

AGREEMENT TO USE AND MAINTAIN HOSPITAL DRIVE

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 driveway/roadway infrastructure commonly referred to as Hospital Drive ("Hospital Drive") 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 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, storm sewer), parking for motor vehicles, and Hospital Drive; 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 construct a driveway and related improvements (“Benedictine Driveway”) as part of the Project to connect the Benedictine Property to Hospital Drive and to use the Benedictine Driveway and Hospital Drive for the ingress and egress of pedestrians and motorized and non-motorized vehicles to and from the Benedictine Property and North Avenue (also known as 330th Street West); and

WHEREAS, Hospital Drive currently extends north from North Avenue a distance of ____ feet and is depicted on Exhibit C, which is attached hereto and incorporated herein by reference; and

WHEREAS, the Benedictine Driveway on the Benedictine Property and the connection of the same to Hospital Drive located on the Hospital Property are depicted on Exhibit D, which is attached hereto and incorporated herein by reference; and

WHEREAS, Benedictine proposes to construct the Benedictine Driveway at its own cost and expense and, in addition, to use and share in the expense of operating, repairing, maintaining, reconstructing and replacing Hospital Drive by the Northfield Hospital under a cost sharing arrangement between the Parties; 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 License and Description of Licensed Premises.** Licensor hereby grants to Benedictine a non-exclusive license to: a) construct the Benedictine Driveway, at its own cost and expense, as part of the Project and connect the same to Hospital Drive on the Hospital Property, and b) to use, operate, repair, maintain, reconstruct, and replace the Benedictine Driveway and Hospital Drive on the Hospital Property, as necessary or as reasonably required by the Northfield Hospital, for the ingress and egress of pedestrians and motorized and non-motorized vehicles to and from the Benedictine Property and North Avenue, all strictly in conformance with Northfield Hospital approved plans and specifications for said Benedictine Driveway to Hospital Drive on the Hospital Property, and all strictly in conformance with Hospital rules and regulations and applicable law and City ordinances, as the same may be amended from time to time; provided that no Hospital rules or regulations shall prohibit or burden the lawful and compliant use of Hospital Drive or the Benedictine Driveway for ingress and egress of pedestrians and motorized and non-motorized vehicles to and from the Benedictine Property and North Avenue at any time.

The Licensed Premises located on the Hospital Property, includes the area encompassing the portion of the Benedictine Driveway from the Benedictine Property to Hospital Drive as well as all of Hospital Drive lying between the Benedictine Driveway and North Avenue and any area lying between the Benedictine Driveway and North Avenue containing road/driveway poles and lights, curbs, gutters, sidewalks, and landscaping adjacent thereto as depicted on Exhibit E, which is attached hereto and incorporated herein by reference (the “Licensed Premises”).

2. **Licenser Review and Approval.** Licenser review and written approval of the Benedictine Driveway on the Hospital Property 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 Licenser, as and for the use of the Licensed Premises a one-time license fee of \$100 payable upon execution hereof.
4. **Costs and Expenses for Benedictine Driveway.** Benedictine shall be responsible for all costs and expenses of every kind whatsoever to construct, connect to, use, operate, repair, maintain, reconstruct, and replace, as necessary or reasonably required by the Northfield Hospital the Benedictine Driveway located on the Hospital Property as depicted on Exhibit D. Benedictine is solely responsible for all costs and expenses of every kind whatsoever of the Benedictine Driveway.
5. **Costs and Expenses for Shared Use and Maintenance of Hospital Drive.** Licenser shall provide all repairs, maintenance, reconstruction, and replacement for Hospital Drive and all appurtenances thereto including, without limitation, patching, sealcoating, resurfacing, replacement, reconstruction, major and minor maintenance within the Licensed Premises, necessary to keep Hospital Drive and the related appurtenances for their intended purposes. Benedictine shall be responsible for a prorated share of all costs and expenses of every kind whatsoever to operate, repair, maintain, reconstruct and replace, as necessary or reasonably required by the Northfield Hospital, Hospital Drive and all appurtenances thereto within the Licensed Premises depicted on Exhibit E. Such costs and expenses include but are not limited to patching, sealcoating, resurfacing, replacement, reconstruction, and major and minor maintenance within the Licensed Premises. This Agreement also includes all appurtenances to Hospital Drive, including but not limited to, road/driveway poles and lights, curbs, gutters, sidewalks, and landscaping within the Licensed Premises.

For purposes of determining Benedictine’s prorated cost share, throughout the Term of this Agreement, to be paid by Benedictine within 30 days of being respectively invoiced for such costs as the same are incurred by the Licenser, the following methodology shall be used as calculated by the Hospital’s Chief Financial Officer:

- a. The prorated share shall be determined by using mutually acceptable traffic counts or an industry standard, traffic use calculation based on the most current version of the Institute of Transportation Engineers Trip Generation Manual to establish a percentage of traffic volume. A traffic volume/use study shall be performed every

three years during the term hereof by a traffic engineer selected by the Licensor with costs of the study being paid equally by the Parties, except with respect to the initial study referenced herein below. The initial traffic volume/use study shall be prepared and completed within six months of the issuance of a Certificate of Occupancy for the Project by a traffic engineer selected by the Licensor with costs of this initial study being paid solely by Benedictine. Additional traffic studies shall be conducted, even in non-third years, where there is a significant change in development (e.g., new building/structure, expansion of an existing building/structure, change in use anticipated to generate a material change in traffic/vehicle volumes) on the Benedictine Property, the Additional Benedictine Property, or the Hospital Property.

- b. This prorated share of all costs will be applied to expenses as defined above for the driveway from the North Avenue entrance to the northern most established entrance to the Benedictine Property.
- c. All invoices from the Licensor seeking reimbursement for the percentage of costs incurred by Benedictine and attributable to Benedictine shall be in writing and itemized showing the costs and expenses incurred by the Licensor and the percentage of the same for which Benedictine is responsible to pay.
- d. When Hospital Drive is extended east into Outlot B St. Olaf College North Avenue Development, paragraph 5 (b.) above shall be replaced as provided in this paragraph. In such event, the prorated share of all costs will be applied to the expenses as defined above from the North Avenue entrance to the east boundary line of Lot 1, Block 1, St. Olaf College North Avenue Development. Upon the commencement date of construction of the additional driveway segment of Hospital Drive referred to herein, the Licensed Premises shall be automatically expanded to include the additional driveway area as depicted on Exhibit F and costs shall be allocated as provided above. The prorated share shall now be determined by an established percentage of traffic for the driveway from the North Avenue entrance to the northern most established entrance to the Benedictine Property and also the established percentage of traffic for the driveway from the northern most entrance to the Benedictine Property to the east boundary line of Lot 1, Block 1 St. Olaf College North Avenue Development.

Northfield Hospital will provide advance written notice to Benedictine at least thirty (30) days prior to undertaking any such work where the cost share to be incurred and paid by Benedictine for such work is estimated to exceed \$5,000. The decision to undertake any work contemplated herein shall be in the sole judgment and discretion of the Licensor following notice to Benedictine as provided herein in the event such notice is required. In the event any work does not exceed the notice threshold, Licensor may undertake the work in its discretion and thereafter invoice Benedictine for Benedictine's cost share.

- 6. **Future Development.** 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. Any parcel on the Hospital Property, including but not limited to Parcels 3 and 4, developed in the future by parties other than the Hospital, shall be required to enter into a license agreement(s) or other agreements under terms and conditions substantially equivalent to this Agreement or having such other terms and conditions as the City of Northfield and Licensors may require prior to construction of a connection to, use or extension of Hospital Drive. In the event that Hospital Drive is extended to serve future development, the Licensed Premises contained herein shall be automatically adjusted to include the additional roadway/driveway areas. Benedictine agrees to make such adjustments or amendments to this Agreement as may be determined necessary by the Licensors and the City of Northfield to facilitate such future development and extension of Hospital Drive.

7. **Payment of Costs and Expenses by Benedictine.** Benedictine shall pay in full all bills/invoices submitted to it by the Licensors for obligations incurred under this Agreement within thirty (30) days of the date of the Licensors' 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, then after providing Benedictine with at least fifteen (15) days prior written notice, the same shall be an event of default and Licensors 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.
8. **Taxes and Assessments.** Benedictine shall pay promptly, and before delinquency, one-half of any real estate taxes in the event the same are levied against the 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 taxes are levied upon only the portion of the Licensed Premises providing the connection of the driveway on the Benedictine Property to Hospital Drive, Benedictine shall be solely responsible for payment of the entire amount of the same as they become due and payable. 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 Licensors 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 Licensors, on Licensors' 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. **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 Licensors in the event of abandonment.

Within 90 days of termination of this Agreement, Benedictine shall, at Benedictine's expense, remove any portion of the Benedictine Driveway within the Licensed Premises and restore said portion of the Licensed Premises to the condition they were originally in at the inception of this Agreement or, alternatively, pay the Licensor the cost of restoring said portion of the Licensed Premises to the condition herein stated, payment to be made within Ninety (90) days from the date of written notice given by Licensor 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 Licensor or its authorized agents or representatives may perform any work necessary to restore the Licensed Premises to its preexisting condition or otherwise take action to remove the Benedictine Driveway from within the Licensed Premises and secure the same, and Benedictine shall reimburse Licensor for all costs and expenses reasonably incurred by the Licensor in performing such work. The Licensor may take any action authorized under law or this Agreement to recover such charges if the same are not timely paid as provided in Licensor's invoice.

10. Condition of Licensed Premises Not Warranted. Benedictine acknowledges that it has inspected the Licensed Premises and accepts the same in an "as is" condition. The Licensor and the City of Northfield do not warrant that the Licensed Premises is suitable for the purposes for which it is permitted to be used under this License. Licensor and the City of Northfield shall have no responsibility with regard to any failure of or damage to the Benedictine Driveway located within the Licensed Premises. Benedictine understands and acknowledges that this License grants it only a nonexclusive license to use and maintain the Licensed Premises for the purposes stated herein, and does not confer any permanent property rights with respect to the Licensed Premises.

11. Driveway Improvements, Maintenance and Other Conditions. The Licensor's grant of a nonexclusive license, in addition to the other terms contained herein, is subject to the following conditions:

- a. Benedictine shall commence no work within the Licensed Premises 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 Licensed Premises and to be made by Benedictine, shall be subject to the written approval of the Licensor. Plans and specifications for all alterations or improvements to the Licensed Premises by Benedictine shall be presented to the Licensor for review and approval. If approved, that fact shall be noted on the plans and specifications or attached thereto and the same shall be filed with the Licensor. 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 Licensor may require.

- c. Benedictine shall take all necessary precautions to protect and preserve the Hospital Property, Hospital Drive, and any other improvements in the Licensed Premises during any activities within or use of the Licensed Premises by Benedictine as contemplated in this Agreement.
 - d. Benedictine shall take all necessary precautions to avoid creating unsafe or unsanitary conditions within the Licensed Premises.
 - e. Benedictine shall notify Gopher State One Call prior to conducting any excavation necessary to construct, maintain, repair, reconstruct or replace the driveway improvements and comply with the requirements thereof.
 - f. Benedictine shall be responsible for the costs associated with any damage to the Hospital Property, Hospital Drive, and any other improvements in the Licensed Premises, which is caused by Benedictine as a result of its use of or operations within the Licensed Premises or on the Hospital Property. Benedictine shall pay such costs within thirty (30) days of Benedictine's receipt of a billing statement for such charges from the Licensor.
 - g. Benedictine shall not intentionally commit or allow to be committed any waste on, destruction of, or damage to, or nuisance on the Licensed Premises or Hospital Property. In the event of such occurrence, Licensor may immediately terminate this Agreement, unless such waste, destruction or damage is repaired to Licensor's satisfaction by Benedictine, at Benedictine's cost, within the 90 day notice period.
 - h. Benedictine shall not block access to the Hospital Property and Northfield Hospital during the term of this License, including emergency vehicle access.
 - i. Benedictine shall not conduct any work outside the Licensed Premises, except upon the Benedictine Property.
12. **Use of Licensed Premises.** During the term of this License, Benedictine shall comply with all applicable laws, regulations, conditions, and covenants affecting its use of the Licensed Premises, whether federal, state, local, or contractual.
13. **Waiver and Assumption of Risk.** Benedictine knows, understands and acknowledges the risks and hazards associated with using the Licensed Premises for the purposes permitted herein and the driveway 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 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

Licensed Premises, the driveway improvements to be constructed therein, the Hospital Property, Hospital Drive or the Licensors' maintenance, repair or other work conducted within the Licensed Premises, within the Hospital Property, or within the public right-of-way or easements, by Benedictine, Licensors, the City of Northfield or any other third party; provided, however, that nothing in this Section shall affect or diminish the obligations of Licensors under paragraph 5 above. Benedictine is responsible for the cost of restoration and removal of Benedictine's driveway improvements made necessary related to Licensors' or the City of Northfield's maintenance, repair or other work conducted within the Licensed Premises, within the Hospital Property, or within the public right-of-way or easements by the Licensors, the City of Northfield or their agent(s).

- 14. Licensors and the City of Northfield Right of Entry.** The Licensors and the City of Northfield, their employees, and their agents shall have the right to enter the 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 Licensed Premises, or any maintenance, repair or other work conducted within the Licensed Premises by the Licensors or the City of Northfield for utility purposes or otherwise deemed necessary or appropriate by Licensors or the City of Northfield. Nothing in this Agreement shall be interpreted as requiring the Licensors or the City of Northfield to perform any such acts independent of the requirements of the other provisions of this Agreement. The Licensors or the City of Northfield may order the immediate cessation of any Benedictine Driveway improvements, or work within the Licensed Premises or on Hospital Property that exceeds the scope of this Agreement or otherwise poses a threat to the life, health, safety or welfare of the public. The Licensors or the City of Northfield may order Benedictine to correct any work to comply with applicable standards, conditions, laws ordinances or this Agreement.

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

- 15. 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 Licensors. The licenses herein are not merely personal rights and shall run with the land.

16. 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 Benedictine's use of the Licensed Premises or under this Agreement. Benedictine shall indemnify the Licensors and the City of Northfield against and agrees 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 Licensor and the City of Northfield 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 Licensor. Upon request, the insuring company shall deliver to the Licensor certificates of all insurance required, signed by an authorized representative and stating that all provisions of the specified requirements are satisfied.

17. **Default.** If Benedictine fails to perform any of the provisions of this Agreement, Licensor 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, the Licensor may, upon written notice, exercise any rights or remedies available to the Licensor under this Agreement or law except for termination.

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

19. **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 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 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:

Licensor:

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 Licensors, 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 the Benedictine Driveway or the Licensed Premises. 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 Licensors 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. 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

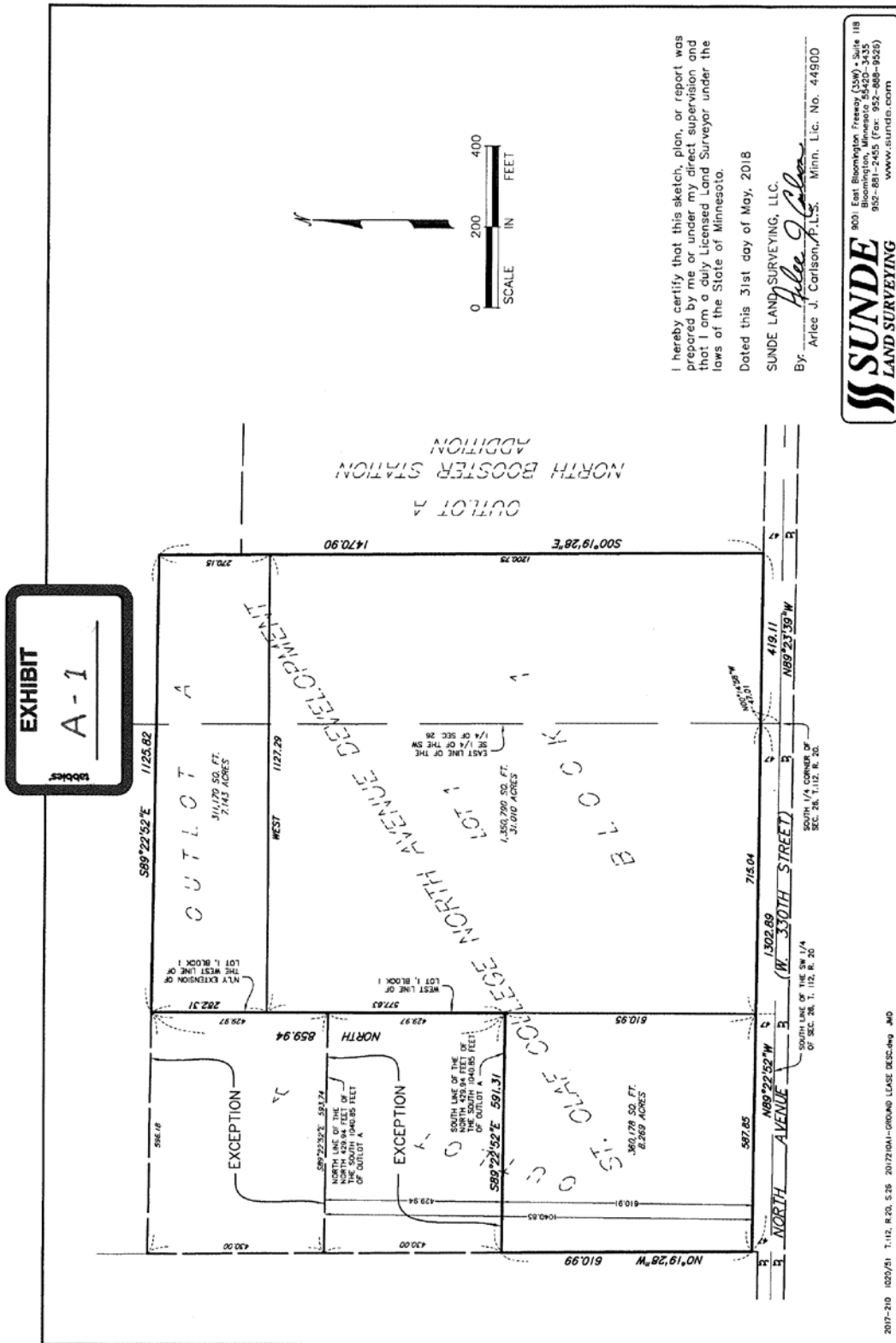
Outlot A, St. Olaf College North Avenue Development, Dakota County, Minnesota

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.

EXHIBIT A-1

Depiction of Hospital Property



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 May, 2018

SUNDE LAND SURVEYING, LLC.

By: *Ailee J. Carlson* Minn. Lic. No. 44900

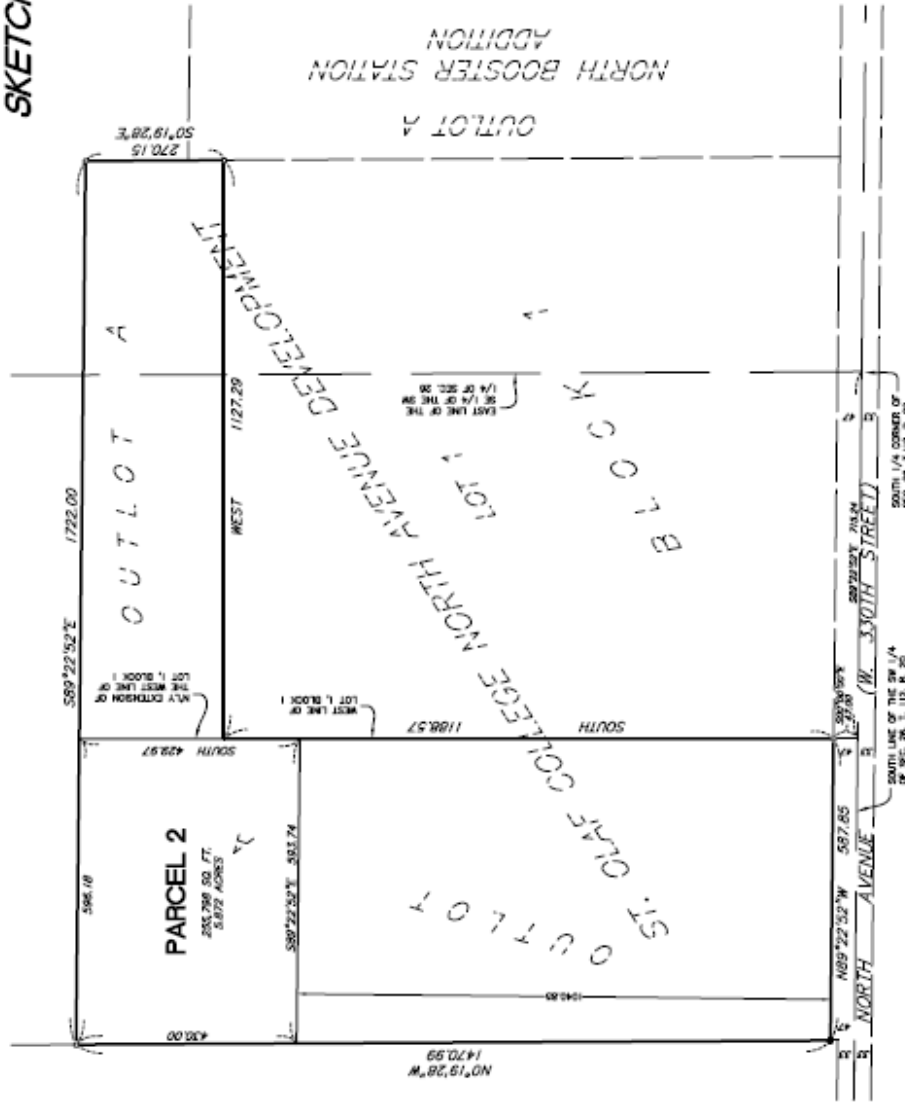
SUNDE LAND SURVEYING

300 East Broadway Street, Suite 118
Bloomington, Minnesota 55420-1415
952-881-2455 (Fax: 952-888-9555)
www.sunde.com

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 LANDSURVEYING, LLC.

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



9001 East Hennepin Freeway, (35W) & Suite 118
Minneapolis, Minnesota 55425-4533
612-835-2425 (Toll Free 800-888-8325)
www.sunde.com

EXHIBIT C

Depiction of Hospital Drive

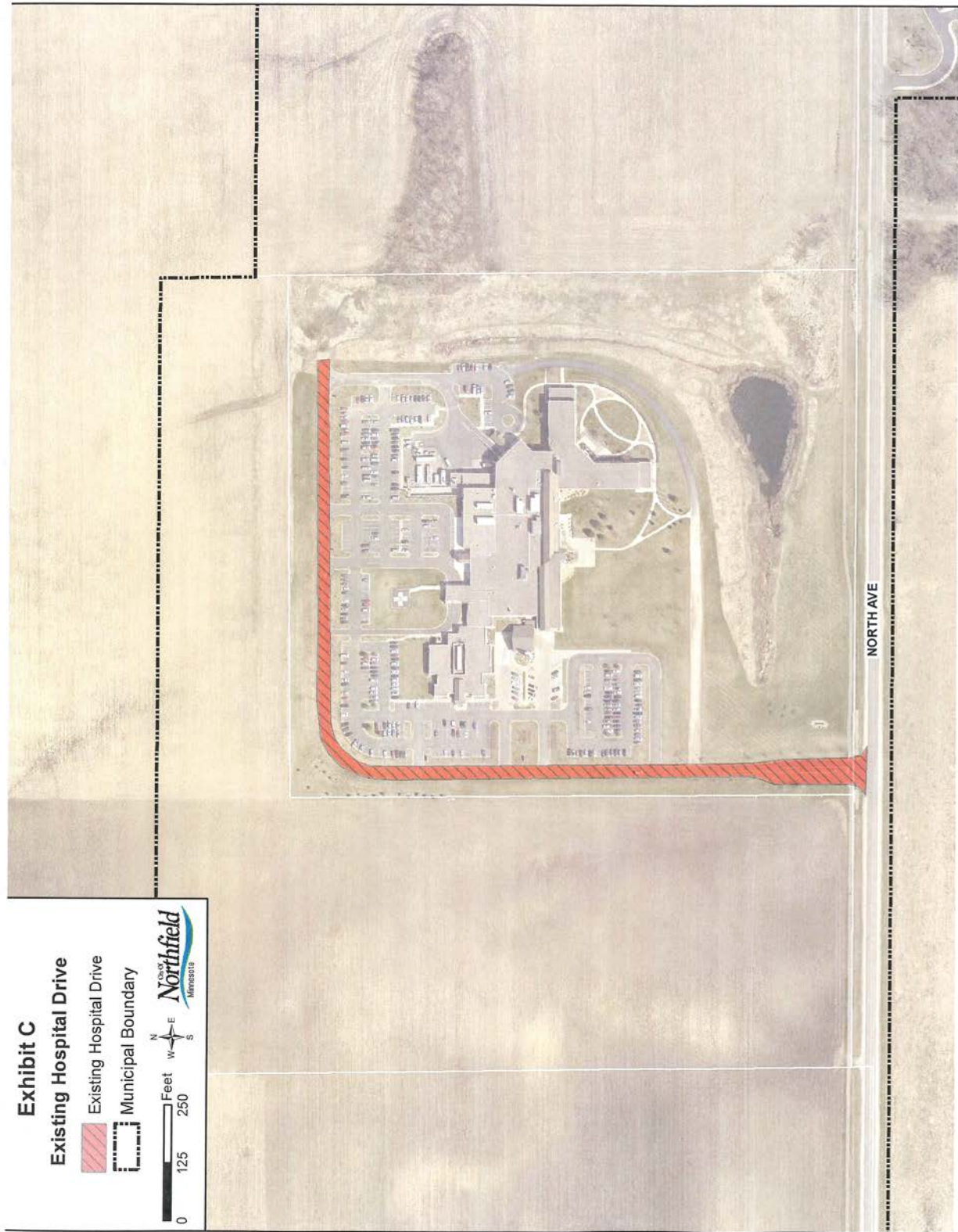


EXHIBIT D

Depiction of Benedictine Driveway Improvements



EXHIBIT E

Description and Depiction of the Licensed Premises on the Hospital Property

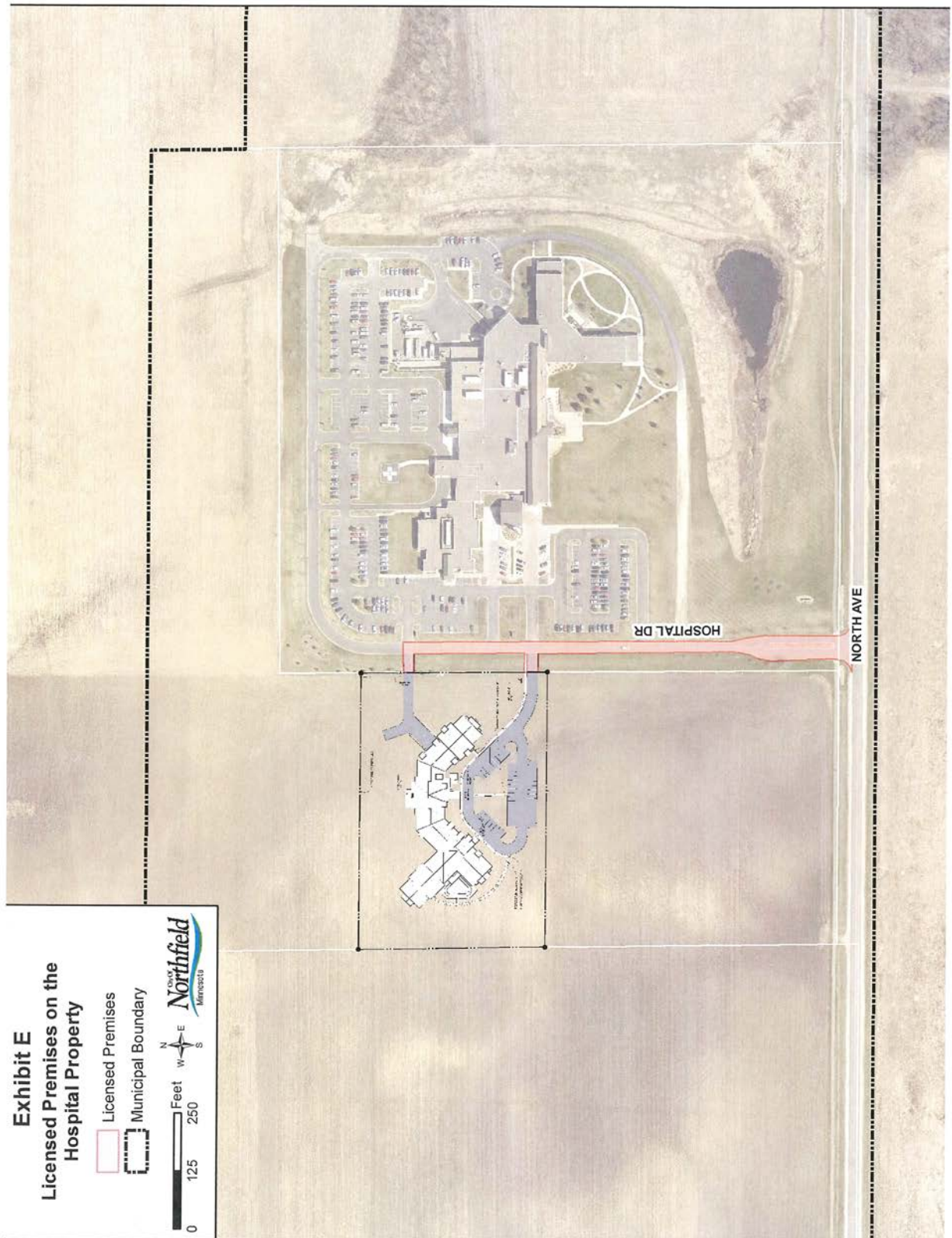
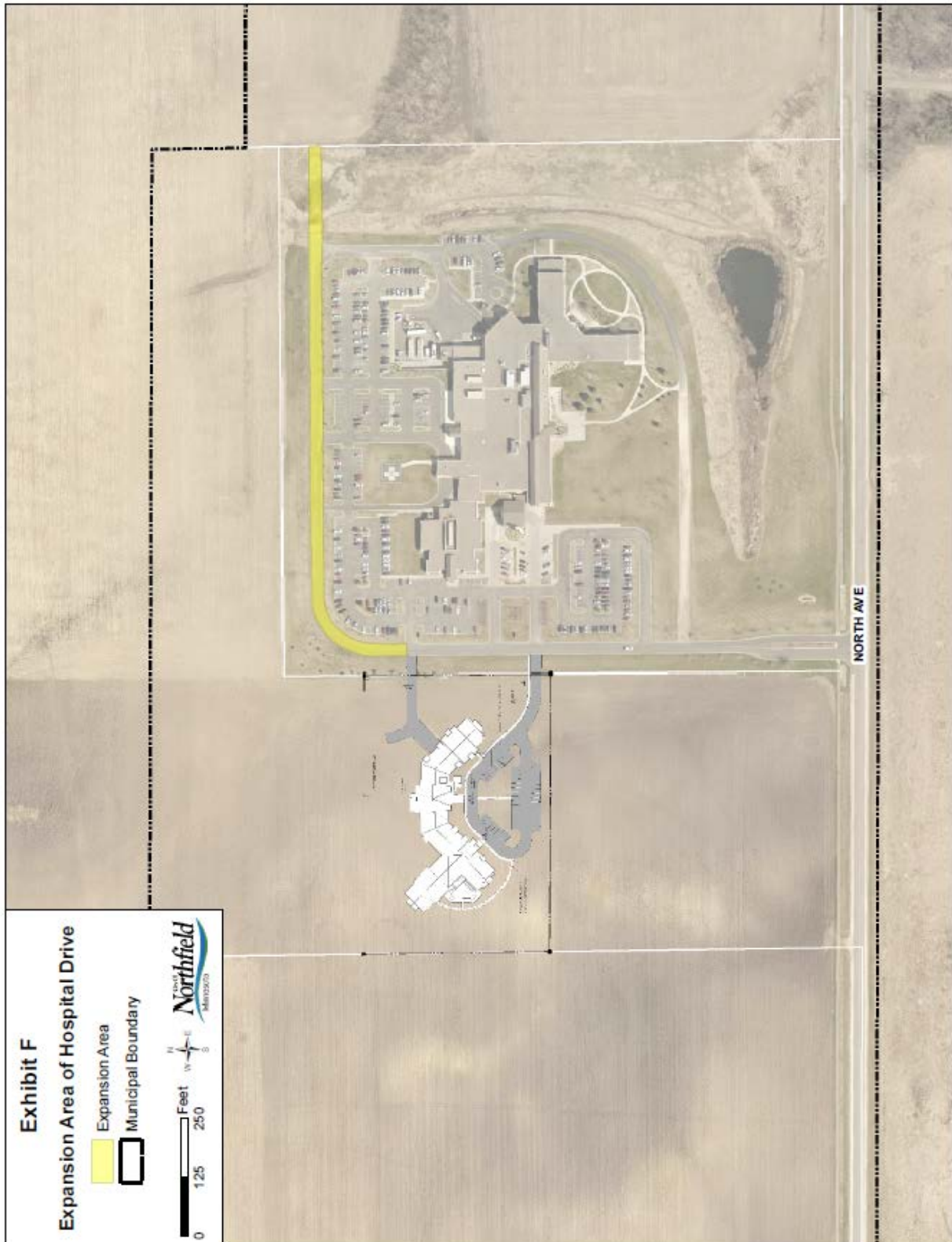


EXHIBIT F

Depiction of Expansion Area of Hospital Drive



**FEE OWNER CONSENT AND JOINDER
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 and Maintain Hospital Drive ("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.

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

**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 and Maintain Hospital Drive 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 and Maintain Hospital Drive 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