

Exhibit 1

TEMPORARY LICENSE AGREEMENT

THIS TEMPORARY LICENSE AGREEMENT (this "Agreement") is entered into this ____ day of _____, 2022, by and between SPIRIT COVE HOME OWNERS ASSOCIATION, a nonprofit corporation under the laws of the State of Minnesota ("Grantor"), and the CITY OF DULUTH, a Minnesota municipal corporation ("City").

RECITALS

A. Grantor is owner of the following property located in St. Louis County, Minnesota (the "Grantor Property"):

Outlots A, B and C, SPIRIT COVE DIVISION, EXCEPT MINERALS.

B. By agreement dated October 15, 1980 (the "Easement Agreement"), Grantor's predecessor in interest granted an easement to City for public park recreational purposes over and across a portion of the Grantor Property and additional property that is not owned by Grantor. The Easement Agreement was registered in the Office of the St. Louis County Registrar of Titles on December 17, 1982 as Document No. 448598.

C. The St. Louis River shoreline located on the Grantor Property has suffered erosion due to natural causes, and future erosion has the potential to negatively impact the portion of the Grantor Property subject to the Easement Agreement.

D. City wishes to stabilize the St. Louis River shoreline on the Grantor Property in an attempt to prevent further erosion to the portion of the Grantor Property subject to the Easement Agreement.

E. In order to allow City to obtain such objective, Grantor wishes to provide City with a temporary license over the Grantor 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 License. Subject to the terms and conditions set forth in this Agreement, Grantor grants to City a temporary license for the following purposes, all of which may be performed in City's sole discretion and at City's sole cost and expense: (i) access the Grantor Property with all necessary tools, equipment, vehicles, and related materials, (ii) installation of erosion control measures along some or all of the St. Louis River shoreline within the Grantor Property, and/or (iii) undertake additional activities in order to stabilize some or all of the St. Louis River shoreline within the Grantor Property. City, its employees, contractors, agents and subcontractors may enter onto the Grantor Property during the Term (defined below) for the purposes described above. Prior to the end of the Term, City shall repair any damages or disturbances it makes to the Grantor Property. Grantor may not revoke the License during the Term.
2. Term. Notwithstanding the date of execution of this Agreement, the term of this Agreement shall begin December 1, 2021 and shall expire at the end of the day on June 30, 2023 (the "Term").
3. Erosion Control. City shall have no obligation, during the Term or afterward, to prevent erosion of the St. Louis River shoreline within the Grantor Property.
4. Laws and Regulations. City shall conduct its activities in strict compliance with the United States Constitution and with the applicable laws, rules, and regulations of the United States, State of Minnesota, St. Louis County, City of Duluth, including, but not limited to, all laws, rules, and regulations relating to accessibility standards under the Americans with Disabilities Act. City shall procure, at its expense, all licenses, permits, approvals and permissions necessary for carrying out its activities under this Agreement.
5. Hazardous Substances. City will not permit any unsafe or hazardous material to be deposited on the Grantor Property. Notwithstanding the foregoing, if hazardous or unsafe material is so deposited by City or its agents, City will promptly remove any hazardous or unsafe material at City's cost and expense and indemnify, save harmless and defend Grantor from and against any claims made against Grantor arising therefrom. For the purposes of this Agreement, "Hazardous Material" or "unsafe material" will mean any substance (i) defined as "hazardous substance" under Section 1.01(14) of CERCLA, 42 U.S.C.9601(14) or any successor regulation; (ii) containing petroleum, including any fraction thereof; (iii) determined to be deleterious to human health or the environment by any federal, state or local environmental, occupational health, or public health agency or authority or (iv) that contains metal shards or other materials that could cause injury to humans or pets.
6. Liability and Indemnification.
 - a. 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 exercise of this Agreement. This indemnification provision shall survive expiration or termination of this Agreement for any reason, for a period of twelve (12) months.

7. Data Practices. Grantor shall comply with the Minnesota Government Data Practices Act, Minnesota Statutes Chapter 13, as it applies to all data provided by City under this Agreement, and as it applies to all data created, collected, received, stored, used, maintained or disseminated by Grantor under this Agreement. The civil remedies of Minnesota Statutes Section 13.08 apply to the release of the data referred to in this section by Grantor. If Grantor receives a request to release the data referred to in this section, Grantor must immediately notify City and consult with City as to how it should respond to the request. Grantor will hold City, its officers, and employees harmless from any claims resulting from Grantor's unlawful disclosure or use of data protected under state and federal laws.

8. 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.

9. Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of Minnesota.

10. Amendment. This Agreement may be amended only in writing, signed by both of the parties hereto, or their successors in interest.

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

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

Spirit Cove Home Owners Association
Attn: Barbara Darland
8048 East Spirit Cove Drive
Duluth, MN 55807

or to such other persons and addresses as the parties may designate to each other in writing from time to time.

12. Title and Authority. Grantor warrants that it is the owner in fee simple of the Grantor Property and the individuals executing this Agreement on behalf of Grantor have the present full authority and power to execute this Agreement without permission from any other party, court, tribunal or trustee. This Agreement has been duly authorized, executed and delivered by Grantor and is a valid and binding obligation of Grantor.

13. Entire Agreement. This Agreement constitutes the entire agreement between the parties and supersedes all prior written and oral agreements and negotiations between the parties relating to the subject matter hereof, except the Easement Agreement, which remains in full force and effect. This Agreement may be executed in counterparts, which together shall form one original.

[Remainder of this page is intentionally left blank.]

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

CITY OF DULUTH, MINNESOTA

SPIRIT COVE HOME OWNERS
ASSOCIATION

By: _____
Mayor

By: 
Sharyn Danielson, Its President

ATTEST:

Dated: January 4, 2022

City Clerk

Dated: _____

COUNTERSIGNED:

City Auditor

APPROVED AS TO FORM:

City Attorney