

# EXHIBIT 1

## DULUTH TRAVERSE TRAIL LICENSE AGREEMENT

**THIS LICENSE AGREEMENT** (this “Agreement”) is by and among OLIVER MANAGEMENT SERVICES, INC., a Minnesota corporation and TROPICANA APARTMENTS LIMITED PARTNERSHIP, a Minnesota limited partnership (collectively, “Owner”) and the City of Duluth, a Minnesota municipal corporation (“City”).

**WHEREAS**, the Duluth Traverse is a bike-optimized, multi-use, natural surface trail designed to provide a nationally significant mountain biking experience, connect people to Duluth’s beautiful natural places, and exemplify best practices for environmentally sustainable trail design and management (the “Trail”).

**WHEREAS**, City and Owner would like to expand the Trail to add a trail section crossing real property owned by Owner, which property is legally described on the attached Exhibit A (the “Owner Property”).

**WHEREAS**, the parties wish to create a revocable, non-exclusive license in favor of City to allow City to construct and the general public to utilize a portion of the Owner Property for use as a public multi-use recreational trail, which will constitute a portion of the Trail.

**NOW, THEREFORE**, in consideration of the mutual covenants and conditions contained in this Agreement, the receipt and sufficiency of which is acknowledged, the parties agree as follows:

### **I. LICENSE**

A. Subject to the terms and conditions set forth in this Agreement, Owner grants to City a revocable, non-exclusive license (the “License”) to access and utilize that portion of the Owner Property legally described on the attached Exhibit B and depicted on the attached Exhibit C (the “License Area”) for a ten-foot-wide multi-use recreational trail to be used by the general public.

B. The License includes the right of City, its contractors, agents, and employees to enter the License Area at all reasonable times for the purposes of locating, constructing, operating, installing, maintaining and repairing a multi-use recreational trail and related improvements and signage within the License Area. City, its contractors, agents and employees may add, remove, cut, trim, or remove from the License Area bark, sand, stones, boards, grass, trees, shrubs, other vegetation, or other landscaping in City’s discretion. City, its contractors, agents and employees may construct erosion control structures necessary to maintain a clear, dry passage through the License Area, including the right to install, maintain, repair and replace waterbars, steps, and other trail surface structures, as well as culverts as necessary to traverse surface waters within the

License Area. Owner shall have no obligation or duty to maintain, repair, or replace any improvements or vegetation in the License Area.

C. City's and the public's use of the License Area shall be limited to public recreational trail purposes. City agrees to maintain signage in the License Area identifying the area that is open to public use.

D. Either party may terminate this Agreement upon 60 days' written notice to the other party. This Agreement shall automatically terminate upon a change in ownership of the Owner Property.

## **II. EFFECTIVE DATE**

Notwithstanding the date of execution of this Agreement, this Agreement shall have an effective date as of October 1, 2017.

## **III. LAWS, RULES AND REGULATIONS**

City agrees to conduct its activities related to this Agreement in strict compliance with the United States Constitution and with the applicable laws, rules, and regulations of the United States, State of Minnesota, St. Louis County, and City of Duluth.

## **IV. WAIVER**

The waiver by City or Owner of any breach of any term, covenant, or condition in this Agreement shall not be deemed a waiver of any subsequent breach of same or any term, covenant, or condition of this Agreement.

## **V. INDEMNIFICATION**

To the extent permitted by Minnesota law, City shall defend, indemnify, and hold Owner harmless from and against any and all claims asserted by any person arising from or relating to any negligent acts or omissions of City in carrying out its obligations under this License Agreement.

## **VI. NO THIRD PARTY RIGHTS**

This Agreement is to be construed and understood solely as an agreement between City and Owner regarding the subject matter herein and shall not be deemed to create any rights in any other person or on any other matter. No person, organization, or business shall have the right to make claim that they are a third party beneficiary of this Agreement or of any of the terms and conditions of this Agreement, which, as between City and Owner, may be waived at any time by mutual agreement between the parties.

**VII. NOTICES**

Notices shall be sufficient if sent by regular United States mail, postage prepaid, addressed to:

City  
City of Duluth  
Attn: Property and Facilities Manager  
1532 W. Michigan Street  
Duluth, MN 55806

Owner  
Oliver Management Services Inc.  
c/o Oliver Companies  
Attn: Karen Welnetz  
5713 Grand Avenue, Suite #B  
Duluth, Minnesota 55807

and

Tropicana Apartments Limited Partnership  
c/o Oliver Companies  
Attn: Karen Welnetz  
5713 Grand Avenue, Suite #B  
Duluth, Minnesota 55807

or to such other persons or addresses as the parties may designate to each other in writing from time to time.

**VIII. COMPLIANCE WITH AGREEMENT**

The rights of City and the general public to occupy and use the License Area are subject to City’s compliance with the undertakings, provisions, covenants, and conditions herein.

**IX. APPLICABLE LAW**

The laws of the State of Minnesota shall govern all interpretations of this Agreement, and the appropriate venue and jurisdiction for any litigation that may arise under the Agreement will be in and under the state courts located within St. Louis County, Minnesota.

**X. AMENDMENTS**

Any amendments to this Agreement shall be in writing and shall be executed by the same parties who executed this Agreement or their successors in office.

**XI. SEVERABILITY**

Owner and City agree that if any term or provision of this Agreement is declared by a court of competent jurisdiction to be illegal or in conflict with any law, then the validity of the remaining terms and provisions shall not be affected, and the rights and obligations of the parties shall be construed and enforced as if this Agreement did not contain the particular term or provision held to be invalid.

## **XII. AUTHORITY TO EXECUTE AGREEMENT**

The parties represent to each other that the execution of this Agreement has been duly and fully authorized by their respective governing bodies or boards, that the officers of the parties who executed this Agreement on their behalf are fully authorized to do so, and that this Agreement when executed by said officers will constitute and be the binding obligation and agreement of the parties in accordance with the terms and conditions hereof.

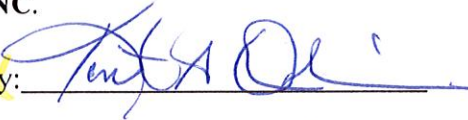
## **XIII. ENTIRE AGREEMENT**

This Agreement, including exhibits, constitutes the entire agreement between the parties and supersedes all prior written and oral agreements and negotiations between the parties relating to the subject matter hereof. This Agreement may be executed and delivered by a party by facsimile or PDF transmission, which transmission copy shall be considered an original and shall be binding and enforceable against such party.

*[Remainder of this page is intentionally left blank.]*

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed as indicated below.

**OLIVER MANAGEMENT SERVICES, INC.**

By: 

Its: Vice President  
Authorized Representative

Printed Name: Kent Oliver

Dated: 10/23/17

**TROPICANA APARTMENTS LIMITED PARTNERSHIP**

By: 

Its: General Partner  
Authorized Representative

Printed Name: Kent Oliver

Dated: 10-23-17

**CITY OF DULUTH**

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

Attest: \_\_\_\_\_

City Clerk  
Date Attested: \_\_\_\_\_

Approved as to form:

\_\_\_\_\_  
City Attorney

Countersigned: \_\_\_\_\_  
City Auditor

**EXHIBIT A**  
**Owner Property Legal Description**

Lots 1 and 3, Block 1, Villa Village, St. Louis County, Minnesota

**EXHIBIT B**  
**Legal Description of License Area**

in the S1/2 Section 15, T50N, R15W, St. Louis County, Minnesota

A 10.00 feet wide strip of land over, under and across all that part of Lots 1, 2, 3 and 4, Block 1, Villa Village, according to the recorded plat thereof in St. Louis County, Minnesota, the centerline of which is described as follows:

Commencing at the southeast corner of Lot 2, Block 1 of said Villa Village;

Thence North 21° 10' 15" East, basis of bearing St. Louis County Transverse Mercator 96 Coordinate System, along the east line of said Lot 2 a distance of 29.86 feet to the point of beginning of said centerline;

Thence South 87° 30' 41" West 48.32 feet to a tangential curve;

Thence westerly 13.05 feet along said curve, concave to the south, central angle 24° 55' 05", radius 30.00 feet, chord bearing South 75° 03' 08" West to a point of intersection with a tangential line;

Thence along said tangent line South 62° 35' 36" West 31.53 feet to a tangential curve;

Thence westerly 12.09 feet along said curve, concave to the north, central angle 34° 38' 49", having a radius of 20.00 feet, chord bearing South 79° 55' 00" West to a point of intersection with a tangential line.

Thence along said tangent line North 82° 45' 35" West 11.93 feet to a tangential curve;

Thence northerly 18.49 feet along said curve, concave to the east, central angle 132° 26' 25", radius of 8.00 feet, chord bearing North 16° 32' 22" West to a point of intersection with a tangential line;

Thence along said tangent line North 49° 40' 50" East 45.99 feet to a tangential curve;

Thence northeasterly 6.39 feet along said curve, concave to the northwest, central angle of 12° 12' 44", radius 30.00 feet, chord bearing North 43° 34' 28" to a point of intersection with a tangential line;

Thence along a tangent line North 37° 28' 06" East a distance of 7.25 feet to a tangential curve;

Thence northeasterly 58.86 feet along said curve, concave to the southeast, central angle 22° 28' 54", radius 150.00 feet, chord bearing North 48° 42' 34" East to a point of intersection with a tangential line;

Thence along a tangent line North 59° 57' 00" East 10.56 feet to a tangential curve;

Thence northeasterly 10.97 feet along said curve, concave to the northwest, central angle 31° 26' 09", radius 20.00 feet, chord bearing North 44° 13' 56" East to a point of intersection with a tangential line;

Thence along said tangent line North 28° 30' 51" East 107.01 feet to a tangential curve;

Thence northerly 12.54 feet along said curve, concave to the west, central angle 11° 58' 44", radius 60.00 feet, chord bearing North 22° 31' 30" East to a point of intersection with a tangential line;

Thence along said tangent line North 16° 32' 07" East 26.35 feet to a tangential curve;

Thence northwest, west and southwesterly 105.01 feet along said curve, concave to the south, central angle 211° 52' 17", radius 28.40 feet, chord bearing North 89° 24' 01" West to a point of intersection with a tangential line;

Thence along said tangent line South 15° 20' 10" East 36.93 feet to a tangential curve;

Thence southwesterly 43.46 feet along said curve, concave to the west, central angle 49° 48' 17", radius 50.00 feet, chord bearing South 09° 33' 59" West to a point of intersection with a tangential line;


Thence along said tangent line South 34° 28' 07" West 41.20 feet to a tangential curve;

Thence southwesterly 86.87 feet along said curve, concave to the northwest, central angle 41° 28' 31", having a radius of 120.00 feet, chord bearing South 55° 12' 23" West to a point of intersection with a tangential line.

Thence along said tangent line South 75° 56' 38" West 108.31 feet to a tangential curve;

Thence westerly 11.33 feet along said curve, concave to the south, central angle 12° 59' 10", radius of 50.00 feet, chord bearing South 69° 27' 04" West to a point of intersection with a tangential line;

I HEREBY CERTIFY THAT THIS PLAN, SPECIFICATION, OR REPORT WAS PREPARED BY ME OR UNDER MY DIRECT SUPERVISION AND THAT I AM A DULY LICENSED LAND SURVEYOR UNDER THE LAWS OF THE STATE OF MINNESOTA.

Date: 8/16/2017  
  
Greg Stoewer  
MINNESOTA LICENSE NO. 21774



11 East Superior Street  
Suite 420  
Duluth, MN 55802  
218-724-8578  
tkda.com  
Job Number: 15601.006

Sheet 2 of 3 Sheets



in the S1/2 Section 15, T50N, R15W, St. Louis County, Minnesota

Thence along said tangent line South 62° 57' 28" West 13.55 feet to a tangential curve;

Thence westerly 15.41 feet along said curve, concave to the north, central angle of 29° 25' 37", radius 30.00 feet, chord bearing South 77° 40' 18" West to a point of intersection with a tangential line;

Thence along a tangent line North 87° 36' 55" West 21.80 feet to a tangential curve;

Thence westerly 13.65 feet along a curve, concave to the north, central angle 26° 04' 32", radius 30.00 feet, chord bearing North 74° 34' 38" West to a point of intersection with a tangential line;

Thence along said tangent line North 61° 32' 23" West 17.36 feet to a tangential curve;

Thence north and northeasterly 28.41 feet along a curve, concave to the east, central angle 162° 46' 27", radius 10.00 feet, chord bearing North 19° 50' 51" East to a point of intersection with a tangential line;

Thence along said tangent line South 78° 45' 56" East 15.45 feet to a tangential curve;

Thence easterly 12.55 feet along a curve, concave to the north, central angle 28° 45' 47", radius 25.00 feet, chord bearing North 86° 51' 11" East to a point of intersection with a tangential line;

Thence along said tangent line North 72° 28' 17" East 18.20 feet to a tangential curve;

Thence northeast, north and northwesterly 22.33 feet along said curve, concave to the west, central angle 180° 00' 00", radius 7.11 feet, chord bearing North 17° 31' 42" West to a point of intersection with a tangential line;

Thence along said tangent line South 72° 28' 17" West 11.14 feet to a tangential curve;

Thence westerly 15.75 feet along said curve, concave to the north, central angle 45° 07' 35", radius 20.00 feet, chord bearing North 84° 57' 54" West to a point of intersection with a tangential line;

Thence along said tangent line North 62° 24' 08" West 6.70 feet to a tangential curve;

Thence westerly 19.75 feet along a curve, concave to the south, central angle 37° 42' 48", radius 30.00 feet, chord bearing North 81° 15' 31" West to a point of intersection with a tangential line;

Thence along said tangent line South 79° 53' 04" West 57.47 feet to a tangential curve;

Thence westerly 26.37 feet along a curve, concave to the north, central angle 50° 21' 14", radius 30.00 feet, chord bearing North 74° 56' 18" West to a point of intersection with a tangential line;

Thence along said tangent line North 49° 45' 42" West 34.80 feet to a tangential curve;

Thence northwest and westerly 80.63 feet along a curve, concave to the south, central angle 36° 57' 22", radius 125.00 feet, chord bearing North 68° 14' 22" West to a point of intersection with a tangential line;

Thence along said tangent line North 86° 43' 04" West 12.87 feet to a tangential curve;

Thence northwesterly 59.54 feet along said curve, concave to the northeast, central angle 75° 48' 38", radius 45.00 feet, chord bearing North 48° 48' 44" West to a point of intersection with a tangential line;


Thence along said tangent line North 10° 54' 26" West 16.48 feet to a tangential curve;

Thence northwest, west and southwesterly 82.99 feet along said curve, concave to the south, central angle 125° 07' 49", radius 38.00 feet, chord bearing North 73° 28' 20" West to a point of intersection with a tangential line;

Thence along said tangent line South 43° 57' 45" West 34.16 feet to a point on the south line of said Lot 4, said point distant 38.00 feet westerly of southeast corner of Lot 4, said point being the end of the centerline described herein.

Side lines of said 10.00 foot wide strip of land are prolonged or shortened to terminate on Partridge Street of said Villa Village.

I HEREBY CERTIFY THAT THIS PLAN,  
SPECIFICATION, OR REPORT WAS PREPARED BY  
ME OR UNDER MY DIRECT SUPERVISION AND  
THAT I AM A DULY LICENSED LAND SURVEYOR  
UNDER THE LAWS OF THE STATE OF MINNESOTA.

Date : 8/16/2017  
  
Greg Stoewer  
MINNESOTA LICENSE NO. 21774

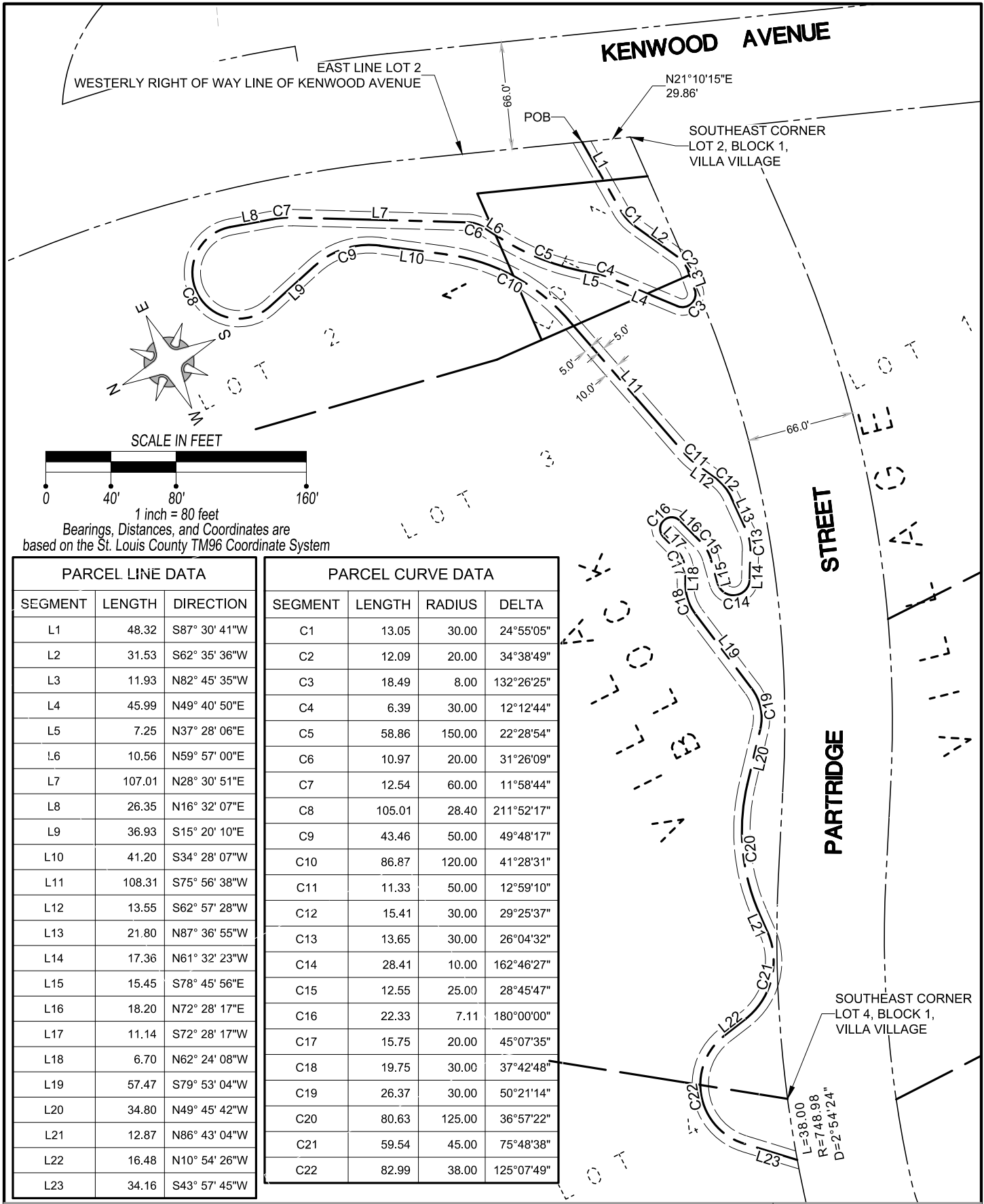


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Sheet 3 of 3 Sheets

**EXHIBIT C**  
**Depiction of License Area**


in the S1/2 Section 15, T50N, R15W, St. Louis County, Minnesota



PARCEL LINE DATA		
SEGMENT	LENGTH	DIRECTION
L1	48.32	S87° 30' 41"W
L2	31.53	S62° 35' 36"W
L3	11.93	N82° 45' 35"W
L4	45.99	N49° 40' 50"E
L5	7.25	N37° 28' 06"E
L6	10.56	N59° 57' 00"E
L7	107.01	N28° 30' 51"E
L8	26.35	N16° 32' 07"E
L9	36.93	S15° 20' 10"E
L10	41.20	S34° 28' 07"W
L11	108.31	S75° 56' 38"W
L12	13.55	S62° 57' 28"W
L13	21.80	N87° 36' 55"W
L14	17.36	N61° 32' 23"W
L15	15.45	S78° 45' 56"E
L16	18.20	N72° 28' 17"E
L17	11.14	S72° 28' 17"W
L18	6.70	N62° 24' 08"W
L19	57.47	S79° 53' 04"W
L20	34.80	N49° 45' 42"W
L21	12.87	N86° 43' 04"W
L22	16.48	N10° 54' 26"W
L23	34.16	S43° 57' 45"W

PARCEL CURVE DATA					
SEGMENT	LENGTH	RADIUS	DELTA		
C1	13.05	30.00	24°55'05"		
C2	12.09	20.00	34°38'49"		
C3	18.49	8.00	132°26'25"		
C4	6.39	30.00	12°12'44"		
C5	58.86	150.00	22°28'54"		
C6	10.97	20.00	31°26'09"		
C7	12.54	60.00	11°58'44"		
C8	105.01	28.40	211°52'17"		
C9	43.46	50.00	49°48'17"		
C10	86.87	120.00	41°28'31"		
C11	11.33	50.00	12°59'10"		
C12	15.41	30.00	29°25'37"		
C13	13.65	30.00	26°04'32"		
C14	28.41	10.00	162°46'27"		
C15	12.55	25.00	28°45'47"		
C16	22.33	7.11	180°00'00"		
C17	15.75	20.00	45°07'35"		
C18	19.75	30.00	37°42'48"		
C19	26.37	30.00	50°21'14"		
C20	80.63	125.00	36°57'22"		
C21	59.54	45.00	75°48'38"		
C22	82.99	38.00	125°07'49"		

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