


REQUEST FOR ORDINANCE TO RELINQUISH AN EASEMENT

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

FROM: Matt R. Bryner, PE, Director, Right of Way Services 
Matt R. Bryner (Jan 10, 2023 16:20 MST)

PROJECT NO: 2021-RELINQ-0000002

DATE: January 5, 2023

SUBJECT: Request for an Ordinance to relinquish the entire easement established in the Permanent Non-Exclusive Easement with recordation No. 2020053681, as recorded on April 20, 2020. Located at 2100-2130 Arapahoe Street.

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

This office has investigated the request of XSC Denver 3.0 Investment, LLC, dated October 5, 2022 on behalf of XSC Denver 3.0 Investment, LLC for the relinquishment of the subject easement(s).

This matter has been coordinated with City Councilperson CdeBaca, District 9; Asset Management; Emergency Management; Community Planning & Development; Planning Services; Historic Preservation/Landmark; Denver Water; Denver Fire Department; City Forester; Parks and Recreation; DOTI: DES Transportation & Wastewater, Construction Engineering, Policy and Planning, TES Signing and Striping, Survey; Colorado Department of Transportation; Regional Transportation District; Comcast; Metro Wastewater Reclamation District; CenturyLink; and Xcel Energy, all of whom have indicated no objection to the proposed easement relinquishment(s).

As a result of these investigations, it has been determined that there is no objection to relinquishing the subject easement(s).

Therefore, you are requested to initiate Council action to relinquish the easement.

A vicinity map of the subject easement area(s) and a copy of the document(s) creating the easement(s) are attached.

MB:VW

cc: City Councilperson & Aides
City Council Staff – Zach Rothmier
Department of Law – Bradley Beck
Department of Law – Deanne Durfee
Department of Law – Maureen McGuire
Department of Law – Martin Plate
DOTI, Manager's Office – Alba Castro
DOTI, Legislative Services – Jason Gallardo
DOTI, Survey – Paul Rogalla

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
Phone: 720-865-3003

ORDINANCE/RESOLUTION REQUEST

Please email requests to Jason Gallardo
at Jason.Gallardo@denvergov.org by **12:00pm on Monday**. Contact him with questions.

Date of Request: **December 28, 2022**

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: Easement Relinquishment

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 an Ordinance to relinquish the entire easement established in the Permanent Non-Exclusive Easement with recordation No. 2020053681, as recorded on April 20, 2020. Located at 2100-2130 Arapahoe Street

3. Requesting Agency: DOTI ROWS Engineering & Regulatory

4. Contact Person:

Contact person with knowledge of proposed ordinance/resolution	Contact person to present item at Mayor-Council and Council
Name: Vanessa West	Name: Jason Gallardo
Email: Vanessa.west@denvergov.org	Email: Jason.Gallardo@denvergov.org

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

Ordinance to relinquish the entire easement established in the Permanent Non-Exclusive Easement with recordation No. 2020053681, as recorded on April 20, 2020. Located at 2100-2130 Arapahoe Street

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

7. City Council District: District No. 9, CdeBaca

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

Key Contract Terms

To be completed by Mayor's Legislative Team:

Resolution/Bill Number: _____

Date Entered: _____

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

<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: _____

EASEMENT RELINQUISHMENT EXECUTIVE SUMMARY

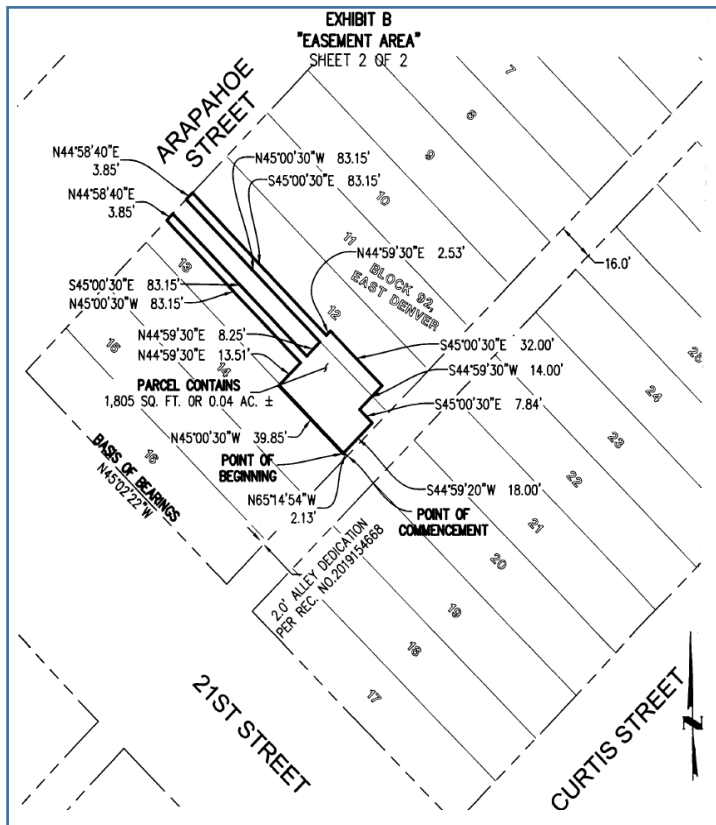
Project Title: 2021-RELINQ-0000002 2100-2130 Arapahoe St Relinquishment (X Denver 3)

Property Owner: XSC Denver 3.0 Investment, LLC

Description of Proposed Project: Relinquish the entire easement established in the Permanent Non-Exclusive Easement with recordation No. 2020053681, as recorded on April 20, 2020. Located at 2100-2130 Arapahoe Street

Background: The easement was put in place in April of 2020 in association a new construction development project on the site. In the period since then the development project design was modified, the new design requires the location of the easement to be relocated. As such we are seeking to relinquish the easement recorded on 4/20/20, and file for a new easement area.

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/dot
 Phone: 720-865-3003



2020053681

Page: 1 of 9

D \$0.00

[2018PM0000672]

PERMANENT NON-EXCLUSIVE EASEMENT

2100-2130 Arapahoe Street, Denver

This Permanent Non-Exclusive Easement ("Easement"), made 3rd day of February, 2020 between XSC DENVER 3.0 INVESTMENT, LLC whose address is 308 W Erie St, Ste 400 Chicago, IL 60654 ("Grantor(s)" or "Owner(s)") and the CITY AND COUNTY OF DENVER, a home rule city and municipal corporation of the State of Colorado, whose address is 1437 Bannock Street, Denver, Colorado 80202 ("City" or "Grantee").

For and in consideration of connection to City wastewater facilities and other good and valuable consideration, receipt and sufficiency of which is hereby acknowledged, the Grantor agrees as follows:

1. The Grantor(s) are the owner of the property commonly known and addressed as 2100-2130 Arapahoe Street (the "Property"), described in Exhibit A attached hereto and incorporated herein, which will be served by the following privately-owned wastewater facilities: permanent underground detention vault without pump(s), underground detention structure emergency overflow outlet pipe, and underground detention structure storm sewer outlet pipe (collectively the "Facilities").
2. The Grantor(s) are jointly and severally responsible for the maintenance and service of such Facilities to ensure conformance with all applicable plans and standards approved by the City.
3. The Grantor(s) hereby grant(s) and convey(s) a permanent non-exclusive easement to the City under, in, upon, across, and over the land described in Exhibit B attached hereto and incorporated herein ("Easement Area"), for the purpose of maintaining, repairing, and servicing the Facilities if required as set forth herein, together with any and all rights of ingress and egress, necessary or convenient to the City to accomplish such purposes.

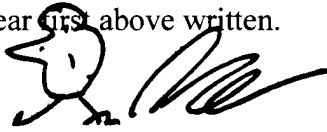
4. The Grantor(s) shall pay for and be responsible for all costs to construct, reconstruct, repair and maintain the Property, the Easement Area and all Facilities within the Easement Area to ensure conformance with all applicable plans and standards relating to the Facilities approved by the City. The City shall not be responsible for any construction, repairs, maintenance, cleaning, snow removal or any other services on the Property, within the Easement Area or of the Facilities.
5. If, in the sole opinion of the City's Manager of the Department of Transportation and Infrastructure, Facilities are not properly maintained, constructed, repaired, or serviced by Grantor(s), the City shall give notice to the Grantor(s) (except in cases of emergency as provided below), and if maintenance, construction, repairs, servicing, or corrections are not made within thirty (30) days of such notice, the City is authorized, but not required, to make or have made maintenance, construction, repairs, servicing or corrections. If the City performs such maintenance, construction, repair, servicing or correction, the City may charge and collect the costs thereof from the Grantor(s). However, in cases of emergency, as solely determined by the City's Manager of Public Works, the City may choose to make immediate maintenance, servicing, repairs or corrections and to collect the cost thereof from the Grantor(s) without notice.
6. The Grantor(s) shall in no way consider or hold the City or its personnel liable for trespass in the performance of any of the maintenance, construction, repairing, servicing, correcting or other activities referred to herein. Grantor(s) hereby agree 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 the work performed under this Easement ("Claims"), unless such Claims have been specifically determined by the trier of fact to be the sole negligence or willful misconduct of the City. This indemnity shall be interpreted in the broadest possible manner to indemnify City for any acts or omissions either passive or active, irrespective of fault, including City's concurrent negligence whether active or passive, except for the sole negligence or willful misconduct of City. Grantor(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. Grantor(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

With a Copy to: XSC Denver 3.0 Investment, LLC
Attn: Andrew Kerr
308 W Erie St, Ste 400
Chicago, IL 60654
andrew@thexcompany.com

11. All obligations of the City pursuant to this Easement, if any, are subject to prior appropriation of monies expressly made by the City Council for the purposes of this Easement and paid into the Treasury of the City.

[Signatures follow on next page.]

IN WITNESS WHEREOF, the Grantor(s) hereto have executed this Permanent Non- Exclusive Easement as of the day and year ~~first~~ above written.



GRANTOR(S): _____

BY: Manager _____

Person(s) and Title(s)
Noah Gottlieb _____

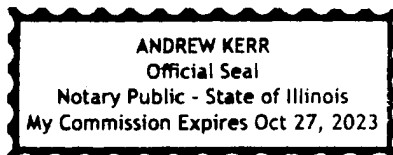
Printed Name(s)

STATE OF Illinois)
COUNTY OF Cook)

The foregoing instrument was acknowledged before me this 3rd day of February, 2020, by Noah Gottlieb as Manager for XSC Denver 3.0, as the Grantor(s).

Witness my hand and official seal.

My commission expires: 10/27/2023



Notary Public

308 W. Erie, Ste 400
Chicago, IL 60654

Address

2018 PM672 - PNEE

EXHIBIT A
"PROPERTY"
LAND DESCRIPTION
SHEET 1 OF 2

A PORTION OF LOTS 9 THROUGH 16, INCLUSIVE, BLOCK 92, EAST DENVER, SITUATED IN THE NORTHWEST QUARTER OF SECTION 34, TOWNSHIP 3 SOUTH, RANGE 68 WEST OF THE 6TH P.M., CITY AND COUNTY OF DENVER, STATE OF COLORADO, MORE PARTICULARLY DESCRIBED AS FOLLOWS.

COMMENCING AT THE SOUTH CORNER OF SAID LOT 16;
THENCE NORTH 45°02'22" WEST ALONG THE SOUTHWEST LINE OF SAID BLOCK 16 A DISTANCE OF 2.00 FEET TO THE **POINT OF BEGINNING**;
THENCE NORTH 45°02'22" WEST ALONG THE SOUTHWEST LINE OF SAID LOT 16, A DISTANCE OF 122.98 FEET TO THE WEST CORNER OF SAID LOT 16;
THENCE NORTH 44°58'40" EAST ALONG THE NORTHWEST LINE OF SAID BLOCK 92, A DISTANCE OF 200.58 FEET TO THE NORTH CORNER OF SAID LOT 9;
THENCE SOUTH 45°00'55" EAST ALONG THE NORTHEAST LINE OF SAID LOT 9, A DISTANCE OF 123.02 FEET ;
THENCE SOUTH 44°59'20" WEST, A DISTANCE OF 200.53 FEET TO THE **POINT OF BEGINNING**.

SAID PARCEL CONTAINS 24,667 SQUARE FEET OR 0.57 ACRES, MORE OR LESS.

BASIS OF BEARINGS: BEARINGS ARE BASED ON THE SOUTHWEST LINE OF LOT 16, BLOCK 92, EAST DENVER, ASSUMED TO BEAR NORTH 45°02'22" WEST.

PREPARED BY: AARON MURPHY
PLS 38162

ON BEHALF OF: HARRIS KOCHER SMITH
1120 LINCOLN STREET, SUITE 1000
DENVER, CO 80203
303.623.6300

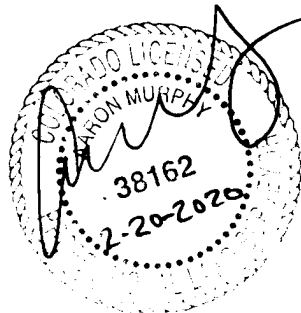
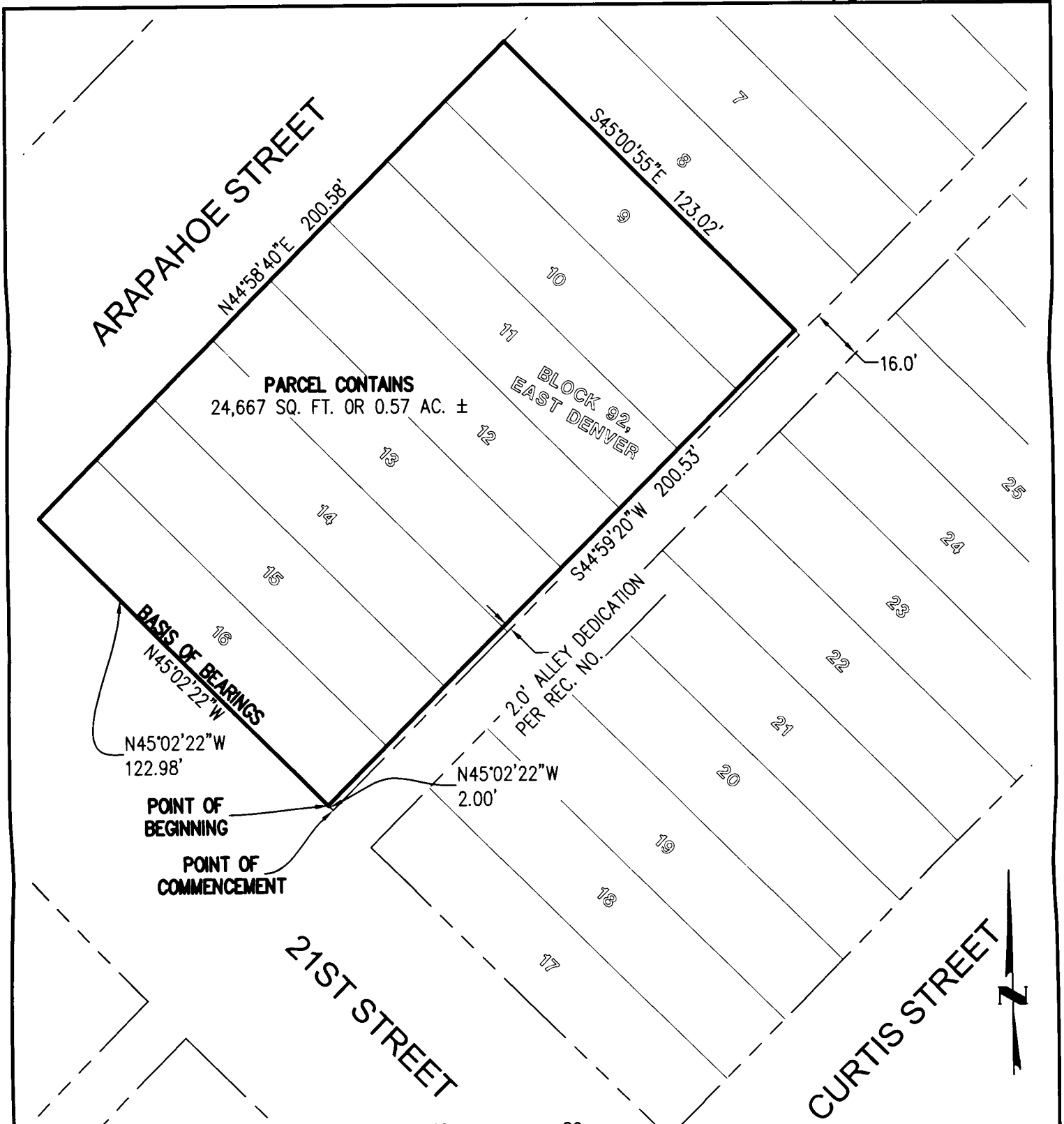


EXHIBIT A
"PROPERTY"
SHEET 2 OF 2

2018 PM 672 - PNEE



SCALE: 1" = 40'

NOTE:
THIS EXHIBIT DOES NOT REPRESENT A MONUMENTED LAND SURVEY.
IT IS INTENDED TO DEPICT ONLY THE ATTACHED LEGAL DESCRIPTION.
NO CHANGES ARE TO BE MADE TO THIS DRAWING WITHOUT WRITTEN PERMISSION OF HARRIS KOCHER SMITH

FILEPATH: P:\181134\SURVEY\JOB-ADMC_LAYOUT_LAYOUT1	
NO. SHEETS: 2	
PLOTTER: FB 02/21/20 8:31:07A BY: AARON MURPHY	
ISSUE DATE: 10/11/2019	PROJECT # 181134
DATE	REVISION COMMENTS
12-06-2019	GENERAL REVISIONS

EXHIBIT A

ILLUSTRATION
21ST AND ARAPAHOE

HKS HARRIS KOCHER SMITH
1120 Lincoln Street, Suite 1000
Denver, Colorado 80203
P. 303.623.6300 F. 303.623.6311
HarrisKocherSmith.com

CHK'D BY: AWM
DRAWN BY: RCR

SHEET NO
2

2 OF 2

2018 PM 672 - PNEE

EXHIBIT B
"EASEMENT AREA"
LAND DESCRIPTION
SHEET 1 OF 2

A PORTION OF LOTS 12 THROUGH 14, INCLUSIVE, BLOCK 92, EAST DENVER, SITUATED IN THE NORTHWEST QUARTER OF SECTION 34, TOWNSHIP 3 SOUTH, RANGE 68 WEST OF THE 6TH P.M., CITY AND COUNTY OF DENVER, STATE OF COLORADO, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

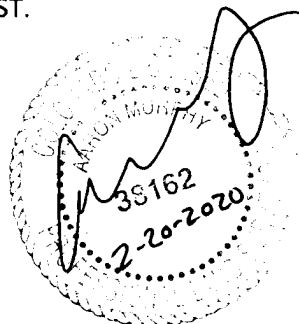
COMMENCING AT THE SOUTH CORNER OF LOT 13, SAID BLOCK 92;
THENCE NORTH 65°15'54" WEST, A DISTANCE OF 2.13 FEET TO THE **POINT OF BEGINNING**;
THENCE NORTH 45°00'30" WEST, A DISTANCE OF 39.85 FEET;
THENCE NORTH 44°59'30" EAST, A DISTANCE OF 13.51 FEET;
THENCE NORTH 45°00'30" WEST, A DISTANCE OF 83.15 FEET TO A POINT ON THE NORTHWEST LINE OF SAID LOT 13;
THENCE NORTH 44°58'40" EAST ALONG SAID NORTHWEST LINE, A DISTANCE OF 3.85 FEET;
THENCE SOUTH 45°00'30" EAST, A DISTANCE OF 83.15 FEET;
THENCE NORTH 44°59'30" EAST, A DISTANCE OF 8.25 FEET;
THENCE NORTH 45°00'30" WEST, A DISTANCE OF 83.15 FEET TO A POINT ON THE NORTHWEST LINE OF SAID LOT 12;
THENCE NORTH 44°58'40" EAST ALONG SAID NORTHWEST LINE, A DISTANCE OF 3.85 FEET;
THENCE SOUTH 45°00'30" EAST, A DISTANCE OF 83.15 FEET;
THENCE NORTH 44°59'30" EAST, A DISTANCE OF 2.53 FEET;
THENCE SOUTH 45°00'30" EAST, A DISTANCE OF 32.00 FEET;
THENCE SOUTH 44°59'30" WEST, A DISTANCE OF 14.00 FEET;
THENCE SOUTH 45°00'30" EAST, A DISTANCE OF 7.84 FEET;
THENCE SOUTH 44°59'20" WEST, A DISTANCE OF 18.00 FEET TO THE **POINT OF BEGINNING**.

SAID PARCEL CONTAINS 1,805 SQUARE FEET OR 0.04 ACRES, MORE OR LESS.

BASIS OF BEARINGS: BEARINGS ARE BASED ON THE SOUTHWEST LINE OF LOT 16, BLOCK 92, EAST DENVER, ASSUMED TO BEAR NORTH 45°02'22" WEST.

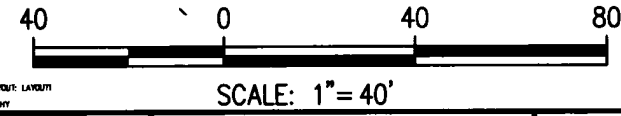
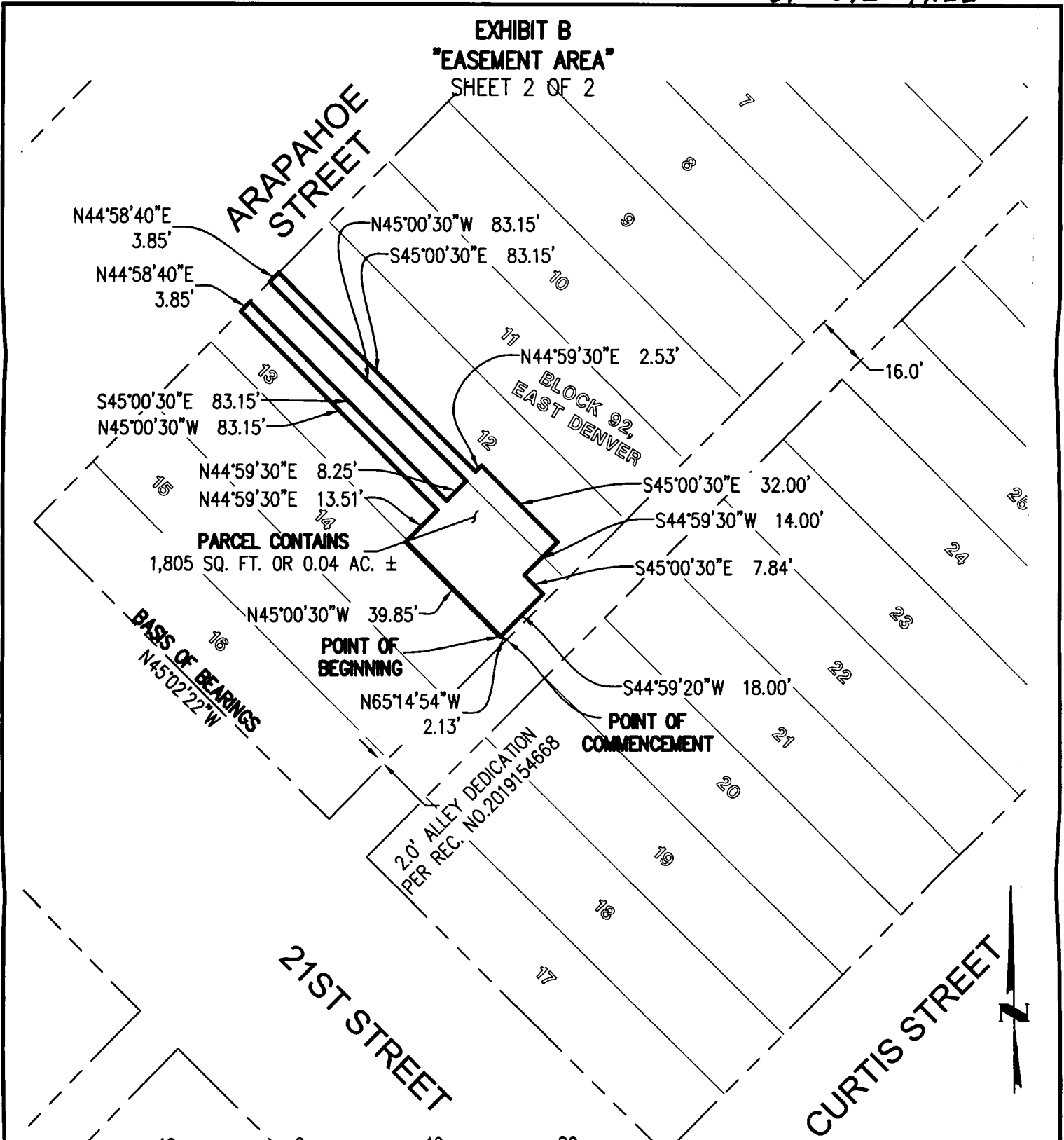
PREPARED BY: AARON MURPHY
PLS 38162

ON BEHALF OF: HARRIS KOCHER SMITH
1120 LINCOLN STREET, SUITE 1000
DENVER, CO 80203
303.623.6300



2018PM 672 - PNEE

EXHIBIT B
"EASEMENT AREA"
SHEET 2 OF 2



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PREPARE P:\181134\SURVEY\20-A-STRAILING LAYOUT.LAYOUT
NO. 181134
PLOTTED: PM 02/21/20 0:29:30A BY: AMON MURPHY

ISSUE DATE: 1/13/2020	PROJECT #: 181134
DATE	REVISION COMMENTS
2-20-2020	GEN REV

EXHIBIT A

ILLUSTRATION
21ST AND ARAPAHOE

HKS HARRIS KOCHER SMITH
1120 Lincoln Street, Suite 1000
Denver, Colorado 80203
P: 303.623.6300 F: 303.623.6311
HarrisKocherSmith.com

CHKD BY: AWM
DRAWN BY: RCR
SHEET NO
2
2 OF 2