

**PURCHASE AND SALE AGREEMENT**  
**(1431 N. Marion Street)**

**THIS PURCHASE AND SALE AGREEMENT** (the “Agreement”) is made and entered into as of the date set forth on the City signature page, by and between the **CITY AND COUNTY OF DENVER**, a Colorado municipal corporation and home rule city of the State of Colorado (the “City”) and **COLFAX DOWNING OWNER LLC**, a Delaware limited liability company whose address is 711 Navarro Street, Suite 400, San Antonio, Texas 78205 (the “Purchaser”), collectively “the Parties.”

**W I T N E S S E T H:**

**WHEREAS**, the City owns certain real property in the City and County of Denver known as 1431 N. Marion Street and has determined that it no longer requires ownership of the property for any City purpose; and

**WHEREAS**, the recommending and approving City officials have determined that it is in the best interest of the City to sell the property to Purchaser subject to the terms and conditions set forth below;

**NOW THEREFORE**, in consideration of the premises and the mutual covenants and obligations set forth herein, the Parties agree as follows:

**1. PROPERTY TO BE PURCHASED:** The Purchaser agrees to purchase and the City agrees to sell, a portion of the real property at 1431 N. Marion Street, Denver, Colorado which is more particularly described in **Exhibit A**, attached hereto and incorporated herein (the “Property”).

**2. PURCHASE PRICE AND TERMS:** The Purchase Price to be paid by Purchaser for the Property shall be **Seventeen Thousand Dollars and 00/100 Cents (\$17,000.00)** (the “Purchase Price”), payable to the City in good funds as follows:

(a) Purchaser shall make an earnest money (“Earnest Money”) deposit payable to the Manager of Finance in the amount of \$1700.00, in good funds within seven (7) business days of the Effective Date into an escrow account held by Land Title Guarantee Company (“Title Company”); and

(b) \$15,300.00 at the time of closing.

**3. EVIDENCE OF TITLE:** Purchaser may obtain, at Purchaser's sole cost and expense, a commitment for owner's title insurance policy for the Property (the "Title Commitment") from a title company of its choosing (the "Title Company") within thirty (30) days from the date of this Agreement.

**4. TITLE AND DEED:** The City shall convey the Property by a Quitclaim Deed, with no covenants of title or warranties, in substantially the same form as is attached as **Exhibit B**, "Quitclaim Deed."

**5. DATE OF CLOSING:** The date of Closing shall be the earlier of (1) thirty (30) days from the Purchaser's written notice to the City of its intent to close, and (2) July 1, 2021 (the "Closing") or as to a time mutually agreed in writing by the Parties. The hour and place of Closing shall be as designated by the City.

**6. TRANSFER OF TITLE:** The City shall execute and deliver a Quitclaim Deed to the Purchaser at Closing.

**7. POSSESSION:** Possession of the Property shall be delivered to Purchaser at Closing.

**8. CLOSING COSTS, DOCUMENTS AND SERVICES:** Purchaser shall pay all actual closing costs at Closing provided that such closing costs shall not include any legal fees. Purchaser and City shall sign and complete all reasonable customary or required documents at or before Closing (including, without limitation, a customary owner's affidavit/GAP indemnity in the form reasonably required by the Title Company), subject to such documents being approved by the City Attorney's office and in compliance with all laws, the Revised Municipal Code of the City and County of Denver, and the Charter and Ordinances of the City and County of Denver as the same may be amended from time to time.

**9. CONDITION OF PROPERTY:** Purchaser acknowledges that it will be purchasing the Property "AS IS" and "WITH ALL FAULTS" based upon the condition of the Property as of the date of this Agreement, subject to reasonable wear and tear and loss by fire or other casualty or condemnation from the date of this Agreement until the Closing. Purchaser acknowledges that neither the City nor its consultants or agents have made any representations or warranties of any kind upon which Purchaser is relying as to any matters concerning the Property, including, but not limited to, (i) the land, and any improvements, any personal property, (ii) the

existence or nonexistence of any hazardous substances, (iii) economic projections or market studies concerning the Property, (iv) any development rights, taxes, bonds, covenants, conditions and restrictions affecting the Property, (v) water or water rights, (vi) topography, drainage, soil, subsoil of the Property, (vii) the utilities serving the Property (viii) zoning, environmental, building or other laws, rules or regulations affecting the Property, (ix) the development, entitlements, benefits or other rights in connection with the development of the Property, (x) the obligations, restrictions, limitations, feasibility or other requirements in connection with the development of the Property, (xi) the current or future real estate tax liability, assessment or valuation of the Property, (xii) the potential qualification of the Property for any benefits conferred by any laws whether for subsidies, special real estate tax treatment, insurance, mortgages or any other benefits, whether similar or dissimilar to those enumerated, (xiii) the ability to obtain a change in the zoning or a variance in respect to the non-compliance of the Property, if any, with zoning laws, (xiv) the nature and extent of any right-of-way, easement, lease, possession, lien, encumbrance, license, reservation, condition, declaration, covenant or otherwise, (xv) the availability of any financing for the purchase, alteration, rehabilitation or operation of the Property from any source, including, without limitation, any government authority or any lender, (xvi) any matters excepted on the Title Commitment, (xvii) the current or future use of the Property, (xviii) the present and future condition and operating state of any personal property and the present or future structural and physical condition of any improvements, their suitability for rehabilitation or renovation, or the need for expenditures for capital improvements, repairs or replacements thereto, (xix) the actual or projected income or operating expenses of the Property. CITY MAKES NO WARRANTY OR REPRESENTATION, EXPRESS OR IMPLIED, OR ARISING BY OPERATION OF LAW, INCLUDING, BUT NOT LIMITED TO, ANY WARRANTY OF CONDITION, HABITABILITY, MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, WITH RESPECT TO THE PROPERTY. City makes no representation that the Property complies with Title III of the Americans With Disability Act or any fire codes or building codes. As of Closing Purchaser hereby releases the City from any and all liability in connection with any claims which Purchaser may have against the City, and Purchaser hereby shall not assert any claims, for contribution, cost recovery or otherwise, against the City relating directly or indirectly to the existence of hazardous substances on, or environmental conditions of, the Property.

**10. TIME IS OF THE ESSENCE/REMEDIES:** It is understood and agreed between the parties that time is of the essence hereof, and all the agreements herein contained shall be binding upon and for the benefit of each party's successors and assigns. If any payment due in accordance with this Agreement is not paid, honored or tendered when due, or if any other obligation hereunder is not performed or waived as herein provided, there shall be the following remedies:

(a) If Purchaser is in Default Prior to Closing: The City may elect to treat this Agreement as canceled, in which case, all Earnest Money, payments and things of value received shall be forfeited by Purchaser and retained by City and both parties shall thereafter be released from all obligations, except for continuing obligations of Purchaser hereunder.

(b) If City is in Default Prior to Closing: Purchaser may elect to: (1) treat this Agreement as canceled, in which case all payments and things of value received hereunder shall be returned to Purchaser or (2) to the extent this Agreement is duly executed by the City and approved by City Council pursuant to Section 28, assert and seek judgment against the City for specific performance; however, any action for specific performance must be filed and served upon the City within thirty (30) days after the City's alleged default, otherwise Purchaser shall be deemed to have elected to proceed in accordance with clause (1) above. Purchaser expressly waives the remedies of additional damages and, unless and until this Agreement is duly executed by the City and approved by City Council pursuant to Section 28, specific performance.

**11. TERMINATION:** In the event this Agreement is terminated for reason other than default, all payment and things of value received hereunder shall be returned and the parties shall be relieved of all obligations hereunder, except for continuing obligations of Purchaser as set forth in this Agreement.

**12. AUTHORITY TO EXECUTE:** Purchaser represents that the persons who have affixed their signature hereto have all necessary and sufficient authority to bind Purchaser.

**13. COOPERATION OF THE PARTIES:** In the event that any third party brings an action against either party regarding the validity or operation of this Agreement, the parties shall cooperate with the other in any such litigation. Purchaser shall bear its own legal costs in all circumstances.

**14. NO BROKER'S FEES:** The City and Purchaser represent to each other that they have had no negotiations through or brokerage services performed by any broker or intermediary

to facilitate purchase and sale of the property, and that no claims for commissions, fees or other compensation shall arise out of this transaction.

**15. ASSIGNMENT:** Neither party may assign its rights and obligations under this Agreement to any entity without the prior written consent of the other party. For the City, such consent shall be given by the Director of Real Estate (“Director”), in the Director’s sole and absolute discretion. If this Agreement is assigned as expressly permitted herein, such assignment shall be in writing, and all the covenants and agreements herein contained shall be binding upon and inure to the benefit of the successors, assigns, heirs, and personal representatives of the respective parties. If this Agreement is assigned without written consent, the assigning party shall be in default of this Agreement.

**16. SUBJECT TO LOCAL LAWS; VENUE:** Each and every term, provision, and condition herein is subject to the provisions of the laws of the United States, the State of Colorado, the Charter and Ordinances of the City and County of Denver, and regulations enacted pursuant thereto. The Charter and Revised Municipal Code of the City and County of Denver, as the same may be amended from time to time, are hereby expressly incorporated into this Agreement as if fully set out herein by this reference. This Agreement is made, shall be deemed to be made, and shall be construed in accordance with the laws of the State of Colorado. Venue for any action arising under this Agreement or any amendment or renewal shall lie in the District Court in and for the City and County of Denver, Colorado.

**17. NOTICES:** All notices provided for herein shall be in writing and shall be personally delivered or mailed by registered or certified United States mail, postage prepared, return receipt requested, to the parties at the addresses given below or at such other address that may be specified by written notice in accordance with this paragraph. All notices which are mailed shall be deemed to have been received three (3) days after deposit in the United States mail.

If to Denver: Mayor  
Mayor’s Office  
City and County Building  
1437 Bannock Street, Room 350  
Denver, CO 80202

With copies to: Denver City Attorney  
Denver City Attorney’s Office  
1437 Bannock Street, Room 353  
Denver, CO 80202

Director of Real Estate  
201 W. Colfax Avenue, Dept.1010  
Denver, CO 80202

If to Purchaser:

Kairoi Residential  
711 Navarro Street, Suite 400  
San Antonio, TX 78205  
Attn: Daniel Zunker, Tyler Sibley  
Email: [dzunker@kairoi.com](mailto:dzunker@kairoi.com); [tsibley@kairoi.com](mailto:tsibley@kairoi.com)

**18. PARTIES' LIABILITIES:** Each party shall be responsible for any and all suits, demands, costs or actions proximately resulting from its own individual acts or omissions.

**19. AGREEMENT AS COMPLETE INTEGRATION; AMENDMENTS:** This Agreement is intended as to the complete integration of all understandings between the parties regarding the purchase and sale of the Property. No prior or contemporaneous addition, deletion or other amendment shall have any force or effect whatsoever, unless embodied herein in writing. No subsequent novation, renewal, addition, deletion, or other amendment shall have any force or effect unless embodied in a written amendatory or other agreement executed by the parties in the same formality as this Agreement.

**20. PARAGRAPH HEADINGS:** The paragraph headings are inserted only as a matter of convenience and for reference and in no way are intended to be a part of this Agreement or to define, limit or describe the scope or intent of this Agreement or the particular paragraphs to which they refer.

**21. THIRD-PARTY BENEFICIARY:** The parties intend that this Agreement shall create no third party beneficiary interest except for an assignment pursuant to this Agreement. The parties are not presently aware of any actions by them or any of their authorized representatives which would form the basis for interpretation construing a different intent, and in any event expressly disclaim any such acts or actions, particularly in view of the integration of this Agreement.

**22. COUNTERPARTS:** This Agreement may be executed in counterparts, each of which shall be deemed to be an original, but of all which shall together constitute one and the same document.

**23. ELECTRONIC SIGNATURES AND ELECTRONIC RECORDS:** The Parties consent to the use of electronic signatures. The Agreement, and any other documents requiring a signature hereunder, may be signed electronically by the City or Purchaser in the manner specified by the City. The Parties agree not to deny the legal effect or enforceability of the Agreement solely because it is in electronic form or because an electronic record was used in its formation. The Parties agree not to object to the admissibility of the Agreement in the form of an electronic record, or a paper copy of an electronic document, or a paper copy of a document bearing an electronic signature, on the ground that it is an electronic record or electronic signature or that it is not in its original form or is not an original.

**24. REASONABLENESS OF CONSENT OR APPROVAL:** Whenever under this Agreement “reasonableness” is the standard for the granting or denial of the consent or approval of either party hereto, such party shall be entitled to consider public and governmental policy, moral and ethical standards, as well as business and economic considerations.

**25. SEVERABILITY:** The promises and covenants contained herein are several in nature. Should any one or more of the provisions of this Agreement be judicially adjudged invalid or unenforceable, such judgment shall not affect, impair, or invalidate the remaining provision of this Agreement.

**26. NO PERSONAL LIABILITY:** No elected official, director, officer, agent or employee of the City nor any director, officer, employee or personal representative of Purchaser shall be charged personally or held contractually liable by or to the other party under any term or provision of this Agreement or because of any breach thereof or because of its or their execution, approval or attempted execution of this Agreement.

**27. CONFLICT OF INTEREST BY CITY OFFICER:** Purchaser represents that to the best of its information and belief no officer or employee of the City is either directly or indirectly a party or in any manner interested in this Agreement except as such interest may arise as a result of the lawful discharge of the responsibilities of such elected official or employee.

**28. SUBJECT TO COUNCIL APPROVAL:** This Agreement is subject to the approval of the City Council in accordance with the provisions of the City Charter, and this Agreement shall not take effect until its final approval by City Council, and until signed by all appropriate City officials, including the Mayor, the Clerk and Recorder, the Manager of Finance and the Auditor.

**29. EFFECTIVE DATE:** The effective date shall be the date the City delivers a fully executed copy of this Agreement to the Seller.

**30. NO MERGER:** The parties intend that the terms of this Agreement shall survive Closing and shall not be merged into the deed conveying the Property.

**EXHIBIT LIST**

**Exhibit A** – Legal Description and Depiction of the Property

**Exhibit B** – Quitclaim Deed

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**ELECTRONICALLY GENERATED CITY SIGNATURE PAGE**

**PURCHASER:**

**COLFAX DOWNING OWNER LLC,**  
a Delaware limited liability company

By: \_\_\_\_\_

Name: \_\_\_\_\_

Its: \_\_\_\_\_

**Contract Control Number:**  
**Contractor Name:**

FINAN-202158206-00  
Colfax Downing Owner LLC

IN WITNESS WHEREOF, the parties have set their hands and affixed their seals at  
Denver, Colorado as of:

**SEAL**

**CITY AND COUNTY OF DENVER:**

**ATTEST:**

By:

\_\_\_\_\_

\_\_\_\_\_

**APPROVED AS TO FORM:**

**REGISTERED AND COUNTERSIGNED:**

Attorney for the City and County of Denver

By:

By:

\_\_\_\_\_

\_\_\_\_\_

By:

\_\_\_\_\_

**Contract Control Number:**  
**Contractor Name:**

FINAN-202158206-00  
Colfax Downing Owner LLC

By: \_\_\_\_\_

Name: \_\_\_\_\_  
(please print)

Title: \_\_\_\_\_  
(please print)

See attached Purchaser signature  
page

ATTEST: [if required]

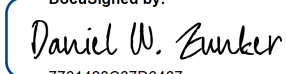
By: \_\_\_\_\_

Name: \_\_\_\_\_  
(please print)

Title: \_\_\_\_\_  
(please print)

**PURCHASER:**

**COLFAX DOWNING OWNER LLC,**  
a Delaware limited liability company

By: DocuSigned by:  
  
776142867D6467...

Name: Daniel W. Zunker

Its: Authorized Signatory

# EXHIBIT A LAND DESCRIPTION

SITUATED IN THE NORTHWEST 1/4 OF SECTION 2, TOWNSHIP 4 SOUTH, RANGE 68 WEST OF THE 6TH P.M.,  
CITY AND COUNTY OF DENVER, STATE OF COLORADO

A PARCEL OF LAND BEING A PORTION OF LOTS 12 AND 13, BLOCK 1, GLENCOE ADDITION TO DENVER AND A PORTION OF LOT 13, BLOCK 1, LONDON AND CURRY'S ADDITION TO DENVER, SITUATED IN THE NORTHWEST QUARTER OF SECTION 2, TOWNSHIP 4 SOUTH, RANGE 68 WEST OF THE SIXTH PRINCIPAL MERIDIAN, CITY AND COUNTY OF DENVER, STATE OF COLORADO, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

**COMMENCING** AT THE NORTHEAST CORNER OF LOT 13, BLOCK 1, GLENCOE ADDITION TO THE CITY OF DENVER; THENCE SOUTH 00°00'11" EAST ALONG THE EAST LINE OF SAID LOT 13, A DISTANCE OF 14.01 FEET TO THE NORTHEAST CORNER OF PARCEL DESCRIBED IN BOOK 9801 PAGE 497 RECORDED OCTOBER 24, 1967, ALSO BEING TO THE **POINT OF BEGINNING**;

THENCE SOUTH 00°00'11" EAST ALONG SAID EAST LINE, A DISTANCE OF 16.00 FEET TO THE SOUTHEAST CORNER OF SAID PARCEL;

THENCE ALONG THE SOUTH LINE OF SAID PARCEL NORTH 89°38'21" WEST, A DISTANCE OF 38.15 FEET;

THENCE DEPARTING THE SOUTH LINE OF SAID PARCEL NORTH 64°54'04" WEST, A DISTANCE OF 28.56 FEET;

THENCE NORTH 89°40'34" WEST, A DISTANCE OF 60.00 FEET;

THENCE NORTH 00°00'16" EAST, A DISTANCE OF 4.09 FEET TO THE NORTH LINE OF SAID PARCEL;

THENCE ALONG THE NORTH LINE OF SAID PARCEL SOUTH 89°38'21" EAST, A DISTANCE OF 124.01 FEET TO THE **POINT OF BEGINNING**.

SAID PARCEL CONTAINS 1,114 SQUARE FEET OR 0.03 ACRES, MORE OR LESS.

**BASIS OF BEARINGS:** BEARINGS ARE BASED ON THE 20 FOOT RANGE LINE IN DOWNING STREET BETWEEN COLFAX AVENUE AND EAST 14TH AVENUE, AS MONUMENTED AT THE NORTH END BY A FOUND 2-1/2" ALUMINUM CAP PLS 38162 IN RANGE BOX AND AT THE SOUTH END BY A FOUND AXLE IN RANGE BOX, ASSUMED TO BEAR NORTH 00°00'38" EAST.

PREPARED BY: AARON MURPHY  
PLS 38162

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



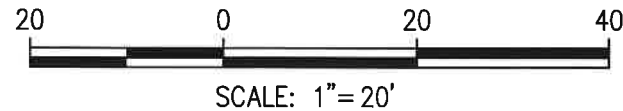
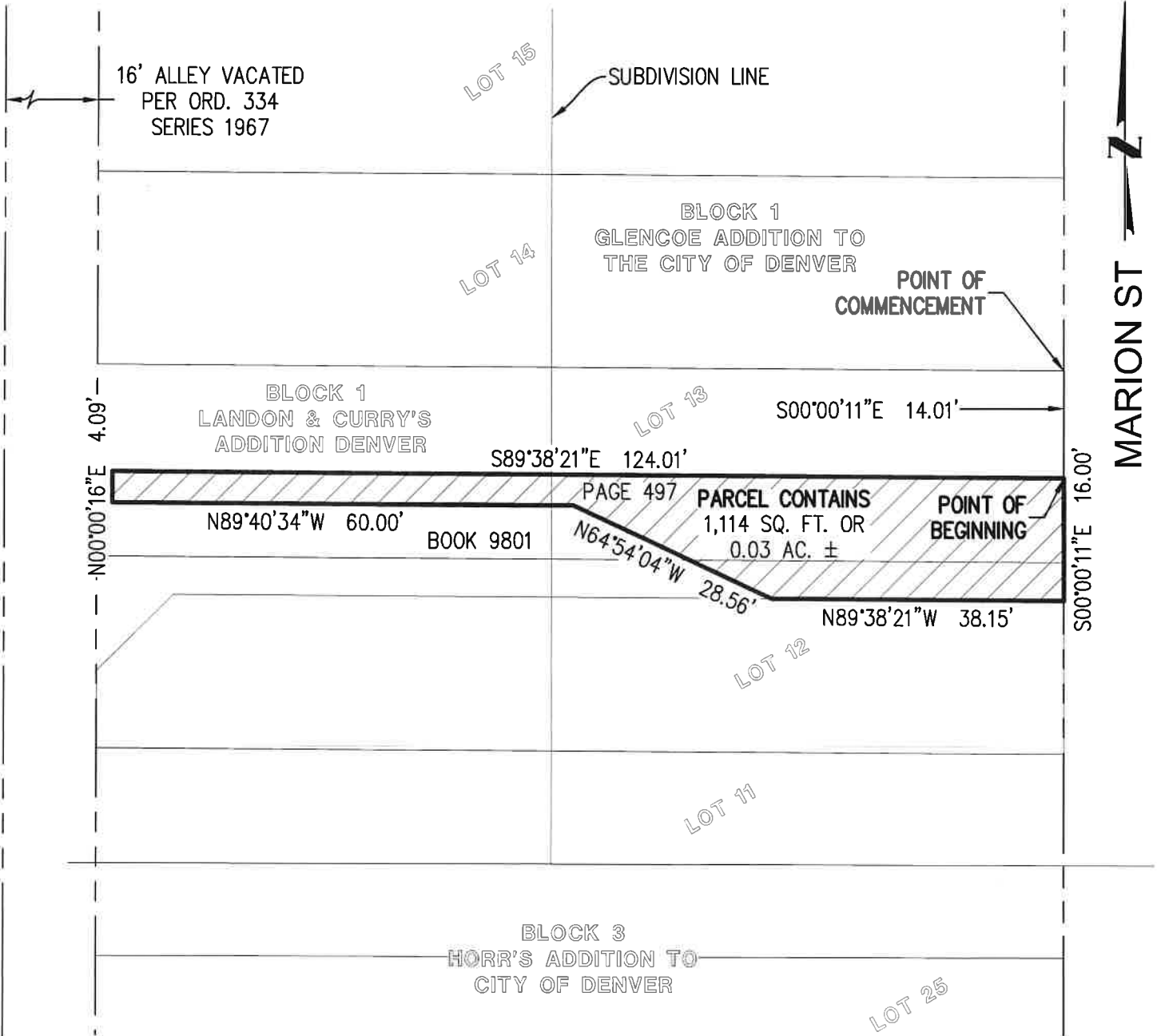
REPORT: D:\980325\SURVEY\980325\_DESC\_LAYOUT.DWG LAYOUT: LAYOUT1  
DATE: 08/25/2020 8:28:23A BY: AARON MURPHY

NO CHANGES ARE TO BE MADE TO THIS DRAWING WITHOUT WRITTEN PERMISSION OF HARRIS KOCHER SMITH

DATE	REVISION COMMENTS	DESCRIPTION	SHEET NO.
4/1/2020	REV. BNDY		<b>HKS HARRIS KOCHER SMITH</b> 1120 Lincoln Street, Suite 1000 Denver, Colorado 80203 P: 303.623.6300 F: 303.623.6311 HarrisKocherSmith.com
8/19/2020	REV. PER COMMENTS		
8/25/2020	REV. PER COMMENTS		
			1

# EXHIBIT A ILLUSTRATION

SITUATED IN THE NORTHWEST 1/4 OF SECTION 2, TOWNSHIP 4 SOUTH, RANGE 68 WEST OF THE 6TH P.M.,  
CITY AND COUNTY OF DENVER, STATE OF COLORADO



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

FILEPATH: G:\190320\SURVEY\BND\_JCS\_CARD.DWG LAYOUT: ILLUSTRATION  
PLOT DATE: 06/23/22 5:28:23A BY: JEREMY FELDEN

NO CHANGES ARE TO BE MADE TO THIS DRAWING WITHOUT WRITTEN PERMISSION OF HARRIS KOCHER SMITH.

ISSUE DATE: 1/24/2020	PROJECT #: 190320
DATE	REVISION COMMENTS
4/1/2020	REV. BNDY
9/19/2020	REV. PER COMMENTS
8/25/2020	REV. PER COMMENTS

ILLUSTRATION

**HKS HARRIS KOCHER SMITH**  
1120 Lincoln Street, Suite 1000  
Denver, Colorado 80203  
P: 303.623.8300 F: 303.623.6311  
HarrisKocherSmith.com

CHK'D BY: AWM  
DRAWN BY: JAF

SHEET NO:

2

2 OF 2

