

EXHIBIT 1

SETTLEMENT AGREEMENT

This Settlement Agreement is made and entered into as of the last day set forth on the signature page (“Effective Date”) by Lakehead Boat Basin, Inc., Marine Service, Inc., Island Inn and Suites, LLC, and Lakehead Hotel Partners, LLC (collectively, “Plaintiffs”), and the City of Duluth (“Defendant”).

WHEREAS, Plaintiffs commenced legal action against Defendant by serving Defendant with a summons and complaint in *Lakehead Boat Basin, Inc., et al. v. City of Duluth*, St. Louis County District Court File No. 69DU-CV-19-871 (the “Action”) asserting claims related to the use of a lot consisting of six parcels, nos. 010-4390-00910, 010-4390-00920, 010-4390-00930, 010-4390-00940, 010-4390-00950, and 010-4390-00960, located at the southeast corner of Minnesota Avenue and 10th Street on Minnesota Point in the City of Duluth, Minnesota (the “Lot”);

WHEREAS, as a result of settlement negotiations, the Parties agreed to a settlement concerning the Action and any potential future action arising from the facts and circumstances alleged in the Action, the terms of which agreement are set forth in the Mediated Settlement Agreement attached as **Exhibit A** and hereby incorporated;

NOW, THEREFORE, the Parties, desiring to fully and finally settle the Action, and in consideration of the promises and covenants hereinafter contained, and intending to be legally bound, agree as follows:

1. **No admission of liability or wrongdoing:** There is no admission of liability or wrongdoing by any Party, and all Parties understand that this settlement represents a mutual agreement to resolve disputed claims.
2. **Dismissal of Action and Covenant Not to Sue:** Plaintiffs agree to dismiss this action without prejudice and covenant not to sue to establish nonconforming use rights on the Lot based on use to date except if necessary to establish or enforce nonconforming use rights as stated in the Mediated Settlement Agreement.
3. **Dismissal of Enforcement Actions:** Defendant agrees to dismiss with prejudice and withdraw all prior enforcement efforts, claims, and orders directed at or arising from use of the Lot, including but not limited to Defendant’s letters of June 22, 2018, August 14, 2018, August 15, 2018, and October 15, 2018. Defendant covenants to bring no further action or claim against Plaintiffs related to Lot use for the period prior to the Effective Date.
4. **Attorneys’ Fees and Costs:** Each Party shall be responsible for its own fees and costs related to the Action.
5. **Nonconforming Use Rights:** Defendant agrees and acknowledges that Plaintiffs possess continuing leasable lawful nonconforming use rights in the Lot to store or park 15 or fewer boats and trailers at any one time in any combination; and to park 21 or fewer motor vehicles of hotel guests and employees and 4 or fewer motor vehicles of marina customers at any one time; and to park 40 or fewer total motor vehicles on special event

occasions. With respect to special event occasions, the number of events shall not exceed 10 per calendar year, and each occasion shall consist of no more than 3 consecutive days.

6. **Landscaping:** Plaintiffs agree to provide mutually agreeable screening and landscaping of the Lot, to include screening along Minnesota Avenue, with the City to allow use of the right of way, and screening along 10th Street and along the back side of the Lot, as set forth on the landscape architecture drawing attached as **Exhibit B** and hereby incorporated. Plaintiffs, through a competent landscaping contractor, shall implement the plans set forth on Exhibit B no later than September 1, 2020.
7. **Acknowledgments:** Each of the Parties acknowledges and agrees that:
 - a. This Agreement is entered into and executed voluntarily by each of the Parties hereto and without any duress or undue influence on the part of, or on behalf of, any such Party.
 - b. Each of the Parties hereto has been represented by counsel of its/their own choice, or has had the opportunity to be represented by counsel and to seek advice in connection with the negotiations for, and in the preparation of, this Agreement and that he, she, or it has read this Agreement and that he, she or it is fully aware of its contents and legal effects. All Parties who are representing themselves are warned to obtain the advice of an attorney before signing this Agreement.
 - c. The drafting and negotiation of this Agreement has been undertaken by all Parties hereto and their respective counsel. For all purposes, this Agreement shall be deemed to have been drafted jointly by all of the Parties hereto with no presumption in favor of one Party over another in the event of any ambiguity.
8. **Binding Effect:** This Agreement shall be binding on, and shall inure to the benefit of, the Parties hereto and their respective administrators, representatives, successors, and assigns.
9. **Governing Law:** This Agreement shall be governed by the laws of the State of Minnesota and any question arising hereunder shall be construed or determined according to such law.
10. **Counterparts:** This Agreement may be executed by the Parties in any number of counterparts, including by way of facsimile or electronic mail, and each of which shall be deemed to be an original and all of which, collectively, shall be deemed to be one and the same instrument.
11. **Integration Clause:** This Agreement contains the entire agreement between and among the Parties hereto, and supersedes all prior and contemporaneous discussions, negotiations, understandings and agreements, whether oral or written, express or implied, between or among them relating to the subject matter of this Agreement. This Agreement may not be amended orally, nor shall any purported oral amendment (even if accompanied by partial or complete performance in accordance therewith) be of any legal force or effect or constitute an amendment of this Agreement, but rather this Agreement may be amended only by an agreement in writing signed by the Parties.

12. Headings and Captions: The headings and captions inserted into this Agreement are for convenience only and in no way define, limit or otherwise describe the scope or intent of this Agreement, or any provision hereof, or in any way affect the interpretation of this Agreement.

IN WITNESS WHEREOF, each of the Parties hereto has executed this Agreement on the date set forth opposite his, her, or its name below. **The undersigned hereby certify that they have read and fully understand all of the terms, provisions, and conditions of this Agreement and have executed this Agreement voluntarily.**

**PLAINTIFFS LAKEHEAD BOAT
BASIN, INC.**

Dated: _____, 2020

BY JOEL JOHNSON

MARINE SERVICE, INC.

Dated: _____, 2020

BY JOEL JOHNSON

ISLAND INN AND SUITES, LLC

Dated: _____, 2020

BY JOEL JOHNSON

LAKEHEAD HOTEL PARTNERS, LLC

Dated: _____, 2020

BY JOEL JOHNSON

Dated: _____, 2020

Approved
by Counsel: _____

Robert Thomas Torgerson
rtt@hanftlaw.com
Attorney for Plaintiffs
1000 U.S. Bank Place
130 West Superior Street
Duluth, MN 55802-2094
Telephone: 218-722-4766

DEFENDANT CITY OF DULUTH

Dated: _____, 2020

Approved
by Counsel: _____

Elizabeth A. Sellers
Assistant City Attorney
esellers@duluthmn.gov
Attorney for Defendant
411 West First Street, Rm. 410
Duluth, MN 55802
Telephone: 218-730-5281

Dated: _____, 2020

By: _____
Mayor

Dated: _____, 2020

Attest: _____
City Clerk

Dated: _____, 2020

Countersigned: _____
City Auditor