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CONSERVATION EASEMENT

DONOR: St. Elizabeth Medical Center, 2209 Genesee Street, Utica, NY, which is donating and granting the conservation easement herein.

GRANTEE: Not-for-profit organization, Citizens to Preserve Our Neighborhood, Inc. and/or the City of Utica, c/o 1629 Oneida Street, Utica, NY 13501.

The property conveyed shall be property located in the City of Utica, State of New York better depicted by the maps prepared by Edward B. Walker, ASLA, AICP, Walker Planning & Design. The Medical Center grants to the Neighbors a permanent easement of variable width to run with the land around the entire existing perimeter of the Medical Center's property at 2209 -2217 Genesee Street as indicated on Drawing No. 3 contained in the Site Planning Study by Walker Planning & Design dated February 24, 1999, except as modified by the attached photocopy of said drawing indicating the agreed upon limits of a revised easement width of 40 feet, a field survey and easement map to be prepared and filed further describing this easement. Drawing No. 3 is "E" attached.

This is a Conservation Easement being granted consistent with § 49-0303 (1) of the Environmental Conservation Law of the State of New York. This easement is being granted for the purpose of preserving and maintaining the scenic, open, historic, architectural and natural condition and character, significance and amenities of the real property affected by this easement, that being the real property both of the Donor and the Grantee.

The Donor is a fee simple title owner of the property in question and is committed to preserving the conservation value of the property as well as those of the adjoining properties. This conservation easement assures that the property will be perpetually preserved in its predominantly historic condition with trees to be planted for the purpose of providing a natural buffer between the residential neighborhood which adjoins the Medical Center and the Medical Center. Specifically, this Conservation Easement will serve to protect the site, sound and aesthetics of the Medical Center and the neighborhood that adjoins the Medical Center. Any activity or use of the property inconsistent with the purposes of this Conservation Easement or detrimental to the conservation values is expressly prohibited. The Donor agrees to confine the use of the property to activities consistent with the purposes of this easement and preservation of the conservation value set forth herein.

The Organization Citizens to Preserve Our Neighborhood, Inc. is a not-for-profit organization organized under the State of New York. Citizens to Preserve Our Neighborhood, Inc. is qualified under Internal Revenue Code § 501(c)(3) and § 170(h)(3) as a tax-exempt entity and pursues activities described under the laws of the State of New York. This organization is created to protect the natural boundaries between the Medical Center and the neighborhood, to provide for the appropriate green space, trees and planting necessary to protect the neighborhood and the ecosystem thereof. It is created for the purpose of providing a natural and pleasing barrier between the Medical Center and the neighborhood so that each may co-exist beneficially.

THE PARTIES AGREE TO THE FOLLOWING TERMS OF THIS CONSERVATION EASEMENT:

1. Prohibited Actions. Any activity or use of the property inconsistent with the purposes of this Conservation Easement or detrimental to the conservation values is expressly prohibited. By way of example, the following activities and uses are expressly prohibited:

- A. Division - any division or subdivision of the property is prohibited;
- B. Commercial activities - commercial or industrial activity is prohibited;

C. Construction - placement or construction of any manmade modifications such as buildings, structures, fences, roads and parking lots is prohibited except as expressly permitted in this Conservation Easement.

D. Cutting vegetation - any cutting of trees or vegetation is prohibited except as done consistent with the plans set forth by the arborist or landscape engineer retained under this agreement.

E. Land surface alteration - any mining or alteration of the land surface is prohibited.

F. Dumping - waste or unsightly or offensive materials are not allowed and may not be accumulated on the property.

G. Water course - natural water courses like lakes, shores, wetlands or other bodies may not be altered.

H. Off-road vehicles - motorized off-road vehicles such as snowmobiles, dune buggies, all-terrain vehicles and motorcycles may not be operated on the property. Bicycles may not be operated on the property.

I. Billboards - billboards and signs are prohibited.

2. Rights of the Neighborhood Group. The Donor confers the following rights to Citizens to Preserve Our Neighborhood, Inc., the Neighborhood Group or in the alternative, the City or the County, to perpetually maintain the conservation values of the property:

A. Right to Enter. Citizens to Preserve Our Neighborhood, Inc., the Neighborhood Group has a right to enter property at reasonable times to monitor or enforce compliance with this Conservation Easement. The Neighborhood Group may not, however, unreasonably interfere with Donor's use and quiet enjoyment of the property. The Neighborhood Group has no right to permit others to enter the property. The general public is not granted access to the property under this Conservation Easement.

B. Right to Preserve. The Neighborhood Group has the right to prevent any activity on or use of the property that is inconsistent with the terms and purpose of this Conservation Easement.

C. Right to Require Restoration. The Neighborhood Group has the right to require restoration of the areas or features of the property which are damaged by any activity inconsistent with this Conservation Easement or pursuant to the report of arborist/landscape architect to replace any trees or plantings which die or are damaged by any cause.

D. Signs. The Neighborhood Group has the right to place signs on the property which identify the land as being protected by this Conservation Easement. The number and location of any signs are subject to the Donor's approval.

E. Right to Engage in Ecological Restoration. The Neighborhood Group has the right to engage in activities that restore the biological and ecological integrity of the property. Possible activities include planting native vegetation consistent with the plans provided by the arborist.

3. Permitted Uses. The Donor retains all ownership rights which are not expressly restricted by this Conservation Easement. In particular, the following rights are reserved:

A. Right to Convey. The Donor retains the right to sell, mortgage, bequeath or donate the property. Any conveyance will remain subject to the terms and conditions of this Conservation Easement and the subsequent interest holder will be bound by terms and conditions of this Conservation Easement.

B. Right to Maintain and Replace Existing Structures. The Donor retains the right to maintain, renovate and replace the existing structure(s) as indicated on Drawing No. 2 contained in the Site Planning Study of 2/24/99 prepared by Walker Planning & Design, which is attached hereto and made a part hereof.

C. Right to Add Designated Structures or Uses. The Donor does not retain the right to add further structures to the location of the Conservation Easement except as set forth herein (see ¶ 19).

4. Neighborhood Group Remedies. This section addresses cumulative remedies of the Neighborhood Group and limitations on these remedies.

A. Delay in Enforcement. A delay in enforcement shall not be construed as a waiver of the Neighborhood Group's right to enforce the terms of this Conservation Easement.

B. Notice and Demand. If the Neighborhood Group determines that the Donor is in violation of this Conservation Easement, or that a violation is threatened, the Neighborhood Group may provide written notice to the Donor unless the violations constitute immediate and irreparable harm. The written notice will identify the violation and request corrective action to cure the violation or to restore the property.

C. Failure to Act. If, for a 28-day period after the date of the written notice, the Donor continues violating this Conservation Easement, or if the Donor does not abate the violation and implement corrective measures requested by the Neighborhood Group, the Neighborhood Group may bring an action in law or in equity to enforce the terms of the Conservation Easement, or may submit to arbitration the issue in dispute, the same being referred to a single arbitrator, arbitrator to be selected by the American Arbitration Association in accordance with its rules, arbitration to be conducted in Utica, NY, administration to be handled through the nearest regional office of the American Arbitration Association (Syracuse, NY). The decision of the arbitrator will be final. The Neighborhood Group is entitled to enjoin the violation through injunctive relief, seek specific performance, declaratory relief, restitution, reimbursement of expenses or an order compelling restoration of the property. If the court determines that the Donor has failed to comply with this Conservation Easement, then the Donor also agrees to reimburse all reasonable costs and attorney fees incurred by the Neighborhood Group compelling such compliance.

D. Unreasonable Litigation. If the Neighborhood Group initiates litigation against the Donor to enforce this Conservation Easement, and if the court determines that this litigation was without reasonable cause or in bad faith, then the court may require the Neighborhood Group to reimburse the Donor's reasonable costs and attorney fees in defending the action.

E. Arbitration. Where arbitration occurs, the cost of the arbitration shall be shared equally.

5. Ownership Costs and Liabilities. In accepting this Conservation Easement, the Neighborhood Group shall have no responsibility or other obligation for costs, liabilities, taxes or insurance of any kind related to the property. The Neighborhood Group and its trustees, officers and members have no liability arising from injury or death to any person or from physical damage to any property on the property or otherwise. The Donor agrees to defend the Neighborhood Group against such claims and to indemnify the Neighborhood Group against all costs and liabilities relating to such claims during the tenure of the Donor's ownership of the property and such an obligation shall run with the land and shall be assumed by any grantee to whom the Donor transfers property. The Donor is responsible for posting the property's boundaries and for discouraging any form of trespass that may occur.

6. Cessation of Existence. Subject to ¶ 22 below, if the Neighborhood Group shall cease to exist or fails to be a "qualified organization" for the purposes of Internal Revenue Code Section 170(h)(3), or if the Neighborhood Group is no longer authorized to acquire and hold conservation easements, then this Conservation Easement shall become vested in another entity. This entity shall be a "qualified organization" for the purposes in Internal Revenue Code Section 170(h)(3). The Neighborhood Group's rights and responsibilities shall be assigned to the following named entities in the following sequence:

1. City of Utica
2. County of Oneida
3. Any other entity heaving similar conservation purposes to which such rights may be awarded.

7. Termination. This Conservation Easement may be extinguished only by the mutual consent of the parties.

8. Liberal Construction. This Conservation Easement shall be liberally construed in favor of maintaining the conservation values of the property and in accordance with the laws of the State of New York and specifically the Environmental Conservation Law.

9. Notices. For purposes of this agreement, notices may be provided to either party, by personal delivery or by mailing a written notice to that party at the address shown at the top of this agreement, or at the last known address of a party, by First Class mail. Service will be complete upon depositing the property addressed notice with the U.S. Postal Service with sufficient postage.

10. Severability. If any portion of this Conservation Easement is determined to be invalid, the remaining provisions will remain in force.

11. Successors. This Conservation Easement is binding upon, and inures to the benefit of all of the Donor's and Neighborhood Group's successors in interest. All subsequent owners of the property are bound to all provisions of this Conservation Easement to the same extent as the current property owner.

12. Termination of Rights and Obligations. A future party's rights and obligations under this Conservation Easement terminate upon transfer of that party's interest in the property. Liability for acts or omissions occurring prior to the transfer will survive the transfer.

13. New York State Law. This Conservation Easement will be construed in accordance with New York Law.

14. Entire Agreement. This Conservation Easement, together with the Settlement Agreement of March 12, 1999, the attached reports, sets forth the entire agreement of the parties and supersedes all prior discussion and understandings.

15. Plantings. Pursuant to the attached stipulation entered into between the parties on the 12th day of March, 1999 which is also referred to as a Settlement Agreement between St. Elizabeth Medical Center and the Neighbors of St. Elizabeth Medical Center, the Medical Center will invest approximately One Hundred Seventy-five Thousand Dollars (\$175,000) in new trees and shrubs, the exact amount to be determined after discussion between Alesia & Crewell, Architects representing the Medical Center, and Edward B. Walker, ASLA, AICP, Walker Planning & Design, Landscape Architect representing the Neighbors, the object and purpose of which is to provide a screen and a buffer between the Medical Center's uses of its property and the Neighbors' use of their property. The screen shall be sufficient to prevent interference by the Medical Center with the use of the Neighbors' residences. It is the intention of the parties to create a buffer that will enhance the appearance of the neighborhood and the Medical Center and the ability to both parties to use their respective properties without interference from the other.

The buffer will exist as a result of the new trees and shrubs to be planted within the Conservation Easement as it is defined along the Ballantyne Brae, Douglas Crescent and Proctor Boulevard sides of the easement more fully depicted in Drawing #3 of 2/18/99 as prepared by Mr. Walker, which is attached hereto.

16. The plantings above described will be planted on the easement of the Ballantyne Brae properties and/or along the Ballantyne Brae side and along the Proctor Boulevard side as well in the area of Douglas Crescent. The plantings will be determined by the aforementioned Alesia & Crewell and Walker Planning & Design and with the approval of the parties. If the parties disagree, then the arbitration clause set forth herein will be utilized to deal with any differences. Likewise, any disagreement between the parties as to the need for plantings for the purpose of visual buffering, noise buffering, or sound buffering or a light buffering will also be subject to arbitration.

17. Parking Lot. It is understood and agreed that a parking lot will be designed and constructed to substantially conform to the geometry and location as indicated on Drawing Number 2 contained in the Site Planning Study prepared by Walker Planning & Design dated February 24, 1999, with the following agreed upon exceptions:

A. The Donor, during final design of the Project, shall have the right to make adjustments to the parking lot to accommodate additional parking spaces within the limits of disturbance (defined below) subject to mutual agreement of the parties.

B. All construction work shall be confined to the area delineated by the disturbance limit line as indicated on Sketch No. 1 (sketch attached). The disturbance limit line shall be defined as the line established in the field (and to be legally described by a metes and bounds survey at a future date and attached to this agreement) beyond which no clearing of existing vegetation or grading of topsoil, loam, earth or rock will be permissible for any purpose unless mutually agreed upon in writing by both parties.

C. The Donor shall have the right to move the location of the east edge of the parking lot from the location indicated on the above-referenced Drawing Number 2, and to adjust the final location of related drainage and grading work, as required, within the limits of disturbance. However, at no time shall any improvements or any construction work of any kind extend beyond the limits of disturbance, unless mutually agreed upon in writing by both parties.

18. Fence. The Donor will install a fence around the new parking area, location, type, style and height to be mutually agreed upon between the Donor and the Neighborhood Group.

19. All presently existing structures, pavements, parking lots, and driveways, within any area of the easement and all structures, pavements, parking lots, and roadways in the project proposed in December 1998 as modified by this agreement will be continued and will be maintained by the Donor but no other new buildings or new projects or pavements or parking lots or improvements of any kind will be constructed or proposed in that easement area, that easement to be forever maintained by the Donor as a buffer between the Donor and the Neighbors, all as described on the drawings contained in the Site Planning Study by Walker Planning & Design dated February 24, 1999, and as modified herein.

20. The Medical Center will retain Edward B. Walker to advise it and the Neighbors during the course of construction on landscaping at an annual budget estimated to be _____ Dollars as set forth earlier in this agreement. Thereafter an annual review by a mutually agreed upon landscape architect or arborist will continue throughout the life of this easement. The cost of the same to be borne by the Donor. The purpose of this annual report is to examine the health of plantings, to evaluate the effectiveness of the barrier and to recommend plans to maintain the barrier created by the plantings. Any disagreement regarding the plan is subject to arbitration.

21. Consistent with the Conservation Easement herein, the Donor will paint the parking garage colors consistent with trees and earth, that is, brown neutral colors, and in particular, the orange and blue colors that are used in some areas of the existing garage will be repainted brown and/or something more closely aligned to the color of the existing Medical Center. Moreover, lighting located in the parking garage and on the general premises of the Medical Center shall be directed in such a way as to minimize interference with the use by the Neighbors to the extent that that use is not and cannot be protected by the Conservation Easement. Any dispute between the parties with regard to this matter shall be subject to the arbitration clause set forth herein.

22. The parties hereto understand that the permanent conservation easement is a term of art. It is understood that the Donees will apply for tax exempt status under the Internal Revenue Code. If the same is not granted, the Donees will have two (2) years from the date of execution of this agreement to have the Conservation Easement revert to an easement.

23. The following documents are attached to this agreement or are to be filed separately in support of this agreement:

- A. Site Planning Study by Walker Planning & Design dated 2/24/99;
- B. Easement Map;
- C. "As Built" drawing showing all improvements in the easement;
- D. Photographs documenting the improvements and plantings in the easement.
- E. Copy of Drawing No. 3 indicating the agreed upon limits of a revised easement of 40 feet.
- F. Sketch No. 1 "Location of Disturbance Limit Line" dated 3/8/99.

Dated: March 12, 1999

St. Elizabeth Medical Center

By: Sister Rose Vincent
Sister Rose Vincent, President

Dated: March 12, 1999

Citizens to Preserve Our Neighborhood, Inc.

By: Edward Lanza 3/12/99

Conservation Easement



Conservation Easement



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