

EXHIBIT 1

DULUTH TRAVERSE TRAIL LICENSE AGREEMENT

THIS LICENSE AGREEMENT (this “Agreement”) is by and between SOBO TROPICANA, LLC, a Minnesota limited liability company (“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
SOBO Tropicana, LLC
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

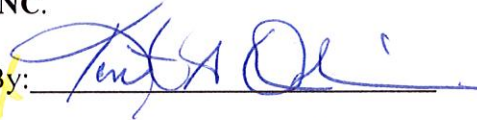
The parties represent to each other that the execution of this Agreement has been duly and fully authorized by their respective governing bodies or boards, that the officers of the parties who executed this Agreement on their behalf are fully authorized to do so, and that this Agreement when executed 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

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 4 and 5, 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

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



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

Sheet 3 of 3 Sheets

A 10.00 feet wide strip of land over, under and across all that part of Lot 5, 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 southwest corner of Lot 5, Block 1 of said Villa Village;

Thence North 89° 48' 19" East, basis of bearing St. Louis County Transverse Mercator 96 Coordinate System, along the south line of said Lot 5 a distance of 198.60 feet to the point of beginning of said centerline;

Thence North 59° 43' 03" West 28.26 feet to a tangential curve;

Thence northwesterly 28.10 feet along said curve, concave to the southwest, central angle 20° 07' 31", radius 80.00 feet, chord bearing North 69° 46' 49" East to a point of intersection with a tangential line;

Thence along said tangent line North 79° 50' 34" West 29.42 feet to a tangential curve;

Thence northwesterly 62.04 feet along said curve, concave to the northeast, central angle 44° 25' 59", radius of 80.00 feet, chord bearing North 57° 37' 35" East to a point of intersection with a tangential line.

Thence along said tangent line North 35° 24' 35" West 6.50 feet to a tangential curve;

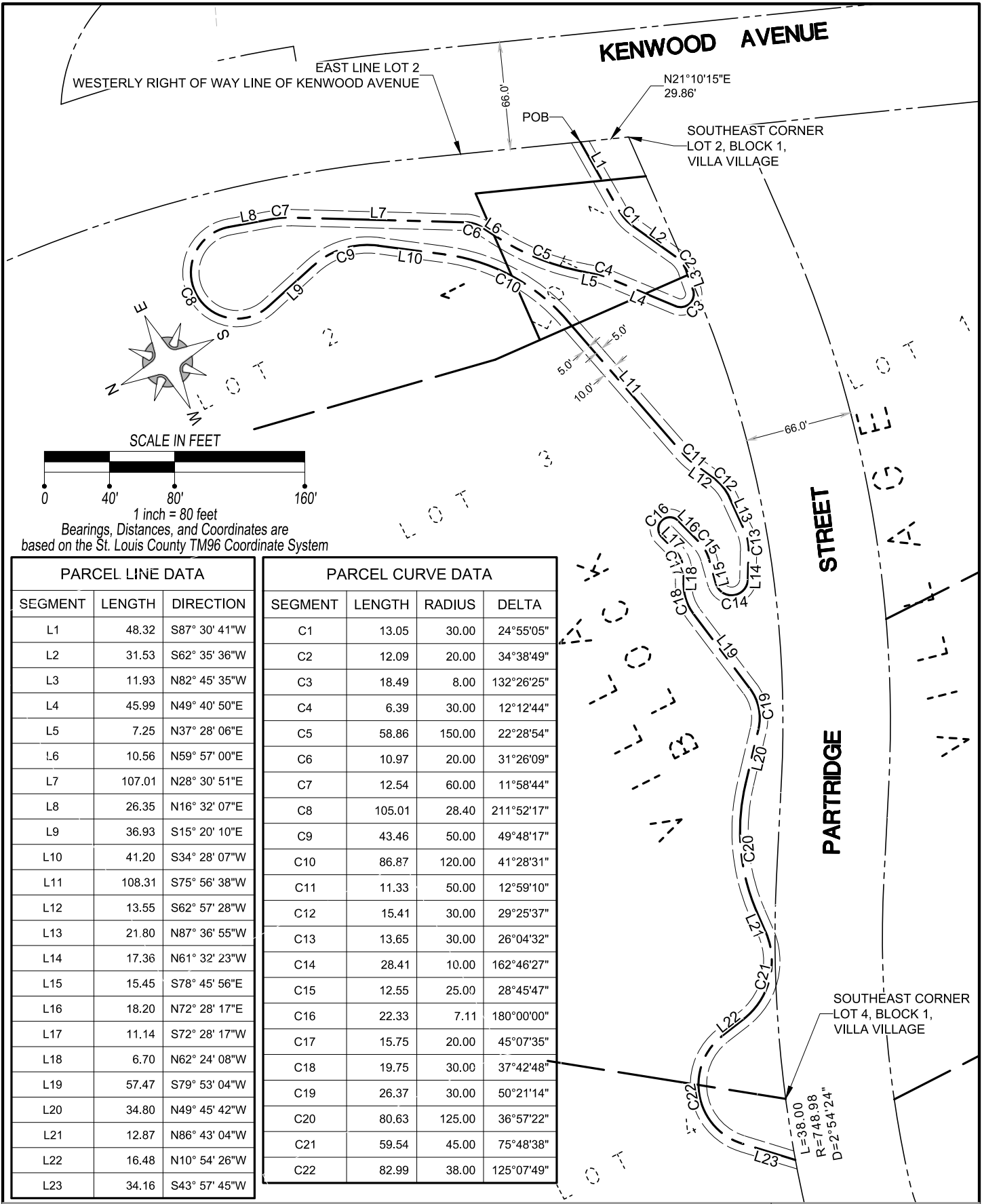
Thence northwesterly 29.49 feet along said curve, concave to the southwest, central angle 56° 18' 57", radius of 30.00 feet, chord bearing North 63° 34' 04" West to a point of intersection with a tangential line;

Thence along said tangent line South 88° 16' 28" West 38.70 feet to a point on the west line of said Lot 5, said point distant 78.90 feet northerly of southeast corner of Lot 5, said point being the end of the centerline described herein.

Side lines of said 10.00 feet wide strip of land are prolonged or shortened to terminate on Partridge Street and west line of Lot 5 of said Villa Village.

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"		

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 1 of 3 Sheets

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

PARCEL LINE DATA		
SEGMENT	LENGTH	DIRECTION
L1	28.26	N59° 43' 03"W
L2	29.42	N79° 50' 34"W
L3	6.50	N35° 24' 35"W
L4	38.70	S88° 16' 28"W

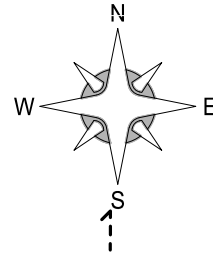
PARCEL CURVE DATA			
SEGMENT	LENGTH	RADIUS	DELTA
C1	28.10	80.00	20°07'31"
C2	62.04	80.00	44°25'59"
C3	29.49	30.00	56°18'57"

AUDITORS PLAT NO. 1

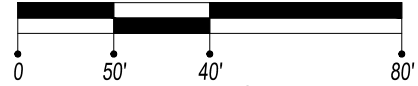
LOT 7
LOT 5
LOT 4
LOT 14

V I L L A

B L O C K



SCALE IN FEET

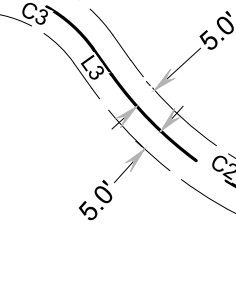


1 inch = 40 feet

Bearings, Distances, and Coordinates are based on the St. Louis County TM96 Coordinate System

S0°04'36"W 78.90'

WEST LINE LOT 5



LOT 5

N89°48'19"E 198.60'

SOUTH LINE LOT 5

PARTRIDGE STREET

SOUTHWEST CORNER
LOT 5, BLOCK 1,
VILLA VILLAGE

66.0'

LOT 4

V I L L A G E

B L O C K 2

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
Greg Stoewer
MINNESOTA LICENSE NO. 21774



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