

AGREEMENT TO USE SEWER AND STORMSEWER LINES

THIS AGREEMENT ("Agreement") is made and entered into this ____ day of _____, 2018, by and between the Northfield Hospital & Clinics, an instrumentality and municipally owned corporation of the City of Northfield ("Northfield Hospital" or "Licensor"), and Benedictine Living Community of Northfield LLC, a Minnesota nonprofit limited liability company, 4000 Lexington Avenue N., Suite 201, Shoreview, MN 55126 ("Benedictine"); (collectively the "Parties").

WITNESSETH:

WHEREAS, the Licensor, by and through that certain ground lease, dated as of November 17, 1999, but effective as of August 30, 2001, recorded in the Office of the Recorder, Dakota County, Minnesota, as Document No. 1834253 on November 28, 2001, between St. Olaf College, as Lessor, and the City of Northfield, as Lessee, (the "Northfield Ground Lease") owns certain sanitary sewer and stormsewer infrastructure (collectively the "Hospital Utilities") upon and within the real property leased from St. Olaf College located at 2000 North Avenue, Northfield, MN 55057, in Dakota County, Minnesota, and said real property is legally described in Exhibit A and depicted in Exhibit A-1, which is attached hereto and incorporated herein by reference (the "Hospital Property"); and

WHEREAS, the Hospital Utilities as the same exist on the date of this Agreement are depicted on Exhibit B, which is attached hereto and incorporated herein by reference; and

WHEREAS, the Hospital Property is currently used by Licensor in accordance with the Northfield Ground Lease for the operation of the Northfield Hospital along with appurtenances thereto, including but not limited to utilities (sewer, water, stormsewer), roads and parking for motor vehicles; and

WHEREAS, Benedictine has entered into a separate ground lease (the "Benedictine Ground Lease") with St. Olaf College for certain real property owned by St. Olaf College and located in the City of Northfield, Dakota County, Minnesota, and said real property is legally described, depicted, and referred to as "Parcel 1" in Exhibit B, which is attached hereto and incorporated herein by reference, (the "Benedictine Property"); and

WHEREAS, the Benedictine Ground Lease also provides Benedictine with an option to enter into an additional lease for an additional parcel of real property, and said real property is legally described, depicted, and referred to as “Parcel 2” in Exhibit B (the “Additional Benedictine Property”).

WHEREAS, Benedictine proposes an approximately 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 on the Benedictine Property (the “Project”); and

WHEREAS, Benedictine has requested that the Licensor permit Benedictine to connect Benedictine’s private sanitary sewer line (the “Benedictine Sanitary Sewer Line”) and private stormsewer line (the “Benedictine Stormsewer Line”) constructed by Benedictine (collectively, the “Benedictine Utilities”), to and to use the Licensor’s existing Hospital sanitary sewer and stormsewer lines located on the Hospital Property for the limited purposes of sanitary sewer and stormwater conveyance from the Benedictine Property, in order to connect the Benedictine Utilities to the municipal sanitary sewer and stormsewer services and corresponding facilities owned and operated by the City of Northfield; and

WHEREAS, the existing sanitary sewer line (“Hospital Sanitary Sewer Line”) owned by the Hospital on the Hospital Property is a 10 inch sewer line located under the roadway/driveway serving the Hospital, commonly referred to as “Hospital Drive,” and as of the date of this Agreement, currently extends north from the City of Northfield trunk main located in North Avenue under Hospital Drive a distance of 280 feet to the sanitary sewer manhole located in Hospital Drive at which point the Hospital owned sewer line turns 90 degrees and extends easterly to serve the Hospital; and

WHEREAS, Benedictine proposes to construct, use, operate, repair, maintain and replace, as necessary or as reasonably required by the City of Northfield, the Benedictine Sanitary Sewer Line and to connect the same to the existing Hospital Sanitary Sewer Line located within Hospital Drive running north from the northerly manhole within Hospital Drive, as described above, and under and across Parcel 3 of the Hospital Property, as depicted on Exhibit D, which is attached hereto and incorporated herein by reference; and

WHEREAS, Parcel 3 of the Hospital Property referenced above is legally described and depicted on the survey attached hereto and incorporated herein by reference as Exhibit E; and

WHEREAS, the existing stormsewer line (the “Hospital Stormsewer Line”) owned by the Hospital on the Hospital Property is a 21 inch line located generally easterly of, but running adjacent to and along Hospital Drive and extending northerly allowing stormwater conveyance and collection from the Hospital to the stormwater pond facility (“Pond”) located south of the Hospital, east of Hospital Drive, and north of North Avenue and to the municipal stormsewer services as depicted on Exhibit F, which is attached hereto and incorporated herein by reference; and

WHEREAS, Benedictine proposes to construct, use, operate, repair, maintain and replace, as necessary or as reasonably required by the City of Northfield, the Benedictine Stormsewer Line and to connect the same to the Hospital Stormsewer Line as depicted on Exhibit F, which is attached hereto and incorporated herein by reference; and

WHEREAS, the Licensor is willing to permit the uses described above subject to the terms, covenants, and conditions contained herein.

NOW, THEREFORE, IT IS AGREED by and between the Parties as follows:

1. Grant of Licenses and Descriptions of Utilities Licensed Premises.

- a. Sanitary Sewer Line Use License. Licensor hereby grants to Benedictine a non-exclusive license to construct, connect to, use, operate, repair, maintain and replace, as necessary or as reasonably required by the City of Northfield, the Benedictine Sanitary Sewer Line and the Hospital Sewer Line within the Hospital Property for the purpose stated herein all strictly in conformance with City Engineer approved plans and specifications for the Benedictine Sanitary Sewer Line, and all strictly in conformance with applicable law, rules and City ordinances as the same may be amended from time to time. As used in this Agreement, the term “Benedictine Sanitary Sewer Licensed Premises” means those areas within the Hospital Property within which: (a) Benedictine may construct, use, operate, repair, maintain and replace the Benedictine Sanitary Sewer Line as depicted on Exhibit D; (b) the Benedictine Sanitary Sewer Line may connect to the Hospital Sanitary Sewer Line; and (c) lies the portion of the Hospital Sanitary Sewer Line running from the point of connection with the Benedictine Sanitary Sewer Line to the City of Northfield trunk main located in North Avenue. The license granted in this Section 1.a. includes the right to connect the Benedictine Sanitary Sewer Line to the Hospital Sanitary Sewer Line and to discharge sewage into the Hospital Sanitary Sewer Line, subject to City Code, the City’s NPDES permit, and applicable law and regulations, as any of the same may be amended from time to time.
- b. Stormsewer Line Use License. Licensor hereby grants to Benedictine a non-exclusive license to construct, connect to, use, operate, repair, maintain and replace, as necessary or as reasonably required by the City of Northfield the Benedictine Stormsewer Line and the Hospital Stormsewer line depicted in Exhibit F for the purpose stated herein all strictly in conformance with City Engineer approved plans and specifications for the Benedictine Stormsewer Line, and all strictly in conformance with applicable law, rules and City ordinances as the same may be amended from time to time. As used in this Agreement, the term “Benedictine Stormsewer Licensed Premises” means the area within the Hospital Property within which: (a) Benedictine may construct, connect to, use, operate, repair, maintain and replace the Benedictine Stormsewer Line as depicted on Exhibit F; (b) the Benedictine Stormsewer Line may connect to the Hospital Stormsewer Line; and (c) lies the portion of the Hospital Stormsewer Line

running from the point of connection with the Benedictine Stormsewer Line to the Pond and to the municipal stormsewer services as depicted on Exhibit F. The license granted in this Section 1.b. includes the right to connect the Benedictine Stormsewer Line to the Hospital Stormsewer Line, the right to discharge stormwater into the Hospital Stormsewer Line, and the right to discharge stormwater into the Pond through the Hospital Stormsewer Line, subject to City Code, the City's MS4 permit, and applicable law and regulations, as any of the same may be amended from time to time.

The Benedictine Sanitary Sewer Licensed Premises and the Benedictine Stormsewer Licensed Premises are collectively referred to herein as the "Utilities Licensed Premises".

2. **City Engineer Review and Approval.** City Engineer written review and approval of the Benedictine Utilities is required prior to and as a condition precedent to construction thereof or any future alterations or replacement thereof.
3. **License Fee.** Benedictine shall pay to the Licensor, as and for the use of the Utilities Licensed Premises, a one time license fee of \$100 payable upon execution hereof.
4. **Future Development and Sewer and Stormsewer Services.** In consideration of the licenses granted hereby, Benedictine agrees that the Benedictine Utilities may be utilized for sanitary sewer and stormsewer services in accordance with those requirements, agreements and conditions as the City of Northfield may establish and impose for the future development of Parcels 2 and 3 at such time as all or any of the same may develop in the future, in order to connect such future development through the use of the Benedictine Utilities to the municipal sanitary sewer and stormsewer system within the public right-of-way or public easements owned and operated by the City of Northfield, all strictly in conformance with City Engineer approved plans and specifications for said future private utilities, and all strictly in conformance with applicable law, rules and City ordinances as the same may be amended from time to time. Benedictine agrees that this Agreement may be amended from time to time as required by the City to allow such future development and connection thereof through the Benedictine Utilities and the Hospital Utilities, provided, however, that no such amendment for this purpose shall materially change or increase the obligations of Benedictine or materially change or decrease the rights of Benedictine, subject to the application of the terms and conditions of this Agreement.
5. **Costs and Expenses for Benedictine Utilities.** Benedictine shall be responsible for all costs and expenses of every kind whatsoever to construct, connect to, use, operate, repair, maintain and replace, as necessary or as reasonably required by the City of Northfield, the City Engineer approved Benedictine Utilities as the same are respectively depicted on Exhibits D and F.
6. **Costs and Expenses for Benedictine Shared Use of the Hospital Sanitary Sewer Line and the Hospital Stormsewer Line.** Licensor shall provide all repairs, maintenance, reconstruction and replacement of the Hospital Utilities for their intended purposes.

Benedictine shall be responsible for a proportionate amount of all costs and expenses of every kind whatsoever to construct, connect to, use, operate, repair, maintain and replace, as necessary or required by the City of Northfield, the Hospital Sanitary Sewer Line and the Hospital Stormsewer Line.

- a. Sanitary Sewer Metering. Benedictine shall be responsible for metering/measuring the sanitary sewer flow from the Benedictine Utilities at the point of interconnection of the Benedictine Sanitary Sewer Line and the Hospital Sanitary Sewer Line. The location and type of metering equipment shall be approved by the City Engineer. All costs associated with the metering equipment shall be borne by Benedictine. The City Engineer or his or her designee or agent may inspect the metering equipment at any time for purposes of verifying calibration, operation, maintenance or accuracy. The City Engineer may direct Benedictine to make alterations or repairs, which Benedictine shall make within 30 days of written notice from the City Engineer. If Benedictine fails to abide by the City Engineer's directive, the City may take such corrective action as the City deems necessary and charge all costs and expenses incurred to Benedictine. City's enforcement actions may include any action to which the City is authorized by law or City Code to take, as the same may be amended from time to time, as applicable to any other recipient of a City service within the City. Benedictine shall pay all such costs within 30 days of receipt of an invoice from the City.
 - b. Sanitary Sewer Cost Share. The amount of the cost share to be paid by Benedictine for future costs and expenses to construct, connect to, use, operate, repair, maintain and replace, as necessary or as reasonably required by the City of Northfield, the portion of the Hospital Sanitary Sewer Line within the Benedictine Sanitary Sewer Licensed Premises, shall be based on Benedictine's proportion (percentage usage) of the total annual flows from the respective Benedictine Sanitary Sewer Line as measured at the point of interconnection with the Hospital Sanitary Sewer Line divided by the total annual flow through the Hospital Sanitary Sewer Line as determined by the City Engineer.
 - c. Stormsewer Cost Share. The amount of the cost share to be paid by Benedictine for future costs and expenses to construct, connect to, use, operate, repair, maintain and replace, as necessary or as reasonably required by the City of Northfield, of the portion of the Hospital Stormsewer Line within the Benedictine Stormsewer Licensed Premises, shall be based on the total drainage area utilizing the shared stormsewer. Benedictine's proportion of the total stormsewer drainage area for the Benedictine Property is 50%. The Hospital shall be responsible for the remaining 50% of the cost for the shared stormsewer.
7. **Future Development Additional Benedictine Property.** If Benedictine exercises its rights with respect to the Additional Benedictine Property and develops the Additional Benedictine Property, then the Licensor shall enter into an additional agreement with terms and conditions substantially the same as the terms and conditions included in this Agreement in favor of the Additional Benedictine Property. Such agreement shall be

subject to review and approval of the City of Northfield and the City of Northfield may require additional terms and conditions as necessary to comply with City Code, the City's NPDES permit, the City's MS4 permit, and applicable law and regulations, as any of the same may be amended from time to time, prior to construction or use of such respective utilities. Costs and expenses of shared use of the respective sanitary sewer and stormsewer utilities shall be determined based on proportionate usage under the same procedure specified in paragraph 6 above adjusted by the amount of flow and drainage, respectively, from each developed parcel as measured and determined by the City Engineer.

8. **Taxes and Assessments.** Benedictine shall pay promptly, and before delinquency, any real estate taxes levied against the Utilities Licensed Premises (but not any other portion of the Hospital Property) in the year 2018 and in all subsequent years of the license term if the same become taxable as determined by the County. If Benedictine shall in good faith desire to contest the validity or amount of any real estate tax agreed to be paid by Benedictine, Benedictine shall be permitted to do so and to defer payment of such tax, the validity or amount of which Benedictine is so contesting, until final determination of the contest, on giving to Licensor written notice thereof prior to the commencement of any such contest, which notice shall be given at least Sixty (60) days prior to delinquency, and on protecting Licensor, on Licensor's demand, by a good and sufficient surety bond in the amount of 125% of the amount of any such tax and from any costs, liability, or damage arising out of such contest.
9. **Payment of Costs and Expenses.** Benedictine shall pay in full all bills/invoices submitted to it by the Licensor or the City of Northfield for obligations incurred under this Agreement within thirty (30) days of the date of the Licensor's or the City's invoice to Benedictine. If Benedictine fails to timely pay a required bill/invoice for its respective cost share for any work performed in accordance with this Agreement or as otherwise required by the City to connect to public utilities or receive such City services, then after providing Benedictine with at least fifteen (15) days prior written notice, the same shall be an event of default and Licensor or the City of Northfield may take any actions as may be available under this Agreement, at law, or in equity to recover such unpaid charges, excluding, however, termination of this Agreement. Any payment not made when required shall bear interest at 8% per annum.
10. **License Term.** This Agreement shall be for an indefinite term commencing on the effective date. Notwithstanding the foregoing, this Agreement may be terminated; 1) by mutual agreement of the Parties at any time or 2) by the Licensor in the event of abandonment. Notwithstanding the foregoing, sanitary sewer and stormsewer services from the City of Northfield are subject to and shall remain in compliance with the requirements contained in Northfield City Code and applicable state and federal law and regulations.

Within 90 days of termination of this Agreement, Benedictine shall, at Benedictine's expense, remove any portion of the Benedictine Utilities within the Utilities Licensed Premises and restore said portion of the Utilities Licensed Premises to the condition they

were originally in at the inception of this Agreement or, alternatively, pay the Licenser the cost of restoring said portion of the Utilities Licensed Premises to the condition herein stated, payment to be made within Ninety (90) days from the date of written notice given by Licenser to Benedictine of the amount of such costs; or such other arrangement as the Parties may agree to in writing.

In the event that Benedictine fails to comply with the above paragraph, the Licenser or its authorized agents or representatives may perform any work necessary to restore the Utilities Licensed Premises to its preexisting condition or otherwise take action to remove the Benedictine Utilities from within the Utilities Licensed Premises and secure the same, and Benedictine shall reimburse Licenser for all costs and expenses reasonably incurred by the Licenser in performing such work. The Licenser may take any action authorized under law or this Agreement to recover such charges if the same are not timely paid as provided in Licenser's invoice.

11. Condition of Utilities Licensed Premises Not Warranted. Benedictine acknowledges that it has inspected the Utilities Licensed Premises and accepts the same in an "as is" condition. The Licenser and the City of Northfield do not warrant that the Utilities Licensed Premises is suitable for the purposes for which it is permitted to be used under this License. The Licenser and the City of Northfield shall have no responsibility with regard to any failure of or damage to the Benedictine Utilities within the Utilities Licensed Premises. Benedictine understands and acknowledges that this License grants it only nonexclusive licenses to use the Utilities Licensed Premises, and does not confer any permanent property rights with respect to the Utilities Licensed Premises, the Hospital Utilities, or the or the Benedictine Utilities constructed on the Hospital Property, including but not limited to Parcel 3.

12. Improvements, Maintenance and Other Conditions. The Licenser's grant of nonexclusive licenses, in addition to the other terms contained herein, is subject to the following conditions:

- a. Benedictine shall commence no work within the Utilities Licensed Premises during its term until it has obtained all required approvals and permits as required by the City of Northfield.
- b. All improvements or alterations, or repairs to authorized improvements or alterations, within the Utilities Licensed Premises and to the Benedictine Utilities shall be subject to the written approval of the City Engineer, said approval shall not be unreasonably withheld. Plans and specifications for all alterations or improvements within the Utilities Licensed Premises and to the Benedictine Utilities shall be presented to the City Engineer for his/her approval; if approved, that fact shall be noted on the plans and specifications or attached thereto and the same shall be filed with the City Clerk. Plans and specifications shall be sufficiently detailed to show the materials to be used, shape and size of the alterations or improvement(s), safety features, lighting, the presence of utilities affected by the work and such other or different information as the City Engineer

may require.

- c. Benedictine shall take all necessary precautions to protect and preserve the Hospital Utilities and any public utilities or public utilities easements within or adjacent to the Utilities Licensed Premises during any activities within or use of the Utilities Licensed Premises as contemplated in this Agreement.
 - d. Benedictine shall take all necessary precautions to avoid creating unsafe or unsanitary conditions.
 - e. Benedictine shall notify Gopher State One Call prior to conducting any excavation necessary to construct, maintain, repair or replace the improvements and comply with the requirements thereof.
 - f. Benedictine shall be responsible for the costs associated with any damage to the Hospital Utilities and public utilities located within the Utilities Licensed Premises, on the Hospital Property or otherwise, which is caused by Benedictine as a result of its use of or operations within the Utilities Licensed Premises or on the Hospital Property where utility connections are made. Benedictine shall pay such costs within 30 days of Benedictine's receipt of a billing statement for such charges from the Licensor or the City of Northfield.
 - g. Benedictine shall not intentionally commit or allow to be committed any waste on, destruction of, or damage to, or nuisance on the Utilities Licensed Premises, the Hospital Property or to any utilities located therein, private or public. In the event of such occurrence, Licensor and the City of Northfield may immediately terminate this Agreement, unless such waste, destruction or damage is repaired to Licensor's and the City of Northfield's satisfaction by Benedictine, at Benedictine's cost, within the 90 day notice period.
 - h. Benedictine shall not conduct any work outside the area authorized within the City Engineer approved plans and specifications or the Utilities Licensed Premises, as applicable.
13. **Use of Utilities Licensed Premises.** During the term of this License, Benedictine shall comply with all applicable laws, regulations, conditions, and covenants affecting its use of the Utilities Licensed Premises, whether federal, state, local, or contractual.
14. **Waiver and Assumption of Risk.** Benedictine knows, understands and acknowledges the risks and hazards associated with using the Utilities Licensed Premises and the Hospital Property for the purposes permitted herein and the improvements thereon and hereby assumes any and all risks and hazards associated therewith. Benedictine understands and acknowledges that public utility facilities located within or connected to the Utilities Licensed Premises may require regular maintenance, repairs or other work. Benedictine hereby irrevocably waives any and all claims against the Licensor or the City of Northfield or any of their officials, employees or agents for any bodily injury

(including death), loss or property damage incurred by Benedictine or any person using Benedictine's improvements and hereby irrevocably releases and discharges the Licensor and the City of Northfield and any of their officials, employees or agents from any and all such claims of liability related in any way to the Utilities Licensed Premises, the improvements to be constructed therein, the Hospital Property, or the Licensor's or the City of Northfield's maintenance, repair or other work conducted within the Utilities Licensed Premises, within the Hospital Property, or within the public right-of-way or easements, by Benedictine, Licensor, the City of Northfield or any other third party, provided, however, that nothing in this Section shall affect or diminish the obligations of Licensor under paragraph 6 above. Benedictine is responsible for the cost of restoration and removal of Benedictine's improvements made necessary related to Licensor's or the City of Northfield's maintenance, repair or other work conducted within the Utilities Licensed Premises. Benedictine is responsible for the prorated costs (as described in paragraph 6 above) related to improvements, repair or other work conducted within the Hospital Property, or within the public right-of-way or easements by the Licensor, the City of Northfield or their agent(s).

15. **Licensor and City of Northfield Right of Entry.** The Licensor and the City of Northfield, their employees, and their agents shall have the right to enter the Utilities Licensed Premises at all times for all reasonable purposes, including, without limitation, enforcing all applicable laws, regulations and/or ordinances, keeping the peace, and inspecting, cleaning, repairing, altering, or improving the Utilities Licensed Premises, or any maintenance, repair or other work conducted within the Utilities Licensed Premises by the Licensor or the City of Northfield for utility purposes or otherwise deemed necessary or appropriate by Licensor or the City of Northfield. Nothing in this Agreement shall be interpreted as requiring the Licensor or the City of Northfield to perform any such acts independent of the requirements of the other provisions of this Agreement. The Licensor or the City of Northfield may order the immediate cessation of any improvements, project or work that exceeds the scope of this License or otherwise poses a threat to the life, health, safety or welfare of the public.

The Licensor or the City of Northfield may order Benedictine to correct any utility work to comply with applicable standards, conditions, laws ordinances or this Agreement. If the Benedictine Utilities fall into disrepair at any time during the term of this License, the City of Northfield may order Benedictine to conduct any repairs or perform any maintenance necessary to bring the improvements within the Utilities Licensed Premises or on the Benedictine Property into compliance with applicable standards, ordinances, laws or this Agreement, as directed by the City of Northfield. Any such an order by the City of Northfield authorized by this Paragraph shall state the violation, the terms of correcting the violation and that failure to correct the violation within the stated time limits shall be an event of default and cause for immediate termination of this Agreement.

If the violation is not corrected within the stated time limits, the City of Northfield may immediately terminate this Agreement and pursue any and all remedies available to it upon termination of this Agreement.

Licensor or the City of Northfield authorized or permitted private utility companies, shall have the right to enter the Utilities Licensed Premises to conduct any installation, construction, maintenance, repair or other work deemed necessary or appropriate for utility purposes.

16. **Binding.** This Agreement shall be binding upon and shall burden the Benedictine Property and the Hospital Property and the heirs, successors, and assigns of Benedictine and Licensor. The licenses herein are not merely personal rights and shall run with the land.

17. **Assignment or Transfer.** Benedictine shall have no right to assign its interest in this Agreement without the prior written consent of Licensor and the City of Northfield, which consent shall not be unreasonably withheld.

18. **Indemnification and Insurance.**

a. Hold Harmless Agreement. Benedictine assumes and agrees to pay for all loss or damage to property whatsoever and injury to or death of any person or persons whomsoever, including all costs and expenses incident thereto, however arising from or in connection with the use of the Utilities Licensed Premises or under this Agreement. Benedictine shall indemnify the Licensor and the City of Northfield against and agree to save them harmless from any and all claims, demands, lawsuits, or liability for, and such loss or damage, injury, death, and costs and expenses incident thereto. The indemnification provisions of this Paragraph shall not apply to damages or other losses proximately caused by or resulting from the negligence or willful misconduct of the Licensor or the City of Northfield. All indemnification obligations shall survive termination, expiration or cancellation of this Agreement.

b. Liability Insurance Coverage. Benedictine shall, at its expense, maintain in effect liability insurance with limits not less than the maximum liability limits for a municipality as provided in Minnesota Statutes, Section 466.04. The City of Northfield and Licensor shall be additional insureds. The insurance policy and certificate shall not be canceled or its conditions altered in any manner without ten (10) days prior written notice to the City Administrator and the Chief Executive Officer of the Licensor. The insuring company shall deliver to the City Clerk and the Chief Executive Officer of the Licensor, certificates of all insurance required, signed by an authorized representative and stating that all provisions of the specified requirements are satisfied.

19. **Default.** If Benedictine fails to perform any of the provisions of this Agreement, Licensor or the City of Northfield may provide written notice to Benedictine stating the failure and the act required to cure the failure. If Benedictine does not cure the failure within 30 days of Licensor's notice (or in the event the failure cannot reasonably be cured within 30 days, Benedictine does not commence and diligently pursue the cure), then a default shall exist. Unless Benedictine's default is excused by the Licensor or the City of

Northfield, as applicable, the Licensor or the City of Northfield, as applicable, may, upon written notice, exercise any rights or remedies available to the Licensor or the City of Northfield under this Agreement or law except for termination.

20. Effective Date. The effective date of this Agreement shall be as written above.

21. General Terms.

- a. 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.
- b. 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.
- c. Mechanic's Liens. Benedictine hereby covenants and agrees that Benedictine will not permit or allow any mechanic's or materialman's liens to be placed on the Licensor's or the City of Northfield's interest in the Utilities Licensed Premises or the Hospital Property during the term hereof for labor performed or material supplied in connection with any work or improvements performed or caused to be performed by Benedictine. Notwithstanding the previous sentence, however, in the event any such lien shall be so placed on the Licensor's or the City of Northfield's interest, Benedictine shall take all steps necessary to see that it is removed within thirty (30) days of its being filed; provided, however, that Benedictine may contest any such lien provided Benedictine first provides adequate security protecting the Licensor against such lien.
- d. Attorneys' Fees. If any action at law or in equity shall be brought by Licensor or the City of Northfield on account of any breach/default of this Agreement by Benedictine or for the recovery of the possession of the Utilities Licensed Premises or to recover costs, expenses or payments to which the Licensor or the City of Northfield are entitled under this Agreement, Licensor and the City of Northfield shall be entitled to recover from Benedictine 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.
- e. Recitals. The recitals to this Agreement are made a part hereof and incorporated herein by reference.

- f. Notices. The parties' representatives for notification for all purposes are:

Licensors:

Northfield Hospital & Clinics
Attn: CEO
2000 North Avenue
Northfield, MN 55057

Benedictine:

Benedictine Living Community of Northfield LLC
4000 Lexington Avenue N., Suite 201
Shoreview, MN 55126

City of Northfield:

City of Northfield
Attn: City Administrator
801 Washington Street
Northfield, MN 55057

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, return receipt requested, and addressed to the other party to this Agreement, to the address set forth above, 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.

- g. No Partnership, Joint Venture, or Fiduciary Relationship. Nothing contained in this Agreement shall be interpreted as creating a partnership, joint venture, or relationship of principal and agent between Benedictine and Licensors.
- h. Modifications/Amendment. Any alterations, variations, modifications, amendments or waivers of the provisions of this Agreement shall only be valid when they have been reduced to writing, and signed by authorized representative of the Parties and consents hereto.

- i. Records—Availability and Retention. Pursuant to Minn. Stat. § 16C.05, subd. 5, Benedictine agrees that the Licensor, the City of Northfield, the State Auditor, or any of their duly authorized representatives at any time during normal business hours and as often as they may reasonably deem necessary, shall have access to and the right to examine, audit, excerpt, and transcribe any books, documents, papers, records, etc., which are pertinent to the accounting practices and procedures of Benedictine and involve transactions relating to this Agreement. Benedictine agrees to maintain these records for a period of six years.
- j. Cumulative Rights. Except as otherwise expressly stated herein, no right or remedy herein conferred on or reserved to Benedictine or the Licensor or the City of Northfield 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.
- k. Compliance with Laws. The Licensor and Benedictine shall abide by all Federal, State and local laws, statutes, ordinances, rules and regulations now in effect or hereinafter adopted pertaining to this Agreement.
- l. Governing Law. This Agreement shall be deemed to have been made and accepted in Dakota County, Minnesota, and the laws of the State of Minnesota shall govern any interpretations or constructions of this Agreement without regard to its choice of law or conflict of laws principles.
- m. Data Practices. The Parties acknowledge that data collected pertaining to this Agreement is subject to the requirements of Minnesota's Government Data Practices Act, Minnesota Statutes, Section 13.01 et seq.
- n. 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.
- o. 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.
- p. Entire Agreement. These terms and conditions constitute the entire agreement between the parties regarding the subject matter hereof. All discussions and negotiations are deemed merged in this Agreement.

- q. 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.
- r. Survivability. All indemnities, guarantees, releases, representations and warranties by any party or parties, and any undischarged obligations of Benedictine and Licensor arising prior to the expiration of this Agreement (whether by completion or earlier termination), shall survive such expiration for a period of five years from the effective date thereof.
- s. Recording. This Agreement will be recorded.

[Remainder of page left intentionally blank]

IN WITNESS WHEREOF, this Agreement has been executed the day and year first above written.

**LICENSOR:
NORTHFIELD HOSPITAL & CLINICS**

BY: _____
Charlie Mandile, Its Chair

BY: _____
Steve Underdahl, Its President

STATE OF MINNESOTA)
) ss.
COUNTY OF DAKOTA)

The foregoing instrument was acknowledged before me this ____ day of _____, _____, by Charlie Mandile, as Chair, and Steve Underdahl, as President, for and on behalf of Northfield Hospital & Clinics, an instrumentality of the City of Northfield, Licensor.

Notary Public

LICENSEE:

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

BY: _____
Kevin Rymanowski, Treasurer

STATE OF MINNESOTA)
) ss.
COUNTY OF _____)

The foregoing instrument was acknowledged before me this _____ day of _____, 20____, by Kevin Rymanowski, as Treasurer, for and on behalf of Benedictine Living Community of Northfield LLC, a Minnesota nonprofit limited liability company on behalf of the company.

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

EXHIBIT A

Legal Description of the Hospital Property

Lot 1, Block 1, St. Olaf College North Avenue Development, Dakota County, Minnesota.

AND

Outlot A, St. Olaf College North Avenue Development, Dakota County, Minnesota

EXCEPT 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.

AND EXCEPT that part of Outlot A, St. Olaf College North Avenue Development, according to the recorded plat thereof, Dakota County, Minnesota, lying north of the south 1040.85 feet of said Outlot A and west of the west line of Lot 1, Block 1, said St. Olaf College North Avenue Development, and its northerly extension.

Depiction of Hospital Property



EXHIBIT B

Depiction of Existing Hospital Utilities

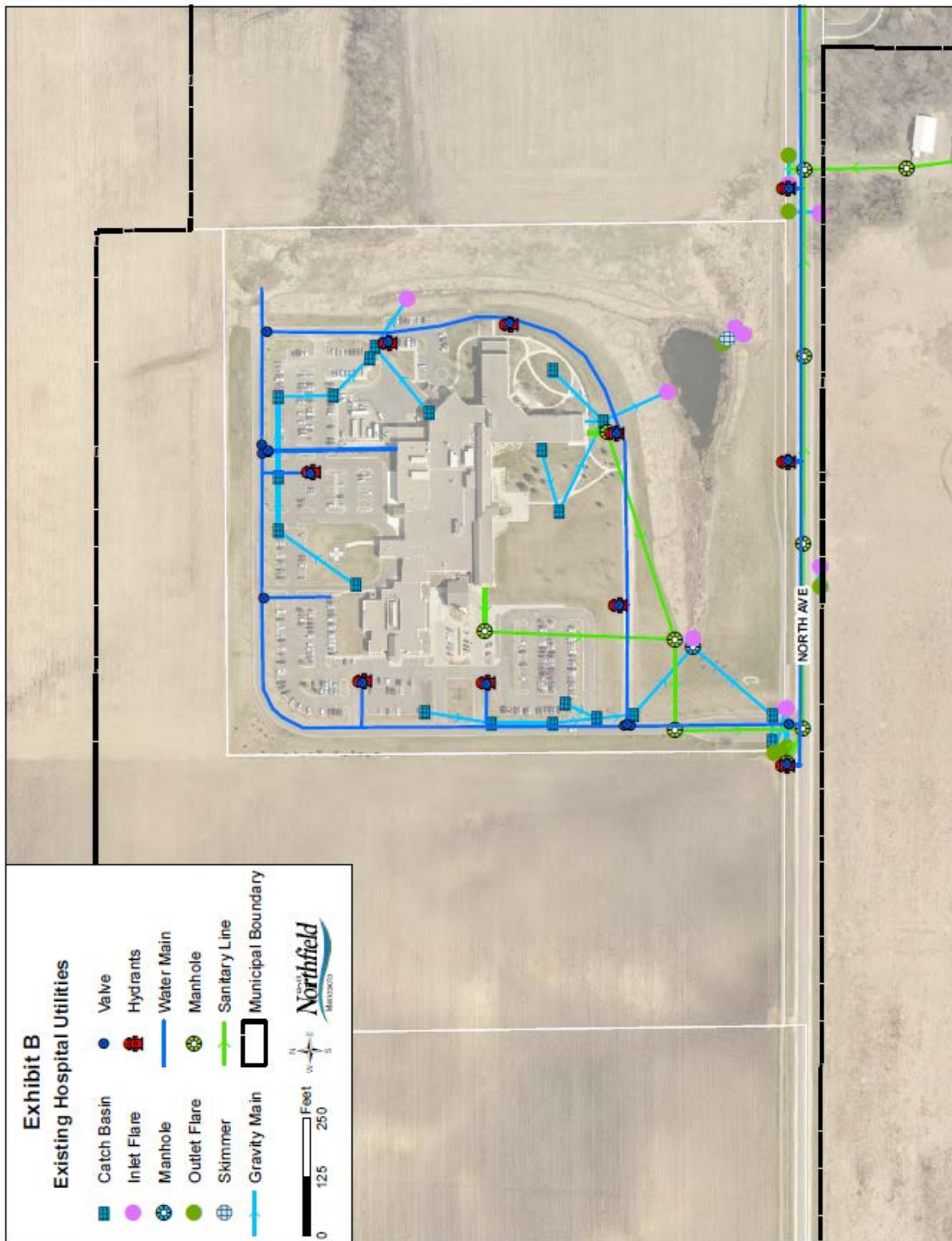
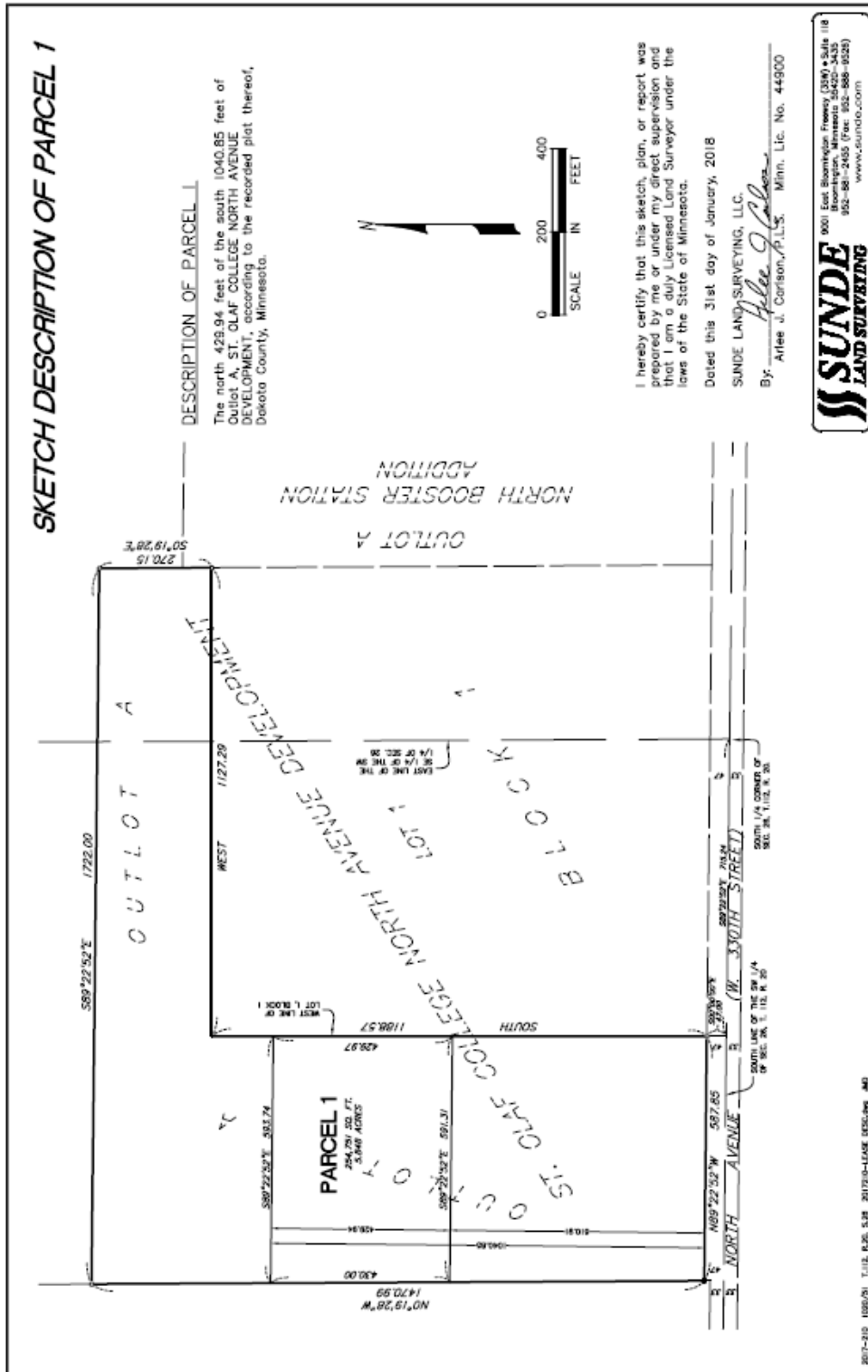
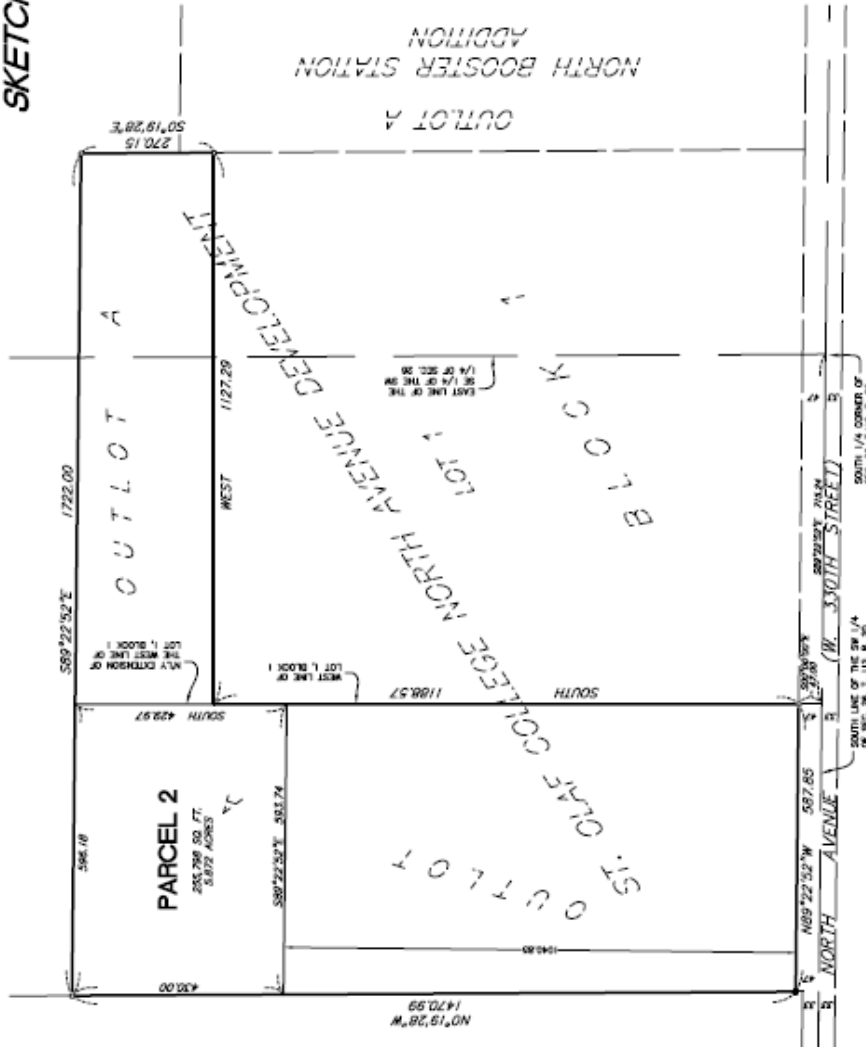


EXHIBIT C

Legal Description and Surveyed Depiction of the Benedictine Property (Parcels 1 and 2)



SKETCH DESCRIPTION OF PARCEL 2



DESCRIPTION OF PARCEL 2

That part of Outlot A, ST. OLAF COLLEGE NORTH AVENUE DEVELOPMENT, according to the recorded plat thereof, Dakota County, Minnesota, lying north of the south 1040.85 feet of said Outlot A and west of the west line of Lot 1, Block 1, said ST. OLAF COLLEGE NORTH AVENUE DEVELOPMENT, and its northerly extension.



I hereby certify that this sketch, plan, or report was prepared by me or under my direct supervision and that I am a duly Licensed Land Surveyor under the laws of the State of Minnesota.

Dated this 31st day of January, 2018

SUNDE LAND SURVEYING, LLC.

By: *Ailee J. Carlson, P.L.S.* Minn. Lic. No. 44900

SUNDE
LAND SURVEYING
9001 East Bloomington Freeway, (35W) • Suite 118
Bloomington, Minnesota 55425-3535
952-867-2435 (F) 952-868-6335
www.sunde.com

EXHIBIT D

Depiction of Hospital Sewer Line

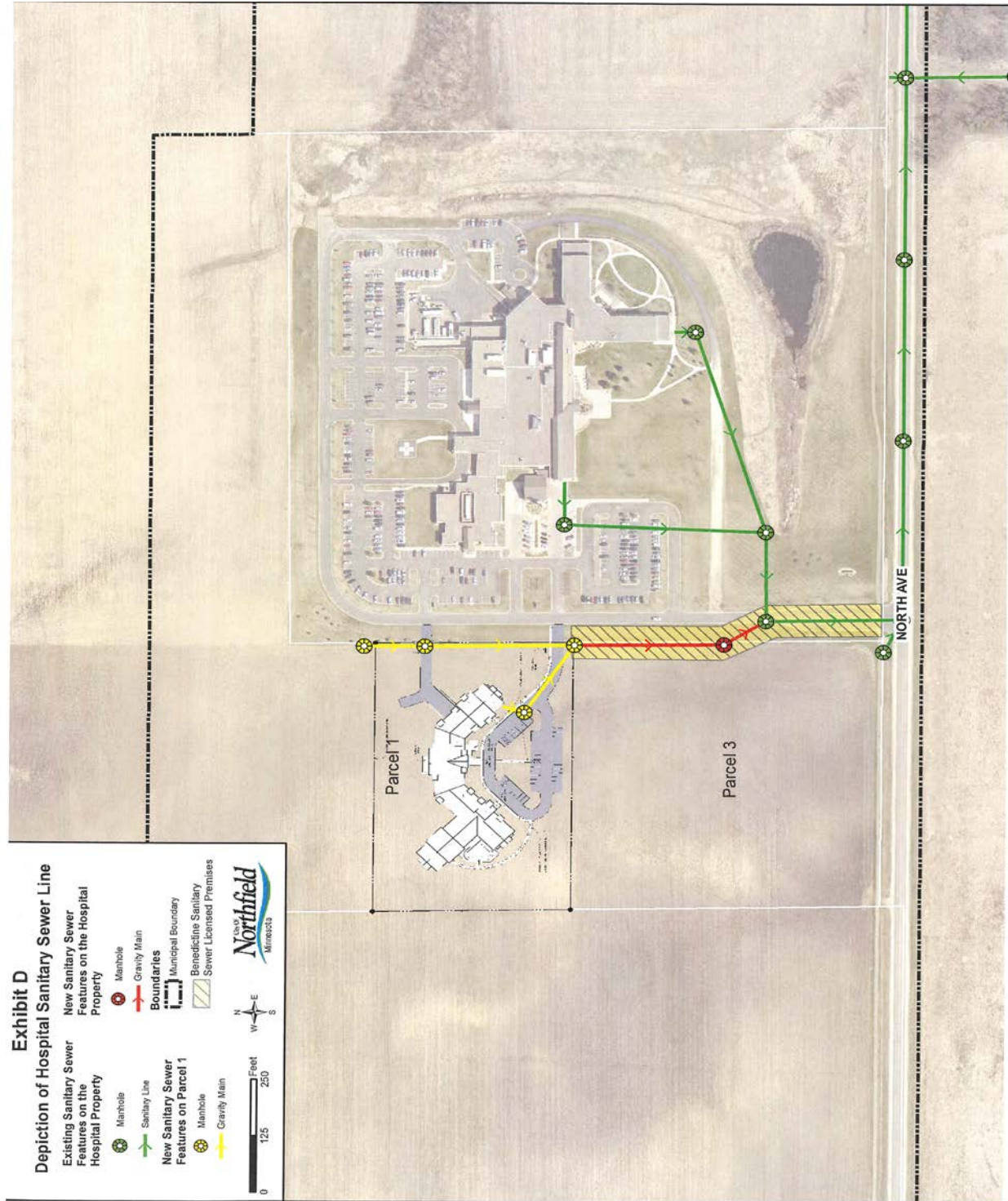


EXHIBIT E

Legal Description and Surveyed Depiction of Parcel 3

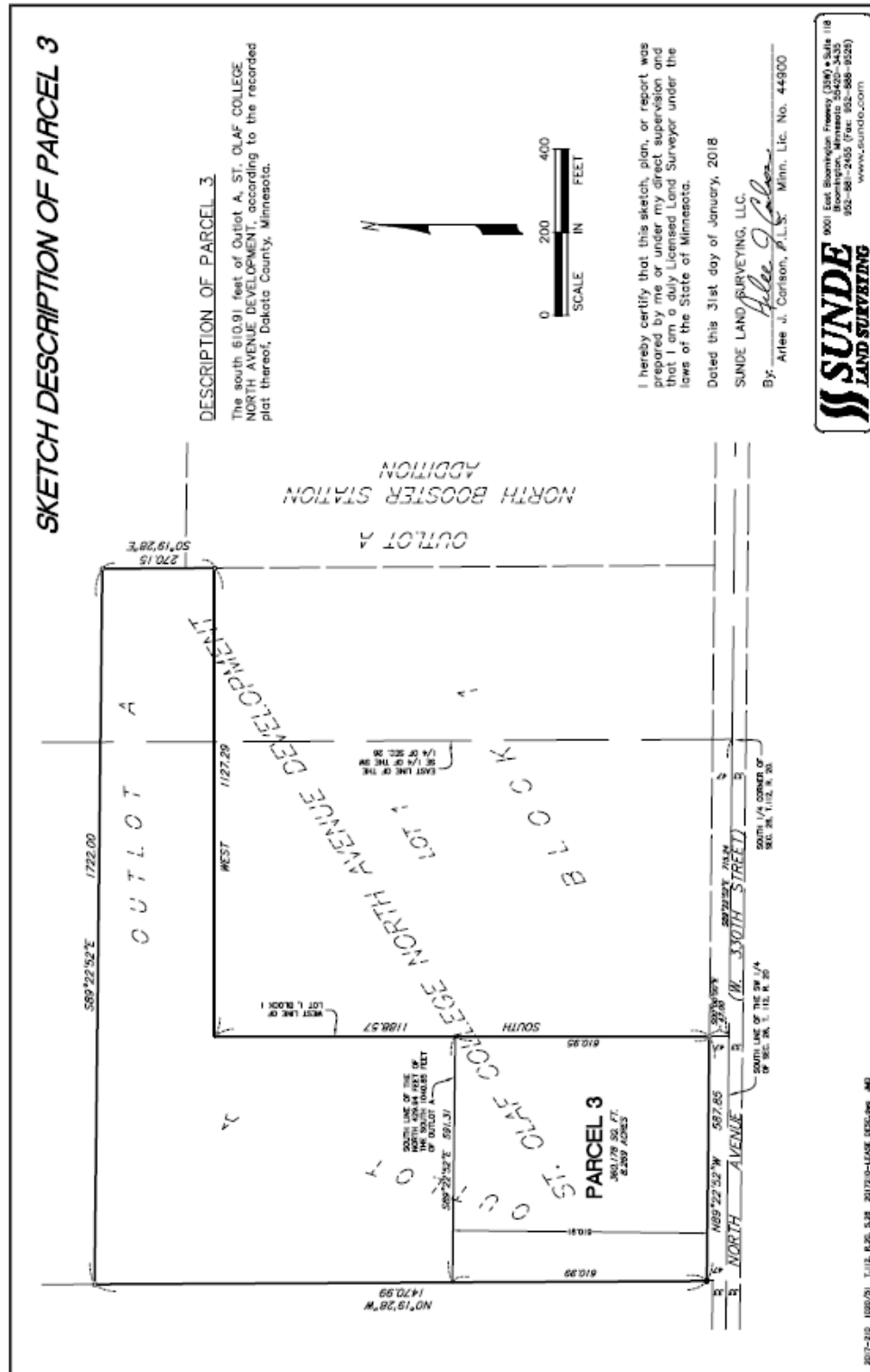
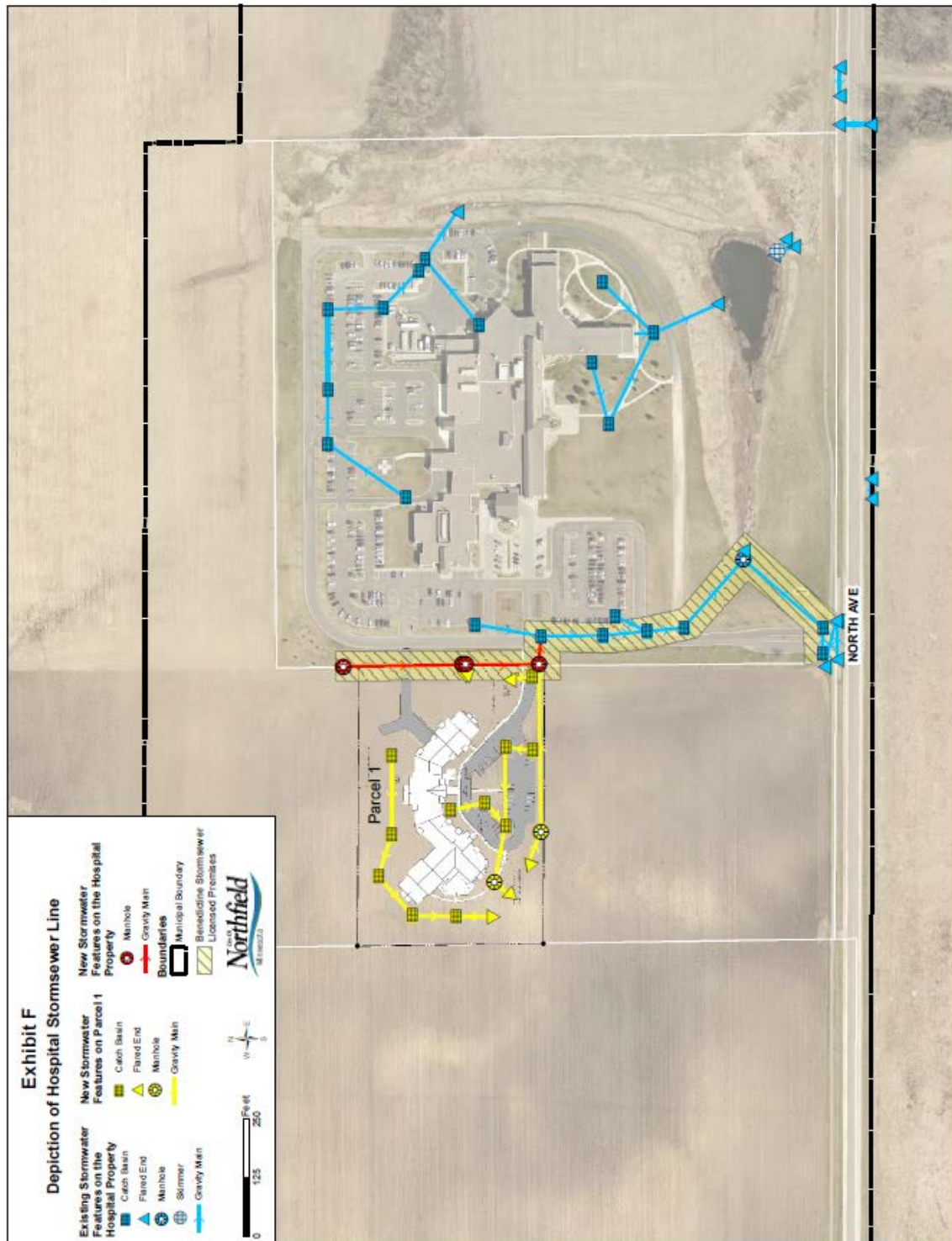


EXHIBIT F

Depiction of Hospital Stormsewer Line



**TO
AGREEMENT**

St. Olaf College, fee owner of the Hospital Property and the Benedictine Property, the use of which is governed by the foregoing Agreement to Use Sewer and Stormsewer Lines ("Agreement"), the Northfield Ground Lease, and the Benedictine Ground Lease, affirms and consents to the provisions of the Agreement, agrees that the Hospital Property and the Benedictine 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 Northfield Ground Lease or the Benedictine Ground Lease, and joins in the grant of licenses to Benedictine.

Dated this _____ day of _____, 2018.

[illegible]

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

**GROUND LEASE HOLDER CONSENT
TO
AGREEMENT**

The City of Northfield, holder of a GROUND LEASE as Lessee of the subject Property, the use thereof which is governed by the foregoing Agreement to Use Sewer and Stormsewer Lines and that certain above-mentioned GROUND LEASE dated as of November 17, 1999 but effective as of August 30, 2001, recorded in the Office of the Recorder, Dakota County, Minnesota, as Document No. 1834253 on November 28, 2001, by and between St. Olaf College and the City of Northfield, affirms and consents to the provisions of the Agreement to Use Sewer and Stormsewer Lines and agrees to be bound by the provisions as the same may apply to that portion of the subject Property owned, leased, or used by it and joins in the grant of licenses to Benedictine..

Dated this ____ day of _____, 2018.

CITY OF NORTHFIELD

By: _____
Rhonda Pownell, Its Mayor

By: _____
Deb Little, Its City Clerk

COUNTY OF RICE)
) ss.
STATE OF MINNESOTA)

The foregoing instrument was acknowledged before me this ____ day of _____, 2018, by Rhonda Pownell, as Mayor, and Deb Little, as City Clerk, for and 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.
Northfield City Attorney
525 Park Street, Suite 470
St. Paul, MN 55103-2122
Telephone: (651) 225-8840