

(Top 3 inches reserved for recording data)

**DECLARATION OF COVENANTS AND AGREEMENT
FOR MAINTENANCE OF STORMWATER FACILITIES**

This Declaration and Agreement (the “Agreement”) is made by and between Benedictine Living Community of Northfield LLC, a Minnesota nonprofit limited liability company, 4000 Lexington Avenue N., Suite 201, Shoreview, MN 55126 (the “Owner” or “Responsible Party”), and the City of Northfield, a Minnesota municipal corporation (the “City”); (collectively the “parties”).

RECITALS:

WHEREAS, the Owner is the lessee of certain real property located in the City of Northfield, Dakota County, Minnesota, legally described as follows:

See Exhibit A attached hereto and incorporated herein by reference (the “Property”); and

WHEREAS, the City Development Review Committee (“DRC”) approved a site plan for improvements for a 97-unit senior housing project and associated improvements including roadway/driveway, sanitary sewer, storm sewer, water, storm water management facilities, sidewalk and trails, grading and erosion control facilities and other private improvements (the “project”) upon the Property; and

WHEREAS, all construction and site improvements for the project must be in conformance with the approved Development Agreement and site plan (the “Site Plan”) and in conformance with City Code; and

WHEREAS, the Owner plans to install, operate, repair and maintain a storm water pond system and related appurtenances (the “Facilities”) on a portion of the Property for future use and benefit of the project; and

WHEREAS, the Facilities on the Property were designed by Pope Architects, Inc. in accordance with the requirements of City Code, Chapter 22, Division 2, Stormwater Management; and

WHEREAS, the Owner shall install, operate, repair and maintain the Facilities pursuant to City Code and in accordance with those approved plans and specifications, including but not limited to the following plans, attached hereto as Exhibits and incorporated herein by reference, hereinafter collectively referred to as the “specifications”:

Exhibit B	Site Plan (A1.1)
Exhibit C	Grading, Drainage & Erosion Plan (C1.1)
Exhibit D	Utility Plan (C1.2)
Exhibit E	Landscape Plan (L1)
Exhibit F	Utilities Details (C1.6)
Exhibit G	Stormwater Maintenance Plan

; and

WHEREAS, in order to provide stormwater management and control, to meet the City’s stormwater permitting requirements, and to promote the water quality and volume control to the City’s stormwater system and water bodies, including but not limited to the Cannon River, the Owner and the City agree that it is reasonable for the City to require the Owner and all subsequent owners of the Property to inspect, operate, repair, maintain and replace, at the Owner’s cost and expense, the Facilities on a regular basis to ensure that the Facilities function as intended in compliance with the specifications, applicable law, stormwater permitting requirements, and this Agreement; and

WHEREAS, pursuant to City Code, the Owner and the City desire to set forth, in this recordable instrument, their agreement to establish covenants and declarations upon the Property for the installation of and ongoing operation, repair, maintenance and replacement of the Facilities on the Property by the Owner and the Owner’s successors and assigns at the Owner’s and the Owner’s successors’ and assigns’ cost and expense.

NOW, THEREFORE, in consideration of the foregoing facts and circumstances, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties hereto agree as follows:

1. Installation, Construction and Maintenance.

- a. Construction and Installation Requirements. The Owner shall construct and install the Facilities in accordance with the Site Plan, the Development Agreement, the approved specifications and this Agreement, at the Owner’s sole cost and expense.
- b. Maintenance Obligation. The Owner shall operate, maintain, repair and replace, as applicable, the Facilities in accordance with the Site Plan, the Development Agreement, the approved specifications, this Agreement, and applicable law and City Code, as amended, at the Owner’s sole cost and expense.

- c. Snow and Leaves Removal and Prohibited Storage. The Owner shall sweep clean the private streets, driveways, parking area and walkways on the Property in April or May and October or November each year to remove from the Property all sand and salt deposited on the private streets, driveways, parking area and walkways. The Owner shall also remove all tree leaves from the Property after they fall to the ground in October or November each year.
- d. Personal Property or Debris Storage Prohibited. The Owner shall not deposit or store any personal property or debris, litter, or other objects within the Facilities or in any manner that will otherwise interfere with the proper operation and maintenance of the Facilities, and the Owner shall keep the Facilities free of any debris, leaves, litter, or other objects.
- e. Maintenance of Vegetation. As applicable, the Owner shall maintain and, when necessary, replace approved plants and vegetation set forth in the specifications. Notwithstanding normal plant maintenance, such as pruning, dividing or thinning vegetation, the Owner shall seek approval from the City before altering the plants used as part of or in relation to the Facilities. The Owner shall not use any chemicals within the Facilities unless first approved by the City and only when necessary for the protection of the Facilities or vegetation associated therewith. The Owner shall repair any erosion within or surrounding the Facilities. The Owner shall conduct monthly inspections of the Facilities during the growing season, at the Owner's sole cost and expense, to ensure the Facilities and associated vegetation are maintained in compliance with the specifications, this Agreement, and applicable law and City Code, as amended. If necessary, the Owner shall repair the Facilities if not in conformance with the standards set forth herein. Repairing landscape and vegetation to maintain a healthy plant community associated with the Facilities may include replacement of dead or diseased plants, vegetation or mulch and removal of noxious weeds, litter or other debris.
- f. Maintenance Costs. The Owner shall incur and pay all costs associated with operating, maintaining, repairing and replacing the Facilities on the Property.

2. Inspections.

- a. Annual Inspections. The Facilities shall be inspected annually by a Qualified Person selected by the Owner to determine whether or not the same are functioning in accordance with the specifications, this Agreement, and applicable law and City Code, as amended. As used in this Agreement, the term "Qualified Person" shall mean a professional engineer licensed by the State of Minnesota, or a person approved by the City Engineer based on training and experience. The Owner's responsibilities under this Section shall be at the Owner's sole cost and expense. If, as a result of the inspection, the Facilities or any portion thereof are determined not to be functioning in accordance with the specifications, this Agreement, and applicable law and City Code, as amended, the Owner shall restore/repair/replace,

as necessary and required by the City Engineer, the Facilities to function as specified herein. Upon request from the Owner, the City Engineer may establish an inspection schedule permitting such inspections to be performed less frequently than annually, but the City Engineer may reinstate the annual inspection schedule at any time by notice to the Owner in the City Engineer's sole judgment and discretion.

- b. City Notification of Inspection. The City shall be notified at least 48 hours prior to the annual inspections or any repair, maintenance or replacement of the Facilities and, at the sole cost of the City, a representative of the City may observe any inspection, repair, maintenance or replacement.
 - c. City Right of Entry and Independent Inspection. Pursuant to City Code, Section 22-306, which is incorporated herein by reference as amended, the City shall have right of entry onto the Property to inspect the Facilities at any time, but the City shall use reasonable efforts to notify the Owner of its intent to enter the Property to inspect. The City shall have the right to enter the Property when the City has a reasonable basis to believe that a violation of the specifications, this Agreement, or applicable law and City Code, as amended, is occurring or has occurred and to enter upon the Property when necessary, in the City Engineer's sole judgment and discretion, for abatement of a public nuisance or correction and enforcement of a violation of City Code or this Agreement. The City shall not be subject to or liable for any claims of trespass by the Owner in exercising its rights under this Agreement.
 - d. Inspection and Maintenance Report. The Owner shall submit a report to the City, no later than two (2) weeks after any annual inspection or maintenance of the Facilities, providing the following information:
 - i. Date and time of inspection;
 - ii. Log of findings;
 - iii. Date and time of maintenance; and
 - iv. Log of maintenance performed.
3. Remediation and Waiver of Rights.
- a. Remediation Plan. If the City Engineer determines that the Facilities do not conform to the Site Plan, the Development Agreement, the approved specifications, this Agreement, or applicable law and City Code, as amended, the City Engineer shall notify the Owner of the deficiency in writing. The Owner shall submit a proposed remediation plan and schedule to the City Engineer within thirty (30) days after receipt of such notice from the City. If the proposed remediation plan and schedule are not acceptable to the City Engineer, the City Engineer shall notify the Owner of the deficiency, and the Owner shall submit a revised plan to the City Engineer within fourteen (14) days after receipt of such notice. If the City Engineer

approves the proposed remediation plan and schedule, the Owner shall perform the remediation in compliance therewith at the Owner's sole cost and expense.

- b. Failure to Repair. If the Owner fails to submit a proposed remediation plan and schedule to the City Engineer as prescribed above, or fails to implement a City Engineer approved remediation plan to bring the Facilities into compliance with the specifications, this Agreement, or applicable law and City Code, as amended, then at the sole cost and expense of the Owner, the City shall have the right, but no obligation, to prepare a remediation plan for the Facilities, enter upon the Property and complete all work necessary to correct the Facilities so as to bring the Facilities into compliance.
 - c. Reimbursement to the City. The Owner shall reimburse the City within thirty (30) days after receipt of an invoice from the City for any and all costs incurred by the City in connection with preparing a remediation plan for the Facilities and all work completed by the City to bring the Facilities back into compliance.
 - d. Waiver of Rights and Certification. If the Owner does not timely reimburse the City, the City may recover its costs by levying a special assessment against the Property certifying the same to the Dakota County Auditor for collection in the same manner as property taxes upon the Property. The Owner, on behalf of itself and its successors and assigns, hereby acknowledges the benefit of such inspection/maintenance/repair/replacement of the Facilities to the Property and hereby expressly waives any rights to hearings, notice of hearings, objections or appeal relating to the levying of any City assessments, the right to contest the City levied assessments under Minnesota Statutes § 429.081 or the certification of such levied assessments to the Dakota County Auditor for collection with property taxes upon the Property.
 - e. Right of Entry. The City shall have the right to enter the Property to implement the terms of this Paragraph 3 and enforce City Code, including but not limited to Chapter 22. The City shall not be subject to or liable for any claims of trespass by the Owner. City Code, Section 22-308 is incorporated herein by reference, as amended.
4. Standards for Performance. Any act of construction, installation, operation, maintenance, repair or replacement to be performed under this Agreement shall be performed in a good and workmanlike manner pursuant to sound engineering practices and in compliance with all applicable governmental requirements, City Code, the Site Plan, the Development Agreement, the approved specifications, and applicable law and rules.
5. Amendment, Release or Termination. Notwithstanding anything herein to the contrary, no amendment, release or termination of any of the provisions of this Agreement shall be effective or may be filed of record unless the City consents to the amendment, release or termination. Such consent must be evidenced by a resolution duly approved by the City Council, or successor body. The Owner, on behalf of itself and its successors and assigns, expressly acknowledges and agrees that the City has no obligation whatsoever to approve

or act upon any proposed amendment, release or termination, and may withhold or delay consent for any reason or no reason whatsoever, or may condition consent upon such terms as the City deems desirable, it being the City's absolute right and prerogative to insist that the terms of this Agreement remain in effect and unaltered and to permit amendment, release or termination only at such times and under such circumstances, if any, as the City deems desirable in the exercise of its sole judgment and discretion. The Owner, on behalf of itself and its successors and assigns, further agrees and covenants, consistent with this acknowledgment, not to institute any legal proceedings against the City on the grounds that the City failed to respond appropriately to a proposed amendment, release or termination, and to indemnify the City against any expense, including litigation costs, which the City incurs as a result of any violation by that party of this covenant. The City may, at any time, give up the right to approval granted hereunder, said action to be evidenced by City Council resolution. Notwithstanding anything herein to the contrary, the Property shall not be deemed dedicated to the public or otherwise public land. The City shall have no obligation and no right, other than as provided in this Agreement or under the ordinances, statutes and other laws under which the City operates, to maintain or administer Property.

6. Duration. This Agreement shall constitute a covenant running with the land and shall be binding upon and inure to the benefit of the parties, and any and all of their successors and assigns.
7. Authority. The Owner covenants with the City that they are the fee owners of the Property as described above and have good right to create the covenants contained herein.
8. Attorney's Fees. If any action at law or in equity shall be brought by the City on account of any breach of this Agreement by the Owner, the City shall be entitled to recover from the Owner reasonable attorney's fees, the amount of which shall be fixed by the Court and shall be made a part of any judgment or decree rendered.
9. General Terms.
 - a. RECITALS. The recitals to this Agreement are made a part hereof and incorporated herein by reference.
 - b. VOLUNTARY AND KNOWING ACTION. The parties, by executing this Agreement, state that they have carefully read this Agreement and understand fully the contents thereof; that in executing this Agreement they voluntarily accept all terms described in this Agreement without duress, coercion, undue influence, or otherwise, and that they intend to be legally bound thereby.
 - c. AUTHORIZED SIGNATORIES. The parties each represent and warrant to the other that (1) the persons signing this Agreement are authorized signatories for the entities represented, and (2) no further approvals, actions or ratifications are needed for the full enforceability of this Agreement against it; each party indemnifies and holds the other harmless against any breach of the foregoing representation and warranty.

- d. **NOTICES.** All communications, demands, notices, or objections permitted or required to be given or served under this Agreement shall be in writing and shall be deemed to have been duly given or served if delivered in person to the other party or its authorized agent or if deposited in the United States mail, postage prepaid, for mailing by certified or registered mail, and addressed to the other party to this Agreement, to the address set forth in this Agreement, or if to a party not a party to this Agreement, to the address designated by a party to this Agreement in the foregoing manner. Any party may change its address by giving notice in writing, stating its new address, to any other party as provided in the foregoing manner. Commencing on the 10th day after the giving of such notice, such newly designated address shall be such address for the purpose of all communications, demands, notices, or objections permitted or required to be given or served under this Agreement.
- e. **NOT PARTNERSHIP, JOINT VENTURE, OR FIDUCIARY RELATIONSHIP CREATED HEREBY.** Nothing contained in this Agreement shall be interpreted as creating a partnership, joint venture, or relationship of principal and agent between the City and the Owner.
- f. **CUMULATIVE RIGHTS.** Except as otherwise expressly stated herein, no right or remedy herein conferred on or reserved to the City is intended to be exclusive of any other right or remedy hereby provided by law, but each shall be cumulative in, and in addition to, every other right or remedy given herein or hereafter existing at law, in equity, or by statute.
- g. **COMPLIANCE WITH LAWS.** Owner shall abide by all Federal, State and local laws, statutes, ordinances, rules and regulations now in effect or hereinafter adopted pertaining to this Agreement or to the Facilities, improvements, personal property, programs and staff for which the Owner is responsible.
- h. **GOVERNING LAW.** This Agreement shall be deemed to have been made and accepted in Rice County, Minnesota, and the laws of the State of Minnesota shall govern any interpretations or constructions of the Agreement without regard to its choice of law or conflict of laws principles.
- i. **DATA PRACTICES.** The parties acknowledge that this Agreement is subject to the requirements of Minnesota's Government Data Practices Act, Minnesota Statutes, Section 13.01 et seq.
- j. **NO WAIVER.** Any party's failure in any one or more instances to insist upon strict performance of any of the terms and conditions of this Agreement or to exercise any right herein conferred shall not be construed as a waiver or relinquishment of that right or of that party's right to assert or rely upon the terms and conditions of this Agreement. Any express waiver of a term of this Agreement shall not be binding and effective unless made in writing and properly executed by the waiving party.

- k. SEVERABILITY. The invalidity or unenforceability of any provision of this Agreement shall not affect the validity or enforceability of any other provision. Any invalid or unenforceable provision shall be deemed severed from this Agreement to the extent of its invalidity or unenforceability, and this Agreement shall be construed and enforced as if the Agreement did not contain that particular provision to the extent of its invalidity or unenforceability.
- l. HEADINGS AND CAPTIONS. Headings and captions contained in this Agreement are for convenience only and are not intended to alter any of the provisions of this Agreement and shall not be used for the interpretation of the validity of the Agreement or any provision hereof.
- m. SURVIVABILITY. All covenants, indemnities, guarantees, releases, representations and warranties by any party or parties, and any undischarged obligations of City and Owner arising prior to the expiration of this Agreement (whether by completion or earlier termination), shall survive such expiration.
- n. RECORDING. This Agreement shall bind the heirs, executors, administrators, assigns and successors of the parties. This Agreement shall be recorded by the City at the expense of the Owner within 30 days of full execution hereof.

IN WITNESS WHEREOF, the parties hereto have hereunto executed this document on the latest date affixed to the signatures hereto.

**BENEDICTINE LIVING COMMUNITY OF
NORTHFIELD LLC**, a Minnesota nonprofit
limited liability company

By: _____
Kevin Rymanowski, Its Treasurer

Date: _____

COUNTY OF _____)
) ss.
STATE OF MINNESOTA)

The foregoing instrument was acknowledged before me, a notary public in and for the above named County and State, on _____, 2018, by Kevin Rymanowski, its Treasurer, on behalf of Benedictine Living Community of Northfield LLC, a nonprofit limited liability company under the laws of the State of Minnesota, Owner.

Notary Public

CITY OF NORTHFIELD

By: _____
Rhonda Pownell, Its Mayor

Date: _____

By: _____
Deb Little, Its City Clerk

Date: _____

COUNTY OF RICE)
) ss.
STATE OF MINNESOTA)

The foregoing instrument was acknowledged before me, a notary public in and for the above named County and State, on _____, 2018, by Rhonda Pownell and Deb Little, respectively the Mayor and City Clerk, on behalf of the City of Northfield, a municipal corporation under the laws of the State of Minnesota.

Notary Public

THIS INSTRUMENT WAS DRAFTED BY:

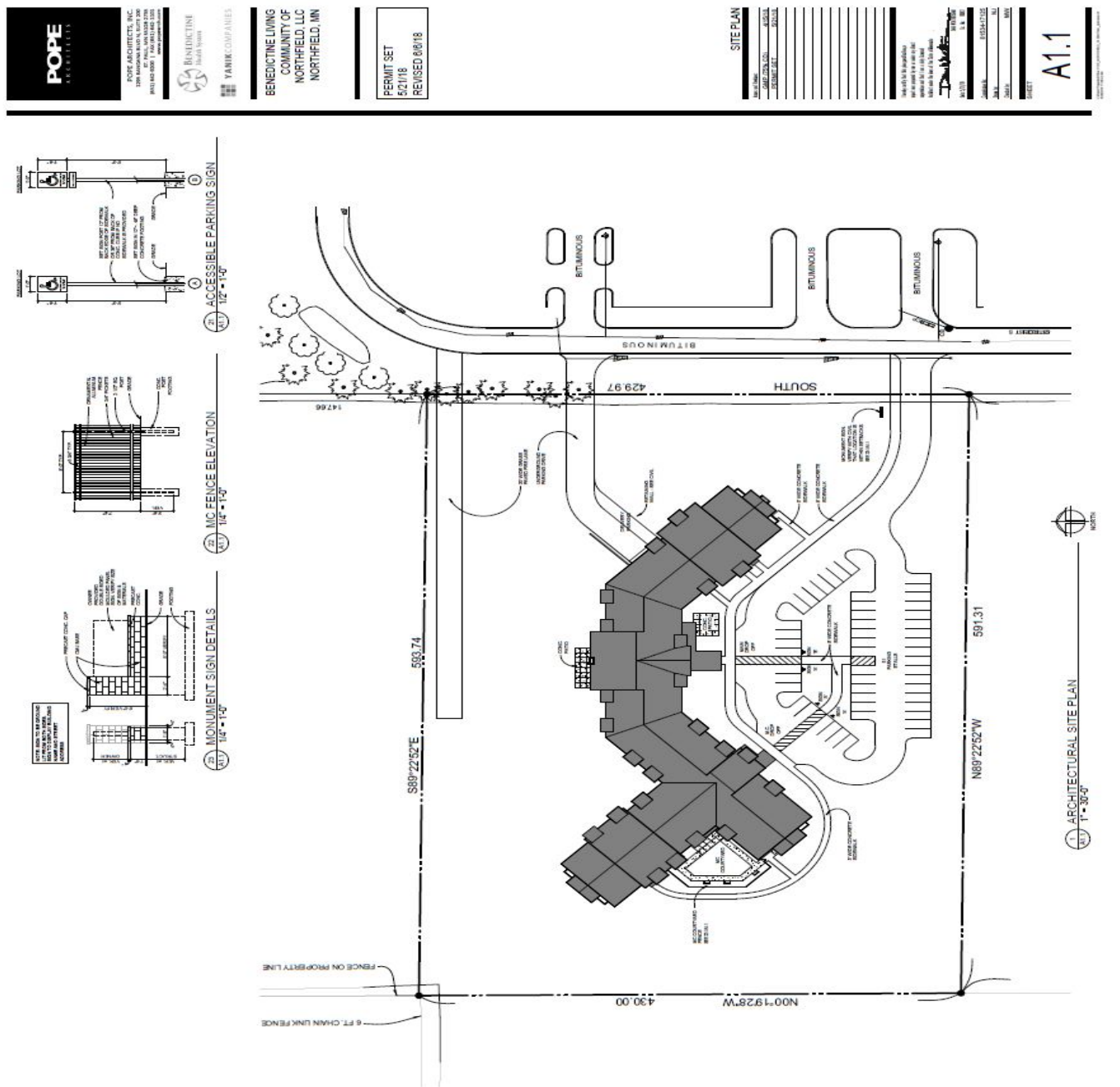
FLAHERTY & HOOD, P.A.
525 Park Street, Suite 470
St. Paul, MN 55103-2122
651-225-8840

EXHIBIT A

Legal Description of Property

The north 429.94 feet of the south 1040.85 feet of Outlot A, ST. OLAF COLLEGE NORTH AVENUE DEVELOPMENT, according to the recorded plat thereof, Dakota County, Minnesota.

Site Plan (A1.1)



Grading, Drainage & Erosion Plan (C1.1)

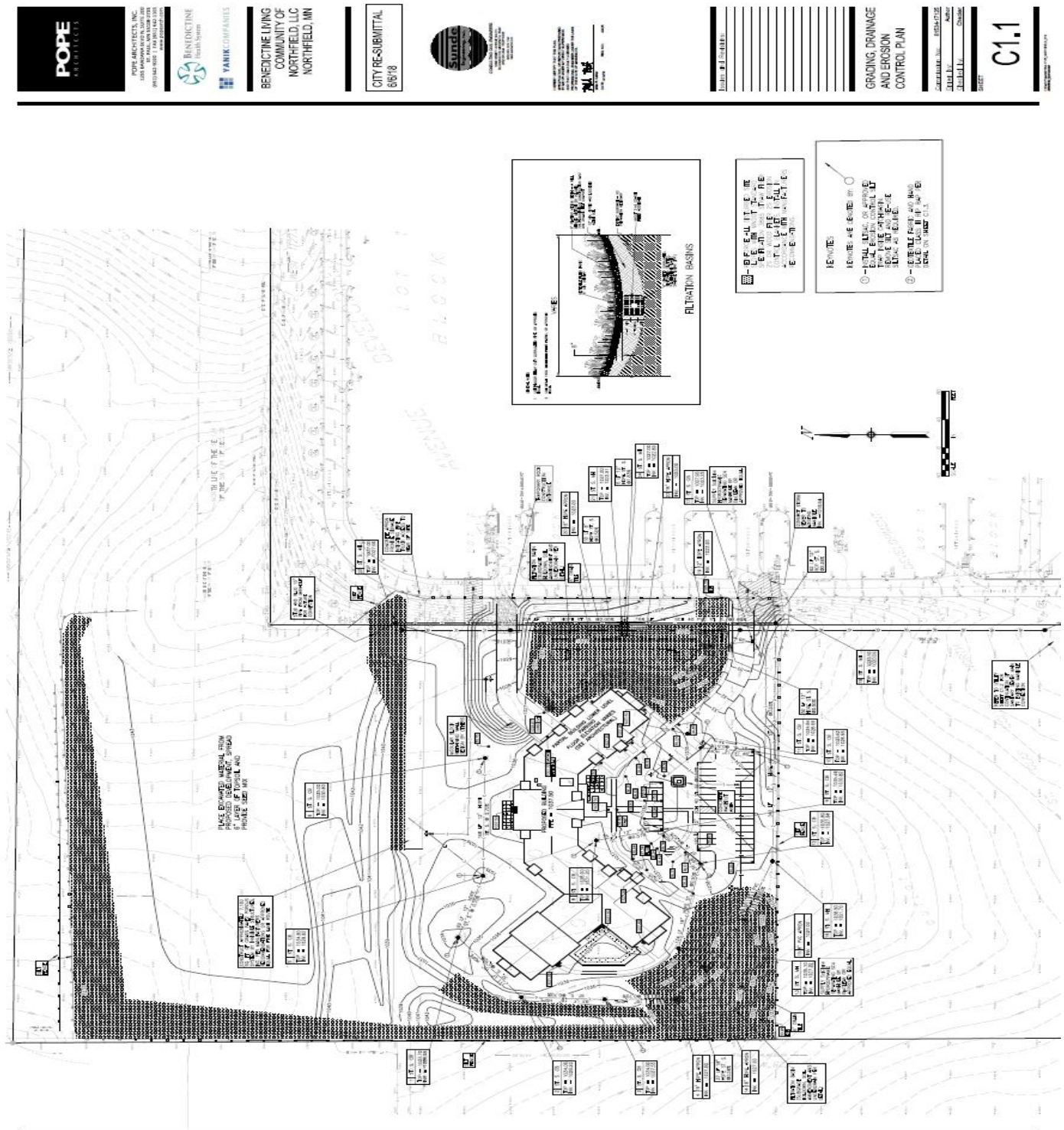
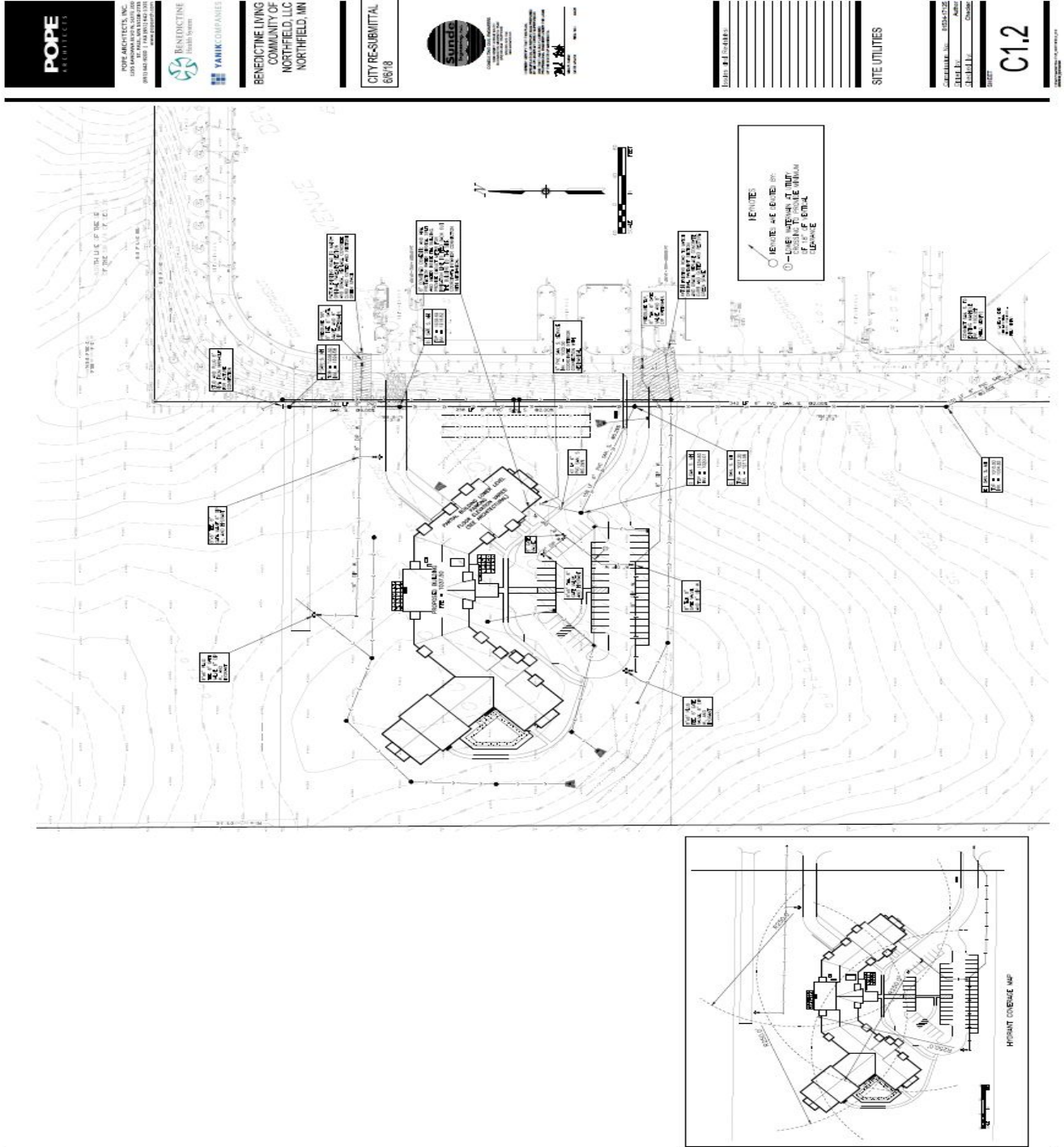
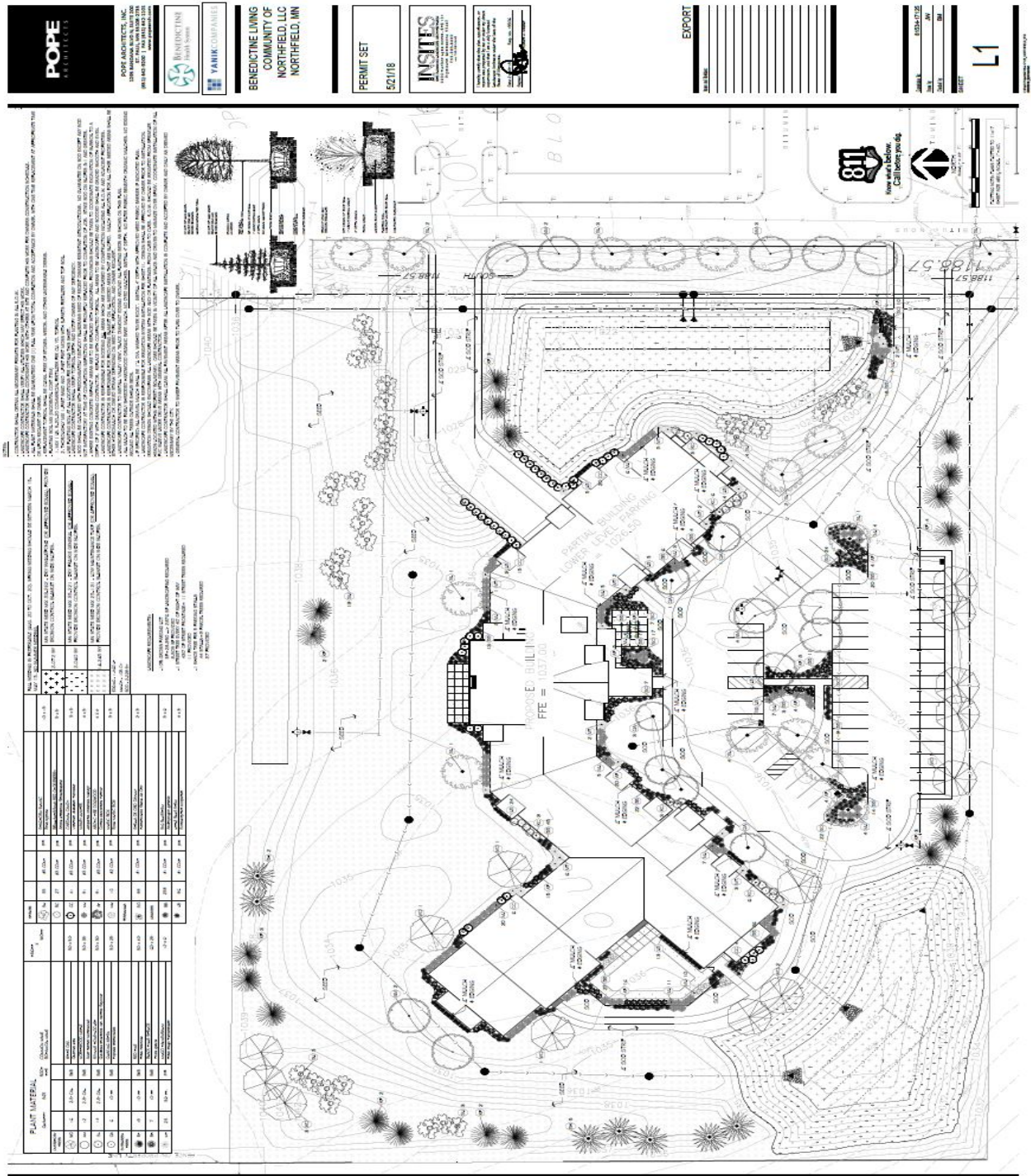


EXHIBIT D

Utility Plan (C1.2)



Landscape Plan (L1)



Utilities Details (C1.6)

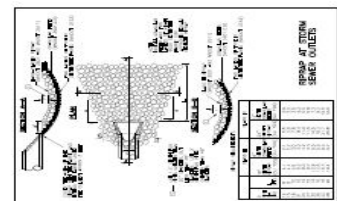
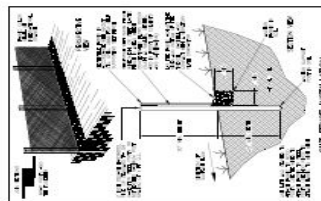
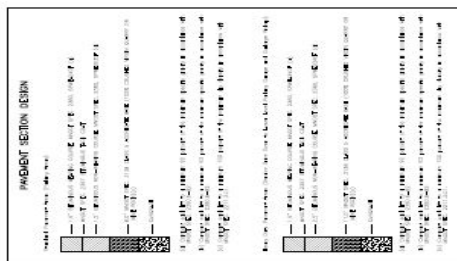
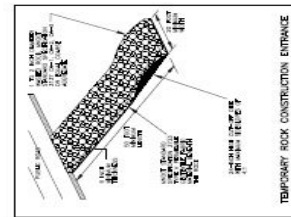
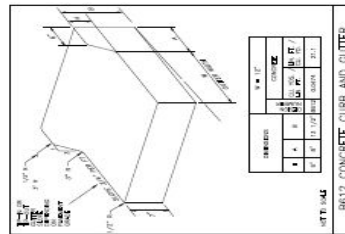
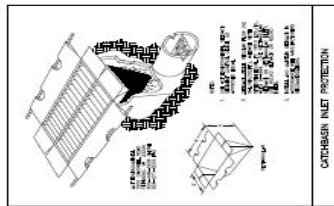
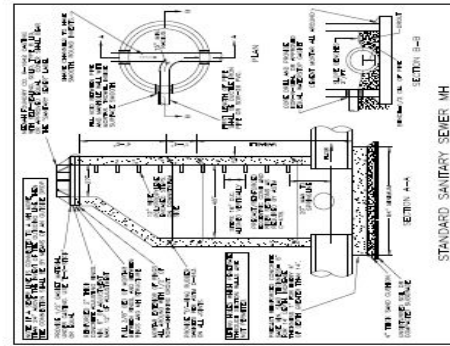
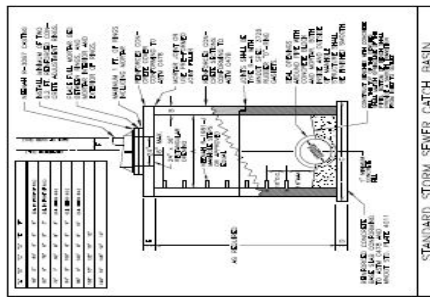
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EXHIBIT G

Stormwater Maintenance Plan

Post Construction Long Term Maintenance Plan for Benedictine Living Community: Northfield, MN

System Description:

The site consists of a series of storm water conveyances through sheet draining, piping and filtration. This system discharges to adjacent storm sewer.

System Maintenance

Swale – Grass Maintenance

- The facility should be checked bi-annually for signs of erosion, vegetation loss, and channelization of the flow.
- The grass should not be allowed to grow greater than 8” in height and shall not be cut any shorter than 2 inches. Allowing the grass to grow taller may cause it to thin and become less effective.
- Keep all areas free of debris.
- Remove cuttings if necessary.
- Remove sediment by hand with a flat-bottomed shovel during dry periods.
- Remove only the amount of sediment necessary to restore hydraulic capacity, leaving as much of the vegetation in place as possible. Reseed or unplug any damaged turf or vegetation.

Piping System Maintenance

- Check at least biannually and after each extreme storm event, the facility should be cleaned of accumulated debris.
- This maintenance typically includes sediment, floatable, and debris removal from inlets and outlets.
- Grass should be mowed so that it does not get over 8”.
- Remove sediment when accumulation reaches 6”, or if re-suspension is observed or probable.

Filtration Areas

Activity	Frequency
Water plants	As necessary during first growing season
Water plants during dry periods	As needed after first growing season
Re-mulch void areas	As needed
Treat diseased trees and shrubs	As needed
Inspect soil and repair eroded areas	Monthly
Remove litter and debris	Weekly
Add additional mulch	Once per year

- Erosion

The soil and mulch in the facility and in areas draining to the facility shall be inspected for eroded areas. Eroded areas shall be filled with soil or mulch and vegetated.

- Sediment Accumulation & Clogging

Sediment accumulation within the facility may reduce the filtration capacity and impair proper performance of the facility. The facility shall be inspected for accumulation of sediment annually. Excessive sediment accumulation shall be removed with the area re-mulched and replanted.

- Outlet Structure Maintenance

The Owner will be responsible for outlet structure maintenance. Periodically, the orifice on the outlet pipe may clog with debris. Debris should be removed and appropriately disposed of off-site.

- Riprap

The facility may have riprap at points where runoff enters or leaves the facility. The riprap is used to prevent erosion of soils from stormwater flows. The facility shall be checked to make sure that an adequate amount of riprap exists to prevent erosion and additional riprap added if necessary.

- Debris & Litter

A filtration device is expected to accumulate debris and litter. Debris and litter should be removed on a weekly basis to maintain appearance and public acceptance of the filtration device.

- Engineered Soil

Longevity of the engineered soil is decreased by clogging, reduced cation exchange capacity and accumulation of sodium. Clogging problems can be

reduced by limiting the input of sediment. Cation exchange capacity can be rejuvenated by the replacement of the engineered soil. Sodium accumulation can be countered by adding gypsum to the soil and/or by allowing about 1" of clean water to percolate through the planting bed 3 to 4 times in the spring.

- Plant Maintenance

Vegetation maintenance includes watering plants during dry periods, re-mulching void areas, treating diseased trees and shrubs and mowing turf areas.

- Standing Water

If the facility has standing water more than three days after a rain event, the engineered soils may have become clogged preventing proper filtration of stormwater. The facility will need to have the mulch removed, the soil scarified around the plants and new mulch added.

**FEE OWNER CONSENT AND JOINDER
TO
AGREEMENT**

St. Olaf College, fee owner of the Property, the use of which is governed by the foregoing Agreement for Maintenance of Stormwater Facilities ("Agreement'), affirms and consents to the provisions of the Agreement, agrees that the Property shall be bound by the provisions of the Agreement, agrees that the Agreement shall not merge into any estate of St. Olaf College notwithstanding the termination of the Agreement to Use Sewer and Stormsewer Lines, and joins in the grant of licenses to Benedictine.

Dated this ____ day of _____, 2018.

STATE OF MINNESOTA)
) ss.
COUNTY OF DAKOTA)

The foregoing instrument was acknowledged before me this ____ day of _____, 2018, by _____, as _____, for and on behalf of St. Olaf College.

NOTARY PUBLIC

THIS INSTRUMENT WAS DRAFTED BY:

FLAHERTY & HOOD, P.A.
Northfield City Attorney
525 Park Street, Suite 470
St. Paul, MN 55103-2122
Telephone: (651) 225-8840