

Exhibit 1

AMENDED AND RESTATED AGREEMENT

THIS AMENDED AND RESTATED 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 (the “City”) and THE LEDGES ON LAKE SUPERIOR HOMEOWNERS’ ASSOCIATION, INC., a Minnesota nonprofit company (“Ledges”).

WHEREAS, the City and Ledges entered into an agreement dated May 26, 2021 (the “Original Agreement”) in which they agreed to enter into certain easements in order to accomplish the objectives identified in the Original Agreement;

WHEREAS, the City and Ledges wish to amend and completely replace the Original Agreement with this Agreement in order to adjust the timelines and obligations set forth in the Original Agreement;

WHEREAS, the City is the owner of that certain real estate located in St. Louis County, Minnesota legally described on Exhibit A (the “City Property”);

WHEREAS, Ledges has the power to convey an easement for public purposes over that certain real estate in St. Louis County, Minnesota legally described on Exhibit B (the “Ledges Property”) pursuant to Minn. Stat. § 515B.3-102(a)(9);

WHEREAS, the City and Ledges desire to work together to obtain the following objectives in regards to the City Property and the Ledges Property (collectively, the “Objectives”):

(1) Ledges desires to obtain an easement over the City Property to allow Ledges, from time to time, to stabilize the Lake Superior shoreline (the “Shoreline Easement”); and

(2) the City desires to obtain an easement over a portion of the Ledges Property approximately as depicted on the map attached hereto as Exhibit E for public recreational, walkway, and trail purposes (the “Lakewalk Easement”) in order to provide a paved trail to meet Americans with Disabilities Act (ADA) accessibility standards.

NOW, THEREFORE, in consideration of the mutual covenants contained herein, both parties agree as follows:

I. Incorporation of Recitals and Original Agreement.

A. The recitals at the beginning of this Agreement are true and correct and are incorporated into this Agreement by reference.

B. This Agreement amends and completely replaces the Original Agreement.

II. Pre-Conditions to Objectives.

A. Survey.

1. The City shall hire a surveyor, at its own expense, to create a legal description for the Lakewalk Easement (the “Lakewalk Easement Area”).

2. The Ledges shall have the right of review and approval (by the President of its Board of Directors) for the legal description and exhibit for the Lakewalk Easement Area.

B. Title Work. Each party shall be responsible to conduct its own title work to the condition of the title of the real property interests it wishes to acquire through this Agreement.

C. Approvals Required Before the Closings.

1. The City passed an ordinance approving the grant of the Shoreline Easement, and a copy is attached as Exhibit F.

2. Ledges’ Board of Directors passed a resolution approving the conveyance of the Lakewalk Easement and the Shoreline Easement, and a copy is attached as Exhibit G.

3. The City’s obligation to close on the Lakewalk Easement is contingent upon the City Council adopting a resolution accepting the Lakewalk Easement. If the foregoing event has not occurred before the Lakewalk Closing, the parties’ shall be relieved from any further obligations pursuant to this Agreement as to the Lakewalk Easement only.

III. Purchase Price and Closings.

A. The purchase price for the Shoreline Easement, which the City agrees to accept and Ledges agrees to pay, is \$1.00 (the “City Purchase Price”), to be paid in cash at the Shoreline Closing (defined below).

B. The closing on the purchase and sale of the Shoreline Easement (the “Shoreline Closing”) shall occur on or before September 30, 2021 (the “Shoreline Closing Date”) at such place as the parties shall mutually agree upon. The Lakewalk Closing (defined below) and the Shoreline Closing are sometimes collectively referred to in this Agreement as the “Closings.”

C. On the Shoreline Closing Date, Ledges shall pay the City Purchase Price to City and City shall deliver: (i) the Shoreline Easement, and (ii) all other documents necessary to complete the Objectives contemplated by this Agreement as applicable to the Shoreline Easement. Ledges shall assume the benefit and burden of the Shoreline Easement as of the date of the Shoreline Closing.

D. The purchase price for the Lakewalk Easement, which Ledges agrees to accept and City agrees to pay, is \$1.00 (the “Ledges Purchase Price”), to be paid in cash at the Lakewalk Closing (defined below).

E. The closing on the purchase and sale of the Lakewalk Easement (the “Lakewalk Closing”) shall occur on or before December 31, 2021 (the “Lakewalk Closing Date”) at such place as the parties shall mutually agree upon.

F. On the Lakewalk Closing Date, City shall pay the Ledges Purchase Price to Ledges and Ledges shall deliver: (i) the Lakewalk Easement and (ii) all other documents necessary to complete the Objectives contemplated by this Agreement as applicable to the Lakewalk Easement. City shall assume the benefit and burden of the Lakewalk Easement as of the date of the Lakewalk Closing.

G. At or prior to the Closings, the City shall execute, as applicable, and deliver the following:

1. The Shoreline Easement, substantially in the form attached as Exhibit C; and
2. The Lakewalk Easement, substantially in the form attached as Exhibit D; and
3. A certified copy of all ordinances and/or resolutions approved in connection with or required under this Agreement; and
4. All other documents required by this Agreement to effectuate the provisions of this Agreement.

H. At or prior to the Closings, Ledges shall execute, as applicable, and deliver the following:

1. The Shoreline Easement, substantially in the form attached as Exhibit C; and
2. The Lakewalk Easement, substantially in the form attached as Exhibit D; and
3. All other documents required by this Agreement to effectuate the provisions of this Agreement.

IV. Utilities and Closing Costs.

A. Each party shall be responsible for utilities, if any, on its own property as of the date of the Closings. Following the date of the Lakewalk Closing, the City shall be responsible for utilities, if any, serving any public recreational walkway and trail within the Lakewalk Easement Area.

B. In addition to the costs discussed above, the following costs and expenses shall be paid in connection with the Closings, as applicable:

1. City shall pay the cost of:
 - a. Any inspection or other reports obtained by City;

- b. Recording fees for the Lakewalk Easement and all City resolutions and ordinances;
 - c. Any other item allocated to or assumed by City in this Agreement;
 - d. All attorneys' fees and expenses incurred by City; and
 - e. The City's survey.
2. Ledges shall pay the cost of:
- a. Any inspection or other reports obtained by Ledges;
 - b. Recording fees for recording the Shoreline Easement;
 - c. Any other item allocated to or assumed by Ledges in this Agreement; and
 - d. All attorneys' fees and expenses incurred by Ledges.

V. Right to Inspect Property.

A. City may require and/or conduct inspections, tests, and studies with respect to the physical and environmental condition of the Lakewalk Easement Area. City and its consultants, agents, engineers, inspectors, contractors, and employees must be given reasonable access to the Lakewalk Easement Area for the purpose of performing such due diligence. If City determines, in its sole discretion, that the physical or environmental condition of the Lakewalk Easement Area is unacceptable to City, City shall notify Ledges in writing and the parties' obligations to close on the Lakewalk Easement shall automatically terminate (but such determination shall not affect the parties' obligations with respect to the Shoreline Closing).

B. Ledges may require and/or conduct inspections, tests, and studies with respect to the physical and environmental condition of the City Property. Ledges and its consultants, agents, engineers, inspectors, contractors, and employees must be given reasonable access to the City Property for the purpose of performing such due diligence. If Ledges determines, in its sole discretion, that the physical or environmental condition of the City Property is not acceptable to Ledges, Ledges shall notify the City in writing and the parties' obligations to close on the Shoreline Easement shall automatically terminate (but such determination shall not affect the parties' obligations with respect to the Lakewalk Closing).

VI. Ledges Representations.

Ledges represents the following:

A. Authorization. Ledges is a corporation in good standing under the laws of the State of Minnesota, has the full power and authority to (i) enter into this Agreement and (ii) convey the Lakewalk Easement. No consent or authorization from any other person, entity or government agency is required for Ledges to enter into and perform Ledges' obligations under this Agreement

except as provided in Section II.C.2. above. The execution of this Agreement will not constitute a breach or default under any agreement to which Ledges is bound.

B. Legal/Other Proceedings. There is no suit, action, legal, administrative or other proceeding or inquiry pending or threatened against Ledges which could affect Ledges' ability to enter into and perform Ledges' obligations under this Agreement. No attachments, execution proceedings, assignments for the benefit of creditors, insolvency, bankruptcy, reorganization, or other proceedings are pending or threatened against Ledges, nor are any such proceedings contemplated by Ledges.

C. Title to Property. Good and marketable title to the Ledges Property is held by the unit owners (the "Unit Owners") in Common Interest Community No. 78, St. Louis County, Minnesota ("CIC No. 78") in undivided interests. At the Lakewalk Closing, Ledges' Board of Directors will have the authority to convey the Lakewalk Easement as specified in this Agreement. Ledges has no actual knowledge of any unrecorded or undisclosed legal or equitable interest in the Lakewalk Easement Area owned or claimed by anyone other than Ledges. Ledges has no knowledge that anyone will, at the Lakewalk Closing, have any right to possession of the Lakewalk Easement Area, other than Ledges and the Unit Owners in CIC No. 78. There are no unsatisfied mechanics' or materialmen's lien rights on the Lakewalk Easement Area. No assessment lien or judgment liens encumber the Lakewalk Easement Area.

D. Hazardous Materials. To the best knowledge of the Board of Directors of the Ledges, and except as provided below: the Ledges Property is not in violation of any federal, state, or local law, ordinance, or regulation relating to the environmental conditions on, under, or about the Ledges Property, including but not limited to soil and groundwater conditions; there are no environmental hazards on, under, or about the Ledges Property, including but not limited to soil and groundwater conditions; and neither Ledges nor any third party has used or installed any underground tank, or used, generated, manufactured, treated, stored, placed, deposited, or disposed of on, under, or about the Ledges Property or transported to or from the Ledges Property any flammable explosives, radioactive materials, hazardous wastes, toxic substances, or related materials. The developer of the Ledges Property, Lakewalk Townhomes, L.L.C., previously represented that there was a petroleum leak on the property prior to creation of the common interest community. Per Declarant, the tanks have been removed and the property has been cleaned up in compliance with MPCA requirements.

Each of the above representations is material and is relied upon by City. Each of the above representations shall be deemed to have been made as of the date of the Closings and shall survive the Closings for 12 months after the Lakewalk Closing. Except as expressly set forth in this Agreement, the City acknowledges and agrees that, to the maximum extent permitted by law, the City is purchasing the Lakewalk Easement in its "AS-IS" condition.

VII. No Representations by City.

Without limitation, Ledges acknowledges that City has made no representations or warranties (whether express or implied, oral or written) regarding the City Property, including but not limited to the value, quality or condition of the City Property; the status of title to the City

Property; the suitability of the City Property for any activity or use which Ledges may conduct; the compliance of the City Property with any laws or regulations; the habitability, merchantability, marketability, profitability, or fitness of the City Property for a particular purpose; and compliance by the City Property with any and all environmental rules, regulations, orders or laws. Ledges acknowledges and agrees that City has no obligation to remove any personal property or debris from the City Property. Ledges acknowledges and agrees that, to the maximum extent permitted by law, Ledges is purchasing the Shoreline Easement in its "AS-IS" condition. This Section VII shall survive the Closings and cancellation of this Agreement for any reason.

VIII. No Assignment.

Ledges represents and agrees for itself, its successors and assigns that it has not made or created, and will not make or create or suffer to be made or created, any total or partial sale, assignment, conveyance, lease, trust, lien or power of attorney, and has not or will not otherwise transfer in any other way all or any portion of the Ledges Property, this Agreement or any other contract or agreement entered into in connection with carrying out its obligations hereunder; and Ledges will not make or create or suffer to be made any such transfer of Ledges' rights hereunder. If any assignment of Ledges' rights or obligations under this Agreement is approved by City, any such assignee shall explicitly assume the obligations of Ledges under this Agreement and Ledges shall remain principally liable for the performance of Ledges' obligations under this Agreement.

IX. Additional Documents.

Ledges and the City shall execute such additional documents as may be reasonable and necessary to carry out the provisions of this Agreement.

X. No Merger.

This Agreement, each provision of it, and all warranties and representations in this Agreement shall survive the Closings and shall not merge in any instrument conveying title to the City nor in any instrument conveying title to Ledges. All representations, warranties, agreements, and obligations of the parties shall survive the Closings.

XI. Waiver.

The failure of either party to enforce any provision of this Agreement shall not be construed as a waiver or limitation of that party's right to subsequently enforce and compel strict compliance with every provision of this Agreement.

XII. Default.

A. It shall be a material default under this Agreement if Ledges: (i) refuses to proceed reasonably with approval, execution and closing on the Lakewalk Easement, or (ii) if Ledges fails to comply with the terms and conditions of this Agreement. If Ledges defaults in the performance of Ledges' obligations under this Agreement, then City may: (i) terminate this Agreement in accordance with applicable law, or (ii) seek specific performance of this Agreement within six

months of the date such right of action arises, including costs. These limitations shall not apply to claims for indemnification or contribution specifically provided for in this Agreement.

B. It shall be a material default under this Agreement if the City: (i) refuses to proceed reasonably with the execution and closing on the Shoreline Easement, or (ii) if the City fails to comply with the terms and conditions of this Agreement. If the City defaults in the performance of the City’s obligations under this Agreement, then Ledges may, as permitted by law: (i) terminate this Agreement in accordance with applicable law; (ii) seek specific performance of this Agreement within six months of the date such right of action arises, including costs.

C. This Section XII shall survive the Closings and delivery of the Lakewalk Easement and the Shoreline Easement.

D. The waiver by either party of any default on the part of the other party or the failure of said party to declare default on the part of the other party of any of its obligations pursuant to this Agreement shall not be deemed to be a waiver of any subsequent event of default on the part of the defaulting party of the same or of any other obligation of the defaulting party hereunder. And, to be effective, any waiver of any default by the defaulting party hereunder shall be in writing by the non-defaulting party.

E. Except as specifically set forth herein, the remedies provided under this Agreement shall be deemed to be cumulative and non-exclusive and the election of one remedy shall not be deemed to be the waiver of any other remedy with regard to any occasion of default hereunder.

XIII. Notices.

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

<u>City</u> City of Duluth Attn: Property and Facilities Manager 1532 W. Michigan Street Duluth, MN 55806	<u>The Ledges</u> The Ledges On Lake Superior Homeowners’ Association, Inc. Attn: President The Ledges 2200 Water St. Duluth, MN 55812
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or to such other persons or addresses as the parties may designate to each other in writing from time to time.

XIV. Counterparts/Facsimile/E-Mail Signatures.

This Agreement may be executed in any number of counterparts and by different parties on separate counterparts, each of which counterparts, when so executed and delivered, shall be deemed to be an original and all of which counterparts, taken together, shall constitute one and the same Agreement. Facsimile and E-mail signatures shall be binding on the transmitting party and shall have the same force and effect as if the original signature had been delivered.

XV. Miscellaneous.

A. Ledges agrees that it shall neither assign nor transfer any rights or obligations under this Agreement without the prior written approval of the City.

B. The parties 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, 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.

C. This Agreement is to be construed and understood solely as an agreement between the parties hereto and shall not be deemed to create any rights in any other person. No person 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 hereof, which, as between the parties hereto, may be waived at any time by mutual agreement between the parties.

D. Nothing contained in this Agreement is intended or should be construed in any manner as creating or establishing the relationship of copartners between the parties hereto or as constituting Ledges or its members or employees as agents, representatives or employees of the City for any purpose or in any manner whatsoever. The parties do not intend by this Agreement to create a joint venture or joint enterprise, and expressly waive any right to claim such status in any dispute arising out of this Agreement.

XVII. Commission.

The City and Ledges represent and warrant to each other that they have not engaged the services of any broker in connection with the sale and purchase contemplated by this Agreement. The City and Ledges shall each indemnify and hold the other harmless of any claim made by any broker or sales agent or similar party for a commission due or alleged to be due under the terms of any brokerage agreement entered into by said party. This provision shall survive the Closings and delivery of the Lakewalk Easement and the Shoreline Easement.

XVII. Entire Agreement.

This Agreement constitutes the entire agreement between the parties pertaining to the subject matter contained in it and supersedes all prior and contemporaneous agreements, representations, and understandings between the parties regarding the Shoreline Easement and the Lakewalk Easement. There are no further or other agreements or understandings, written or oral, in effect between the parties relating to the subject matter hereof. Notwithstanding the foregoing, nothing contained in this Agreement relieves the City of the commitment it has made to work with the Ledges to adjust the common boundary line between the City Property and CIC No. 78 to follow the large row of rocks located partly within the boundary of the City Property and partly within the boundary of CIC No. 78. There are no oral agreements that change this Agreement and no waiver of any of its terms shall be effective unless in a writing executed by the parties. Time is of the essence in all terms of this Agreement. This Agreement binds and benefits the parties and their successors in interest. This Agreement shall be construed under the laws of the state of

Minnesota. Any amendment to this Agreement shall be in writing, approved with the same legal formalities as required by this Agreement, except that City's Chief Administrative Officer is authorized, in his or her discretion, to sign amendments solely to extend timelines set forth in this Agreement up to a maximum of 120 days.

[Remainder of this page is intentionally left blank.]

IN WITNESS WHEREOF, the parties have executed this Amended and Restated Agreement.

CITY OF DULUTH

THE LEDGES ON LAKE SUPERIOR HOMEOWNERS' ASSOCIATION, INC.

By: _____
Mayor

DocuSigned by:
Bradley W Oachs
By: _____
BEDC50FE4CCA41B

Attest: _____
City Clerk

Printed Name: Bradley w oachs

Its: President

Dated: _____

Date: 8/4/2021

Countersigned:

City Auditor

Approved as to form:

City Attorney

EXHIBIT A

CITY PROPERTY

All those parts of Lots 1, 2, 3, and 4, Block E, ENDION DIVISION OF DULUTH, including vacated parts of 24th 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 23rd 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 23rd ½ Avenue East, alley within said Block, and 24th Avenue East adjacent thereto; and Lots 5 and 6, Block E, ENDION DIVISION OF DULUTH, including vacated parts of 24th 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 24th 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 24th 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 23rd 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 23rd ½ Avenue East, alley within said Block, 24th 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 24th 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

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

EXHIBIT C

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.]

EXHIBIT A

CITY PROPERTY

All those parts of Lots 1, 2, 3, and 4, Block E, ENDION DIVISION OF DULUTH, including vacated parts of 24th 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 23rd 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 23rd ½ Avenue East, alley within said Block, and 24th Avenue East adjacent thereto; and Lots 5 and 6, Block E, ENDION DIVISION OF DULUTH, including vacated parts of 24th 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 24th 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 24th 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 23rd 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 23rd ½ Avenue East, alley within said Block, 24th 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 24th 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.

EXHIBIT D

**PUBLIC RECREATIONAL, WALKWAY, AND TRAIL
EASEMENT AGREEMENT**

THIS PUBLIC RECREATIONAL, WALKWAY, AND TRAIL EASEMENT AGREEMENT (this “Agreement”) is entered into this ____ day of _____, 2021, by and between The Ledges On Lake Superior Homeowners’ Association, Inc., a Minnesota nonprofit corporation (“Grantor”) in favor of the City of Duluth, a municipal corporation created and existing under the laws of the State of Minnesota (“City”).

RECITALS

A. The unit owners in Common Interest Community No. 78 own the following property located in St. Louis County, Minnesota (the “Grantor Property”) in undivided interest:

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

B. Grantor has the power to convey a public easement through over or under the Grantor Property pursuant to Minn. Stat. § 515B.3-102(a)(9).

C. Grantor wishes to grant and City wishes to accept a public recreational, walkway, and trail easement over a portion of the Grantor Property in trust for the benefit of the public.

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

1. Grant of Easement. Grantor does hereby grant to City, its successors and assigns, a perpetual, non-exclusive easement (the “Lakewalk Easement”) for public recreational, walkway, and trail purposes under, over, upon, across and along that portion of the Grantor Property legally described on the attached Exhibit A and depicted on the attached Exhibit B (the “Lakewalk Easement Area”) for uses consistent with the remainder of City’s Lakewalk. Grantor reserves

the right to use the Lakewalk Easement Area for purposes that do not interfere with City's and the public's full enjoyment of the rights granted in this Agreement, provided Grantor shall not erect or construct any buildings or other structures in the Lakewalk Easement Area.

2. Construction, Repair and Maintenance.

- a. City may, at its sole cost and expense, install and maintain a public recreational, walkway and trail ("Lakewalk") on the Lakewalk Easement Area, without the need for any further approvals of Grantor or the unit owners in Common Interest Community No. 78. Prior to entering the Lakewalk Easement Area for the purpose of installing or maintaining the Lakewalk, City shall submit to Grantor a concept design of the proposed Lakewalk (or maintenance of existing improvements) along with detailed plans, including a drawing showing the location of the proposed Lakewalk within the Lakewalk Easement Area. These documents shall be submitted to Grantor at least sixty (60) days before the planned commencement of the work. Grantor may provide City with input and feedback regarding the concept design, but the final concept design shall be in City's sole discretion. The City's 60 days' advance notice requirement to Grantor does not include routine maintenance activities such as snow and ice removal, mowing, seasonal landscaping, patching, and similar activities. Notwithstanding the foregoing discretion, the City agrees to the following: the City shall plant mature vegetation and plantings along the Lakewalk within the Lakewalk Easement Area that provide physical and visual barriers between the Lakewalk and the remainder the Grantor's Property (and the units and other common elements in Common Interest Community No. 78); the City shall minimize the length of the Lakewalk in the Lakewalk Easement Area to the greatest extent feasible; and the City shall not disrupt or displace the existing shed located on the Grantor's Property. 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 Lakewalk Easement Area shall become the property of City and be maintained by City as required by this Agreement. Notwithstanding anything in this Agreement to the contrary, the following terms and conditions shall apply to the use of the Lakewalk Easement Area: (i) the Lakewalk may be used for walking, running, rollerblading, biking, cross-country skiing and other non-motorized uses; (ii) use of the Lakewalk Easement Areas shall not be open to the public until the Lakewalk is constructed; (iii) the Lakewalk shall not be lit; and (iv) there will be no benches, picnic tables, stairs or other physical accommodations in the Lakewalk Easement Area to encourage persons to pause or linger along the Lakewalk.
- b. City, its contractors, agents and employees may enter the Lakewalk Easement Area at all reasonable times for the purposes of locating, constructing, operating, maintaining, repairing, replacing and monitoring a multi-use recreational trail within the Lakewalk Easement Area. All work shall be performed in a safe and professional manner and any constructing, operating, maintaining, repairing and replacing activities will minimize, to the extent reasonably possible, safety risks, noise and physical disruption to the Grantor Property and surrounding property. City may not store or stockpile construction or landscaping materials within the Lakewalk Easement Area, except on a short-term basis during installation or maintenance activities.

- c. City, its contractors, agents and employees may construct erosion control structures necessary to maintain a clear, dry passage through the Lakewalk Easement Area, including the installation, maintenance, repair and replacement of waterbars, steps, and other trail surface structures, as well as culverts as necessary to traverse surface waters within the Lakewalk Easement Area, provided that no such structures or culverts shall cause water to damage the Grantor Property by flowing onto or flooding any portion of the Grantor Property beyond the Lakewalk Easement Area.
- d. City, its contractors, agents and employees may add, remove, cut, trim, or remove from the Lakewalk Easement Area bituminous material, bark, sand, stones, boards, grass, trees, shrubs, other vegetation, or other landscaping in City's discretion.
- e. All of City's rights listed above with respect to the Lakewalk Easement Area are optional and City shall have no obligation or duty to construct, install, maintain, repair or replace any improvements, erosion control structures or vegetation in the Lakewalk Easement Area; provided that, after construction or installation of any improvements, erosion control structures, or vegetation in the Lakewalk Easement Area, City, at its sole cost and expense, shall maintain such improvements, erosion control structures or vegetation in a good, safe and serviceable condition, or, in lieu of continued maintenance, shall have the option to remove any improvements, erosion control structures or vegetation installed pursuant to this Agreement.

3. Liability and Indemnification

- a. To the extent permitted by law, Grantor shall have and enjoy all of the protection from liability afforded an owner granting an easement for the use of land for recreational purposes as provided in Chapter 604A of Minnesota Statutes and such statutory protection and limitations on duties, including but not limited to those set forth in Minn. Stat. §§ 604A.22 and 604A.23, which are hereby incorporated by reference. Grantor shall not be liable to City for any injury or damage resulting from any defect in the Grantor Property, nor for any damage that may result from the negligence of any other person whatsoever, except the negligence of Grantor, its officers, members, agents, servants and employees.
- b. To the extent permitted by law, City agrees to indemnify, save harmless, and defend Grantor and its officers, agents, servants, employees, residents and visitors 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 Grantor, 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 City arising out of, related to or associated with City's negligent acts in its use of the Lakewalk Easement Area or performance of its obligations under this Agreement. Promptly after receipt by Grantor of notice of the commencement of any action with respect to which City is required to indemnify Grantor, Grantor shall notify City in writing of the commencement thereof, and, subject to the provisions of this Agreement, City shall assume the defense of such action, including the employment of counsel satisfactory to Grantor and the payment of expenses. In so far

as such action shall relate to any alleged liability of Grantor with respect to which indemnity may be sought against City, Grantor 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 City. This indemnification provision shall survive expiration or termination of this Agreement for any reason, for a period of six (6) years.

- 4. Signage. City will maintain signage in the Lakewalk Easement Area identifying the area that is open to the public and that which is private. The signage will be generally consistent with signage used on other portions of City's trails and shall be maintained by City in a first-class and safe condition and appearance.
- 5. 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.
- 6. Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of Minnesota.
- 7. 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.
- 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. 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 Lakewalk Easement shall be perpetual and the Lakewalk Easement and all other rights granted in this Agreement shall run with the land.
- 10. Title and Authority. Grantor represents to City that (i) this easement document has been properly approved by Grantor; (ii) the individual(s) executing this document on behalf of Grantor have the requisite authority to execute this document and to bind Grantor thereto; and (iii) no further permissions or authorizations from Grantor or owners of lots within the plat of

Common Interest Community No. 78 The Ledges On Lake Superior are needed in order to permit City to fully enjoy the rights granted in this Agreement.

11. Termination of Easement. This Agreement shall terminate if City fails to complete construction of a multi-use recreational trail within the Lakewalk Easement Area within fifteen (15) years from the date of this Agreement.
12. Consent Not Unreasonably Withheld. Whenever the consent or approval of Grantor is required or permitted under this Agreement, such consent or approval shall not be unreasonably withheld, conditioned or delayed.

[Remainder of this page is intentionally left blank.]

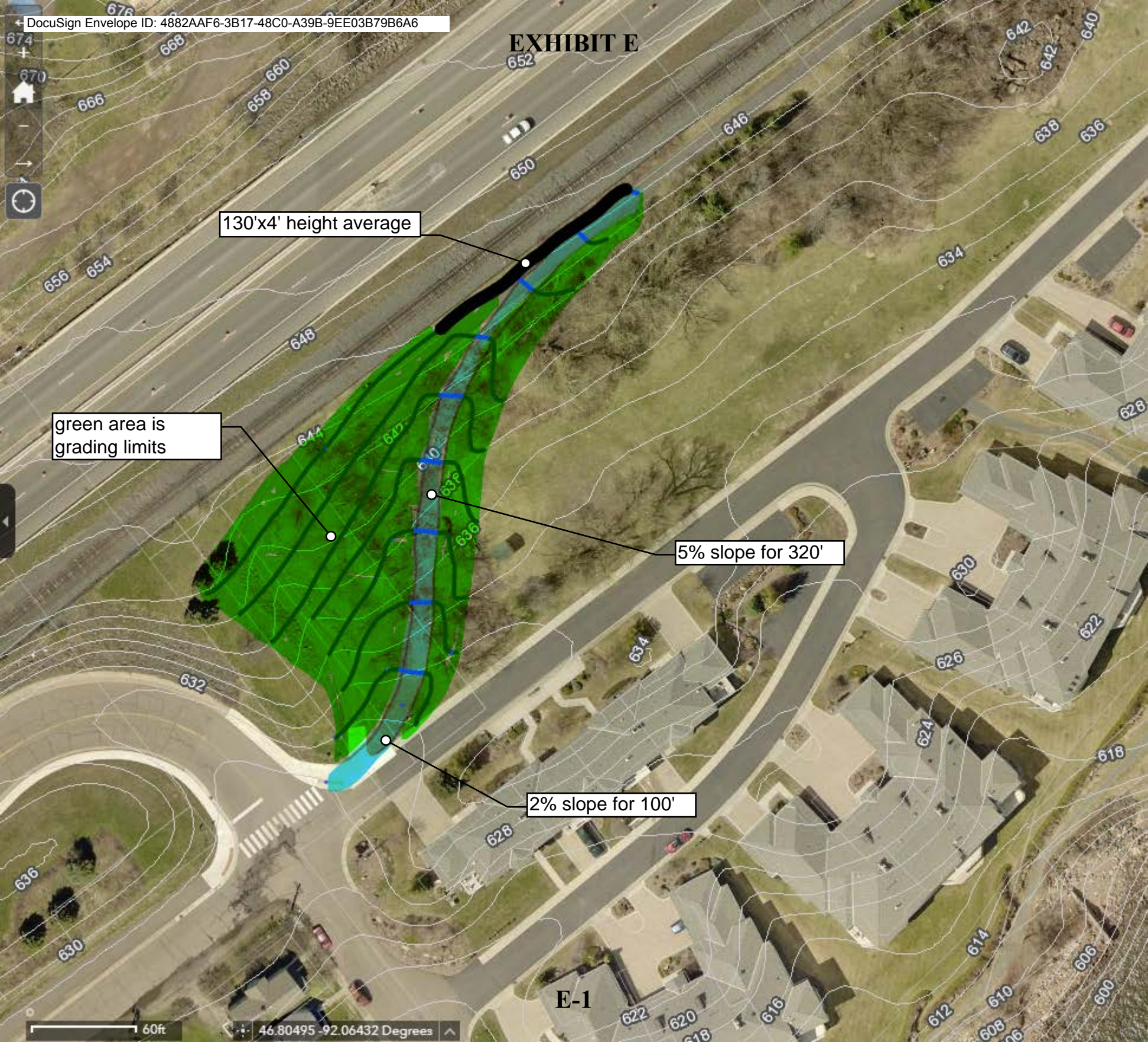
EXHIBIT A

Lakewalk Easement Area Legal Description

EXHIBIT B

Lakewalk Easement Area Depiction

EXHIBIT E



130'x4' height average

green area is grading limits

5% slope for 320'

2% slope for 100'

E-1

60ft

46.80495 -92.06432 Degrees

EXHIBIT F City of Duluth

411 West First Street
Duluth, Minnesota
55802



Certified Copy

Ordinance: 10750

File Number: 21-018-O

Enactment Number: 10750

AN ORDINANCE AUTHORIZING THE CONVEYANCE OF A PERPETUAL, NON-EXCLUSIVE EASEMENT TO THE LEDGES ON LAKE SUPERIOR HOMEOWNERS' ASSOCIATION, INC. FOR THE SOLE PURPOSE OF INSTALLING, INSPECTING AND MAINTAINING EROSION CONTROL MEASURES UNDER, OVER, UPON, ACROSS AND ALONG CERTAIN CITY-OWNED PROPERTY FOR \$1.00 AND OTHER VALUABLE CONSIDERATION.

CITY PROPOSAL:

The city of Duluth does ordain:

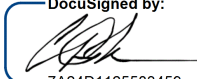
Section 1. That the proper city officials are hereby authorized to convey a perpetual, non-exclusive easement to The Ledges on Lake Superior Homeowners' Association, Inc., substantially in the form attached as Exhibit 1, for the sole purpose of installing, inspecting and maintaining erosion control measures under, over, upon, across and along the real property legally described on Exhibit A attached to Exhibit 1 for \$1.00 and other valuable consideration.

Section 2. That this ordinance shall take effect 30 days after its passage and publication.

A motion was made by Councilor Forsman to pass this Ordinance. The motion was seconded by Councilor Tomanek. This Ordinance passes unanimously.

I, Chelsea Helmer, City Clerk of the City of Duluth, Minnesota, do hereby certify that I have compared the foregoing passed by the city council on 6/7/2021, with the original approved and that the same is a true and correct transcript therefrom.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the corporate seal of said city of Duluth.

DocuSigned by:

7A24D1125583459...

7/30/2021

DocuSigned by:



Date Certified

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.

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EXHIBIT A

CITY PROPERTY

All those parts of Lots 1, 2, 3, and 4, Block E, ENDION DIVISION OF DULUTH, including vacated parts of 24th 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 23rd 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 23rd ½ Avenue East, alley within said Block, and 24th Avenue East adjacent thereto; and Lots 5 and 6, Block E, ENDION DIVISION OF DULUTH, including vacated parts of 24th 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 24th 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 24th 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 23rd 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 23rd ½ Avenue East, alley within said Block, 24th 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 24th 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.

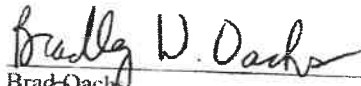
EXHIBIT G

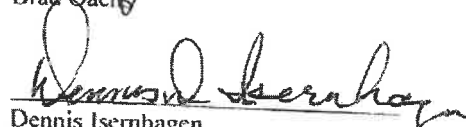
CONSENT RESOLUTION OF THE BOARD OF DIRECTORS OF THE LEDGES ON LAKE SUPERIOR HOMEOWNERS' ASSOCIATION, INC.

The following resolutions are adopted by unanimous written consent, in lieu of meeting, by the undersigned, constituting all of the Directors of The Ledges On Lake Superior Homeowners' Association, Inc., a Minnesota noncorporation ("Association"). All resolutions are effective as of May 17, 2020.

1. The execution and delivery of the Agreement dated May ____, 2021 by and between the Association and the City of Duluth ("City") for the purpose of granting a trail easement ("Lakewalk Easement") to the City and accepting an erosion control easement ("Shoreline Easement") from the City, and performance of said Agreement, is hereby authorized.
2. The President, Vice President or any other officer of the Association is hereby authorized to execute and deliver any and all documents and instruments reasonably necessary to perform and carry out the terms of the Agreement, including but not limited to the Lakewalk Easement and the Shoreline Easement.
3. The form of the Lakewalk Easement attached hereto as Exhibit A is hereby approved.
4. The form of the Shoreline Easement attached hereto as Exhibit B is hereby approved.
5. This Consent Resolution may be signed in one or more counterparts, each of which shall constitute an original and all of which together shall constitute one and the same document. Any signature delivered by a party by facsimile, electronic mail or other transmission method shall have the same authority, effect, and enforceability as an original signature.

IN WITNESS WHEREOF, the undersigned have executed this Consent Resolution as of May 17, 2021.


Brad Oach


Dennis Isernhagen


Arend Sandbulte