

# EXHIBIT 1

## EROSION CONTROL EASEMENT AGREEMENT

THIS EROSION CONTROL EASEMENT AGREEMENT (this “Agreement”) is entered into this \_\_\_\_ day of \_\_\_\_\_, 2021, by and between the City of Duluth, a municipal corporation created and existing under the laws of the State of Minnesota (“City”) and The Ledges On Lake Superior Homeowners’ Association, Inc., a Minnesota nonprofit corporation (“Ledges”)

### RECITALS

A. City is owner of real property located in St. Louis County, Minnesota and legally described on the attached Exhibit A (the “City Property”).

B. The real property located in St. Louis County, Minnesota and legally described on the attached Exhibit B (the “Ledges Property”) is a portion of the common elements in Common Interest Community No. 78, which is adjacent to the City Property.

C. The Lake Superior shoreline located on the City Property has suffered erosion due to natural causes, and future erosion has the potential to negatively impact the Ledges Property.

D. Ledges wishes to install and maintain, from time to time, erosion control measures on the City Property in order to prevent further erosion to the Lake Superior shoreline located on the City Property.

E. In order to allow Ledges to install erosion control measures, City wishes to grant and Ledges wishes to accept an easement over the City Property as further described below.

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which is acknowledged, the parties agree as follows:

1. Grant of Easement. Subject to the terms and conditions set forth in this Agreement, City does hereby grant to Ledges, its successors and assigns, a perpetual, non-exclusive easement (the

“Shoreline Easement”), for the benefit of the Ledges Property, for the sole purpose of installing, inspecting and maintaining erosion control measures under, over, upon, across and along the City Property. Ledges acknowledges that the City Property includes areas that are open to the public. Ledges shall not, on a permanent or temporary basis, interfere with City’s or the public’s use of the City Property without the advance written approval of City’s Property and Facilities Manager or their designee (the “Manager”).

2. Installation, Inspection and Maintenance.

- a. Ledges may, at its sole cost and expense, install and maintain erosion control measures on the City Property only with advance written approval of the Manager pursuant to the process set forth in this Agreement. This approval requirement includes the delivery, installation, and/or storage of any temporary or permanent equipment or materials on the City Property. Prior to entering the City Property for the purposes of installing or maintaining erosion control measures, Ledges shall submit to the Manager a concept design of the proposed erosion control measures (or maintenance of existing measures) along with detailed plans, including a drawing in form acceptable to the Manager showing the location of the proposed erosion control measures within the City Property. These documents shall be submitted to City at least sixty (60) days before the planned commencement of the work. The Manager can approve or reject the proposed erosion control measures, provided that if the Manager rejects the proposed erosion control measures, the Manager shall deliver to Ledges a written statement given the reasons therefor. No work may begin on any approved project until all necessary permits are secured. All work shall conform to state law and the Duluth City Code. All improvements or installations within the City Property shall become the property of City, but shall be maintained by Ledges as required by this Agreement. The proposed erosion control measures, upon approval by the Manager pursuant to the process set forth in this paragraph, shall be deemed to be a permissible use of the City Property that does not interfere with City’s or the public’s use of the City Property.
- b. Not less than thirty (30) days prior to commencement of any installation or maintenance activities on the City Property, Ledges will provide City with sufficient proof of required insurance, including general liability insurance and worker’s compensation, in form acceptable to City’s Claims Investigator and Adjuster.
- c. Ledges, at its sole expense, shall be responsible for ongoing maintenance of all erosion control measures installed pursuant to this Agreement and shall maintain them in a safe manner. Notwithstanding the foregoing, Ledges shall not be obligated to continue to maintain ineffective erosion control measures, so long as the lack of maintenance does not present a safety hazard to the public, as reasonably determined by City. In the event City deems the lack of maintenance of an ineffective erosion control measure a safety hazard, Ledges shall perform such maintenance activities necessary to ensure public safety upon request from City. In the event Ledges fails to perform any maintenance on the City Property that it deems necessary to ensure public safety, City may, at its option after written notice to Ledges, perform such maintenance and immediately collect from Ledges all costs incurred by City in performing the maintenance. The

foregoing sentence shall apply only to a failure by the Ledges to maintain erosion control measures installed by the Ledges in a safe manner and shall not create any duty or obligation on the part of the ledges to mitigate or repair any damage to the City Property caused by future erosion.

- d. Ledges shall not create or permit any mortgage, encumbrance or lien or allow any mechanics' or materialmen's liens to be filed or established or to remain against the City Property, or any part thereof, provided that if Ledges shall first notify City of its intention to do so and post such security as City reasonably deems necessary, Ledges may, in good faith, contest any such mechanics' or other liens filed or established as long as City does not deem its interest or rights in this Agreement or in the City Property to be subject to foreclosure by reason of such contest.
- e. Ledges, its contractors, agents and employees may enter the City Property at all reasonable times for the purpose of inspecting and monitoring erosion control measures within the City Property.
- f. Notwithstanding City's role in accepting or rejecting proposed erosion control measures, or suggesting modifications to proposed erosion control measures, City shall not be responsible for the effectiveness of any erosion control measures.
- g. Ledges shall procure at its sole expense all licenses and permits necessary for its activities on the City Property.
- h. Nothing contained in this Agreement shall be deemed to obligate Ledges to undertake erosion control measures within the City Property.

### 3. Insurance and Indemnification.

- a. For the duration of any installation or maintenance work on the City Property, Ledges, at its sole cost and expense, shall procure and maintain in force Public Liability Insurance written on an "occurrence" basis under a Commercial General Liability Form in limits of not less than \$2,000,000 aggregate per occurrence for personal bodily injury and death and limits of not less than \$2,000,000 for damage liability. If person limits are specified, they shall be for not less than \$2,000,000 per person and be for the same coverages. Insurance required by this Agreement shall be taken out and maintained in responsible insurance companies organized under the laws of the states of the United States and licensed to do business in the State of Minnesota. Insurance shall cover public liability including premises and operations coverage, independent contractors - protective contingent liability, personal injury, contractual liability covering the indemnity obligations set forth herein, and products - completed operations. Ledges shall provide Certificates of Insurance to City evidencing the required insurance coverage. The required insurance policies are subject to approval by the City Attorney and shall contain a condition that they may not be cancelled without thirty (30) days' advance written notice to City. The Certificates of Insurance shall name City as an additional insured. City reserves the right to require Ledges to increase the coverages

set forth above to the extent that the liability limits as provided in Minn. Stat. § 466.04 are increased, and to provide evidence of such increased insurance.

- b. City does not represent or guarantee that the types or limits of insurance coverage required by this Agreement are adequate to protect Ledge's interests and liabilities.
  - c. City shall not be liable to Ledges for any injury or damage resulting from any defect in the City Property, nor for any damage that may result from the negligence of any other person whatsoever.
  - d. Ledges shall be responsible for any losses or damages whatsoever caused by the acts of Ledges, or its employees, agents, contractors or invitees. Ledges agrees to indemnify, save harmless, and defend City and its officers, agents, servants and employees from and against any and all claims, suits, loss, judgments, costs, damages and expenses asserted by any person by reason of injury to or death of any and all persons, including employees or agents of City or Ledges, and including any and all damages to property to whomsoever belonging, including property owned by, leased to, or in the care, custody, and control of Ledges, arising out of, related to or associated with the use of the City Property by Ledges or performance of its obligations under this Agreement. Promptly after receipt by City of notice of the commencement of any action with respect to which Ledges is required to indemnify City, City shall notify Ledges in writing of the commencement thereof, and, subject to the provisions of this Agreement, Ledges shall assume the defense of such action, including the employment of counsel satisfactory to City and the payment of expenses. In so far as such action shall relate to any alleged liability of City with respect to which indemnity may be sought against Ledges, City shall have the right to employ separate counsel in any such action and to participate in the defense thereof, and the fees and expenses of such separate counsel shall be at the expense of Ledges. This indemnification provision shall survive expiration or termination of this Agreement for any reason, for a period of six (6) years following expiration or termination of this Agreement. Notwithstanding the foregoing provisions of this paragraph, Ledges shall not be responsible to City for any erosion-related losses or damages to the City Property due to ineffective erosion control measures undertaken by Ledges, to the extent that such erosion control measures were approved by the Manager pursuant to the process set forth in this Agreement.
4. Severability. If any term, provision or condition contained in this Agreement shall to any extent be invalid or unenforceable, the remainder of this Agreement or the application of such term, provision or condition to persons or circumstances other than those in respect of which it is invalid or unenforceable, shall not be affected thereby and each term, provision or condition of this Agreement shall be valid and enforceable to the fullest extent permitted by law.
  5. Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of Minnesota.

6. Amendment. This Agreement may be amended only in writing, signed by both of the parties hereto, or their successors in interest, and recorded in the real estate records in St. Louis County, Minnesota.
7. Binding Effect. This Agreement and each and every covenant, agreement, and other provision hereof shall inure to the benefit of and be binding upon the each of parties hereto and their respective successors and assigns. The Shoreline Easement shall be perpetual and the Shoreline Easement and all other rights granted in this Agreement shall run with the land. The Shoreline Easement shall benefit the Ledges Property and burden the City Property.
8. Notices. Unless otherwise provided herein, notice to City or Ledges shall be sufficient if sent by regular United States mail, postage prepaid, addressed to the parties at the addresses hereinafter set forth or to such other respective persons or addresses as the parties may designate to each other in writing from time to time.

City of Duluth  
 Attn: Property & Facilities Manager  
 1532 West Michigan Street  
 Duluth, MN 55806  
 (218) 730-4430

The Ledges On Lake Superior  
 Homeowners' Association, Inc.  
 Attn: President  
 The Ledges  
 2200 Water St  
 Duluth, MN 55812

9. Title and Authority. Ledges represents to City that (i) this easement document has been properly approved by Ledges; (ii) the individual(s) executing this document on behalf of Ledges have the requisite authority to execute this document and to bind Ledges thereto; and (iii) no further permissions or authorizations from Ledges or owners of lots within the plat of Common Interest Community No. 78 The Ledges On Lake Superior are needed in order to fully bind Ledges to this Agreement.
10. Consent Not Unreasonably Withheld. Whenever the consent or approval of by City, the Manager, the City's Claims Investigator and Adjuster, or the City Attorney is required or permitted under the terms of this Agreement, such consent or approval shall not be unreasonably withheld, conditioned or delayed.
11. Licenses, Fees and Other Charges. Ledges shall pay all licenses, fees, and other charges that arise because of, out of, or in the course of Ledges' installation, inspection or maintenance or erosion control measures on the City Property.

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

IN WITNESS WHEREOF, this Agreement has been executed by the parties hereto as of the day and year first above written.

The Ledges On Lake Superior Homeowners’  
Association, Inc.

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

Its: Vice President

STATE OF MINNESOTA     )  
  ) ss  
COUNTY OF ST. LOUIS    )

This instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_, 2021 by Dennis Isernhagen, the Vice President of The Ledges On Lake Superior Homeowners’ Association, Inc., a Minnesota nonprofit corporation.

\_\_\_\_\_  
Notary Public

CITY OF DULUTH

By: \_\_\_\_\_  
Emily Larson, Mayor

Attest: \_\_\_\_\_  
Chelsea Helmer, City Clerk

STATE OF MINNESOTA    )  
  ) ss  
COUNTY OF ST. LOUIS    )

This instrument was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_, 2021,  
by Emily Larson, Mayor of the City of Duluth, a Minnesota municipal corporation.

\_\_\_\_\_  
Notary Public

STATE OF MINNESOTA    )  
  ) ss  
COUNTY OF ST. LOUIS    )

This instrument was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_, 2021,  
by Chelsea Helmer, City Clerk, of the City of Duluth, a Minnesota municipal corporation.

\_\_\_\_\_  
Notary Public

This instrument was drafted by:  
Office of the City Attorney  
Room 410 City Hall  
411 West 1st Street  
Duluth, MN 55802-1198

## EXHIBIT A

### CITY PROPERTY

All those parts of Lots 1, 2, 3, and 4, Block E, ENDION DIVISION OF DULUTH, including vacated parts of 24<sup>th</sup> Avenue East and Water Street adjacent thereto, which lie Southeasterly of the following described line:

Commencing at most Westerly corner of Block 1, Langellier's Rearrangement of Block D, ENDION DIVISION OF DULUTH, thence Southeasterly along the Southwesterly line of said Block 1 a distance of 231.00 feet to the beginning of said line to be described; thence deflect 66°-14'-31" to the left in a Northeasterly direction a distance of 116.25 feet; thence deflect 29°-28'-14" to the left in a Northeasterly direction a distance of 81.76 feet; thence deflect 5°-38'-54" to the right in a Northeasterly direction a distance of 37.37 feet; thence deflect 37°-02'-21" to the left in a Northerly direction a distance of 111.21 feet; thence deflect 31°-20'-34" to the right in a Northeasterly direction a distance of 108.11 feet; thence deflect 28°-12'-09" to the left in a Northerly direction a distance of 54.98 feet to the Southwesterly line of Lot 1, Block E, ENDION DIVISION OF DULUTH; thence deflect 00°-15'-13" to the left in a Northerly direction a distance of 120.94 feet; thence deflect 15°-16'-46" to the right in a Northerly direction a distance of 52.86 feet; thence deflect 11°-08'-27" to the right in a Northeasterly direction a distance of 50.47 feet; thence deflect 10°-39'-58" to the left in a Northerly direction a distance of 52.71 feet; thence deflect 06°-04'-03" to the left in a Northerly direction a distance of 34.00 feet; thence deflect 16°-22'-48" to the left in a Northerly direction a distance of 58.31 feet to the most Northerly corner of Lot 6, Block E, ENDION DIVISION OF DULUTH, and there terminating. Except all minerals and mineral rights.

AND



All those parts of Block 1, Langellier's Rearrangement of Block D, ENDION DIVISION OF DULUTH, including vacated parts of 23<sup>rd</sup> ½ Avenue East, alley within said Block adjacent thereto; Block 2, Langellier's Rearrangement of Block D, ENDION DIVISION OF DULUTH, including vacated parts of 23<sup>rd</sup> ½ Avenue East, alley within said Block, and 24<sup>th</sup> Avenue East adjacent thereto; and Lots 5 and 6, Block E, ENDION DIVISION OF DULUTH, including vacated parts of 24<sup>th</sup> Avenue East and Water Street adjacent thereto which lie Southeasterly of the following described line:

Commencing at most Westerly corner of Block 1, Langellier's Rearrangement of Block D, ENDION DIVISION OF DULUTH, thence Southeasterly along the Southwesterly line of said Block 1 a distance of 231.00 feet to the beginning of said line to be described; thence deflect 66°-14'-31" to the left in a Northeasterly direction a distance of 116.25 feet; thence deflect 29°-28'-14" to the left in a Northeasterly direction a distance of 81.76 feet; thence deflect 5°-38'-54" to the right in a Northeasterly direction a distance of 37.37 feet; thence deflect 37°-02'-21" to the left in a Northerly direction a distance of 111.21 feet; thence deflect 31°-20'-34" to the right in a Northeasterly direction a distance of 108.11 feet; thence deflect 28°-12'-09" to the left in a Northerly direction a distance of 54.98 feet to the Southeasterly line of Lot 1, Block E, ENDION DIVISION OF DULUTH; thence deflect 00°-15'-13" to the left in a Northerly direction a distance of 120.94 feet; thence deflect 15°-16'-46" to the right in a Northerly direction a distance of 52.86 feet; thence deflect 11°-08'-27" to the right in a Northeasterly direction a distance of 50.47 feet; thence deflect 10°-39'-58" to the left in a Northerly direction a distance of 52.71 feet; thence deflect 06°-04'-03" to the left in a Northerly direction a distance of 34.00 feet; thence deflect 16°-22'-48" to the left in a Northerly direction a distance of 58.31 feet to the most Northerly corner of Lot 6, Block E, ENDION DIVISION OF DULUTH, and there terminating.

AND

Lots 11, 12, 13, 14, 15 and 16, Block 2, ENDION DIVISION OF DULUTH, including vacated parts of 24<sup>th</sup> Avenue East and Water Street adjacent thereto, EXCEPT the Northwesterly 25.00 feet thereof.

AND

Lots 9, 10, 11, 12, 13, and 14, Block 3, ENDION DIVISION OF DULUTH, including vacated parts of 24<sup>th</sup> Avenue East and Water Street adjacent thereto, EXCEPT the Northwesterly 25.00 feet thereof.

AND

All those parts of Block 1, Langellier's Rearrangement of Block D, ENDION DIVISION OF DULUTH, including vacated parts of 23<sup>rd</sup> ½ Avenue East, alley within said Block and Water Street adjacent thereto; Block 2, Langellier's Rearrangement of Block D, ENDION DIVISION OF DULUTH, including vacated parts of 23<sup>rd</sup> ½ Avenue East, alley within said Block, 24<sup>th</sup> Avenue East and Water Street adjacent thereto; and Lots 1, 2, 3, 4, 5 and 6, Block E, ENDION DIVISION OF DULUTH, including vacated parts of 24<sup>th</sup> Avenue East and Water Street adjacent thereto which lie Northwesterly of the following described line:

Commencing at most Westerly corner of Block 1, Langellier's Rearrangement of Block D, ENDION DIVISION OF DULUTH, thence Southeasterly along the Southwesterly line of said Block 1 a distance of 231.00 feet to the beginning of said line to be described; thence deflect 66°-14'-31" to the left in a Northeasterly direction a distance of 116.25 feet; thence deflect 29°-28'-14" to the left in a Northeasterly direction a distance of 81.76 feet; thence deflect 5°-38'-54" to the right in a Northeasterly direction a distance of 37.37 feet; thence deflect 37°-02'-21" to the left in a Northerly direction a distance of 111.21 feet; thence deflect 31°-20'-34" to the right in a Northeasterly direction a distance of 108.11 feet; thence deflect 28°-12'-09" to the left in a Northerly direction a distance of 54.98 feet to the Southeasterly line of Lot 1, Block E, ENDION DIVISION OF DULUTH; thence deflect 00°-15'-13" to the left in a Northerly direction a distance of 120.94 feet; thence deflect 15°-16'-46" to the right in a Northerly direction a distance of 52.86 feet; thence deflect 11°-08'-27" to the right in a Northeasterly direction a distance of 50.47 feet; thence deflect 10°-39'-58" to the left in a Northerly direction a distance of 52.71 feet; thence deflect 06°-04'-03" to the left in a Northerly direction a distance of 34.00 feet; thence deflect 16°-22'-48" to the left in a Northerly direction a distance of 58.31 feet to the most Northerly corner of Lot 6, Block E, ENDION DIVISION OF DULUTH, and there terminating.

**EXHIBIT B**

Ledges Property Legal Description

The Common Elements in Common Interest Community No. 78 The Ledges On Lake Superior, St. Louis County, Minnesota.

AND

The Common Elements in Common Interest Community No. 78 The Ledges On Lake First Supplemental, St. Louis County, Minnesota.

AND

The Common Elements in Common Interest Community No. 78 The Ledges On Lake Superior Second Supplemental, St. Louis County Minnesota.

