



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

misconduct was the sole cause of claimant's damages. Grantor(s) 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. This defense and indemnification obligation shall survive the termination of this Easement.

7. If the Grantor(s) form an Owners Association to hold title to and/or administer the use, construction, repair, servicing and maintenance of the Facilities, the declaration or any similar instrument for any such Owners Association shall clearly state that the Owners Association has joint and several financial responsibility for the maintenance and repair of such Facilities, and the indemnity provisions of this Easement.
8. This Easement shall run with the land and shall be binding upon, jointly and severally, and shall inure to the benefit of, the parties hereto, their heirs, successors, or assigns.
9. This Permanent Non-Exclusive Easement shall be recorded in the Denver County real property records.
10. Notices required hereunder shall be in writing, and shall be deemed to have been properly given and shall be effective upon being personally delivered or delivered by nationally recognized courier such as Federal Express which maintains a record of receipt and delivery, or five (5) days after being deposited in the United States mail, postage prepaid, certified with return receipt requested, to the other party at the addresses set forth below, or another address that may be specifically designated by giving notice to other party.

If to City: Manager of Department of Transportation and Infrastructure
 201 W. Colfax, Department 608
 Denver, CO 80202

If to Grantor(s): XSC Denver 3.0 Investment, LLC
 Attn: Noah Gottlieb
 308 W Erie St, Ste 400
 Chicago, IL 60654
 noah@thexcompany.com

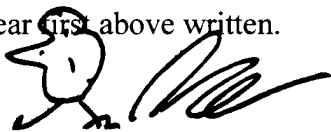
With a Copy to: XSC Denver 3.0 Investment, LLC
Attn: Andrew Kerr
308 W Erie St, Ste 400
Chicago, IL 60654
andrew@thexcompany.com

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

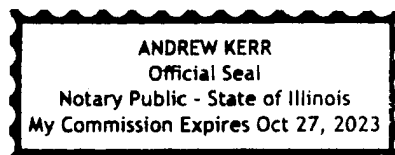
COUNTY OF

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

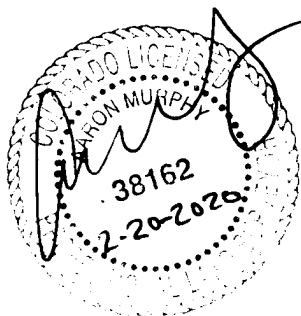
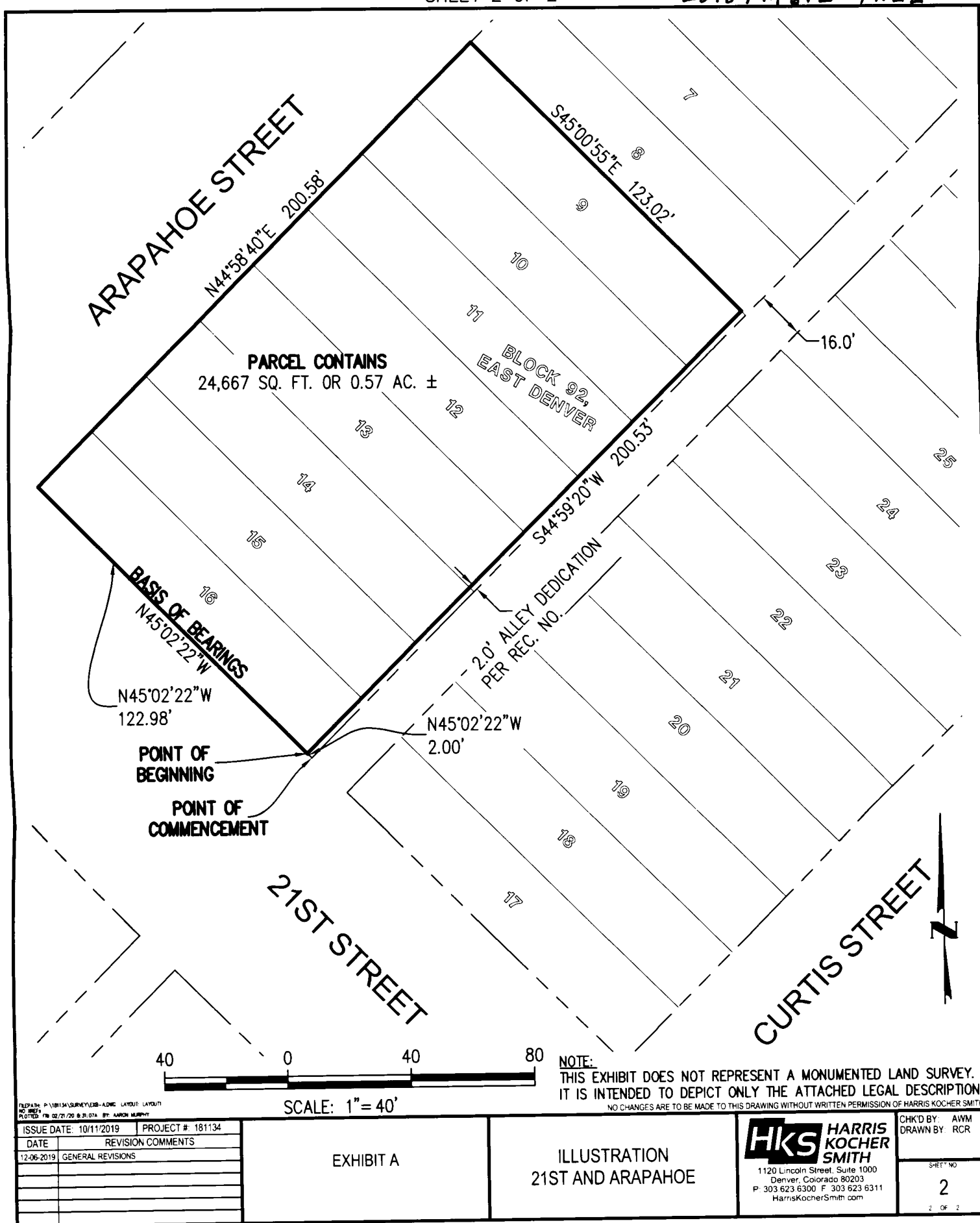


EXHIBIT A
"PROPERTY"
SHEET 2 OF 2

2018 PM 672 - PNEE



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:

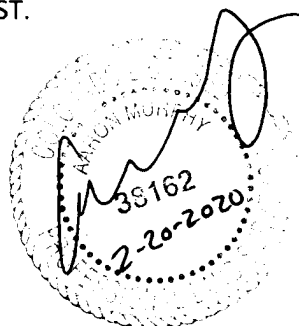
COMMENCING AT THE SOUTH CORNER OF LOT 13, SAID BLOCK 92;
THENCE NORTH 65°15'54" WEST, A DISTANCE OF 2.13 FEET TO THE **POINT OF BEGINNING**;
THENCE NORTH 45°00'30" WEST, A DISTANCE OF 39.85 FEET;
THENCE NORTH 44°59'30" EAST, A DISTANCE OF 13.51 FEET;
THENCE NORTH 45°00'30" WEST, A DISTANCE OF 83.15 FEET 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.

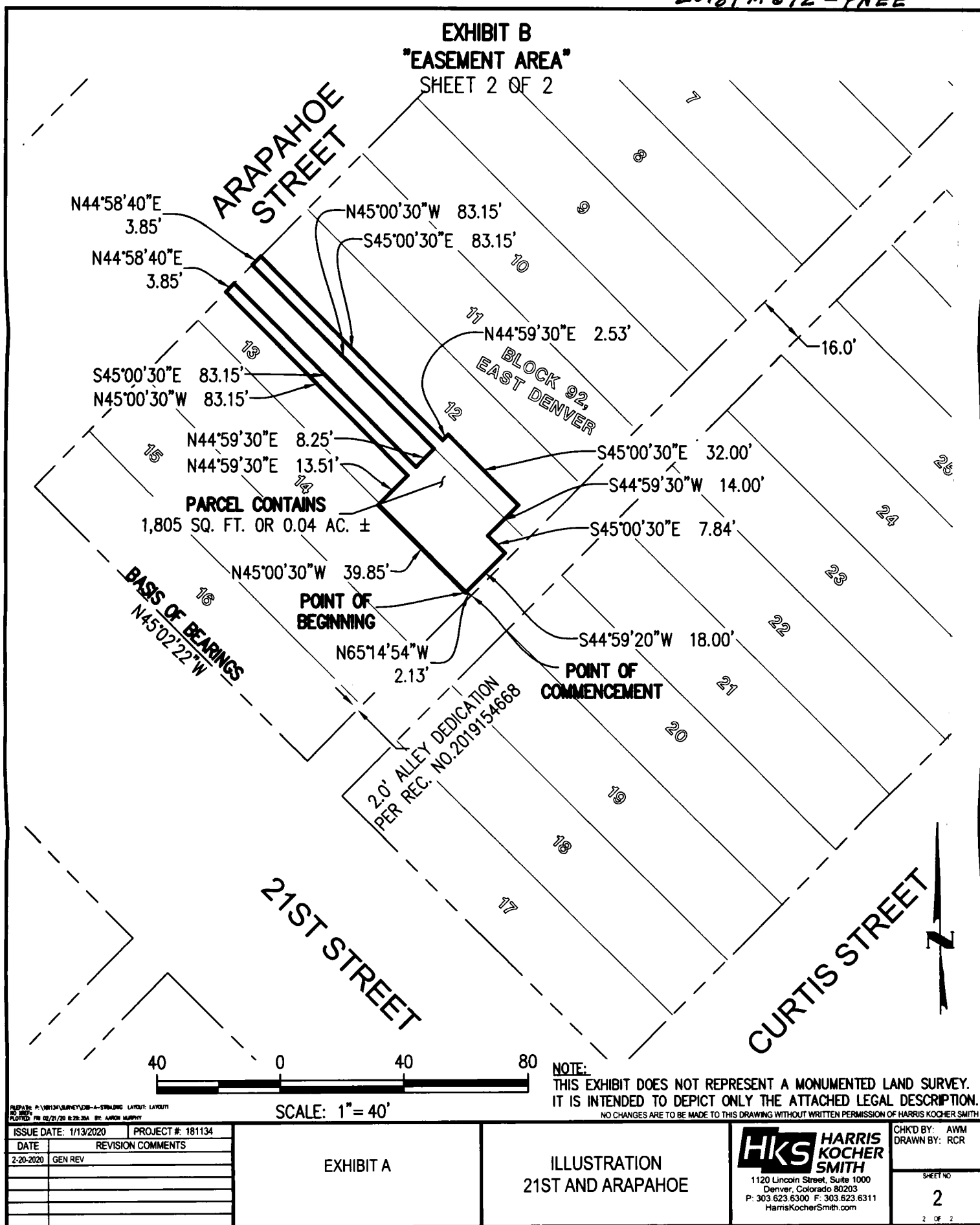
PREPARED BY: AARON MURPHY
PLS 38162

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



FILEPATH: P:\181134\SURVEY\20-A-STRAILING LAYOUT LAYOUT
 NO. 181134
 PLOTTED: PM 02/21/20 0:28:30A 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