



REQUEST FOR RESOLUTION FOR A TIER III ENCROACHMENT PERMIT

TO: Ivone Avila-Ponce, City Attorney's Office

FROM: Glen Blackburn, PE, Director, Right of Way Services *Glen Blackburn*

PROJECT NO.: 2024-ENCROACHMENT-0000070

DATE: November 25, 2024

SUBJECT: Request for a Resolution granting a revocable permit, subject to certain terms and conditions, to Toshihiro Kizaki, their successors and assigns, to encroach into the right-of-way with six elevated patios and electrical service in the tree lawn, at the Sushi Den at 1487 South Pearl Street.

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

This office has investigated the request from Noah Heaney of Sushi Den dated March 28, 2024, on behalf of Toshihiro Kizaki for the granting of the above subject permit.

This matter has been checked by this office and has been coordinated with DOTI ROWS DES Transportation; CPD DS Project Review Coordinator; DOTI ROWS Survey; DOTI ROWS DES Wastewater; City Council District #7; DOTI ROWS ER Transportation & Wastewater; CenturyLink/Lumen; Xcel Energy; Regional Transportation District; Comcast; Metro Water Recovery; DOTI Street Maintenance; Office of Emergency Management; CPD Building Department; DOF Real Estate; Denver Fire Department; Denver Water; Parks & Recreation; DOTI Policy & Planning; Office of Disability Rights; DOTI ROWS Construction Engineering; DOTI TES Sign & Stripe; City Forester; Historic Preservation/Landmark; Colorado Department of Transportation; Environmental Services; DOTI IPP Infrastructure Engineering, all of whom have indicated no objection for the proposed encroachment.

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 request for a Resolution granting a revocable permit, subject to certain terms and conditions, to Toshihiro Kizaki, their successors and assigns, to encroach into the right-of-way with six elevated patios and electrical service at the Sushi Den at 1487 South Pearl Street.

**INSERT ENCROACHMENT AREA LEGAL DESCRIPTION ROW 2024-ENCROACHMENT-0000070-002
HERE**

And benefitting the following described parcel of property:

INSERT PARCEL LEGAL DESCRIPTION ROW 2024-ENCROACHMENT-0000070-001 HERE

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/rowplanreview
Phone: (720) 865-3003

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 (terms not defined herein are defined in the Rules and Regulations Governing Encroachments & Encumbrances in the Public Right of Way):

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

(b) Permittee shall be responsible for obtaining all necessary permits and shall pay all costs 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, ROW 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 (Colorado 811) through <https://colorado811.org/> or at 303-232-1991, 16361 Table Mountain Pkwy, Golden, Colorado, 80403. Further, Permittee shall contact the Utility Notification Center (Colorado 811) at <https://colorado811.org/> or 303-232-1991 to request locates for existing underground facilities prior to commencing excavation.

(d) Permittee is fully responsible for any and all damages incurred to facilities of Denver Water and any other Utility Company, and/or drainage facilities for water and sewage of the City and County of Denver due to activities authorized by the Permits. 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 City's Executive Director of DOTI ("Executive Director"), in the Executive Director's sole and absolute discretion, Permittee shall pay all cost and expense of the portion of the water and/or sewer facilities affected by the Encroachment(s). The extent of the affected portion to be replaced and relocated by Permittee shall be determined by the Executive Director. Any and all replacement or repair of facilities of Denver Water and any other Utility Company, and/or drainage facilities for water and sewage of the City and County of Denver attributed to the Permittee shall be made by Denver Water, Utility Company, and/or the City and County of Denver at the sole expense of the Permittee. In the event the Permittee's facilities are damaged or destroyed due to Denver Water's, Utility Company'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 hold the City harmless and to repair or pay for the repair of any and all damages to said water, storm, sanitary sewer facilities or other Utility Company facilities, or those damages resulting from the failure of the water, storm, sanitary sewer facilities or other Utility Company facilities to properly function because of the Encroachment(s).

(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 utility 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 and [City and County of Denver Department of Transportation & Infrastructure Transportation Standards and Details for the Engineering Division](#).

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

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

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

(j) Permittee shall remove and replace any and all street/alley paving, Sidewalks, Streetscapes, Amenity Zones, and curb and gutter, both inside the Encroachment Area and in the rights-of-way adjacent thereto, that become broken, damaged or unsightly during, in the opinion of DOTI, the course of construction or maintenance of the Encroachment(s). 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 DOTI, the damage has been caused by the Encroachment(s) or 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 DOTI.

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

(l) During the existence of the Encroachment(s) and the Permit, Permittee, its successors and assigns, at its expense, and without cost to the City, shall procure and maintain Commercial General Liability insurance policy with a limit of not less than \$1,000,000 per occurrence. All coverages 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 authorized to do business in the State of Colorado. A certified copy of all such insurance policies shall be filed with the Executive Director, 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 Executive Director at least thirty (30) days prior to the effective date of the cancellation or material change. The City and County of Denver, its Elected and Appointed Officials, Employees and Volunteers shall be included as Additional Insured.

(m) In addition to the requirement herein to comply with all laws, 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 DRMC. The failure to comply with any such provision shall be a proper basis for revocation of the Encroachment(s).

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

SPECIAL CONDITIONS FOR THIS PERMIT

(a) None

A map of the area is attached hereto.



GB: er

cc: Asset Management,
City Council Office, Luke Palmisano
Councilperson and Aides
Department of Law, Bradley Beck
Department of Law, Kwali Farbes
Department of Law, Maureen McGuire
Department of Law, Martin Plate
Department of Law, Ivone Avila-Ponce
DOTI, Alba Castro
DOTI, Alaina McWhorter
Project File

Property Owner:
Toshihiro Kizaki
Sushi Den
1501 S Pearl St
Denver, CO 80210

Agent:
Noah Heaney
Sushi Den
1487 S Pearl St
Denver, CO 80210

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/rowplanreview
Phone: (720) 865-3003

CONNECT WITH US | 311 | DENVERGOV.ORG | DENVER 8 TV

ORDINANCE/RESOLUTION REQUEST

Please email requests to the Mayor's Legislative Team
at [MileHighOrdinance@DenverGov.org](mailto: MileHighOrdinance@DenverGov.org) by 9 a.m. Friday. Contact the Mayor's Legislative team with questions

Date of Request: November 25, 2024

Please mark one: Bill Request or Resolution Request

Please mark one: The request directly impacts developments, projects, contracts, resolutions, or bills that involve property and impact within .5 miles of the South Platte River from Denver's northern to southern boundary? (Check map [HERE](#))

Yes No

1. Type of Request:

Contract/Grant Agreement Intergovernmental Agreement (IGA) Rezoning/Text Amendment

Dedication/Vacation Appropriation/Supplemental DRMC Change

Other: Tier III Resolution

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 Toshihiro Kizaki, their successors and assigns, to encroach into the right-of-way with six elevated patios and electrical service in the tree lawn, at the Sushi Den at 1487 South Pearl Street.

3. **Requesting Agency:** DOTI Right of Way Services Engineering & Regulatory

4. Contact Person:

Contact person with knowledge of proposed ordinance/resolution (e.g., subject matter expert)	Contact person for council members or mayor-council
Name: Shari Bills	Name: Alaina McWhorter
Email: shari.bills@denvergov.org	Email: Alaina.mcwhorter@denvergov.org

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

Request for a Resolution granting a revocable permit, subject to certain terms and conditions, to Toshihiro Kizaki, their successors and assigns, to encroach into the right-of-way with six elevated patios and electrical service in the tree lawn, at the Sushi Den at 1487 South Pearl Street.

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

7. **City Council District:** District 7, Council Person Flor Alvidrez

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 (including any dba's):

Contract control number (legacy and new):

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?

To be completed by Mayor's Legislative Team:

Resolution/Bill Number: _____

Date Entered: _____

RESOLUTION FOR A TIER III ENCROACHMENT EXECUTIVE SUMMARY

An Encroachment is a privately-owned improvement located in or projecting over or under the public right-of-way.

Application Title: 2024-ENCROACHMENT-0000071 – Tier III 1487 South Pearl Street - Sushi Den Patio

Encroachment Owner: Toshihiro Kizaki

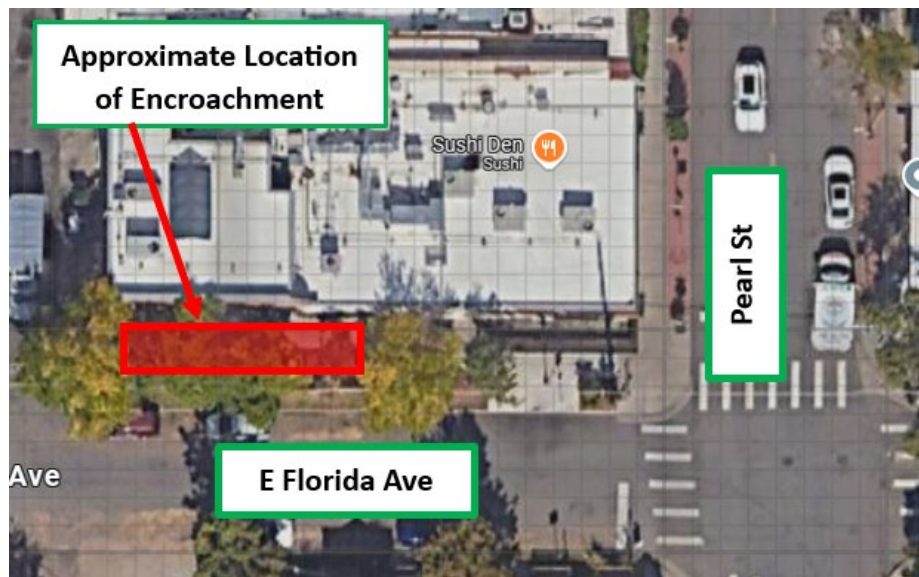
Description of Proposed Encroachment: Request for a Resolution granting a revocable permit, subject to certain terms and conditions, to Toshihiro Kizaki, their successors and assigns, to encroach into the right-of-way with six elevated patios and electrical service at the Sushi Den at 1487 South Pearl Street.

Applicant’s explanation of why the Public Right-of-Way must be utilized for their private improvement: The patios need to be modified and electrical cables need to be buried in order to comply with Denver code.

Annual Fees: \$200.00 per year.

Additional Information: None

Location Map:



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/rowplanreview
Phone: (720) 865-3003

**EXHIBIT A
LAND DESCRIPTION**

PARCEL 1

A TRACT OF LAND LOCATED IN THE NORTHEAST QUARTER OF SECTION 22, TOWNSHIP 4 SOUTH, RANGE 68 WEST OF THE SIXTH PRINCIPAL MERIDIAN, CITY AND COUNTY OF DENVER, STATE OF COLORADO, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT A RANGE POINT CALCULATED FROM FOUND REFERENCE POINTS AT THE INTERSECTION OF E. FLORIDA AVENUE AND S. PEARL STREET;

THENCE NORTH 44°41'46" WEST, A DISTANCE OF 28.28 FEET TO THE SOUTHEAST CORNER OF LOT 24, BLOCK 30, SHERMAN SUBDIVISION;

THENCE ALONG THE SOUTH LINE OF SAID LOT 24, SAME BEING THE NORTH LINE OF E. FLORIDA AVENUE, NORTH 89°41'50" WEST, A DISTANCE OF 40.67 FEET;

THENCE DEPARTING SAID LINES SOUTH 00°18'10" WEST, A DISTANCE OF 6.83 FEET TO THE **POINT OF BEGINNING**;

THENCE CONTINUING SOUTH 00°18'10" WEST, A DISTANCE OF 8.00 FEET;

THENCE PARALLEL WITH THE SOUTH LINE OF SAID LOT 24 NORTH 89°41'50" WEST, A DISTANCE OF 75.42 FEET;

THENCE NORTH 00°18'10" EAST, A DISTANCE OF 8.00 FEET;

THENCE PARALLEL WITH AND 6.83 FEET SOUTH OF THE SOUTH LINE OF SAID LOT 24 SOUTH 89°41'50" EAST, A DISTANCE OF 75.42 FEET TO THE **POINT OF BEGINNING**;

CONTAINING A CALCULATED AREA OF 603 SQUARE FEET OR 0.014 ACRE, MORE OR LESS.

PARCEL 2

A TRACT OF LAND LOCATED IN THE NORTHEAST QUARTER OF SECTION 22, TOWNSHIP 4 SOUTH, RANGE 68 WEST OF THE SIXTH PRINCIPAL MERIDIAN, CITY AND COUNTY OF DENVER, STATE OF COLORADO, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:



COMMENCING AT A RANGE POINT CALCULATED FROM FOUND REFERENCE POINTS AT THE INTERSECTION OF E. FLORIDA AVENUE AND S. PEARL STREET;

THENCE NORTH 44°41'46" WEST, A DISTANCE OF 28.28 FEET TO THE SOUTHEAST CORNER OF LOT 24, BLOCK 30, SHERMAN SUBDIVISION AND THE **POINT OF BEGINNING**;

THENCE SOUTH 00°18'10" WEST, A DISTANCE OF 7.17 FEET;

THENCE PARALLEL WITH THE SOUTH LINE OF SAID LOT 24, SAME BEING THE NORTH LINE OF EAST FLORIDA AVENUE, NORTH 89°41'50" WEST, A DISTANCE OF 31.33 FEET;

THENCE NORTH 00°18'10" EAST, A DISTANCE OF 7.17 FEET TO THE SOUTH LINE OF SAID LOT 24;

THENCE ALONG THE SOUTH LINE OF SAID LOT 24 SOUTH 89°41'50" EAST, A DISTANCE OF 31.33 FEET TO THE SOUTHEAST CORNER OF SAID LOT 24 AND THE **POINT OF BEGINNING**;

CONTAINING A CALCULATED AREA OF 225 SQUARE FEET OR 0.005 ACRE, MORE OR LESS.

THE BASIS OF BEARINGS FOR THE ABOVE LEGAL DESCRIPTIONS IS THE 20.00 FOOT RANGE LINE IN E. FLORIDA AVENUE, BEING CALCULATED AT THE INTERSECTION WITH S. PEARL STREET BY FOUND REFERENCE POINTS AND AT THE INTERSECTION WITH S. PENNSYLVANIA STREET BY A STONE WITH CHISELED CROSS FOUND IN A RANGE BOX. SAID 20.00 FOOT RANGE LINE IS ASSUMED TO BEAR NORTH 89°41'50" WEST, A DISTANCE OF 325.10 FEET, WITH ALL BEARINGS CONTAINED HEREIN BEING RELATIVE THERETO.

KEVIN J. KUCHARCZYK, P.L.S.
COLORADO REG. NO. 34591
FOR AND ON BEHALF OF
R&R ENGINEERS-SURVEYORS, INC

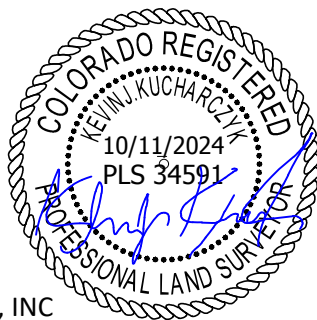
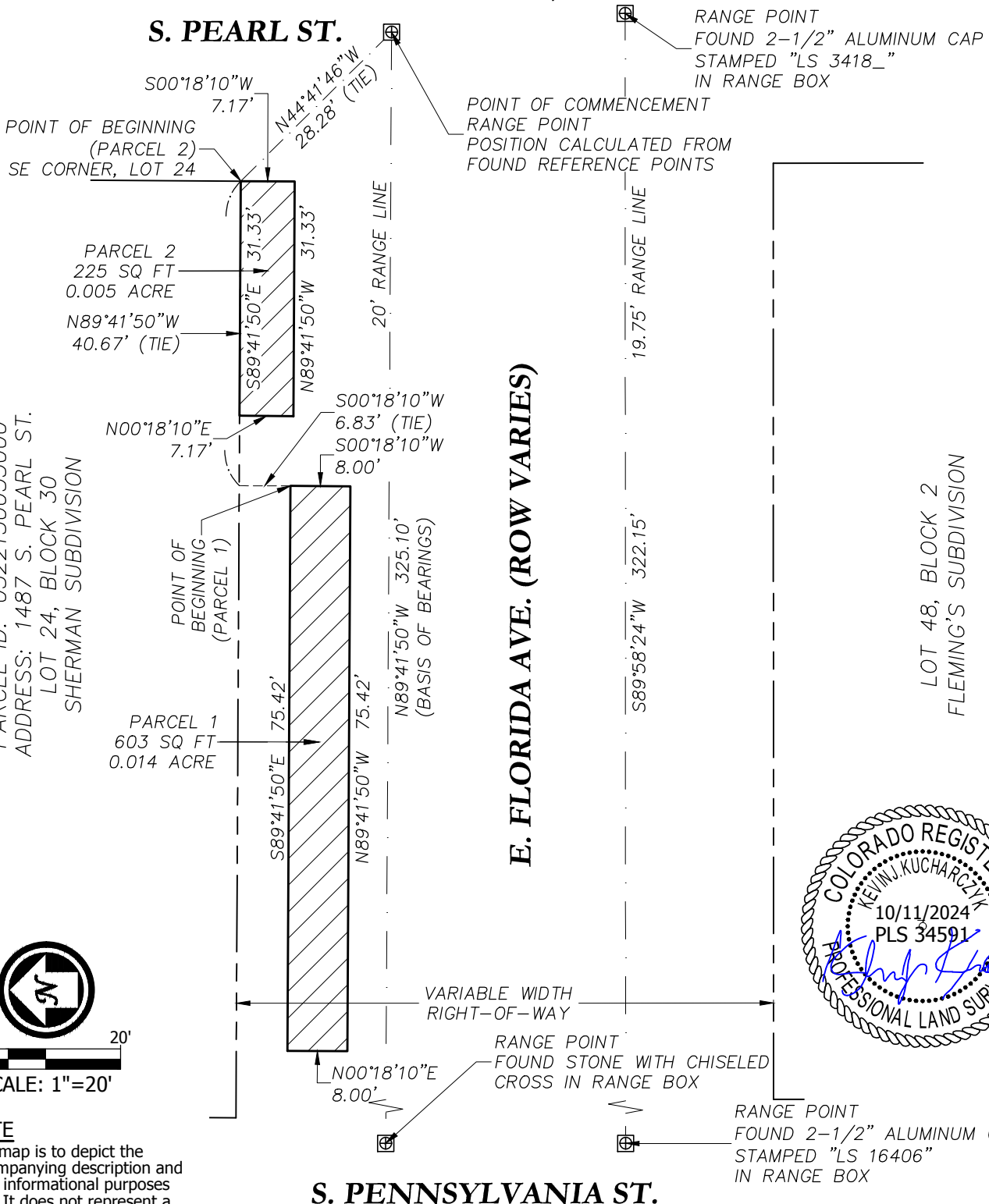


EXHIBIT A

2024-ENCROACHMENT-0000070-002

BEING A PART OF THE NORTHEAST QUARTER OF OF SECTION 22,
TOWNSHIP 4 SOUTH, RANGE 68 WEST OF THE 6TH PRINCIPAL MERIDIAN
CITY AND COUNTY OF DENVER, STATE OF COLORADO

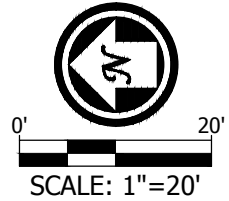
S. PEARL ST.



OWNER: KIZAKI, TOSHIHIRO
PARCEL ID: 0522130053000
ADDRESS: 1487 S. PEARL ST.
LOT 24, BLOCK 30
SHERMAN SUBDIVISION

PARCEL 1
603 SQ FT
0.014 ACRE

PARCEL 2
225 SQ FT
0.005 ACRE



NOTE
This map is to depict the accompanying description and is for informational purposes only. It does not represent a monumented land survey.

S. PENNSYLVANIA ST.

E. FLORIDA AVE. (ROW VARIES)

LOT 48, BLOCK 2
FLEMING'S SUBDIVISION

TIER III ENCROACHMENT EXHIBIT

REVISIONS		Orig. Issue Date: 10/11/2024	Sheet
		Drawn By: MJP	3
		Checked By: KJK	of
		Project No. SD24078	3



R&R ENGINEERS-SURVEYORS, INC.
1635 W. 13TH AVENUE, SUITE 310
DENVER, COLORADO 80204
303-753-6730
www.rrengineers.com

Oct 11, 2024 - 11:03am Plotted by: mpellegrini P:\SD24078 1487 & 1501 S. Pearl St\Survey - Legal Group\30-CAD Drawings\SD24078-T3 Enc Exhibit - North.dwg



LAND TITLE GUARANTEE COMPANY

Date: October 21, 2024

Subject: Attached Title Policy/Guarantee

Enclosed please find your product relating to the property located at 1487 S PEARL ST, Denver, CO 80210.

If you have any inquiries or require further assistance, please contact Scott Bennetts at (303) 850-4175 or sbennetts@ltgc.com

Chain of Title Documents:

[Denver county recorded 12/31/1990 under reception no. R-90-0120342](#)

[Denver county recorded 03/16/2012 under reception no. 2012036171](#)

Property Information Binder

CONDITIONS AND STIPULATIONS

1. Definition of Terms

The following terms when used in this Binder mean:

- (a) "Land": The land described, specifically or by reference, in this Binder and improvements affixed thereto which by law constitute real property;
- (b) "Public Records"; those records which impart constructive notice of matters relating to said land;
- (c) "Date": the effective date;
- (d) "the Assured": the party or parties named as the Assured in this Binder, or in a supplemental writing executed by the Company;
- (e) "the Company" means Old Republic National Title Insurance Company, a Minnesota stock company.

2. Exclusions from Coverage of this Binder

The company assumes no liability including cost of defense by reason of the following:

- (a) Taxes or assessments which are not shown as existing liens by the records of any taxing authority that levies taxes or assessments on real property or by the Public Records; taxes and assessments not yet due or payable and special assessments not yet certified to the Treasurer's office.
- (b) Unpatented mining claims; reservations or exceptions in patents or in Acts authorizing the issuance thereof; water rights, claims or title to water.
- (c) Title to any property beyond the lines of the Land, or title to streets, roads, avenues, lanes, ways or waterways on which such land abuts, or the right to maintain therein vaults, tunnels, ramps, or any other structure or improvement; or any rights or easements therein unless such property, rights or easements are expressly and specifically set forth in said description.
- (d) Mechanic's lien(s), judgment(s) or other lien(s).
- (e) Defects, liens, encumbrances, adverse claims or other matters: (a) created, suffered or agreed to by the Assured;(b) not known to the Company, not recorded in the Public Records as of the Date, but known to the Assured as of the Date; or (c) attaching or creating subsequent to the Date.

3. Prosecution of Actions

1. The Company shall have the right at its own costs to institute and prosecute any action or proceeding or do any other act which in its opinion may be necessary or desirable to establish or confirm the matters herein assured; and the Company may take any appropriate action under the terms of this Binder, whether or not it shall be liable thereunder and shall not thereby concede liability or waive any provision hereof.
2. In all cases where the Company does not institute and prosecute any action or proceeding, the Assured shall permit the Company to use, at its option, the name of the Assured for this purpose. Whenever requested by the Company, the Assured shall give the Company all reasonable aid in prosecuting such action or proceeding, and the Company shall reimburse the Assured for any expense so incurred.

4. Notice of Loss - Limitation of Action

A statement in writing of any loss or damage for which it is claimed the Company is liable under this Binder shall be furnished to the Company within sixty days after such loss or damage shall have been determined, and no right of action shall accrue to the Assured under this Binder until thirty days after such statement shall have been furnished, and no recovery shall be had by the Assured under this Binder unless action shall be commenced thereon with two years after expiration of the thirty day period. Failure to furnish the statement of loss or damage or to commence the action within the time hereinbefore specified, shall be conclusive bar against maintenance by the Assured of any action under this Binder.

5. Option to Pay, Settle or Compromise Claims

The Company shall have the option to pay, settle or compromise for or in the name of the Assured any claim which could result in loss to the Assured within the coverage of this Binder, or to pay the full amount of this Binder. Such payment or tender of payment of the full amount of the Binder shall terminate all liability of the Company hereunder.

6. Limitation of Liability - Payment of Loss

- (a) The liability of the Company under this Binder shall be limited to the amount of actual loss sustained by the Assured because of reliance upon the assurances herein set forth, but in no event shall the liability exceed the amount of the liability stated on the face page hereof.
- (b) The Company will pay all costs imposed upon the Assured in litigation carried on by the Company for the Assured, and all costs and attorneys' fees in litigation carried on by the Assured with the written authorization of the Company.
- (c) No claim for loss or damages shall arise or be maintainable under this Binder (1) if the Company after having received notice of any alleged defect, lien or encumbrance not shown as an Exception or excluded herein removes such defect, lien or encumbrance within a reasonable time after receipt of such notice, or (2) for liability voluntarily assumed by the Assured in settling any claim or suit without written consent of the Company.
- (d) All payments under this Binder, except for attorney's fees as provided for in paragraph 6(b) thereof, shall reduce the amount of the liability hereunder pro tanto, and no payment shall be made without producing this Binder or an acceptable copy thereof for endorsement of the payment unless the Binder be lost or destroyed, in which case proof of the loss or destruction shall be furnished to the satisfaction of the Company.
- (e) When liability has been definitely fixed in accordance with the conditions of this Binder, the loss or damage shall be payable within thirty days thereafter.

7. Subrogation Upon Payment or Settlement

Whenever the Company shall have settled a claim under this Binder, all right of subrogation shall vest in the Company unaffected by any act of the Assured, and it shall be subrogated to and be entitled to all rights and remedies which the Assured would have had against any person or property in respect to the claim had this Binder not been issued. If the payment does not cover the loss of the Assured, the Company shall be subrogated to the rights and remedies in the proportion which the payment bears to the amount of said loss. The Assured, if requested by the Company, shall transfer to the Company all rights and remedies against any person or property necessary in order to perfect the right of subrogation, and shall permit the Company to use the name of the Assured in any transaction or litigation involving the rights or remedies.

8. Binder Entire Contract

Any action or actions or rights of action that the Assured may have or may bring against the Company arising out of the subject matter hereof must be based on the provisions of this Binder. No provision or condition of this Binder can be waived or changed except by a writing endorsed or attached hereto signed by the President, a Vice President, the Secretary, an Assistant Secretary or other validating officer of the Company.

9. Notices. Where Sent

All notices required to be given the Company and any statement in writing required to be furnished the Company shall be addressed to it at 400 Second Avenue South, Minneapolis, Minnesota 55401, (612) 371-1111.

10. Arbitration

Unless prohibited by applicable law, either the Company or the insured may demand arbitration pursuant to the Title Insurance Arbitration Rules of the American Arbitration Association.

ANTI-FRAUD STATEMENT: Pursuant to CRS 10-1-128(6)(a), it is unlawful to knowingly provide false, incomplete or misleading facts or information to an insurance company for the purpose of defrauding or attempting to defraud the company. Penalties may include imprisonment, fines, denial of insurance and civil damages. Any insurance company or agent of an insurance company who knowingly provides false, incomplete, or misleading facts or information to a policyholder or claimant for the purpose of defrauding or attempting to defraud the policyholder or claimant with regard to a settlement or award payable from insurance proceeds shall be reported to the Colorado division of insurance within the department of regulatory agencies.

This anti-fraud statement is affixed and made a part of this policy.

Issued by:
Land Title Guarantee Company
3033 East First Avenue Suite 600
Denver, Colorado 80206
303-321-1880



Craig B. Rants, Senior Vice President



OLD REPUBLIC NATIONAL TITLE INSURANCE COMPANY
A Stock Company
1408 North Westshore Blvd., Suite 900, Tampa, Florida 33607
(813) 371-1111 www.oldrepublictitle.com

By  President

Attest  Secretary

**AMERICAN
LAND TITLE
ASSOCIATION**



Old Republic National Title Insurance Company
PROPERTY INFORMATION BINDER

Order Number: RND70852374

Policy No.: PIB70852374.27428371

Liability: \$50,000.00

Fee: \$500.00

Subject to the exclusions from coverage, the limits of liability and other provisions of the Conditions and Stipulations hereto annexed and made a part of this Binder,

OLD REPUBLIC NATIONAL TITLE INSURANCE COMPANY a Corporation, herein called the Company,

GUARANTEES

ROTH SHEPPARD ARCHITECTS, ITS SUCCESSORS AND/OR
ASSIGNS

Herein called the Assured, against loss, not exceeding the liability amount stated above, which the assured shall sustain by reason of any incorrectness in the assurance which the Company hereby gives that, according to the public records as of

October 16, 2024 at 5:00 P.M.

1. Title to said estate or interest at the date hereof is vested in:

TOSHIHIRO KIZAKI

2. The estate or interest in the land hereinafter described or referred to covered by this Binder :

FEE SIMPLE

3. The Land referred to in this Binder is described as follows:

LOTS 24 THROUGH 27, INCLUSIVE, BLOCK 30, SHERMAN SUBDIVISION, CITY AND COUNTY OF DENVER, STATE OF COLORADO.

4. The following documents affect the land:

1. EXISTING LEASES AND TENANCIES, IF ANY.
2. TERMS, CONDITIONS AND PROVISIONS OF ACCESS AND USE EASEMENT AGREEMENT RECORDED APRIL 17, 1991 UNDER RECEPTION NO. [R-91-0032249](#).
3. DEED OF TRUST DATED JULY 31, 2007 FROM PEARL STREET LAND TO THE PUBLIC TRUSTEE OF DENVER COUNTY FOR THE USE OF SUN LIFE ASSURANCE COMPANY OF CANADA TO SECURE THE SUM OF \$9,900,000.00, AND ANY OTHER AMOUNTS PAYABLE UNDER THE TERMS THEREOF, RECORDED JULY 31, 2007, UNDER RECEPTION NO. [2007121037](#).
SAID DEED OF TRUST WAS FURTHER SECURED BY ASSIGNMENT OF LEASES AND RENTS RECORDED JULY 31, 2007, UNDER RECEPTION NO. [2007121038](#).

Old Republic National Title Insurance Company
PROPERTY INFORMATION BINDER

Order Number: RND70852374

Policy No.: PIB70852374.27428371

4. ZONE LOT AMENDMENT RECORDED AUGUST 8, 2012 UNDER RECEPTION NO. [2012105312](#).
5. TERMS, CONDITIONS, PROVISIONS, BURDENS AND OBLIGATIONS AS SET FORTH IN INSTRUMENT RECORDED OCTOBER 17, 2012 UNDER RECEPTION NO. [2012142479](#).
6. TERMS, CONDITIONS, PROVISIONS, BURDENS, OBLIGATIONS AND EASEMENTS AS SET FORTH AND GRANTED IN RESOLUTION NO. CR16-0788, SERIES OF 2016 RECORDED SEPTEMBER 29, 2016 UNDER RECEPTION NO. [2016133827](#).
7. TERMS, CONDITIONS, PROVISIONS, BURDENS, OBLIGATIONS AND EASEMENTS AS SET FORTH AND GRANTED IN RESOLUTION NO. CR17-10, SERIES OF 2017 RECORDED FEBRUARY 15, 2017 UNDER RECEPTION NO. [2017020424](#).
8. DEED OF TRUST DATED NOVEMBER 26, 2019 FROM TOSHIHIRO KIZAKI AND MICHIKO KIZAKI TO THE PUBLIC TRUSTEE OF DENVER COUNTY FOR THE USE OF WELLS FARGO BANK, NATIONAL ASSOCIATION TO SECURE THE SUM OF \$6,900,000.00, AND ANY OTHER AMOUNTS PAYABLE UNDER THE TERMS THEREOF, RECORDED DECEMBER 06, 2019, UNDER RECEPTION NO. [2019171317](#).
SUBORDINATION AGREEMENT IN CONNECTION WITH SAID DEED OF TRUST WAS RECORDED APRIL 28, 2016, UNDER RECEPTION NO. [2016056018](#).
9. TERMS, CONDITIONS, PROVISIONS, BURDENS AND OBLIGATIONS AS SET FORTH IN DISHWASHING MACHINE AGREEMENT RECORDED DECEMBER 10, 2019 UNDER RECEPTION NO. [2019172723](#).