area are approximately 6% along 35th Street and too steep for use by pedestrians. The requested area will be regraded to a raised patio and walkway to provide an accessible outdoor walkway space. This will be for private use to the adjacent retailer within 3500 Chestnut.

**Duration of the Encroachment:** Permanent

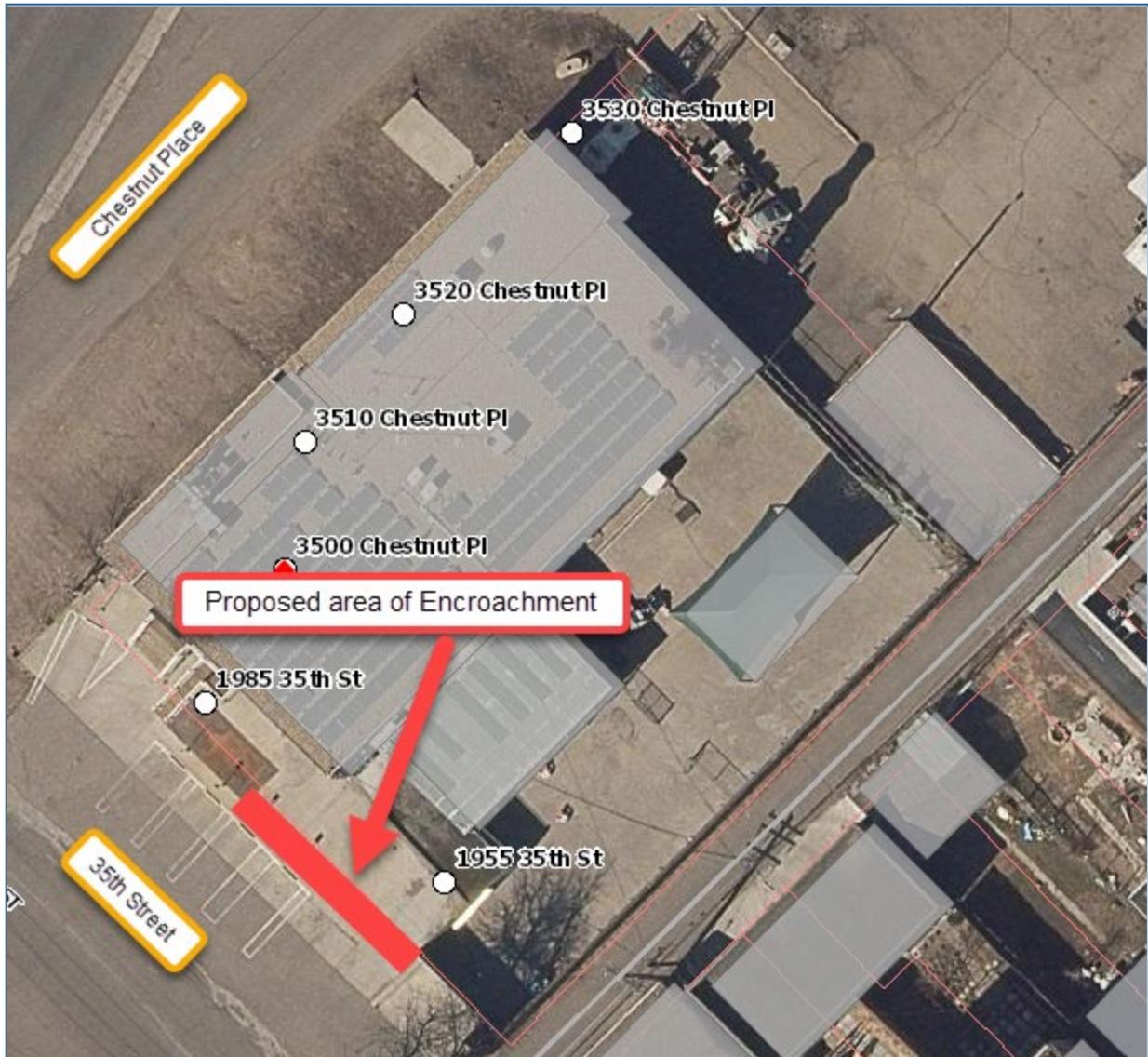
**Annual Fees:** \$200

**Additional Information:** None

**Location Map:** Continued on next page

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**EXHIBIT "A"**

**LAND DESCRIPTION**

2019-ENCROACHMENT-0000321-001

**PAGE 1 OF 2**

A PARCEL OF LAND LYING WITHIN THE 35<sup>TH</sup> STREET RIGHT-OF-WAY AS PLATTED IN 1<sup>ST</sup> ADDITION TO IRONTON, AND RECORDED IN PLAT BOOK 6 AT PAGE 110 IN THE RECORDS OF THE CLERK AND RECORDER OF THE CITY AND COUNTY OF DENVER; SITUATED IN THE SOUTHEAST QUARTER OF SECTION 22, TOWNSHIP 3 SOUTH, RANGE 68 WEST OF THE 6<sup>TH</sup> PRINCIPAL MERIDIAN; CITY AND COUNTY OF DENVER, STATE OF COLORADO; BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BASIS OF BEARINGS: THE 14.75 FOOT RANGE LINE WITHIN 35<sup>TH</sup> STREET, BETWEEN CHESTNUT PLACE AND DELGANY STREET, HAVING AN ASSUMED BEARING OF NORTH 45°26'07" WEST.

**COMMENCING** AT THE SOUTHWEST CORNER OF LOT 16, BLOCK 16, SAID 1<sup>ST</sup> ADDITION TO IRONTON AS DESCRIBED IN THE DOCUMENT RECORDED UNDER RECEPTION NUMBER 2020000827 IN SAID RECORDS, BEING MONUMENTED BY A #5 REBAR WITH A 1-1/4" YELLOW PLASTIC CAP STAMPED "LS 37933";

THENCE NORTH 45°26'07" WEST, ALONG THE SOUTHWESTERLY LINE OF SAID LOT 16, A DISTANCE OF 8.67 FEET TO THE **POINT OF BEGINNING**;

THENCE SOUTH 44°35'29" WEST, A DISTANCE OF 8.00 FEET;

THENCE NORTH 45°26'07" WEST, A DISTANCE OF 53.33 FEET;

THENCE NORTH 44°35'29" EAST, A DISTANCE OF 8.00 FEET TO A POINT ON SAID SOUTHWESTERLY LINE OF LOT 16;

THENCE SOUTH 45°26'07" EAST, ALONG SAID SOUTHWESTERLY LINE, A DISTANCE OF 53.33 FEET TO THE **POINT OF BEGINNING**.

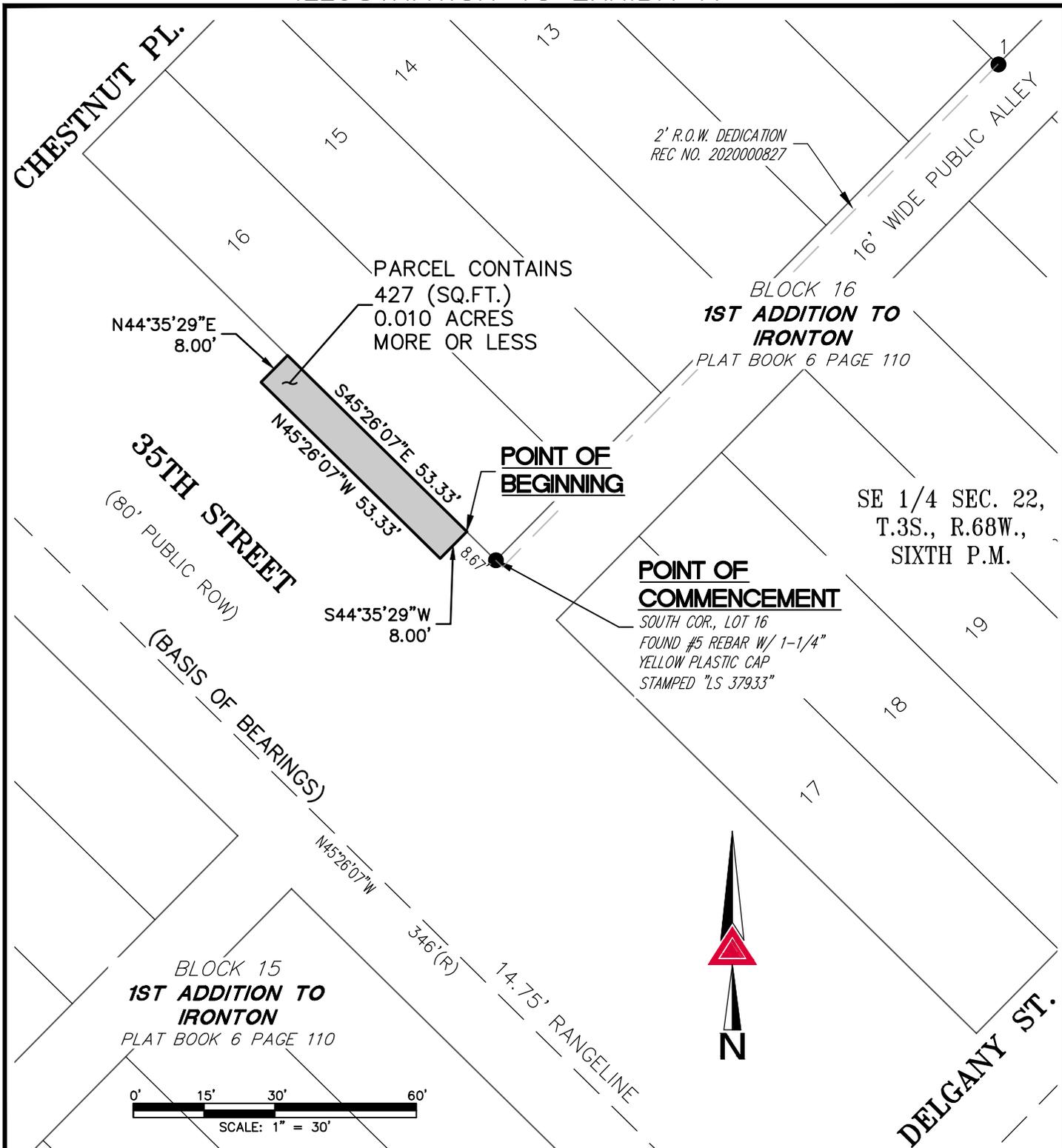
CONTAINING AN AREA OF 0.010 ACRES, (427 SQUARE FEET), MORE OR LESS.

EXHIBIT ATTACHED AND MADE A PART HEREOF.



JAMES E. LYNCH, PLS NO. 37933  
FOR AND ON BEHALF OF AZTEC CONSULTANTS, INC.  
300 E. MINERAL AVE., SUITE 1, LITTLETON, CO 80122  
303-713-1898

ILLUSTRATION TO EXHIBIT A



NOTE: THIS DRAWING DOES NOT REPRESENT A MONUMENTED LAND SURVEY AND IS ONLY INTENDED TO DEPICT THE ATTACHED LEGAL DESCRIPTION.

PATH: Q:\DWG\EXHIBITS\  
 DWG NAME Encroachment Exh.DWG  
 DWG: JEL CHK: JRW  
 DATE: 2/24/2020  
 SCALE: 1"=30'

300 East Mineral Ave,  
 Suite 1  
 Littleton, Colorado 80122  
 Phone: (303)713-1898  
 Fax: (303)713-1897  
[www.aztecconsultants.com](http://www.aztecconsultants.com)

**PARCEL EXHIBIT**  
 BLOCK 16, 1ST ADDITION TO IRLTON  
 DENVER, COLORADO  
 JOB NUMBER 137218-01 2 OF 2 SHEETS