



The Center for the Performing Arts Memorandum of Understanding

THIS MEMORANDUM OF UNDERSTANDING ("MOU") is made as of the 7 day of July, 2010 (the "Effective Date"), by and between THE SMITH CENTER FOR THE PERFORMING ARTS, a Nevada non-profit corporation ("PAC"), and CITY PARKWAY V, INC., a Nevada non-profit corporation ("CPV"). CPV and PAC are individually or collectively referred to herein as "party" or "parties."

RECITALS

WHEREAS, PAC is a 501 (c)(3) organization dedicated to developing, building and operating a world class performing arts center in the City of Las Vegas, Nevada (the "City");

WHEREAS, CPV is the owner of that certain real property as depicted and described on Exhibit "A" attached hereto and hereby made a part hereof (the "Park");

WHEREAS, CPV may gift, and PAC may accept, the Park, on which PAC would then develop and operate the Park as more fully described in this MOU; and

WHEREAS, the parties desire to enter into this MOU in order to memorialize the current understanding of the parties with respect to the design, development and operation of the Park and for the negotiation of the DDA (hereinafter defined).

AGREEMENT

NOW, THEREFORE, the parties hereby set forth their nonbinding mutual statement of intent in connection with the Park as follows:

1. Nonbinding Nature of MOU. The parties acknowledge that because of the many uncertainties concerning the Park and its development, this MOU serves as an expression of a mutual intent of the Parties to negotiate agreements relating to the donation of the Park by CPV to PAC and the ownership, construction, operation and maintenance of the Park by PAC. Nothing contained herein shall be deemed legally binding upon either party. The parties shall only be legally obligated to one another upon the execution and delivery of the DDA and related agreements. The parties agree that the term of this MOU shall commence on the Effective Date and expire on September 30, 2010 and in the event a DDA is not entered into by that date for any reason, this MOU shall automatically expire and be of no further force and effect, PAC agrees that this MOU creates no ownership or other rights whatsoever on the part of PAC in the Park.

2. Character of the Park. The Park should be a welcoming green space and a desirable location for public art, with lawns, trees and beautiful landscaping. It is anticipated that the Park would generally be open to the public during daylight hours, as well as during events and performances. The Park should be designed to be capable of hosting outdoor concerts and events for both neighborhood residents and the general public of greater Las Vegas.

3. Conveyance and Private ownership. It is contemplated that the Park shall be conveyed from CPV to PAC as a gift and for no consideration payment or other consideration to be owned by PAC.

4. Schedule. Design and construction coordination and schedule shall be determined by the parties at a later date. However, the parties agree that the Park would be completed in advance of the March 2012 opening of the performing arts center. Such design and construction schedule shall be consistent with such date.

5. Design Standards Compliance and Permits.

(a) All designs shall be approved by Symphony Park Design Review Committee and shall be in compliance with all applicable rules and regulations.

(b) The design of the Park should also include the designation of areas for the construction and operation of appropriate retail and other accessory uses which, if not used by PAC, shall be available for lease.

6. Dispositions and Development Agreement.

(a) CPV and PAC shall negotiate a Disposition and Development Agreement ("DDA") whereby the Park will be conveyed by CPV to the PAC and which will set forth the terms and conditions of such conveyance.

(b) It is contemplated that the DDA shall contain the requirements for the design, permitting and funding of the Park construction prior to and as a condition to the conveyance of the Park to PAC.

(c) It is further contemplated that the DDA would set forth the requirement for funding environmental remediation up to an agreed cost cap amount and pursuant to an approved environmental remediation plan. CPV would fund this effort up to the cost cap amount. The conditions relating to the cost cap and other conditions relating to remediation will be set forth in a Project Environmental Management Agreement which shall be an exhibit to the DDA.

7. Declaration of Special Land Use Restrictions. At the closing of the conveyance of the Park, it is anticipated that the parties shall enter into a Declaration of Special Land Use Restrictions (the "DSLURS") which shall be recorded in the Official Records of Clark County, Nevada against title to the Park. It is further contemplated that the DSLURS should govern PAC's obligation to construct the Park pursuant to the agreed design, to maintain the Park to agreed standards of maintenance, and to operate the Park within the parameters set forth in Section 8 below. The DSLURS shall restrict the use of the Park to a park and its accessory uses. All other uses may be prohibited.

8. Operations and Management.

(a) Maintenance responsibilities associated with the Park would be borne by PAC at PAC's expense pursuant to agreed upon standards. PAC may be required to maintain customary insurance for the operation of the Park.

(b) Hours of operations are to be determined by the parties, but in any event shall be between dawn and dusk during which the Park will be open for use by members of the general public and operating hours for night time events and performances shall be established.

(c) The Park would be available as a performance venue for outdoor concerts and events presented by PAC.

(d) In addition, PAC would make the Park available for rent by the public for public and private events at reasonable rental rates competitive with other similar venues in Las Vegas, to be determined upon completion of the Park. Such public and private events may include, but not be limited to, public and private parties, concerts, weddings, events, walk-a-thons and similar events.

(e) Conditions of use, rental terms, insurance and other similar requirements may be established by PAC, provided, however, that such terms, including rental charges, shall be done in a non-discriminating manner for all parties, and the availability of the Park to such uses shall be at all times during the year and no less than an agreed upon amount of days as may be set forth in the DSLURS.

(f) DSLURS should set forth agreed prohibitions on the use of the Park which PAC may agree to enforce.

(g) The DSLURS will provide benchmarks for a requirement that PAC begin to use reasonable efforts for securing retail users for the retail locations designated for the Park. The parties agree that PAC shall have the right to directly operate retail within the Park. Upon completion of the construction of the retail uses to the Park, such space shall include restrooms to be maintained by the retail operator.

(h) PAC may agree to provide restrooms for all events it hosts and such facilities shall remain open during hours when the Park is rented out for public or private events, as more fully described in Section 8(d) above.

9. Landscape. The contractual relationship with Design Workshop, Inc., a Colorado corporation, ("Design Workshop") may be reestablished. PAC may begin work with Design Workshop to create plans and consult on the landscape for the Park.

10. Technology. The DDA should also include certain provisions regarding the need for wiring to be installed during the initial construction and landscaping of the Park. Such wiring should allow for integration into the Symphony Park Master Association ("SPMA") technological systems, which shall only be utilized in the event that the Park is no longer owned and operated by PAC. Provided that the costs to install such wiring do not exceed an amount to be agreed upon by the parties in the DSLURS, the costs of such wiring and installation shall be borne by PAC,

11. Default.

(a) Conditions of default under the DSLURS may include PAC failing to operate the performing arts center, PAC's failing to maintain the Park to the agreed standard and/or failing of PAC to comply with the covenants of operating the Park as set forth in DSLURS.

(b) In the event of a default under the DSLURS, CPV or its designee would have the right to cure such default and collect the costs of such cure from PAC and/or the right to require a conveyance by PAC of the Park to the City or similar governmental entity. In the event of default in connection with PAC's obligations related to retail uses, PAC would not be able to give SPMA preferential rights to develop the retail uses. Alternatively, PAC would be required to undertake a neutral process to select a developer for the retail uses on an arm's length basis.

(c) In the event of a transfer by PAC, PAC could only transfer the Park to another 501(c)(3) entity or to a state or local government for public use, unless the transfer is for consideration equal to the fair market value of the property. Fair market value would be determined at the time of the transfer by an independent appraiser selected by PAC, provided, however, that such appraisal would be based upon the permanent restriction that the Park be used as a park. However, it is common practice for properties owned by 501(c)(3) entities to be sold utilizing auction procedures. Accordingly, PAC may utilize such procedures if the property would be sold or transferred.

12. Contingencies.

- (a) The DDA should provide that the following are contingencies to each party's respective obligations to the close of the conveyance of the Park to PAC:
- (b) Approval by the governing council of the City;
- (c) Obtaining the approvals of the various developers in master development in which the Park is located as may be necessary for PAC to operate and maintain the Park, including any required amendments to the Symphony Park Charter; and
- (d) Formalization of Donald W. Reynolds Foundation funding for Park construction.

13. Appropriation Requirement.

Any monetary obligations of CPV hereunder or other obligations of CPV hereunder which require an outlay of money by CPV for the performance thereof are subject to the governing body of the CPV making an appropriation to pay the same, and nothing in this MOU obligates the governing body to make any such appropriation which has not been made before the Effective Date.

14. Miscellaneous Provisions.

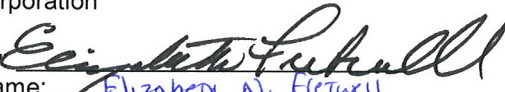
- (a) Current Understanding. This MOU constitutes the entire understanding between the parties hereto pertaining to the subject matter hereof and supersedes all prior agreements, oral or written, express or implied, and all understandings, negotiations or discussions of the parties, whether oral or written, and there are no warranties, representations or agreements between the parties in connection with the subject matter hereof except as are set forth herein.
- (b) Amendment, Modifications. This MOU may not be altered, amended, changed, waived, terminated or modified in any respect or particular unless the same shall be in writing and signed by or on behalf of the party to be charged therewith.
- (c) Headings. All section and paragraph titles or captions are for convenience only and shall not be deemed a part of this MOU unless so specified.
- (d) Counterparts. This MOU may be executed in counterparts, each of which shall be deemed an original, but which when taken together shall constitute one and the same instrument.
- (e) Days of the Week. If the date upon which any act is to be performed or notice is to be delivered under this MOU shall fall upon a Saturday, Sunday or legal holiday, such act or notice shall be timely if performed or delivered on the next business day.
- (f) Non-liability of Officials and Employees. No member, official or employee of any party, or any other governing body shall be personally liable under the terms of this MOU; and any and all such personal liability of every such person, either at common law or in equity or by constitution or statute, and any and all such rights and claims against every such person, or under or by reason of the obligations, covenants or agreements contained in this MOU or implied therefrom are expressly waived and released as a condition of, and as a consideration for, the execution of this MOU.
- (g) No Third Party Beneficiaries. Nothing in this MOU shall confer upon any person, other than the Parties hereto and their respective successors and permitted assigns, any rights or remedies under or by reason of this MOU.
- (h) Construction. The terms and conditions of this MOU shall be construed as a whole according to its fair meaning and not strictly for or against any party. The parties acknowledge that each

of them has reviewed this MOU and has had the opportunity to have it reviewed by an attorney and that any rule of construction to the effect that ambiguities are to be resolved against the drafting party shall not apply in the interpretation of this MOU, including its exhibits or any amendments. The parties further agree that prior drafts of this MOU shall not be relevant or considered in connection with the construction or interpretation of this MOU, or to vary, modify or contradict any of the terms or provisions of this MOU.

IN WITNESS WHEREOF, the parties hereto have executed this MOU as of the date first written above.

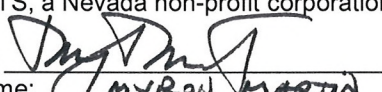
CPV

CITY PARKWAY V, INC., a Nevada non-profit corporation

By: 
Name: Elizabeth N. Fletwell
Title: President

PAC

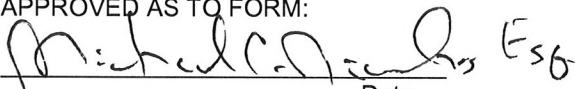
THE SMITH CENTER FOR THE PERFORMING ARTS, a Nevada non-profit corporation

By: 
Name: MYRON MARTIN
Title: PRESIDENT

ATTEST:


SCOTT D. ADAMS, Title Vice-president

APPROVED AS TO FORM:

 Esq
Date

6-18-10

410.128
3-3-09
D. JENSEN

Exhibit 'A'

Legal Description, M3 Parcel

SITUATE IN THE CITY OF LAS VEGAS, CLARK COUNTY, NEVADA, LYING WITHIN THE NORTHEAST QUARTER (NE 1/4) OF SECTION 33, TOWNSHIP 20 SOUTH, RANGE 61 EAST, BEING A PORTION OF LOT 5 AS SHOWN IN THE OFFICE OF THE CLARK COUNTY, NEVADA RECORDER IN BOOK 53 OF PLATS ON PAGE 61, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE CENTERLINE INTERSECTION OF GRAND CENTRAL PARKWAY AND BONNEVILLE AVENUE AS SHOWN ON SAID PLAT; THENCE ALONG THE CENTERLINE OF SAID BONNEVILLE AVENUE, NORTH 81°09'57" EAST, 383.24 FEET TO THE CENTERLINE INTERSECTION OF BONNEVILLE AVENUE AND PROMENADE PLACE; THENCE ALONG THE CENTERLINE OF PROMENADE PLACE, NORTH 17°53'58" EAST, 188.15 FEET TO A CURVE CONCAVE SOUTHEASTERLY; THENCE NORTHEASTERLY ALONG THE CENTERLINE OF PROMENADE PLACE AND ALONG THE ARC OF A 2053.00 FOOT RADIUS CURVE TO THE RIGHT, 362.42 FEET, WITH A CENTRAL ANGLE OF 10°06'52"; THENCE CONTINUING ALONG SAID CENTERLINE, NORTH 28°00'50" EAST, 583.65 FEET; THENCE DEPARTING SAID CENTERLINE, SOUTH 61°59'10" EAST, 17.00 FEET TO A POINT ON THE EASTERLY RIGHT-OF-WAY LINE OF PROMENADE PLACE, SAID POINT ALSO BEING **THE POINT OF BEGINNING**; THENCE ALONG SAID EASTERLY RIGHT-OF-WAY LINE, NORTH 28°00'50" EAST, 73.81 FEET TO A CURVE CONCAVE SOUTHERLY; THENCE NORTHEASTERLY ALONG SAID EASTERLY RIGHT-OF-WAY LINE AND ALONG AN ARC OF A 1130.00 FOOT RADIUS CURVE THE RIGHT, 76.94 FEET, WITH A CENTRAL ANGLE OF 03°54'04", TO A POINT OF COMPOUND CURVE TO WHICH A RADIAL LINE BEARS, NORTH 58°05'06" WEST; THENCE DEPARTING THE EASTERLY RIGHT-OF-WAY OF PROMENADE PLACE AND EASTERLY ALONG THE ARC OF A 10 FOOT RADIUS CURVE TO THE RIGHT, 15.01 FEET, WITH A CENTRAL ANGLE OF 86°00'22", TO THE NORTHERLY RIGHT-OF-WAY OF SYMPHONY PARK AVENUE; THENCE ALONG SAID NORTHERLY RIGHT-OF-WAY LINE, SOUTH 62°04'44" EAST, 382.10 FEET TO A CURVE CONCAVE WESTERLY; THENCE DEPARTING SAID NORTHERLY RIGHT-OF-WAY LINE AND SOUTHERLY ALONG THE ARC OF A 10 FOOT RADIUS CURVE TO THE RIGHT, 15.70 FEET, WITH A CENTRAL ANGLE OF 89°58'27" TO A POINT ON THE WESTERLY RIGHT-OF-WAY LINE OF CITY PARKWAY; THENCE ALONG SAID WESTERLY RIGHT-OF-WAY LINE, SOUTH 27°53'43" WEST, 150.00 FEET TO A CURVE CONCAVE NORTHERLY; THENCE DEPARTING SAID WESTERLY RIGHT-OF-WAY AND WESTERLY ALONG THE ARC OF A 10 FOOT RADIUS CURVE TO THE RIGHT, 15.71 FEET, WITH A CENTRAL ANGLE OF 90°01'33", TO THE NORTHERLY RIGHT-OF-WAY SYMPHONY PARK AVENUE; THENCE ALONG SAID NORTHERLY RIGHT-OF-WAY LINE, NORTH 62°04'44" WEST, 385.00 FEET TO A



CURVE CONCAVE EASTERLY; THENCE DEPARTING SAID NORTHERLY RIGHT-OF-WAY AND NORTHERLY, ALONG THE ARC OF A 10 FOOT RADIUS CURVE TO THE RIGHT, 15.72 FEET, WITH A CENTRAL ANGLE OF $90^{\circ}05'34''$, TO **THE POINT OF BEGINNING**.

PARCEL CONTAINS 68,646 SQUARE FEET, MORE OR LESS.

LAND SURVEYOR, PLS
DENNIS H. JENSEN
NEVADA LICENSE NO. 5859

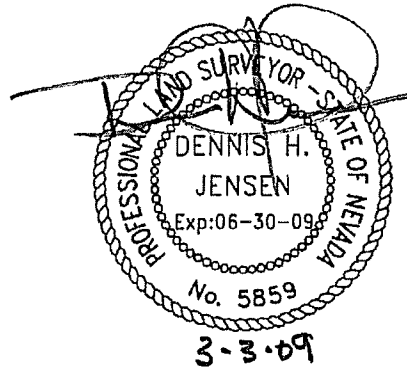
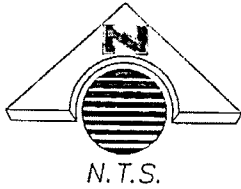


EXHIBIT 'B' TO ACCOMPANY LEGAL DESCRIPTION



A PORTION OF LOT 5 AS
SHOWN IN BOOK 53, PAGE
61 OF PLATS
APN: 139-34-110-003

SEE
DETAIL ON
SHEET 4

PARCEL M3
68,648 S.F.

L4

N28°00'50"E
583.65'

POINT OF
BEGINNING

GRAND CENTRAL PARKWAY

UNION PACIFIC RAILROAD

PARCEL A-2
(FILE 163,
PAGE 35 OF
SURVEYS)
PARCEL A-1
(FILE 163,
PAGE 35 OF
SURVEYS)

(BASIS OF BEARINGS)

BONNEVILLE
AVENUE

POINT OF
COMMENCEMENT

SHEET 3 OF 5

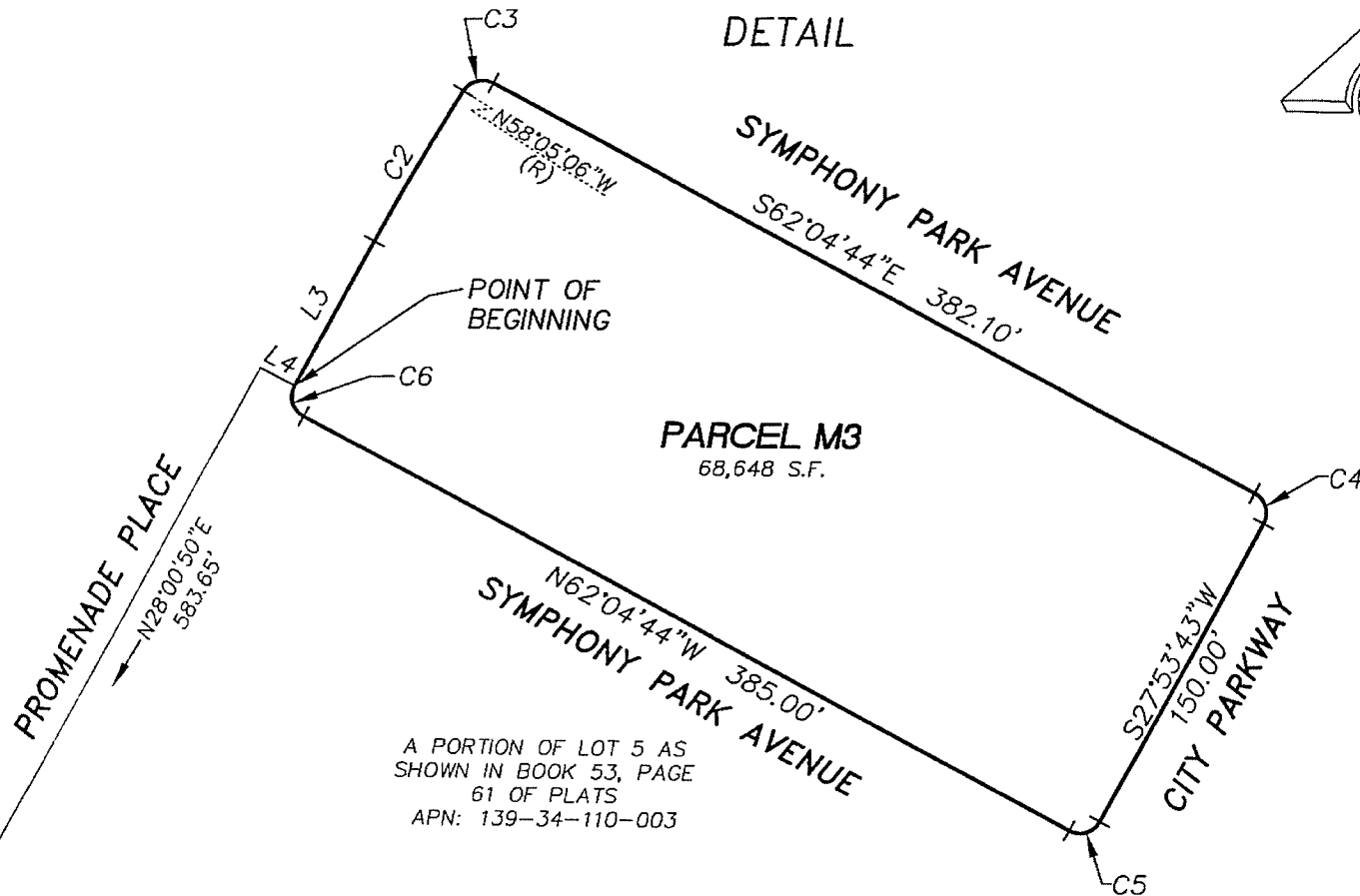
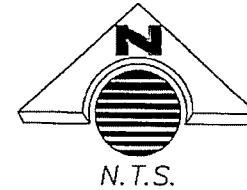
HORIZON SURVEYS



9901 COVINGTON CROSS DRIVE, SUITE 120
LAS VEGAS, NEVADA 89144
PHONE (702)228-5066 FAX (702)228-0677
WWW.HORIZONSURVEYS.COM

EXHIBIT 'B' TO ACCOMPANY LEGAL DESCRIPTION

DETAIL



A PORTION OF LOT 5 AS
SHOWN IN BOOK 53, PAGE
61 OF PLATS
APN: 139-34-110-003

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EXHIBIT 'B' TO ACCOMPANY LEGAL DESCRIPTION

LINE TABLE

LINE	BEARING	LENGTH
L1	N81°09'57"E	383.24'
L2	N17°53'58"E	188.15'
L3	N28°00'50"E	73.81'
L4	S61°59'10"E	17.00'

CURVE TABLE

CURVE	DELTA	RADIUS	LENGTH	TANGENT
C1	10°06'52"	2053.00	362.42'	181.68'
C2	03°54'04"	1130.00	76.94'	38.48'
C3	86°00'22"	10.00	15.01'	9.33'
C4	89°58'27"	10.00	15.70'	10.00'
C5	90°01'33"	10.00	15.71'	10.00'
C6	90°05'34"	10.00	15.72'	10.02'

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Parcel name: M3

North: 6078.4596 East : 10866.8370
Line Course: N 28-00-50 E Length: 73.81
North: 6143.6215 East : 10901.5044
Curve Length: 76.94 Radius: 1130.00
Delta: 3-54-04 Tangent: 38.48
Chord: 76.92 Course: N 29-57-52 E
Course In: S 61-59-10 E Course Out: N 58-05-06 W
RP North: 5612.8768 East : 11899.1066
End North: 6210.2600 East : 10939.9231
Curve Length: 15.01 Radius: 10.00
Delta: 86-00-22 Tangent: 9.33
Chord: 13.64 Course: N 74-55-05 E
Course In: S 58-05-06 E Course Out: N 27-55-16 E
RP North: 6204.9734 East : 10948.4114
End North: 6213.8092 East : 10953.0933
Line Course: S 62-04-44 E Length: 382.10
North: 6034.8888 East : 11290.7142
Curve Length: 15.70 Radius: 10.00
Delta: 89-58-27 Tangent: 10.00
Chord: 14.14 Course: S 17-05-30 E
Course In: S 27-55-16 W Course Out: S 62-06-17 E
RP North: 6026.0529 East : 11286.0317
End North: 6021.3733 East : 11294.8700
Line Course: S 27-53-43 W Length: 150.00
North: 5888.8026 East : 11224.6914
Curve Length: 15.71 Radius: 10.00
Delta: 90-01-33 Tangent: 10.00
Chord: 14.15 Course: S 72-54-30 W
Course In: N 62-06-17 W Course Out: S 27-55-16 W
RP North: 5893.4812 East : 11215.8534
End North: 5884.6439 East : 11211.1664
Line Course: N 62-04-44 W Length: 385.00
North: 6064.9223 East : 10870.9830
Curve Length: 15.72 Radius: 10.00
Delta: 90-05-34 Tangent: 10.02
Chord: 14.15 Course: N 17-01-57 W
Course In: N 27-55-16 E Course Out: N 61-59-10 W
RP North: 6073.7582 East : 10875.6655
End North: 6078.4516 East : 10866.8383

Perimeter: 1129.99 Area: 68,646. S.F. 1.57 ACRES

Mapcheck Closure - (Uses listed courses and chords)

Error Closure: 0.0080 Course: S 09-18-53 E
Error North: -0.00793 East : 0.00130
Precision 1: 140,488.75